CHIEF'S PREFACE

The men and women of the Berkeley Police Department aspire to provide exceptional community service to the citizens of Berkeley. The character and responsibilities surrounding the law enforcement field requires that all personnel be given specific and consistent instructions to execute their duties and obligations. This manual is designed to provide each member a working guide to follow to aid in the requirements of their duties. While sworn and non-sworn personnel are responsible for making discretionary decisions, we are all bound by law and standards to be fair, consistent, impartial and professional. The policies, procedures, and rules set forth in this manual are a guide to the exercise of discretion and execution of duty.

The system of policy and procedure outlined in this manual reflects basic departmental functions in the major operational and administrative areas. These systems are provided to establish a format for a methodical approach to achieving Department goals and objectives. Policies and procedures are designed to support a clear understanding of the constraints and limitations allowed under law and to convey the Department's expectations of work performance.

This manual is a tool to be used to supplement individual training and experience, and is not intended to discourage employee initiative. It will not encompass every situation encountered by a member, so judicious exercise of discretion may be required.

All personnel are required to be familiar with the directives in this manual and when necessary, seek guidance and clarification from a supervisor. Members are encouraged to submit recommendations for constructive changes to improve the Department's efficiency and effectiveness. This manual will be updated as necessary to reflect changes in the law, personnel responsibilities, and Department goals and objectives.

Disclaimer: The policies, procedures, and rules expressed in this manual are for Departmental use only and do not apply in any criminal or civil proceeding. Any policy, procedure and/or rule shall not be construed as a higher legal standard of care or safety in an evidentiary sense with respect to third party claims. When a conflict occurs in any directive in this manual with Federal laws, State Statutes, City Ordinances or City Personnel Policies, the existing Federal law, State Statute, City Ordinance or City Personnel Policy will supersede the directive in conflict.

Jennifer Louis

Chief of Police

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LAW ENFORCEMENT CODE OF ETHICS

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

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MISSION - VISION - VALUES

MISSION

United in service, our mission is to safeguard our diverse community through proactive law enforcement and problem solving, treating all people with dignity and respect.

VISION

The Berkeley Police Department will be a team of leaders at every level. We will foster strong relationships with our community, inspiring trust through our service, building on our historic tradition of progressive policing, and dedicated to the safety of all.

VALUES

Service is our calling. As members of this community, the Berkeley Police Department team is committed to proactive law enforcement and problem solving, holding these as our core values:

Integrity: We are ethical, fair, and trustworthy in all we do.

Safety: We strive to keep our community and each other safe.

Respect: We fulfill our duties with dignity, compassion, and empathy.

Diversity: We value the strength of a diverse workplace and community. We endeavor to reflect the community we serve, promoting inclusion and fairness.

Professionalism: We commit to organizational excellence through progressive training, positive attitude, and superior performance.

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Chapter 1 - Law Enforcement Role and Authority

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Law Enforcement Authority

100.1 PURPOSE AND SCOPE

The purpose of this policy is to affirm the authority of the members of the Berkeley Police Department to perform their functions based on established legal authority.

100.2 POLICY

It is the policy of the Berkeley Police Department to limit its members to only exercise the authority granted to them by law.

While this department recognizes the power of peace officers to make arrests and take other enforcement action, officers are encouraged to use sound discretion in the enforcement of the law. This department does not tolerate the abuse of law enforcement authority.

100.3 PEACE OFFICER POWERS

Sworn members of this department are authorized to exercise peace officer powers pursuant to applicable state law (Penal Code § 830.1 et seq.).

100.3.1 DELIVERY TO NEAREST MAGISTRATE

When an officer makes an arrest pursuant to a warrant with bail set, and the warrant was issued in a county other than where the person was arrested, the officer shall inform the person in writing of the right to be taken before a magistrate in the county where the arrest occurred (Penal Code § 821; Penal Code § 822).

100.3.2 ARREST AUTHORITY OUTSIDE THE JURISDICTION OF THE BERKELEY POLICE DEPARTMENT

The arrest authority outside the jurisdiction of the Berkeley Police Department includes (Penal Code § 830.1; Penal Code § 836):

(a) When the officer has probable cause to believe the person committed a felony.

(b) When the officer has probable cause to believe the person has committed a misdemeanor in the presence of the officer and the officer reasonably believes there is immediate danger to person or property or of escape.

(c) When the officer has probable cause to believe the person has committed a misdemeanor for which an arrest is authorized even if not committed in the presence of the officer such as certain domestic violence offenses and there is immediate danger to person or property or of escape or the arrest is mandated by statute.

(d) When authorized by a cross jurisdictional agreement with the jurisdiction in which the arrest is made.

(e) In compliance with an arrest warrant.

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On-duty arrests will not generally be made outside the jurisdiction of this department except in cases of hot or fresh pursuit, while following up on crimes committed within the City or while assisting another agency.

On-duty officers who discover criminal activity outside the jurisdiction of the City should when circumstances permit, consider contacting the agency having primary jurisdiction before attempting an arrest.

100.3.3 ARREST AUTHORITY INSIDE THE JURISDICTION OF THE BERKELEY POLICE DEPARTMENT

The arrest authority within the jurisdiction of the Berkeley Police Department includes (Penal Code § 830.1; Penal Code § 836):

(a) When the officer has probable cause to believe the person has committed a felony, whether or not committed in the presence of the officer.

(b) When the officer has probable cause to believe the person has committed a misdemeanor in this jurisdiction and in the presence of the officer.

(c) When the officer has probable cause to believe the person has committed a public offense outside this jurisdiction, in the presence of the officer and the officer reasonably believes there is an immediate danger to person or property, or of escape.

(d) When the officer has probable cause to believe the person has committed a misdemeanor for which an arrest is authorized or required by statute even though the offense has not been committed in the presence of the officer such as certain domestic violence offenses.

(e) In compliance with an arrest warrant.

100.3.4 TIME OF MISDEMEANOR ARRESTS

Officers shall not arrest a person for a misdemeanor between the hours of 10:00 p.m. of any day and 6:00 a.m. of the next day unless (Penal Code § 840):

(a) The arrest is made without a warrant pursuant to Penal Code § 836 which includes:

1. A misdemeanor committed in the presence of the officer.
2. Misdemeanor domestic violence offenses (See the Domestic Violence policy).

(b) The arrest is made in a public place.

(c) The arrest is made with the person in custody pursuant to another lawful arrest.

(d) The arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night.

100.4 INTERSTATE PEACE OFFICER POWERS

Peace officer powers may be extended to other states:

(a) As applicable under interstate compacts, memorandums of understanding or mutual aid agreements in compliance with the laws of each state.

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(b) When an officer enters an adjoining state in close or fresh pursuit of a person believed to have committed a felony (ARS § 13-3832; NRS 171.158; ORS 133.430).

The person arrested out of state must be taken without unnecessary delay before a magistrate of the county in which the arrest was made (ARS § 13-3833; NRS 171.158; ORS 133.440).

100.5 CONSTITUTIONAL REQUIREMENTS

All members shall observe and comply with every person's clearly established rights under the United States and California Constitutions.

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Chief Executive Officer

101.1 PURPOSE AND SCOPE

The California Commission on Peace Officer Standards and Training (POST) has mandated that all sworn officers and dispatchers employed within the State of California shall receive certification by POST within prescribed time periods.

101.1.1 CHIEF EXECUTIVE OFFICER REQUIREMENTS

Any chief executive officer of this department appointed after January 1, 1999, shall, as a condition of continued employment, complete the course of training prescribed by POST and obtain the Basic Certificate by POST within two years of appointment (Penal Code § 832.4).

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Oath of Office

102.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that oaths, when appropriate, are administered to department members.

102.2 POLICY

It is the policy of the Berkeley Police Department that, when appropriate, department members affirm the oath of their office as an expression of commitment to the constitutional rights of those served by the Department and the dedication of its members to their duties.

102.3 OATH OF OFFICE

All department members, when appropriate, shall take and subscribe to the oaths or affirmations applicable to their positions. All sworn members shall be required to affirm the oath of office expressing commitment and intent to respect constitutional rights in discharging the duties of a law enforcement officer (Cal. Const. Art. 20, § 3; Government Code § 3102). The oath shall be as follows:

“I, (employee name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.”

102.4 MAINTENANCE OF RECORDS

The oath of office shall be filed as prescribed by law (Government Code § 3105).

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Policy Manual

103.1 PURPOSE AND SCOPE

The manual of the Berkeley Police Department is hereby established and shall be referred to as the Policy Manual or the manual. The manual is a statement of the current policies, rules and guidelines of this department. All members are to conform to the provisions of this manual.

All prior and existing manuals, orders and regulations that are in conflict with this manual are rescinded, except to the extent that portions of existing manuals, procedures, orders and other regulations that have not been included herein shall remain in effect, provided that they do not conflict with the provisions of this manual.

103.2 POLICY

Except where otherwise expressly stated, the provisions of this manual shall be considered as guidelines. It is recognized that the work of law enforcement is not always predictable and circumstances may arise which warrant departure from these guidelines. It is the intent of this manual to be viewed from an objective standard, taking into consideration the sound discretion entrusted to members of this department under the circumstances reasonably available at the time of any incident.

103.2.1 DISCLAIMER

The provisions contained in the Policy Manual are not intended to create an employment contract nor any employment rights or entitlements. The policies contained within this manual are for the internal use of the Berkeley Police Department and shall not be construed to create a higher standard or duty of care for civil or criminal liability against the City, its officials or members. Violations of any provision of any policy contained within this manual shall only form the basis for department administrative action, training or discipline. The Berkeley Police Department reserves the right to revise any policy content, in whole or in part.

103.3 AUTHORITY

The Chief of Police shall be considered the ultimate authority for the content and adoption of the provisions of this manual and shall ensure compliance with all applicable federal, state and local laws. The Chief of Police or the authorized designee is authorized to issue Special Orders, which shall modify those provisions of the manual to which they pertain. Special Orders shall remain in effect until such time as they may be permanently incorporated into the manual.

103.4 DEFINITIONS

The following words and terms shall have these assigned meanings throughout the Policy Manual, unless it is apparent from the content that they have a different meaning:

Adult - Any person 18 years of age or older.

CCR - California Code of Regulations (Example: 15 CCR 1151).

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CHP- The California Highway Patrol.

CFR - Code of Federal Regulations.

City - The City of Berkeley.

Non-sworn - Employees and volunteers who are not sworn peace officers.

Department/BPD - The Berkeley Police Department.

DMV - The Department of Motor Vehicles.

Employee - Any person employed by the Department.

Juvenile- Any person under the age of 18 years.

Manual - The Berkeley Police Department Policy Manual.

May - Indicates a permissive, discretionary or conditional action.

Member - Any person employed or appointed by the Berkeley Police Department, including:

- Full- and part-time employees
- Sworn peace officers
- Reserve, auxiliary officers
- Non-sworn employees
- Volunteers.

Officer - Those employees, regardless of rank, who are sworn peace officers of the Berkeley Police Department.

On-duty - A member's status during the period when he/she is actually engaged in the performance of his/her assigned duties.

Order - A written or verbal instruction issued by a superior.

POST - The California Commission on Peace Officer Standards and Training.

Rank - The title of the classification held by an officer.

Shall or will - Indicates a mandatory action.

Should - Indicates a generally required or expected action, absent a rational basis for failing to conform.

Supervisor - A person in a position of authority that may include responsibility for hiring, transfer, suspension, promotion, discharge, assignment, reward or discipline of other department members, directing the work of other members or having the authority to adjust grievances. The supervisory exercise of authority may not be merely routine or clerical in nature but requires the use of independent judgment.

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The term "supervisor" may also include any person (e.g., officer-in-charge, lead or senior worker) given responsibility for the direction of the work of others without regard to a formal job title, rank or compensation.

When there is only one department member on-duty, that person may also be the supervisor, except when circumstances reasonably require the notification or involvement of the member's off-duty supervisor or an on-call supervisor.

USC - United States Code.

103.5 ISSUING THE POLICY MANUAL

An electronic version of the Policy Manual will be made available to all members on the department network for viewing and printing. No changes shall be made to the manual without authorization from the Chief of Police or the authorized designee.

Each member shall acknowledge that he/she has been provided access to, and has had the opportunity to review the Policy Manual. Members shall seek clarification as needed from an appropriate supervisor for any provisions that they do not fully understand.

103.6 PERIODIC REVIEW OF THE POLICY MANUAL

The Chief of Police will ensure that the Policy Manual is periodically reviewed and updated as necessary.

103.7 REVISIONS TO POLICIES

All revisions to the Policy Manual will be provided to each member on or before the date the policy becomes effective. Each member will be required to acknowledge that he/she has reviewed the revisions and shall seek clarification from an appropriate supervisor as needed.

Members are responsible for keeping abreast of all Policy Manual revisions.

Each division captain will ensure that members under his/her command are aware of any Policy Manual revision.

All department members suggesting revision of the contents of the Policy Manual shall forward their written suggestions to their division captain, who will consider the recommendations and forward them to the command staff as appropriate.

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Chapter 2 - Organization and Administration

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Organizational Structure and Responsibility

200.1 PURPOSE AND SCOPE

The organizational structure of this department is designed to create an efficient means to accomplish our mission and goals and to provide for the best possible service to the public.

200.2 ORGANIZATIONAL STRUCTURE

The general hierarchy of the department's divisions, bureaus, etc. is as follows:

- Department
- Divisions
- Bureaus
- Units
- Details
- Officer / Sergeant / Detective

200.3 DIVISIONS

The Chief of Police is responsible for administering and managing the Berkeley Police Department. There are four divisions in the Police Department as follows:

- Investigations Division
- Operations Division
- Professional Standards Division
- Support Services Division

200.4 OFFICE OF THE CHIEF

The Office of the Chief includes the Chief of Police, the Internal Affairs Bureau and two Administrative Assistants.

(a) The Chief of Police is responsible to the City Manager. Functions of the Chief of Police include, but are not limited to the following:

1. Setting objectives for the Department
2. Developing and adopting policies and procedures
3. Prescribing penalties for violations of any such policies or procedures and providing for the enforcement of said penalties
4. Providing for staffing
5. Inspecting, assigning and promoting personnel
6. Reporting on Department accomplishments

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7. Maintaining good public, employee and official relations
8. Developing the Departmental budget
9. Keeping the City Manager informed of incidents or developments that may adversely affect public or official relations

b. The Internal Affairs Bureau is administered by two sergeants who are directly responsible to the Chief of Police. For the functions of the Internal Affairs Bureau, see the Personnel Complaints Policy.

200.5 PROFESSIONAL STANDARDS DIVISION

The Professional Standards Division is commanded by a captain, whose primary responsibility is to provide general management, direction and control for the Professional Standards Division.

The Professional Standards Division consists of the Professional Standards Bureau and the Personnel and Training Bureau.

(a) The Professional Standards Bureau is administrated by two sergeants who are directly responsible to the Professional Standards Division Captain. The Professional Standards Bureau consists of the Audit and Inspection Sergeant and the Policy and Planning Sergeant.

1. The Audit and Inspection Sergeant's functions include, but are not limited to:
   - i. Planning and conducting research
   - ii. Preparing surveys, studies and projects
   - iii. Auditing medical expenses incurred by the Department in its investigative and custodial activities
2. The Policy and Planning Sergeant's functions include, but are not limited to:
   - i. Coordinating the presentation of the annual Memorandum of Understanding
   - ii. Maintaining and updating Departmental policies

(b) The Personnel and Training Bureau is administered by a Lieutenant who is directly responsible to the Professional Standards Division Captain. The Personnel and Training Bureau consists of the Personnel and Training Sergeant, a Training Officer, an Associate Management Analyst, an OSIII, and Police Aides. Functions of the Personnel and Training Bureau include:

1. Ensuring officers and employees complete required training, including but not limited to training mandated by the California Peace Officer Standards and Training Commission (POST).
2. Administering reimbursement monies from POST and maintaining a close liaison with the City Auditor in this accounting responsibility
3. Processing expense accounts for police personnel
4. Assisting Human Resources with hiring examinations

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5. Conducting pre-employment personnel investigations
6. Developing and directing Departmental training programs
7. Preparing and issuing Departmental Orders
8. Processing internal and external commendations
9. Developing specifications for uniforms and other equipment and determining if the equipment used by members of the Department complies with specifications
10. Maintaining an inventory of issued safety equipment
11. Developing and supervising health and safety programs
12. Investigation the preparation of reports of injuries to personnel received in the line of duty, and preparing reports to contractor administering Worker's Compensation Insurance, City Human Resources Department and City Risk Manager
13. Assisting other Department personnel as needed or assigned
14. Processing leaves of absence, terminations and retirements
15. Processing Performance Appraisal Reports
16. Providing the administrative processing of disciplinary sanctions
17. Participating as member(s) of Departmental Boards of Review dealing with personnel complaints
18. Developing and managing employee incentive programs
19. Developing and disseminating information pertaining to the promotion of health, welfare and morale of police personnel
20. Scheduling annual physical exams
21. Maintaining Departmental personnel files
22. Compiling Department strength and assignment reports as needed.

200.6 SUPPORT SERVICES DIVISION

The Support Services Division is commanded by a captain, whose primary responsibility is to provide general management, direction and control for the Support Services Division. The Support Services Division consists of the Support Services Bureau, the Communications Center and info Information Management.

The Support Services Bureau is administered by a Lieutenant who is directly responsible to the Support Services Division Captain. The Support Services Bureau consists of the Jail, the Property and Evidence Unit, Records Management, Report Review and the Warrant Detail.

(a) The Jail is administered by the Support Services Lieutenant and the Jail Operations Sergeant, who are directly responsible to the Support Services Division Captain. The functions of Jail Operations include, but are not limited to:

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i. Ensuring the safe and efficient operation of the City Jail

ii. Providing for the short term detention of persons pending arraignment in court

iii. Ensuring there is adequate staffing to provide for the physical needs and safety of all inmates

iv. Providing for the safekeeping of prisoners' property during their detention in the City Jail

2.The Property and Evidence Unit is administered by a supervisor who is directly responsible to the Support Services Lieutenant. The functions of the Property and Evidence Unit include, but are not limited to:

i. Safeguarding inventory

ii. Processing property and evidence related to investigations conducted by Department personnel

iii. Maintaining and monitoring supplies for the police facility.

3. Records Management and Report Review are administered by a supervisor who reports directly to the Support Services Lieutenant. For the functions of Records Management and Report Review, see the Records Management policy.

4. The Warrant Detail is administered by an officer who is directly responsible to the Support Services Lieutenant. For the functions of the Warrant Detail, see the Warrant Service Policy.

5. The Communications Center is administered by a Manager who is directly responsible to the Support Services Division Captain. For the functions of Communication Center, see the Communications Center Policy.

6. Information Management is administered by an Sergeant who is directly responsible to the Support Services Lieutenant. The functions of Information Management include, but are not limited to developing, implementing and maintaining all computer related information management systems applicable throughout the Department.

200.7 OPERATIONS DIVISION

The Operations Division is commanded by a Captain, whose primary responsibility is to provide general management direction and control for the Operations Division. The Operations Division consists of the Patrol Bureau, the Community Services Bureau and the Special Response Team.

(a) The Patrol Bureau is administered by four lieutenants who are directly responsible to the Operations Division Captain. The Patrol Bureau consists of Patrol Teams and the Field Training Officer Program.

(a) Patrol Teams consist of 7 teams, each with 10-12 officers and 2 supervising sergeants. The Sergeants are directly responsible to their assigned Patrol Lieutenant. For the functions of Patrol, see the Patrol Function policy.

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(b) The FTO Program is administered by three sergeants who are directly responsible to the FTO Lieutenant. For the functions of Field Training Officer Program, see the Field Training Program Policy.

b. The Community Services Bureau (CSB) is administered by a lieutenant who is directly responsible to the Operations Division Captain. CSB consists of the Area Coordinators and the Reserve Officer Program.

1. The CSB Area Coordinators are commanded by a sergeant who is directly responsible to the CSB Lieutenant. For the functions of CSB, see the Community Relations Policy.
2. The Police Reserve Program is administered by the Community Services Sergeant who is directly responsible to the CSB Lieutenant. For the functions of Police Reserve Program, see the Police Reserve Program Policy.
3. The Special Response Team is administered by employees who are directly responsible to the Operations Division Captain. For the functions of the Special Response Team, see the Special Response Team Policy.

200.8 INVESTIGATIONS DIVISION

The Investigations Division is commanded by a Captain, whose primary responsibility is to provide general management direction and control for the Investigations Division. The Investigations Division consists of the Detective Bureau and the Traffic Bureau

a. The Detective Bureau is administered by a lieutenant who is directly responsible to the Investigations Division Captain. The Detective Bureau consists of six investigative units, the Identification Unit and Crime Analysis.

(a) The six investigative units are each commanded by a sergeant who is directly responsible to the Detective Bureau Lieutenant. For the functions of each unit, see the Detective Bureau Policy.

(b) The Identification Unit is administered by an Identification Expert who is responsible to the Detective Bureau Lieutenant. The functions of Identification Unit include, but are not limited to:

i. Providing identification services, including fingerprinting, photography and the maintenance of fingerprint identification and photograph files

ii. Examining crime scenes for identification evidence

iii. Providing other technical services as appropriate

3. Crime Analysis consists of one Crime Analyst. Crime Analysis is administered by an officer who is directly responsible to the Detective Bureau Lieutenant. For the functions of Crime Analysis, see the Crime Analysis Policy.

b. The Traffic Bureau is administered by a lieutenant who is directly responsible to the Investigations Division Captain. The Traffic Bureau consists of the Traffic Unit and Parking Enforcement.

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(a) The Traffic Unit is commanded by a sergeant who is directly responsible to the Traffic Bureau Lieutenant. The functions of the Traffic Bureau include, but are not limited to:

i. Enforcing traffic regulations

ii. Investigating traffic hazards and initiating remedial measures

iii. Cooperating with public schools, other agencies and organizations to provide traffic safety education and information

iv. Preparing reports for the Chief of Police, City Manager, City Council, or others as directed

v. Cooperating with the City Traffic Engineer in developing engineering plans for the solution of traffic problems

vi. Overseeing the police tow contract with private contractors and conducting post storage tow hearings

vii. Reviewing traffic collision reports

(b) Parking Enforcement is administered by a Parking Manager who is directly responsible to the Traffic Bureau Lieutenant. The functions of the Parking Bureau include, but are not limited to:

i. Enforcing local parking regulations

ii. Overseeing the operation of parking garages

iii. Maintaining and regulating parking in off street lots

iv. Enforcing preferential parking regulations

v. Making routine collections from meters

vi. Keeping records and accounting for all parking revenues

200.9 SUCCESSION OF COMMAND

The Chief of Police exercises command over all personnel in the Department. During planned absences, the Chief of Police will designate a division captainto serve as the acting Chief of Police.

200.10 UNITY OF COMMAND

The principles of unity of command ensure efficient supervision and control within the Department. Generally, each employee shall be accountable to one supervisor at any time for a given assignment or responsibility. Except where specifically delegated authority may exist by policy or special assignment (e.g., SRT, bike patrol), any supervisor may temporarily direct any subordinate if an operational necessity exists.

200.11 ORDERS

Members shall respond to and make a good faith and reasonable effort to comply with the lawful order of superior officers and other proper authority.

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200.12 DUTY COMMAND OFFICER

(a) Purpose: The purpose of the Duty Command Officer (DCO) is to provide Command Staff level supervision to those persons charged with the operation of the Department during those times when no Command Staff is on duty. All Command Staff officers, with the exception of the Chief of Police shall serve as DCO.

(b) Service: Service as DCO shall be for a one-week period, commencing at 0800 hours on Monday through 0800 hours on the following Monday. Selection of on-call weeks shall be based on seniority in rank. The Operations Division Captain shall coordinate the selection of on-call weeks, prepare a written schedule, and distribute the schedule, when completed, to the Chief of Police, each Division Captain, the Patrol Lieutenants' Office, the Patrol Sergeants' Office and the Communications Center.

(c) Availability: The DCO shall be immediately available by telephone to provide Command Staff level supervision either by instructions via telephone or by responding directly to the Police Department of field command post. Other responsibilities may include attending City Council or other City meetings as assigned.

(d) Notifications: The DCO shall be notified of all cases involving:

1. Homicide
2. Escape or jail break
3. Death or serious injury of a person in custody
4. Kidnapping
5. Missing juveniles under the age of 12 years
6. Bombing
7. Serious injury to an officer or caused by an officer
8. Officer-involved shootings
9. Hazardous spills
10. Other events which, in the judgment of the ranking on-duty officer, require DCO notification.

The DCO notification shall be made at the direction of the ranking on-duty officer.

(a) Police Accountability Board (PAB): The DCO shall serve as the representative of the Police Department at all PAB Boards of Inquiry and regular PAB business meetings. This duty shall include the authority to remove officers from hearings if the hearing appears out of control.

1. The DCO should be responsive to requests for information and/or assistance by the PAB, but should confine responses to:
   - The scope of the Internal Affairs Bureau investigation.
   - Department policies and procedures.
   - Applicable local, state and federal laws.
   - Procedures of allied agencies in the Criminal Justice System.

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(b) PAB Reports: A written report shall be prepared and forwarded to the Chief of Police on the day following the attended PAB Board of Inquiry. An exemplar below shows the proper format for this report. Reports should be completed and delivered to the Office of the Chief on the day following the Board of Inquiry session attended.

(c) Exemplar:

On _____, the PAB Board of Inquiry

Commissioners: _____, _____ and _____ met to make findings on PRC Case Number(s)_____. _____

(a) PRC Case No. _____ / IAB Case No. _____

(b) Complainant: _____

(c) Accused Officer(s)/Employee(s): _____

(d) Allegations and dispositions: _____

(e) Comments - (briefly describe the nature and substance of the Board of Inquiry. This should include discussion of policy or other points which may require a response by the Department, reasons for dispositions, areas of controversy (example: "PAB vs. BPD") and may include such other information as may be reasonably be included for the Chief's information).

(f) Time Spent - (List those Departmental employees attending on and off-duty and actual time spent at the Board session.

Signature

200.13 GENERAL RESPONSIBILITIES OF OFFICERS AND EMPLOYEES

It shall be the duty and responsibility of each employee to fulfill, to the greatest extent possible, the functions of the Police Department and the Division, Bureau or Unit to which one is assigned and to perform any duty assigned by a supervisor. An employee's work performance shall be in keeping with the focus of the Department's Mission Statement.

200.14 INDIVIDUAL RESPONSIBILITIES OF OFFICERS AND EMPLOYEES

Each employee of the Department is individually responsible for:

(a) The enforcement of laws

(b) Initiating police action when necessary

(c) The proper execution of assigned duties

(d) The prevention and suppression of crime

(e) The arrest of offenders, depending upon the nature of his/her specific assignment

(f) Maintenance of proper public relations

(g) Adherence to Departmental policies and procedures

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(h) Promptly reporting through channels developments that may adversely affect public or official relations

(i) The proper care and use of Departmental equipment, supplies and facilities

200.15 RESPONSIBILITIES OF SUPERVISORY EMPLOYEES

Each supervisory employee, in addition to the general and individual responsibilities, shall be responsible for:

(a) The detailed inspection of all activities of the employees under one's supervision

(b) An intimate knowledge of the duties and responsibilities of one's subordinates

(c) Proper performance of duties and adherence to policies and procedures by each member of one's unit

(d) The enforcement of rules and regulations among members of one's unit

(e) Working as closely with one's subordinates as time and area permit.

(f) Providing leadership in carrying out police activities

(g) Coordination of effort when more than one employee is involved and the proper assignment of duties to each person

(h) Functional supervision of employees not directly supervised

(i) Detailed training on the job as necessary to insure efficient operations by one's subordinates

(j) The effective operation of one's unit

(k) Providing command to members of one's division as necessary in the absence of divisional command or a ranking officer

200.16 RESPONSIBILITIES OF COMMAND OFFICERS

Each Commanding Officer, in addition to the general and individual responsibilities of each officer, employee, supervisory officer and supervisor, shall be held responsible for:

(a) The proper direction and control of personnel under one's command

(b) The maintenance of discipline among members of one's command

(c) Proper performance of duties and adherence to policies and procedures by each member of one's command

(d) The enforcement of rules and regulations among members of one's command

(e) Providing supervision and command to members of other divisions as necessary

(f) The proper discharge of detailed divisional responsibilities

(g) The proper condition and maintenance of quarters assigned to one's command

(h) The proper maintenance, use and operation of equipment, supplies and materials assigned for divisional use

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(i) The prompt initiation of employee, supervisory, or administrative action when necessary to fulfill a functional responsibility of the Department when such action is not otherwise being taken

(j) The effective operation of one's division or unit

(k) Providing for continuation of command and/or supervision in one's absence

(l) Preparation of correspondence pertaining to activities of the division

(m) Complete Duty Command assignments as scheduled

200.17 FUNCTIONAL RESPONSIBILITIES OF THE POLICE DEPARTMENT

The functions of the Police Department include, but are not limited to the following:

(a) Maintaining law and order in the City

(b) Enforcing all laws of the United States and the State of California, and all Ordinances of the City, except when such enforcement is by such law, Ordinance, or the Charter of the City made the responsibility of a state or federal agency or officer

(c) Administering the City jail and the care, custody and control of prisoners

(d) Performing other functions as may be assigned by the City Manager or prescribed by Ordinance of the Council or by applicable State law.

(e) Section 2.64.020 of the Berkeley Municipal Code provides that "The Chief of Police, subject to the approval of the City Manager, shall organize and maintain such divisions in said department as the operations may in his/her judgment require."

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Departmental Orders and Policies

201.1 PURPOSE AND SCOPE

The purpose of this policy is to explain administrative management procedures for maintaining, issuing, revising, and rescinding Departmental Orders and Policies.

201.2 POLICY

It is the policy of the Berkeley Police Department that departmental orders and policies will govern the operations of the department and actions of its employees.

Documents issued in accordance with this policy will include procedural and instructional information necessary for department personnel to comply with orders and policies.

Employees shall, upon receipt, read any communication regarding a new, revised, or rescinded order or policy.

Should a principle, policy, or procedure communicated in a departmental order be made permanent, it shall be reissued in the form of a policy.

201.3 DEFINITIONS

Departmental Policy: a written order issued by the Chief of Police applicable to the department as a whole, or a division or bureau thereof, which establishes a principle, policy, and/or procedure concerning a given subject, and which is effective until revised by subsequent policy or rescinded.

Departmental Order: a written order issued by the Chief of Police applicable to the Department as a whole, a division or bureau thereof, a group of employees, or an individual employee, which communicates a temporary principle, policy, procedure, direction, or assignment on a given subject. The effective period of a department order shall be specified therein or, absent a "sunset clause", will automatically become inoperative with the passage of the incident or assignment which caused its issuance. A departmental order may be issued in one of the following forms:

(a) Operational Order: A document issued to direct police activity at a planned event (e.g., "BHS Graduation", "Juneteenth"). The Professional Standards Bureau shall issue and maintain the master list of document identification numbers for operational orders.

(b) Administrative Order: A document issued to present temporary policy or procedural guidelines on administrative matters. (i.e. "Daylight Savings Time"). The Professional Standards Bureau shall issue and maintain the master list of document identification numbers for administrative orders.

(c) Administrative Instruction: A written directive issued by the Chief of Police or a division captain (e.g., "Captain's Instruction"), applicable to subordinate division(s), bureau(s), employees, or an individual employee, which communicates a temporary principle, policy, procedure, direction, or assignment on a particular subject. The Professional Standards Bureau shall issue and maintain the master list of document identification numbers for administrative Iistructions.

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(d) Special Orders establish an interdepartmental communication that may be used by the Chief of Police to make immediate changes to policy and procedure consistent with the current Memorandum of Understanding and as permitted by Government Code § 3500 et seq. Special Orders will immediately modify or change and supersede sections of this manual to which they pertain.

(e) Training Order: A document issued to communicate assignment of particular employees to an authorized training course/program. The Personnel and Training Bureau shall issue and maintain the master list of document identification numbers for training orders.

201.4 NUMBERING

Departmental orders shall be numbered consecutively starting with the year, followed by a three digit number 001. For example, 2019 - 001 on a special order signifies the first special order for the year 2019. For training orders, the numbers may be obtained from the Personnel and Training Bureau, for all other orders, the numbers may be obtained from the Policy & Planning Sergeant.

201.5 FONT

All font shall be "Arial"

"DEPARTMENTAL ORDER" shall be 14 point font. The rest of the document shall be 11 point font.

201.6 HEADERS

Administrative Instructions, shall begin with the "SUBJECT" header and may incorporate additional headers and sub-headers to effectively structure and present information.

Administrative Orders should contain the following headers

- PURPOSE
- POLICY
- EFFECTIVE TERM
- PROCEDURES

Operational Orders should employ the following section headers, and when appropriate, incorporate elements and labels associated with standardized emergency management systems (NIMS):

(a) Purpose:

(b) SITUATION: A summary description of the incident, involved parties, and relevant safety-related information necessitating police action.

(c) MISSION: A statement of the objective(s) of police action.

(d) EXECUTION: Sufficiently detailed presentation of "how" the stated mission(s) will be achieved.

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(e) ADMINISTRATION: A summary of relevant logistical elements supporting the operation (e.g., staging issues, vehicles, radios, logs, payslips, etc.)

(f) COMMAND/COMMUNICATIONS: Sufficiently detailed presentation of the operational chain of command, and mechanisms of communication to be employed in the operation (e.g., radio frequency, telephone numbers, etc.)

Special Orders shall begin with the "SUBJECT" header and may incorporate additional headers and sub-headers to effectively structure and present information.

201.7 DOCUMENT DISTRIBUTION

(a) Department policies shall be distributed to the following personnel by the Professional Standards Bureau upon issuance or revision:

1. All Department personnel;
2. The Police Accountability Board; and
3. The City's website (for public viewing).

(b) Distribution of Department Orders shall be coordinated by the issuing authority.

201.8 EXAMPLE DOCUMENTS / TEMPLATES

The following documents can be converted from a PDF to a Word document for editing.

Administrative Order Example

Captain's Instruction Example

Special Order Example

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Emergency Operations Plan

202.1 PURPOSE AND SCOPE

The City has prepared an Emergency Operations Plan for use by all employees in the event of a major disaster or other emergency event. The plan provides for a strategic response by all employees and assigns specific responsibilities in the event that the plan is activated (Government Code § 8610). The Department has prepared a supplemental Disaster Response Plan Manual, specific to the Department's initial procedures in the event of a disaster or other emergency event.

202.2 ACTIVATING THE EMERGENCY OPERATIONS PLAN

The Emergency Operations Plan can be activated on the order of the official designated by local ordinance.

The Disaster Response Plan can be activated on the order of the Watch Commander or ranking Sergeant.

202.3 LOCATION OF THE PLAN

The City's Emergency Response Plan is located on the Department's internal server under: GDrive/p_admin/Professional Standards/Manuals/COB Disaster Response Manual.

The Department's Disaster Response Plan Manual is available on the Department's internal server under: GDrive/p_admin/Professional Standards/Manual as well as in multiple locations throughout the PSB including the Patrol Sergeants' office and the Watch Commander's office. All supervisors should familiarize themselves with the Disaster Response Plan.

202.4 NOTIFICATIONS

In the event of a major disaster or other emergency event, the following notifications shall be made:

(a) The Fire Department

(b) Command Staff, up to and including the Chief

(c) The City Manager

(d) The California Offices of Emergency Services (916) 845-8911

(e) For mass casualty incidents, the on-scene supervisor or Incident Commander shall notify the Chief or Assistant Chief of Inspectors at the Alameda County District Attorney's Office to utilize their assistance with investigation of the incident and/or providing victim services. Contact can be made via the Alameda County Sheriff's Office Emergency Services Dispatch at (925) 803-7800, or ACSO Dispatch at (510) 667-7721

(f) The PIO

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202.5 RECALL OF PERSONNEL

In the event that the Emergency Operations Plan is activated, all employees of the Berkeley Police Department are subject to immediate recall. Employees may also be subject to recall during extraordinary circumstances as deemed necessary by the Chief of Police or his/her designee.

Failure to promptly respond to an order to report for duty may result in discipline.

202.6 RECALL DURING OFF-DUTY HOURS

If a disaster occurs during off-duty hours, employees should first assure the security of their immediate family and make any needed short term arrangements. Employees should then do the following:

(a) Contact the Communications Center and/or their direct supervisor for instructions as to when to report to work. If the employee is unable to make contact with the Communications Center or their direct supervisor due to disrupted communications, they shall report to work as follows:

1. All off-duty employees (on a regularly scheduled work day wherein they have not yet started) shall report for duty as soon as possible after taking care of family arrangements.
2. All off-duty employees (on a day off or who have completed their regularly scheduled duty shift for that day) shall report for duty twelve hours after the disaster strikes or at their regular duty time, whichever comes first after taking care of family arrangements.

(b) Employees should stay updated on disaster/emergency relief efforts through available media and news outlets.

202.7 DISASTER WORK IN ANOTHER JURISDICTION

In the event an employee is not able to return to Berkeley because of road conditions, he/she has the option to become a disaster service worker in the jurisdiction where he/she resides.

If an employee elects to become a disaster service worker in the jurisdiction where he/she resides, they are required to contact that agency's Communications Center for further instructions. The employee shall then advise the BPD Communications Center and/or their direct supervisor of their intent to work in that jurisdiction. Once the employee reports for duty in that jurisdiction, they should attempt to obtain written documentation regarding their assignment (i.e., an operations plan or list of assignments).

(a) In order to receive payment for disaster service work in another jurisdiction, employees are required to complete an improvised timesheet and have it approved by their temporary supervisor in that jurisdiction. The employee shall then submit the timesheet to their BPD supervisor where it will be processed through the normal payroll procedure.

(b) Employees are required to communicate with the BPD Communication Center and/or their direct BPD supervisor and return to work as soon as travel to Berkeley is possible.

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202.8 WAGES

Employees will be paid regular wages while performing disaster work, in accordance with the terms of their collective bargaining unit's Memorandum of Understanding.

Employees who do not report to work at the City of Berkeley or in another jurisdiction during the emergency will be considered on unpaid leave unless the employee submits documentation which supports justification to receive paid leave.

202.9 UPDATING OF THE PLAN

The Chief of Police or his/her designee, shall review the Emergency Operations Plan at least once every two years to ensure that the Plan conforms to any revisions made by the National Incident Management System (NIMS) and the Standardized Emergency Management System (SEMS) and should appropriately address any needed updates.

202.10 RESOURCES

In addition to the City's Plan, the State has provided a comprehensive Guide for Emergency Operations, available on the Department's internal server under: GDrive/p_admin/Professional Standards/Manual.

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Training

203.1 PURPOSE AND SCOPE

It is the policy of this department to administer a training program that will provide for the professional growth and continued development of its personnel. By doing so, the Department will ensure its personnel possess the knowledge and skills necessary to provide a professional level of service that meets the needs of the community.

203.2 PHILOSOPHY

The Department seeks to provide ongoing training and encourages all personnel to participate in advanced training and formal education on a continual basis. Training is provided within the confines of funding, requirements of a given assignment, staffing levels, and legal mandates. Whenever possible, the Department will use courses certified by the California Commission on Peace Officer Standards and Training (POST).

203.3 OBJECTIVES

The objectives of the Training Program are to:

(a) Enhance the level of law enforcement service to the public.

(b) Increase the technical expertise and overall effectiveness of our personnel.

(c) Provide for continued professional development of department personnel.

(d) Ensure compliance with POST rules and regulations concerning law enforcement training.

203.4 TRAINING PLAN

A training plan will be developed and maintained by the Personnel and Training Bureau Officer and Sergeant. It is the responsibility of the Personnel and Training Bureau Officer and Sergeant to maintain, review, and update the training plan on an annual basis.

203.5 TRAINING SERGEANT

The Training Sergeant shall be assigned to the Professional Standards Division's Personnel and Training Bureau, under the immediate supervision of the Personnel and Training Bureau Lieutenant. However, he/she may be required to report directly to the Professional Standards Division Captain or Chief of Police on training or administrative matters, as necessary. The Training Sergeant shall supervise the Training Officer.

203.6 TRAINING OFFICER

The Training Officer shall be assigned to the Professional Standards Division, Personnel and Training Bureau, under the immediate supervision of the Training Sergeant. The Training Officer will work with the Training Sergeant in the coordination of departmental training.

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The Training Officer shall be responsible for management of departmental training, including but not limited to the following:

(a) Identifying training needs.

(b) Scheduling, coordinating, and evaluating in-house and outside training programs.

(c) Notifying personnel of required and available training.

(d) Maintaining departmental training materials.

(e) Monitoring training attendance and maintaining attendance records.

(f) Implementing training programs.

(g) Developing and maintaining roll call training programs.

(h) Evaluating training programs.

(i) Participating in local and regional training associations.

(j) Reviewing lesson plans for department in-service training programs.

(k) Including community engagement and quality of service in training.

(l) Implementing department-wide Continuing Professional Training (CPT) on a regular basis.

203.7 TRAINING PROCEDURES

(a) All employees assigned to attend training shall attend as scheduled unless previously excused by their immediate supervisor. Excused absences from mandatory training should be limited to the following:

1. Court appearances
2. Scheduled vacation
3. Sick leave
4. Physical limitations preventing the employee's participation
5. Emergency situations
6. Time constraints involving an ongoing investigation (with supervisor approval)

(b) When an employee is unable to attend mandatory training, that employee shall:

1. Notify his/her supervisor as soon as possible but no later than one hour prior to the start of training and;
2. Make arrangements through his/her supervisor and the Training Officer or Sergeant to attend the required training on an alternate date.

203.8 TRAINING AUTHORIZATION

Those assigned to attend training during their regular duty shift shall attend in an on-duty status. Employees shall not flex or adjust their schedule in order to attend training and receive overtime or compensatory time.

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All outside training requests shall be approved by the employee's division captain.

203.9 EMPLOYEE RESPONSIBILITY

Personnel of any classification may be required to attend assigned training.

All employees are expected to achieve and maintain levels of work proficiency as established by the Chief of Police. Employees who fail to achieve or maintain a level of proficiency as established will be required to achieve or regain such level within a period of time and under conditions as determined by the Chief of Police.

All employees shall be expected to perform their job functions in the manner in which they were trained.

Employees shall give particular attention to the safety needs of all personnel and shall bring any safety-related errors found in procedures or training to the attention of their supervisor for appropriate action.

Employees who exhibit unsafe tactical field procedures shall be interviewed by their supervisor, who shall make a determination as to whether or not an update in training is in order. If the supervisor is unable to provide such training he/she shall, with the permission of the division captain, contact the Training Sergeant for advice on how best to proceed.

When an employee is assigned to training, a Departmental Training Order directing the employee to attend will be issued as soon as possible.

203.10 TRAINING TIME CREDIT RECORD AND EXPENSE ACCOUNT

All employees attending outside department sponsored training, shall complete and submit a Training Time Credit Report, Statement of Expense Form and/or a Mileage Reimbursement Form and any received certificates to the Personnel and Training Bureau within five days of the completion of training. The Training Sergeant shall route the forms to the Personnel and Training Bureau's Assistant Management Analyst (AMA) to log the training credit and, if applicable, reimburse the employee, per COB Administrative Regulation 3.4 and POST requirements.

203.11 PERSONNEL AND TRAINING SERGEANT

The Chief of Police shall designate the _ Personnel and Training Sergeant who is responsible for developing, reviewing, updating, and maintaining the department training plan so that required training is completed. The Personnel and Training Sergeant should review the training plan annually.

203.11.1 TRAINING RESTRICTION

The Personnel and Training Sergeant is responsible for establishing a process to identify officers who are restricted from training other officers for the time period specified by law because of a sustained use of force complaint (Government Code § 7286(b)).

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Electronic Communication

204.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the proper use and application of the Department's electronic communication systems by employees of this department. Electronic communication is a tool available to employees to enhance efficiency in the performance of job duties and is to be used in accordance with generally accepted business practices and current law (e.g., California Public Records Act). Messages transmitted over the Department's electronic communication systems must only be those that involve official business activities or contain information essential to employees for the accomplishment of business-related tasks and/or communication directly related to the business, administrations or practices of the Department.

204.2 EMAIL RIGHT OF PRIVACY

All email messages, including any attachments, that are transmitted over department networks are considered department records and therefore are department property. The Department reserves the right to access, audit or disclose, for any lawful reason, any message including any attachment that is transmitted over its email system or that is stored on any department system.

The email system is not a confidential system since all communications transmitted on, to or from the system are the property of the Department. Therefore, the email system is not appropriate for confidential communications. If a communication must be private, an alternative method to communicate the message should be used instead of email. Employees using the Department's email system shall have no expectation of privacy concerning communications utilizing the system.

Employees should not use personal accounts to exchange email or other information that is related to the official business of the Department.

204.3 CHECKING EMAIL AND THE CRIME FORUM

Employees shall check their email and Crime Forum accounts for new messages or posts at least two times each duty shift.

(a) It is recommended that the accounts be checked close to the beginning and end of each shift in order to maximize the employee's exposure to new email messages and crime information.

When requested by the sender of a message, or as otherwise necessary or appropriate, employees shall respond to received email in a timely fashion.

Mis-addressed email should be sent back to the original sender with an advisement that the message was mis-addressed.

Employees may forward or re-distribute copies of email messages only when doing so fulfills a legitimate work-related purpose.

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204.4 PROHIBITED USE OF EMAIL

Sending email messages which are derogatory, defamatory, obscene, disrespectful, sexually suggestive, harassing or in any other way inappropriate, is prohibited and may result in discipline.

Email messages addressed to the entire department should only be used for official business related items that are of particular interest to all users. Personal advertisements are not acceptable. Email messages addressed to the entire city must be approved by the Chief of Police or City Manager.

204.5 SECURITY

It is a violation of this policy to transmit a message under another employee's name. Employees are strongly encouraged to log off the network when their computer is unattended.

Employees should protect the security of their network, email and Crime Forum accounts by regularly changing their passwords.

Employees shall not share their passwords with any other individual.

The unauthorized use, or attempted use, of another employee's password, computer files or email without that person's expressed consent is prohibited.

An employee who observes another person use a departmental communication system inappropriately shall immediately notify their supervisor, or if unavailable, the next person in their chain of command.

204.6 EMAIL RECORD MANAGEMENT

Email may, depending upon the individual content, be considered a public record under the California Public Records Act and must be managed in accordance with the established records retention schedule and in compliance with state law.

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Administrative Communications

205.1 PURPOSE AND SCOPE

The purpose of this policy is to describe appropriate forms of administrative communication.

205.2 BULLETIN NOTICE

A Bulletin Notice may be issued periodically by the Chief of Police to announce and document a promotion, transfer, new hire, retirement or other change in a member's status.

205.3 CORRESPONDENCE

All external correspondence shall be on Department letterhead. All Department letterhead shall bear the signature element of the Chief of Police. Personnel should use Department letterhead only for official business and with approval of their supervisor.

205.4 SURVEYS

All surveys made in the name of the Department shall be authorized by the Chief of Police or a division captain.

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Retiree Concealed Firearms

206.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the issuance, denial, suspension or revocation of Berkeley Police Department identification cards under the Law Enforcement Officers' Safety Act (LEOSA) and California law (18 USC § 926C; Penal Code § 25455).

206.2 POLICY

It is the policy of the Berkeley Police Department to provide identification cards to qualified former or retired officers as provided in this policy.

206.3 LEOSA

The Chief of Police may issue an identification card for LEOSA purposes to any qualified former officer of this department who (18 USC § 926C(c)):

(a) Separated from service in good standing from this department as an officer.

(b) Before such separation, had regular employment as a law enforcement officer for an aggregate of 10 years or more or, if employed as a law enforcement officer for less than 10 years, separated from service after completing any applicable probationary period due to a service-connected disability as determined by this department.

(c) Has not been disqualified for reasons related to mental health.

(d) Has not entered into an agreement with this department where the officer acknowledges that he/she is not qualified to receive a firearm qualification certificate for reasons related to mental health.

(e) Is not prohibited by federal law from receiving or possessing a firearm.

206.3.1 LEOSA IDENTIFICATION CARD FORMAT

The LEOSA identification card should contain a photograph of the former officer and identify him/her as having been employed as an officer.

If the Berkeley Police Department qualifies the former officer, the LEOSA identification card or separate certification should indicate the date the former officer was tested or otherwise found by the Department to meet the active duty standards for qualification to carry a firearm.

206.3.2 AUTHORIZATION

Any qualified former law enforcement officer, including a former officer of this department, may carry a concealed firearm under 18 USC § 926C when he/she is:

(a) In possession of photographic identification that identifies him/her as having been employed as a law enforcement officer, and one of the following:

1. An indication from the person's former law enforcement agency that he/she has, within the past year, been tested or otherwise found by the law enforcement

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agency to meet agency-established active duty standards for qualification in firearms training to carry a firearm of the same type as the concealed firearm.

2. A certification, issued by either the state in which the person resides or by a certified firearms instructor who is qualified to conduct a firearms qualification test for active duty law enforcement officers within that state, indicating that the person has, within the past year, been tested or otherwise found to meet the standards established by the state or, if not applicable, the standards of any agency in that state.

(b) Not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

(c) Not prohibited by federal law from receiving a firearm.

(d) Not in a location prohibited by California law or by a private person or entity on his/her property if such prohibition is permitted by California law.

206.4 CALIFORNIA IDENTIFICATION CARD ISSUANCE

Any full-time sworn officer of this department who was authorized to, and did, carry a concealed firearm during the course and scope of his/her employment shall be issued an identification card with a Carrying Concealed Weapon endorsement, "CCW Approved," upon honorable retirement (Penal Code § 25455).

(a) For the purpose of this policy, honorably retired includes all peace officers who have qualified for, and accepted, a service or disability retirement. It shall not include any officer who retires in lieu of termination.

(b) No CCW Approved endorsement shall be issued to any officer retiring because of a psychological disability (Penal Code § 26305).

206.4.1 CALIFORNIA IDENTIFICATION CARD FORMAT

The identification card issued to any qualified and honorably retired officer shall be 2 inches by 3 inches, and minimally contain (Penal Code § 25460):

(a) A photograph of the retiree.

(b) The retiree’s name and date of birth.

(c) The date of retirement.

(d) The name and address of this department.

(e) A stamped CCW Approved endorsement along with the date by which the endorsement must be renewed. If a CCW endorsement has been denied or revoked, the identification card shall be stamped “No CCW Privilege.”

206.4.2 QUALIFIED RETIREES FROM INCORPORATED JURISDICTION

The Berkeley Police Department shall provide an identification card with a CCW Approved endorsement to honorably retired peace officers from any jurisdiction that this department now serves under the following conditions (Penal Code § 25905):

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(a) The retiree's previous agency is no longer providing law enforcement services or the relevant government body is dissolved.

(b) This department is in possession of the retiree's complete personnel record or can verify the retiree's honorably retired status.

(c) The retiree is in compliance with all of the requirements of this department for the issuance of a CCW Approved endorsement.

206.4.3 QUALIFIED RETIRED RESERVES

Qualified retired reserve officers who meet the department requirements shall be provided an identification card with a CCW Approved endorsement (Penal Code § 26300).

206.5 FORMER OFFICER RESPONSIBILITIES

A former officer with a card issued under this policy shall immediately notify the Berkeley Police Department Communications Center of his/her arrest or conviction in any jurisdiction, or that he/she is the subject of a court order, and advise that they have been issued a card with a CCW endorsement. The Communications Center employee receiving the information shall notify the Professional Standards Division Captain or Lieutenant for follow up. The Communications Center employee is responsible for ensuring that the message is received, whether it is verbally communicated or in writing.

206.5.1 RESPONSIBILITIES UNDER LEOSA

In order to obtain or retain a LEOSA identification card, the former officer shall:

(a) Qualify annually with the authorized firearm at a course approved by this department at the retired officer's expense.

(b) Sign a waiver of liability of the Department for all acts taken related to carrying a concealed firearm, acknowledging both his/her personal responsibility as a private person for all acts taken when carrying a concealed firearm as permitted by LEOSA and also that these acts were not taken as an employee or former employee of the Department.

(c) Remain subject to all applicable department policies and federal, state and local laws.

(d) Demonstrate good judgment and character commensurate with carrying a loaded and concealed firearm.

(e) Successfully pass an annual criminal history background check indicating that he/she is not prohibited by law from receiving or possessing a firearm.

Retiree Firearms Waiver

206.5.2 MAINTAINING A CALIFORNIA IDENTIFICATION CARD CCW ENDORSEMENT

In order to maintain a CCW Approved endorsement on an identification card issued under California law, the retired officer shall (Penal Code § 26305):

(a) Qualify every five years with the authorized firearm at a course approved by this department at the retired officer's expense.

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(b) Remain subject to all applicable department policies and federal, state and local laws.

(c) Not engage in conduct that compromises public safety.

(d) Only be authorized to carry a concealed firearm inspected and approved by the Department.

206.6 DENIAL, SUSPENSION OR REVOCATION OF A LEOSA IDENTIFICATION CARD

A LEOSA identification card may be denied or revoked upon a showing of good cause as determined by the Department. In the event that an identification card is denied, suspended or revoked, the former officer may request a review by the Chief of Police. The decision of the Chief of Police is final.

206.7 DENIAL, SUSPENSION OR REVOCATION OF A CALIFORNIA CCW ENDORSEMENT CARD

A CCW endorsement under Penal Code § 25470 for any officer retired from this department may be denied or revoked only upon a showing of good cause. The CCW endorsement may be immediately and temporarily revoked by the Watch Commander when the conduct of a retired peace officer compromises public safety.

(a) In the event that a CCW endorsement is initially denied, the retired officer shall have 15 days from the date of denial to request a formal hearing. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received.

(b) Prior to revocation of any CCW endorsement, the Department shall provide the affected retiree with written notice of a hearing by either personal service or first class mail, postage prepaid, return receipt requested to the retiree's last known address (Penal Code § 26315).

1. The retiree shall have 15 days from the date of service to file a written request for a hearing.

2. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received (Penal Code § 26315).

3. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right.

(c) A hearing for the denial or revocation of any CCW endorsement shall be conducted before a hearing board composed of three members, one selected by the Department, one selected by the retiree or his/her employee organization and one selected jointly (Penal Code § 26320).

1. The decision of such hearing board shall be binding on the Department and the retiree.

2. Any retiree who waives the right to a hearing or whose CCW endorsement has been revoked at a hearing shall immediately surrender his/her identification

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card. The Department will then reissue a new identification card which shall be stamped “No CCW Privilege.”

(d) Members who have reason to suspect the conduct of a retiree has compromised public safety shall notify the Professional Standards Division as soon as practicable. The Professional Standards Division should promptly take appropriate steps to look into the matter and, if warranted, contact the retiree in person and advise him/her of the temporary suspension and hearing information listed below.

1. Notification of the temporary suspension should also be promptly mailed to the retiree via first class mail, postage prepaid, return receipt requested (Penal Code § 26312).

2. The Professional Standards Division should document the investigation, the actions taken and, if applicable, any notification made to the retiree. The memo should be forwarded to the Chief of Police.

3. The personal and written notification should be as follows:

   i. The retiree’s CCW endorsement is immediately and temporarily suspended.

   ii. The retiree has 15 days to request a hearing to determine whether the temporary suspension should become permanent revocation.

   iii. The retiree will forfeit his/her right to a hearing and the CCW endorsement will be permanently revoked if the retiree fails to respond to the notice of hearing within the 15-day period.

4. In the event that personal contact with the retiree cannot be reasonably achieved in a timely manner, the Professional Standards Division should attempt to make the above notice of temporary suspension through another law enforcement officer. For example, if a retiree was arrested or detained by a distant agency, the Professional Standards Division may request that a law enforcement officer from that agency act as the agent of the Department to deliver the written notification.

206.8 FIREARM QUALIFICATIONS

The Personnel and Training Sergeant may provide former officers from this department an opportunity to qualify. Written evidence of the qualification and the weapons used will be provided and will contain the date of the qualification. The Personnel and Training Sergeant will maintain a record of the qualifications and weapons used.

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License to Carry a Firearm

207.1 PURPOSE AND SCOPE

The Chief of Police is given the statutory discretion to issue a license to carry a firearm to residents within the community (Penal Code § 26150; Penal Code § 26155). This policy will provide a written process for the application and issuance of such licenses. Pursuant to Penal Code § 26160, this policy shall be made accessible to the public.

207.1.1 APPLICATION OF POLICY

Nothing in this policy shall preclude the Chief or other head of a municipal police department from entering into an agreement with the Sheriff of the county or preclude the Sheriff of the county from entering into an agreement with the Chief of any municipal police department to process all applications and license renewals for the carrying of concealed weapons (Penal Code § 26150; Penal Code § 26155).

207.2 POLICY

The Berkeley Police Department will fairly and impartially consider all applications to carry firearms in accordance with applicable law and this policy.

207.3 QUALIFIED APPLICANTS

In order to qualify for a license to carry a firearm, the applicant must meet certain requirements, including:

(a) Be a resident of the City of Berkeley (Penal Code § 26150; Penal Code § 26155).

(b) Be at least 21 years of age (Penal Code § 29610).

(c) Fully complete an application that will include substantial personal information. Much of the information in the application may be subject to public access under the Public Records Act.

(d) Be free from criminal convictions that would disqualify the applicant from carrying a firearm. Fingerprints will be required and a complete criminal background check will be conducted.

(e) Be of good moral character (Penal Code § 26150; Penal Code § 26155).

(f) Pay all associated application fees. These fees are set by statute and may not be refunded if the application is denied.

(g) Provide proof of ownership or registration of any firearm to be licensed.

(h) Be free from any psychological conditions that might make the applicant unsuitable for carrying a firearm (Penal Code § 26190).

(i) Complete required training (Penal Code § 26165).

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207.4 APPLICATION PROCESS

The application process for a license to carry a firearm shall consist of two phases. Upon the successful completion of each phase, the applicant will advance to the next phase until the process is completed and the license is either issued or denied.

No person determined to fall within a prohibited class described in Penal Code § 29800, Penal Code § 29900, Welfare and Institutions Code § 8100, or Welfare and Institutions Code § 8103 will be issued a license to carry a firearm. A license shall not be issued if the California Department of Justice (DOJ) determines that the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm (Penal Code § 26195).

207.4.1 PHASE ONE (TO BE COMPLETED BY ALL APPLICANTS)

(a) Any individual applying for a license to carry a firearm shall first fully complete a California Department of Justice (DOJ) application to be signed under penalty of perjury. Any applicant who provides false information or statements on the application will be removed from further consideration and may be prosecuted for a criminal offense (Penal Code § 26180).

1. In the event of any discrepancies in the application or background investigation, the applicant may be required to undergo a voice stress analysis examination, at no cost to the applicant.

2. If an incomplete application package is received, the Chief of Police or the authorized designee may do any of the following:

(a) Require the applicant to complete the package before any further processing.

(b) Advance the incomplete package to phase two for conditional processing pending completion of all mandatory conditions.

(c) Issue a denial if the materials submitted at the time demonstrate that the applicant would not qualify for a license to carry a firearm even if the package was completed (e.g., not a resident, disqualifying criminal conviction).

(b) At the time the completed application is submitted, the applicant shall submit a check made payable to the California Department of Justice for the required California DOJ application fee, along with a separate check made payable to the City of Berkeley for a nonrefundable 20 percent of the application fee to cover the cost of processing the application (Penal Code § 26190).

1. Additional fees may be required for fingerprinting, training or psychological testing, in addition to the application fee.

2. Full payment of the remainder of the application fee will be required upon issuance of a license.

3. Payment of related fees may be waived if the applicant is a duly appointed reserve peace officer as defined in Penal Code § 830.6 (a) or (b) (Penal Code § 26170).

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(c) The applicant shall be required to submit to fingerprinting and a complete criminal background check by the California DOJ.A second set of fingerprints may be required for retention in department files. Two recent passport-size photos (2 inches by 2 inches) of the applicant shall be submitted for department use. No person determined to fall within a prohibited class described in Penal Code § 29800, Penal Code § 29900, Welfare and Institutions Code § 8100 or Welfare and Institutions Code § 8103 will be issued a license to carry a firearm. A license shall not be issued if the California DOJ determines that the applicant is prohibited by state or federal law from possessing, receiving, owning or purchasing a firearm (Penal Code § 26195).

(d) The applicant should submit at least three signed letters of character reference from individuals other than relatives.

(e) The applicant shall submit proof of ownership or registration of each firearm to be licensed.

Once the Chief of Police or authorized designee has reviewed the completed application package and relevant background information, the application will either be advanced to phase two or denied.

In the event that an application is denied at the conclusion of, or during, phase one, the applicant shall be notified in writing within 90 days of the initial application or within 30 days after receipt of the applicant's criminal background check from the California DOJ, whichever is later. If the license is denied, the notice shall state which requirement was not satisfied (Penal Code § 26205).

207.4.2 PHASE TWO

This phase is to be completed only by those applicants successfully completing phase one.

(a) Upon successful completion of phase one, the applicant shall be scheduled for a personal interview with the Chief of Police or the authorized designee. During this stage, there will be further discussion of any potential restrictions or conditions that might be placed on the license.

(b) The Chief of Police may, based upon criteria established by the Chief of Police, require that the applicant be referred to an authorized psychologist used by the Department for psychological testing. The cost of such psychological testing (not to exceed $150) shall be paid by the applicant. The purpose of any such psychological testing is intended only to identify any outward indications or history of psychological problems that might render the applicant unfit to carry a firearm. This testing is not intended to certify in any other respect that the applicant is psychologically fit. If it is determined that the applicant is not a suitable candidate for carrying a firearm, the applicant shall be removed from further consideration (Penal Code § 26190).

(c) The applicant shall complete a course of training approved by the department, which complies with Penal Code § 26165 (Penal Code § 26165).

(d) The applicant shall submit any firearm to be considered for a license to the Personnel and Training Sergeant or other department authorized gunsmith, at no cost to the applicant, for a full safety inspection. The Chief of Police reserves the right to deny a license for any firearm that has been altered from the manufacturer's specifications or that is unsafe (Penal Code § 31910).

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(e) The applicant shall successfully complete a firearms safety and proficiency examination with the firearm to be licensed, to be administered by a qualified BPD firearms instructor, or provide proof of successful completion of another department-approved firearms safety and proficiency examination, including completion of all releases and other forms. The cost of any outside inspection/examination shall be the responsibility of the applicant.

Once the Chief of Police or authorized designee has verified the successful completion of phase two, the license to carry a firearm will either be granted or denied.

Whether an application is approved or denied at the conclusion of or during phase two, the applicant shall be notified in writing within 90 days of the initial application or within 30 days after receipt of the applicant's criminal background check from the California DOJ, whichever is later. If the license is denied, the notice shall state which requirement was not satisfied (Penal Code § 26205).

207.5 LIMITED BUSINESS LICENSE TO CARRY A CONCEALED FIREARM

The authority to issue a limited business license to carry a concealed firearm to a non-resident applicant is granted only to the Sheriff of the county in which the applicant works. A chief of a municipal police department may not issue limited licenses (Penal Code § 26150). Therefore, such applicants may be referred to the Sheriff for processing.

An individual who is not a resident of the county but who otherwise successfully completes all portions of phases one and two above, may apply for and be issued a limited license subject to approval by the Sheriff and subject to the following:

(a) The applicant physically spends a substantial period of working hours in the applicant’s principal place of employment or business within the City of Berkeley (Penal Code § 26150).

(b) Such a license will be valid for a period not to exceed 90 days from the date of issuance (Penal Code § 26220).

(c) The applicant shall provide a copy of the license to the licensing authority of the city or county in which the applicant resides (Penal Code § 26220).

(d) Any application for renewal or reissuance of such a license may be granted only upon concurrence of the original issuing authority and the licensing authority of the city or county in which the applicant resides (Penal Code § 26220).

207.6 ISSUED FIREARMS PERMITS

In the event a license to carry a firearm is issued by the Chief of Police, the following shall apply:

(a) The license will be subject to any and all reasonable restrictions or conditions the Chief of Police has deemed warranted, including restrictions as to the time, place, manner and circumstances under which the person may carry the firearm.

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1. All such restrictions or conditions shall be conspicuously noted on any license issued (Penal Code § 26200).
2. The licensee will be required to sign a Restrictions and Conditions Agreement. Any violation of any of the restrictions and conditions may result in the immediate revocation of the license.

(b) The license shall be laminated, bearing a photograph of the licensee with the expiration date, type of firearm, restrictions and other pertinent information clearly visible.

1. Each license shall be numbered and clearly identify the licensee.
2. All licenses shall be subjected to inspection by the Chief of Police or any law enforcement officer.

(c) The license will be valid for a period not to exceed two years from the date of issuance (Penal Code § 26220).

1. A license issued to a state or federal magistrate, commissioner or judge will be valid for a period not to exceed three years.
2. A license issued to any reserve peace officer as defined in Penal Code § 830.6(a) or (b), or a custodial officer employed by the Sheriff as provided in Penal Code § 831.5 will be valid for a period not to exceed four years, except that such license shall be invalid upon the individual's conclusion of service as a reserve officer.

(d) If the licensee's place of residence was the basis for issuance of a license and the licensee moves out of the county of issuance, the license shall expire 90 days after the licensee has moved (Penal Code § 26210).

(e) The licensee shall notify this department in writing within 10 days of any change of place of residency.

207.6.1 LICENSE RESTRICTIONS

(a) The Chief of Police may place special restrictions limiting time, place, manner and circumstances under which any license shall be valid. In general, these restrictions will prohibit the licensee from:

1. Consuming any alcoholic beverage while armed.
2. Falsely representing him/herself as a peace officer.
3. Unjustified or unreasonable displaying of a firearm.
4. Committing any crime.
5. Being under the influence of any medication or drug while armed.
6. Interfering with any law enforcement officer's duties.

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7. Refusing to display his/her license or firearm for inspection upon demand of any peace officer.
8. Loading the permitted firearm with illegal ammunition.

(b) The Chief of Police reserves the right to inspect any license or licensed firearm at any time.

(c) The alteration of any previously approved firearm including, but not limited to adjusting the trigger pull, adding laser sights or modifications shall void any license and serve as grounds for revocation.

207.6.2 AMENDMENTS TO LICENSES

Any licensee may apply to amend a license at any time during the period of validity by completing and submitting a written Application for License Amendment along with the current processing fee to the Department in order to (Penal Code § 26215):

(a) Add or delete authority to carry a firearm listed on the license.

(b) Change restrictions or conditions previously placed on the license.

(c) Change the address or other personal information of the licensee (Penal Code § 26210).

In the event that any amendment to a valid license is approved by the Chief of Police, a new license will be issued reflecting the amendment. An amendment to any license will not serve to extend the original expiration date and an application for an amendment will not constitute an application for renewal of the license.

207.6.3 REVOCATION OF LICENSES

Any license issued pursuant to this policy may be immediately revoked by the Chief of Police for any of the following reasons:

(a) The licensee has violated any of the restrictions or conditions placed upon the license.

(b) The licensee becomes psychologically unsuitable to carry a firearm.

(c) The licensee is determined to be within a prohibited class described in Penal Code § 29800, Penal Code § 29900, Welfare and Institutions Code § 8100, Welfare and Institutions Code § 8103, or any state or federal law.

(d) The licensee engages in any conduct which involves a lack of good moral character for the original issuance of the license.

(e) If the license is one to carry "loaded and exposed," the license shall be revoked immediately upon a change of the licensee's place of residence to another county (Penal Code § 26210).

The issuance of a license by the Chief of Police shall not entitle the holder to either a property or liberty interest as the issuance, amendment, or revocation of such license remains exclusively within the discretion of the Chief of Police as set forth herein.

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If any license is revoked, the Department will immediately notify the licensee in writing and the California DOJ (Penal Code § 26225).

207.6.4 LICENSE RENEWAL

No later than 90 days prior to the expiration of any valid license to carry a firearm, the licensee may apply to the Chief of Police for a renewal by:

(a) Verifying all information submitted in the original application under penalty of perjury.

(b) Completing a department-approved training course pursuant to Penal Code § 26165.

(c) Submitting any firearm to be considered for a license renewal to the Personnel and Training Sergeant, or their designee, for a full safety inspection. The Chief of Police reserves the right to deny a license for any firearm that has been altered from the manufacturer's specifications or that is unsafe (Penal Code § 31910).

(d) Paying a non-refundable renewal application fee.

Once the Chief of Police or the authorized designee has verified the successful completion of the renewal process, the renewal of the license to carry a firearm will either be granted or denied. Prior issuance of a license shall not entitle any licensee to any property or liberty right to renewal.

Whether an application for renewal is approved or denied, the applicant shall be notified in writing within 90 days of the renewal application or within 30 days after receipt of the applicant's criminal background check from the California DOJ, whichever is later (Penal Code § 26205).

207.7 DEPARTMENT REPORTING AND RECORDS

Pursuant to Penal Code § 26225, the Chief of Police shall maintain a record of the following and immediately provide copies of each to the California DOJ:

(a) The denial of a license

(b) The denial of an amendment to a license

(c) The issuance of a license

(d) The amendment of a license

(e) The revocation of a license

The Chief of Police shall annually submit to the State Attorney General the total number of licenses to carry firearms issued to reserve peace officers and judges.

207.8 CONFIDENTIAL RECORDS

The home address and telephone numbers of any peace officer, public defender, prosecutor, magistrate, court commissioner, or judge contained in an application shall not be considered public record (Government Code § 7923.808).

Any information in an application for a license to carry a firearm that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of the applicant's family shall not be considered public record (Government Code § 7923.800).

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Departmental Forms

208.1 PURPOSE AND SCOPE

The purpose of this policy is to delineate proper procedures to follow when creating a new form or revising a currently used form.

208.2 POLICY

All departmental forms, including revisions, shall be approved by the Chief of Police.

208.3 NEW FORMS

(a) Requests for new forms or revisions to current forms shall be submitted to the Support Services Division Captain along with a short statement explaining the need for the form or form revision.

(b) The Support Services Division Captain shall review the request and forward it to the Chief of Police with recommendations.

(c) If approved, the Support Services Division Captain shall arrange for the implementation or revision of the form, or if not approved, return the request to the originator.

(d) The Support Services Division Captain shall maintain a file of all approved forms.

208.4 SPECIAL FORMS

This policy shall not apply to special forms designed for a project of temporary duration, provided the form is not to be used outside of the Department and that its use ceases with completion of the project.

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Chapter 3 - General Operations

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Use of Force

300.1 SANCTITY OF LIFE

The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force. Officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

300.1.1 PURPOSE AND SCOPE

This policy sets forth criteria governing the use of force. All officers are responsible for knowing and complying with this policy and conducting themselves in a manner that reflects the Berkeley Police Department's Use of Force Core Principles. Violations of this policy may result in disciplinary action, including and up to termination, and may subject the officer to criminal prosecution. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it.

300.1.2 USE OF FORCE STANDARD

In dealing with suspects, officers shall use alternatives to physical force whenever reasonably possible. In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.

The United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), held that, in order to comply with the U.S. Constitution, an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force. But these standards merely set the minimum standard for police conduct, below which an officer's conduct would be regarded as unlawful.

In fulfilling this Department's mission to safeguard the life, dignity, and liberty of officers themselves and all members of the community they are sworn to protect and serve, this policy requires more of our officers than simply not violating the law. As a result, this policy is more restrictive than the minimum constitutional standard and state law in two important respects.

First, it imposes a higher duty upon officers to use a minimal amount of force objectively necessary to safely achieve their legitimate law enforcement objective. And, second, this policy imposes a stricter obligation on officers to exert only such force that is objectively proportionate to the circumstances, requiring a consideration of the seriousness of the suspected offense, the availability of de-escalation and other less aggressive techniques, and the risks of harm presented to members of the public and to the officers involved.

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Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force.

300.1.3 CORE PRINCIPLES

A. DE-ESCALATION AND FORCE MINIMIZATION. Every officer's goal, throughout an encounter with a member of the public, shall be to de-escalate wherever possible and resolve the encounter without resorting to the use of force. Wherever possible, officers shall employ de-escalation techniques to increase the likelihood of voluntary compliance with law enforcement requests or directives and, thereby, decrease the likelihood that a use of force will become necessary during an incident. Further, in any encounters that do call for applying force, officers must always use a minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.

B. **PROPORTIONALITY**. When determining the appropriate level of force, at all times officers shall balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is unarmed or armed with a weapon other than a firearm.

C. MINIMIZING THE USE OF DEADLY FORCE. Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

D. DUTY TO INTERCEDE. Whenever possible, officers shall intervene when they know or have reason to know that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

E. VULNERABLE POPULATIONS. Officers should be particularly sensitive when considering the use of force against vulnerable populations, including children, elderly persons, pregnant women, people with physical and mental disabilities, and people with limited English proficiency.

F. **FOSTER STRONG COMMUNITY RELATIONSHIPS.** The Berkeley Police Department understands that uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. The Department is committed to fostering strong community relations by building on its historic tradition of progressive policing, ensuring accountability and transparency, and striving to increase trust with our community.

G. FAIR AND UNBIASED POLICING. Members of the Berkeley Police Department shall carry out their duties, including the use of force, in a manner that is fair and unbiased, in accordance with Policy 401, Fair and Impartial Policing.

300.1.4 DEFINITIONS

Definitions related to this policy include:

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Minimal amount necessary – The least amount of force within a range that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained.

Less-Than-Lethal Force – Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options. Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

Non-Lethal Force – Any use of force other than lethal force or less-than lethal force.

Compliant Suspect – Cooperative and/or responsive to lawful commands.

Passive Resistance - When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way.

Examples: A person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.

Active Resistance - An individual who is uncooperative and fails to comply with the lawful verbal commands of a police officer, and attempts to avoid physical control and/or arrest by physically struggling to free oneself from being restrained. The individual may also use verbal non-compliance (refusing a lawful order or direction).

Examples: A person who attempts to avoid physical control and/or arrest by pulling or pushing away from the officer, tensing arm or muscles, hiding from the officer, and/or fleeing.

Combative Resistance - An individual not only resists the officer, but poses a threat of harm to the officer or others, in an aggressive manner that may cause physical injury.

Examples: A person who violently attempts to or attacks an officer. This action is sometimes preceded by “pre-assault” cues such as taking a threatening stance (clenching fists, facial expressions, threats, etc.) and verbal non-compliance.

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Control Hold - Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.). A control hold can be applied without implementing pain.

Pain Compliance Technique - Involves either the manipulation of a person's joints or activating certain pressure points intended to create sufficient pain for the purpose of motivating a person to comply with verbal commands (examples of pressure points include buccal nerve, gum nerve, sternum rub).

Control Techniques – Personal Impact Weapons and Take Downs.

Personal Body Weapons - An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of kinetic energy transfer (impact) to gain control of a subject.

Blue Team (BT) – Computer software that allows officers to enter use of force and other incidents from a Department computer.

Concealment - Anything which conceals a person from view.

Cover - Anything which provides protection from bullets or other projectiles fired or thrown. Cover is subjective and its effectiveness depends upon the threat's ballistic capability (handgun, rifle, etc.).

Blocking - The positioning of a police vehicle in the path of an occupied subject vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal.

Ramming - The use of a vehicle to intentionally hit another vehicle

Serious bodily injury - A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement or results in a prolonged loss or impairment of the functioning of any bodily member or organ

Officer (or) Police Officer - Any sworn peace officer.

Authorized Employee - Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.

Employee – Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."

Objectively Reasonable – "Objectively reasonable" means an officer's conduct will be evaluated through the eyes of the hypothetically reasonable officer standing in the shoes of the involved officer.

Totality of the circumstances – All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force.

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300.2 DUTY TO INTERCEDE AND DUTY TO REPORT

Any officer who observes another officer or member of the Berkeley Police Department using force that is clearly in violation of this policy shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, when in a position to do so, physical intervention. Further, any officer who learns of a potentially unauthorized use of force, even if the officer did not witness it personally, shall promptly report this information to an on-duty sergeant or a command officer at the first opportunity.

Any officer who observes an employee or member of a different law enforcement agency use force that exceeds the degree of force permitted by law shall promptly report these observations to an on-duty sergeant or a command officer at the first opportunity.

300.3 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable, objectively necessary, and proportional force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. For the purpose of this policy, "retreat" does not mean tactical repositioning or other de-escalation tactics.

300.3.1 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY, AND PROPORTIONALITY OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable, objectively necessary, and proportional force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

(a) The apparent immediacy and severity of the threat to officers or others.

(b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.

(c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).

(d) The conduct of the involved officer.

(e) The effects of drugs or alcohol.

(f) The individual's apparent mental state or capacity.

(g) The individual’s apparent ability to understand and comply with officer commands.

(h) Proximity of weapons or dangerous improvised devices.

(i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.

(j) The availability of other reasonable and feasible options and their possible effectiveness.

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(k) Seriousness of the suspected offense or reason for contact with the individual.

(l) Training and experience of the officer.

(m) Potential for injury to officers, suspects, bystanders, and others.

(n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.

(o) The risk and reasonably foreseeable consequences of escape.

(p) The apparent need for immediate control of the subject or a prompt resolution of the situation.

(q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.

(r) Prior contacts with the subject or awareness of any propensity for violence.

(s) Any other exigent circumstances.

The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force**.** It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is objectively reasonable, objectively necessary, and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant. Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:

- Compliant – In general, when dealing with a compliant person, officers may rely on police presence and/or verbal control techniques, but should not use greater force.
- Passive resistance – In general, when dealing with a suspect involved in passive resistance, officers may rely on police presence, verbal control techniques, or control holds, but should not use greater force.
- Active resistance – In general, in dealing with a suspect involved in active resistance, in addition to the options available for passive resistance, officers may rely on pain compliance techniques or takedowns, but should not use greater force.
- Combative resistance – In general, in dealing with a suspect involved in combative resistance, officers have all use-of-force options available to them, but deadly force shall only be used in compliance with this policy as described in Section 300.4.

300.3.2 USE OF FORCE CONTINUUM

The Department uses a “use of force continuum” that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest

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on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions.

Continuum of Force

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
  - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
  - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not physical.**
  - Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
  - Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Weaponless defense — Officers use bodily force to gain control of a situation.**
  - Pain Compliance and control holds.Officers use grabs, holds and joint locks to restrain an individual.
  - Personal body weapons.Officers may use punches and kicks to restrain an individual.
- **Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**
  - Blunt impact.Officers may use a baton or projectile to immobilize a combative person.
  - Chemical. Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
- **Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**

300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Berkeley Police Department for this specific purpose.

300.3.4 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of

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voluntary compliance when employed and shall be used when it is safe to do so, De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member shall be called upon as a resource.

Officers shall gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to any levels of force. Officers should move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

(a) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; “waiting out” subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.

(b) Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.

(c) Officers should consider a variety of options, including lesser force or no force options.

(d) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.

(e) A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject’s situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.

(f) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use of force.

(g) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.

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(h) Establishing communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

(i) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

When time and circumstances allow, officers shall consider the following tactical principles:

(a) Make a tactical approach to the scene.

(b) Maintain a safe distance.

(c) Use available cover or concealment and identify escape routes.

(d) Stage Berkeley Fire Department.

(e) Control vehicle and pedestrian traffic.

(f) Establish communication, preferably with one officer.

(g) Create an emergency plan and a deliberate plan with contingencies.

(h) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

300.3.5 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

(a) The degree to which the application of the technique may be controlled given the level of resistance.

(b) Whether the person can comply with the direction or orders of the officer.

(c) Whether the person has been given sufficient opportunity to comply.

The purpose of pain compliance is to direct a person's actions. The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.6 USE OF NON-LETHAL FORCE

When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use objectively reasonable, objectively necessary, and proportional approved non-lethal force techniques and weapons in the following circumstances:

(a) To protect themselves or another person from physical injury;

(b) To restrain or subdue a resistant individual; or

(c) To bring an unlawful situation safely and effectively under control.

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300.3.7 RESTRAINT AND CONTROL DEVICES

Restraint and control devices shall not be used to punish, to display authority or as a show of force. Handcuffs, body wraps and spit hoods shall only be used consistent with Policy 302. Batons, approved less-lethal projectiles, and approved chemical agents shall only be used consistent with Policy 303. As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

300.3.8 CHOKEHOLD PROHIBITION

The use of a Carotid Restraint Hold is prohibited. Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., February 14, 1985, “Prohibiting use of ‘chokehold’ for law enforcement purposes in the City of Berkeley” states: “Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley.”

The term bar-arm refers to a variety of techniques. The use of any chokehold is strictly prohibited. A chokehold is any hold or contact with the neck – including a carotid restraint -- that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck. As defined in the City Council Resolution, “bar-arm hold” refers to use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.

300.4 USE OF DEADLY FORCE

An officer's use of deadly force is justified only when it is objectively reasonable, based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided that it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.

An officer shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily endanger innocent people.

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

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An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

300.4.1 DRAWING AND POINTING FIREARMS

Given that individuals may perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines:

(a) If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.

(b) If it is objectively reasonable that a significant threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward said threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

300.4.2 DIRECTED FIRE

Officers may use controlled gunfire that is directed at the suspect, reducing the suspect’s ability to return fire while a group or individual movement is conducted, such as in a rescue operation.

Officers may only employ this tactic when dealing with a suspect who poses an immediate and ongoing lethal threat and only under circumstances where the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Officers remain accountable for every round fired under these circumstances. Officers must consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

300.4.3 SHOOTING AT OR FROM MOVING VEHICLES

Absent exigent circumstances, officers shall not discharge firearms from a moving vehicle.

Firearms shall not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person present with deadly force. The moving vehicle alone does not presumptively constitute a threat that justifies the use of deadly force.

Officers shall not move into, remain, or otherwise position themselves in the path of a vehicle in an effort to detain or apprehend the occupants. Any officer in the path of a moving vehicle shall immediately attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants.

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Because this policy may not cover every situation that may arise, a deviation from this policy may be objectively reasonable and objectively necessary depending on the totality of the circumstances. A deviation from this policy would, for instance, be justified if the officer used a firearm in an attempt to stop an imminent vehicle attack on a crowd or a mass casualty terrorist event.

Factors that may be used to evaluate the reasonableness of the use of a firearm against a vehicle include:

(a) The availability and use of cover, distance and/or tactical relocation

(b) Incident command and personnel placement

(c) Tactical approach

(d) Regard for viable target acquisition and background including location, other traffic, the presence of innocent persons, and police officers.

300.5 USE OF VEHICLES

Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in section 300.4 and in Policy V-6 that covers vehicle operations.

The Vehicle Containment Technique (VCT) is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal. VCT shall only to be used on vehicles that are either stationary or moving at a slow speed. This technique is designed to contain a suspect vehicle to a single stationary location, thereby preventing a pursuit from initiating, or a potentially violent situation (e.g. a hostage situation or person barricaded inside a vehicle) from becoming mobile.

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation.

300.6 REPORTING REQUIREMENTS

All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a “Use of Pepper Spray Report.” Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a “Use of Restraint Device Report” and document, review and report such uses in accordance with section 300.11.

Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation, documentation and review requirements.

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300.6.1 SUPERVISOR RESPONSIBILITY

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to:

(a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

(b) Ensure that any injured parties are examined and treated.

(c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.

(d) Identify any witnesses not already included in related reports.

(e) Review and approve all related reports.

(f) Review body worn camera footage related to the incident.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.6.2 USE OF FORCE REPORTING LEVELS

Level 1

The officer used any of the following, and the circumstances of the application would lead an objectively reasonable officer to conclude that the subject did not experience more than momentary discomfort:

1. Control holds/ pain compliance techniques
2. Leverage
3. Grab
4. Bodyweight
5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person’s bodyweight.
6. Takedown

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

Level 2

(a) No suspect injury or complaint of continuing pain due to interaction with officer.

(b) Officer’s use of force was limited to the following:

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1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual, and/or pointed at an individual. For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.

2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor, when feasible, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of all involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

Level 3

(a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.

(b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.

(c) The officer used any of the following force options:

1. Chemical Agents/Munitions

2. Impact Weapon Strikes

3. Personal Body Weapons

An uninvolved supervisor, when practical**,** will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into the Blue Team template.

The supervisor will also complete a Use of Force Investigation Report narrative in Blue Team for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation.

Level 4

Any incident involving deadly force or any force likely to cause death or serious bodily injury will be investigated under the protocols outlined in Policy P-12.

300.6.3 EMPLOYEE USE OF FORCE

When any Berkeley Police Department employee has engaged in a use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy.

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(a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.

(b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

300.6.4 PUBLIC RECORDS

Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and Department Policy R-23.

300.7 MEDICAL CONSIDERATION

When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, theofficersor employee shall promptly provide, if trained, or otherwise promptly procure medical assistance when reasonable and safe to do so in order to ensure that the subject receives appropriate medical care.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

300.8 USE OF FORCE ADMINISTRATIVE REVIEW

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in Policy 301 instead of utilizing Division Captain Review.

The Chief of Police shall make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

Any determination concerning the propriety of force used shall be based on the facts and information available to the officer at the time the force was employed, and not upon information gained after the fact.

All Use of Force Reports shall be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective,

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and relevant to the situation; 3) require further investigation; and/or, 4) require revision or additional training.

Use of Force Reports shall be held in file for at least five (5) years

300.9 WATCH COMMANDER RESPONSIBILITY

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy.

300.10 TRAINING

Officers, investigators, and supervisors will receive periodic training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, the Personnel and Training Sergeant should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include:

(a) Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.

(b) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

300.11 USE OF FORCE ANALYSIS

The Professional Standards Division Captain or his or her designee shall prepare a comprehensive analysis report on use of force incidents. The report shall not contain the names of officers, suspects or case numbers, and should include but not be limited to:

(a) An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.

(b) All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2)

(c) The identification of any trends in the use of force by members.

(d) Training needs recommendations.

(e) Equipment needs recommendations.

(f) Policy revisions recommendations.

300.11.1 REPORTING FREQUENCY

(a) On a quarterly basis via the City’s Open Data Portal website;

(b) On a quarterly basis to the Police Review Commission; and

(c) On a yearly basis as part of the Police Department’s Annual Crime Report to Council

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300.12 CIVILIAN COMPLAINTS

Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police Review Commission (PRC). Complaints will be investigated in compliance with the respective applicable procedures of the IAB and the PRC.

300.13 POLICY REVIEW AND UPDATES

This policy shall be regularly reviewed and updated to reflect developing practices and procedures.

At least annually, the Berkeley Police Department and the Police Review Commission shall convene to review and update the Use of Force Policy to reflect developing practices and procedures per SB 230.

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Officer Involved Shooting/Injury Review Board

301.1 PURPOSE AND SCOPE

This policy establishes a process for the Berkeley Police Department to review employee involved incidents involving the use of a firearm or incidents resulting in serious injury or death.

This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the use of deadly force.

301.2 POLICY

The Berkeley Police Department will objectively evaluate the use of force by its members to ensure that their authority is used lawfully, appropriately and is consistent with training and policy.

All use of force incidents will be reviewed for training purposes by the Use of Force Training Review Board, see more about the Use of Force Training Review Board within Policy 300.

301.3 REMOVAL FROM LINE DUTY ASSIGNMENT

Generally, whenever an employee's actions or use of force in an official capacity, or while using department equipment, results in death or serious injury to another, that employee will be placed in a temporary administrative assignment pending an administrative review. The Chief of Police may exercise discretion and choose not to place an employee in an administrative assignment in any case.

301.4 REVIEW BOARD

The Officer Involved Shooting/Injury Review Board, hereinafter "the Board" will be convened when the use of force by a member results in serious injury or death to another.

The Board will also investigate and review the circumstances surrounding every discharge of a firearm, whether the employee was on- or off-duty, excluding training or recreational use.

The Chief of Police may request the Board to investigate the circumstances surrounding any use of force incident.

The Professional Standards Division Captain will convene the Board as necessary. It will be the responsibility of the Division Captain or supervisor of the involved employee to notify the Professional Standards Division Captainof any incidents requiring board review. The involved employee's Division Captain or supervisor will also ensure that all relevant reports, documents and materials are available for consideration and review by the board.

301.5 COMPOSITION OF THE BOARD

The Support Services Division Captain shall select a minimum of three, but no more than five Board members from the following, as appropriate:

- The Professional Standard Division Captain (Chair)

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- The division captain of the subject employee
- Personnel and Training Sergeant
- A designated on-duty patrol sergeant
- Two representatives of the subject employee's labor group
- Department instructor for the type of weapon, device or technique used

301.6 REPRESENTATION

As provided by law or as directed by the Chief of Police, the Board will allow a subject employee to have a representative (e.g., legal counsel, a collective bargaining unit representative, etc.) present during a Board proceeding in which he/she is participating.

301.7 ATTENDANCE

The subject employee and his/her chosen representative are encouraged to attend the Review Board hearing to present arguments or explanations and to answer questions which may be presented to them by Board members. Subject employees are not required to attend unless specifically ordered to do so by the Chief of Police.

301.8 RESPONSIBILITIES OF THE BOARD

The Use of Force Review Board is empowered to conduct an administrative review and inquiry into the circumstances of an incident.

The board members may request further investigation, request reports be submitted for the board's review, call persons to present information and request the involved employee to appear. The involved employee will be notified of the meeting of the board and may choose to have a representative through all phases of the review process.

The board does not have the authority to recommend discipline.

The Chief of Police will determine whether the board should delay its review until after completion of any criminal investigation, review by any prosecutorial body, filing of criminal charges the decision not to file criminal charges, or any other action. The board should be provided all relevant available material from these proceedings for its consideration.

Absent an express waiver from the employee, no more than two members of the board may ask questions of the involved employee (Government Code § 3303). Other members may provide questions to these members.

The review shall be based upon those facts which were reasonably believed or known by the officer at the time of the incident, applying any legal requirements, department policies, procedures and approved training to those facts. Facts later discovered but unknown to the officer at the time shall neither justify nor call into question an officer's decision regarding the use of force.

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Any questioning of the involved employee conducted by the board will be in accordance with the department's disciplinary procedures, the Personnel Complaints Policy, the current collective bargaining agreement and any applicable state or federal law.

The board shall make one of the following recommended findings:

(a) The employee's actions were within department policy and procedure.

(b) The employee's actions were in violation of department policy and procedure.

A recommended finding requires a majority vote of the board. The board may also recommend additional investigations or reviews, training reviews to consider whether training should be developed or revised, and policy reviews, as may be appropriate. The board chairperson will submit the written recommendation to the Chief of Police in the Final Report.

The Chief of Police shall review the Final Report, make a final determination as to whether the employee's actions were within policy and procedure and will determine whether any additional actions, investigations or reviews are appropriate. The Chief of Police's final findings will be forwarded to the involved employee's Division Captain for review and appropriate action. If the Chief of Police concludes that discipline should be considered, a disciplinary process will be initiated.

At the conclusion of any additional reviews, copies of all relevant reports and information will be filed with the Chief of Police.

301.9 FINAL REPORT TO THE CHIEF OF POLICE

The board chairperson shall submit the Final Report to the Chief of Police within ten business days of the hearing. The Final Report shall contain:

(a) The findings of the Board

(b) The concurring or non-concurring signatures of each member.

(a) Dissenting Board members may submit a minority report which shall be included with the Final Report.

(c) Any recommendations of the Board

(d) Any documents, photographs or related evidence used during the Board's review.

The Chief of Police retains the right to agree or disagree with the findings of the Board and/or the recommendations of the Board, and to limit or augment those recommendations.

301.10 NOTIFICATIONS OF SUBJECT EMPLOYEE

The subject employee shall be notified of the Chief's decision as soon as possible (see Personnel Complaints Policy for further information).

301.11 FINAL REPORT FORMAT

The memorandum format below shall be used when preparing the Final Report:

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EXEMPLAR

To: (Chief of Police)

From: The Officer Involved Shooting / Injury Review Board

Subject: (XXXXXXXXXXXXXXXXXX)

Composition of the Board:

The members of the Board will be identified.

Summary of the Investigation:

This will be a statement in chronological sequence of the incident and the Board's review.

Conclusion:

This will contain a statement of the Board's findings and recommendation(s).

Additional Observations:

This entry is optional and can be used to provide the Chief of Police with additional or independent information or observations.

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Handcuffing and Restraints

302.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

302.2 POLICY

The Berkeley Police Department authorizes the use of restraint devices in accordance with this policy, the Use of Force Policy and department training. Restraint devices shall not be used to punish, to display authority or as a show of force.

302.3 USE OF RESTRAINTS

Only members who have successfully completed Berkeley Police Department approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, officers should carefully balance officer safety concerns with factors that include, but are not limited to:

(a) The circumstances or crime leading to the arrest

(b) The demeanor and behavior of the arrested person

(c) The age and health of the person

(d) Whether the person may be pregnant

(e) Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes

(f) Whether the person has any other apparent disability

302.4 RESTRAINT OF DETAINEES

Situations may arise where it may be reasonable to restrain an individual who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to assure the safety of officers and others. When deciding whether to remove restraints from a detainee, officers should continuously weigh the safety interests at hand against the continuing intrusion upon the detainee.

302.5 ALTERNATIVE MEANS OF RESTRAINT

Alternative Means of Restraint include but are not limited to:

(a) Handcuffing the person with their hands in front of their body

(b) Handcuffing the person with multiple sets of linked handcuffs

(c) Use of the entire WRAP system

(d) Use of the WRAP’s ankle strap

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(e) Use of plastic handcuffs, aka flex-cuffs

(f) Use of an ambulance gurney with five point straps

302.6 RESTRAINT OF PREGNANT PERSONS

Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety and in no event shall these persons be restrained by the use of leg irons, waist chains or handcuffs behind the body.

No person who is in labor, delivery or recovery after delivery shall be handcuffed or restrained except in extraordinary circumstances and only when a supervisor makes an individualized determination that such restraints are necessary for the safety of the arrestee, officers or others (Penal Code § 3407; Penal Code § 6030).

302.7 RESTRAINT OF JUVENILES

A juvenile under 14 years of age should not be restrained unless he/she is suspected of a dangerous felony or when the officer has a reasonable suspicion that the juvenile may resist, attempt escape, injure him/herself, injure the officer or damage property.

302.8 NOTIFICATIONS

Whenever an officer transports a person with the use of restraints other than handcuffs, the officer shall inform the jail staff upon arrival at the jail that restraints were used. This notification should include information regarding any other circumstances the officer reasonably believes would be potential safety concerns or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration) that may have occurred prior to, or during transportation to the jail.

302.9 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS

Handcuffs, including temporary plastic cuffs, aka flex-cuffs, may be used only to restrain a person's hands to ensure officer safety.

Although recommended for most arrest situations, handcuffing is not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that regardless of the circumstances, every person should be handcuffed.

In most situations handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be applied between the base of the palm and the ulna bone of the wrist. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the individual or may cause unreasonable discomfort due to the person's size, officers should consider using alternative means of restraint.

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If the person being handcuffed is on the ground or in a prone position, officers should, as soon as possible, place the person in an upright sitting position or on their side for respiratory recovery and to mitigate the potential for positional asphyxia.

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

302.10 APPLICATION OF SPIT HOODS/MASKS/SOCKS

Spit hoods, aka spit masks or spit socks, are temporary protective devices designed to prevent the wearer from transferring or transmitting fluids (saliva and mucous) to others. As the Department recognizes that use of a spit hood may be experienced as a traumatic event to a wearer, and may cause alarm and concern to onlookers, this policy provides clear and specific guidelines for their use, in service of the safety of all parties involved.

Spit hoods may be placed upon persons in custody while the officer reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

Officers utilizing spit hoods shall ensure that the spit hood is applied properly to allow for adequate ventilation and that the restrained person can breathe normally. Officers should provide assistance during the movement of restrained individuals due to the potential for impaired or distorted vision on the part of the individual. Officers should avoid comingling individuals wearing spit hoods with other detainees.

Spit hoods shall not be used in situations where there are indications that the restrained person has a medical condition evident in the area around the mouth or nose, such as difficulty breathing or vomiting. In such cases, prompt medical care should be provided. If the person vomits while wearing a spit hood, the spit hood shall be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated including hair, head and clothing prior to application of a spit hood.

Those who have been placed in a spit hood should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods shall be discarded after each use.

302.11 APPLICATION OF THE WRAP

The WRAP is a temporary restraining device comprised of a velcro strapped leg panel, torso harness, ankle strap and backside handcuff carabiner. The device immobilizes the body into a straight-legged seated position. Used properly, it restricts a subject's ability to do harm to oneself or others. Officer safety is enhanced and the risk of injury to the subject is reduced.

In determining whether to use the WRAP, officers should consider:

(a) Whether the officer or others could be exposed to injury due to the assaultive or resistant behavior of a suspect.

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(b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., running away from the arresting officer while handcuffed, kicking at objects or officers).

(c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).

(d) Whether conventional methods of restraint have failed.

302.11.1 GUIDELINES FOR USE OF THE WRAP

When applying the WRAP, the following guidelines should be followed:

(a) If practicable, officers should notify a supervisor of the intent to apply the WRAP. In all cases, a supervisor shall be notified as soon as practicable after the application of the WRAP.

(b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.

(c) Restraint straps should be checked frequently for tightness, and adjusted as necessary, until the WRAP is removed. The harness straps shall never be tightened to the point they interfere with the person's ability to breathe.

(d) The restrained person should be continually monitored by an officer while the WRAP is in use. The officer should ensure that the person does not roll onto and remain on his/her stomach.

(e) The officer should look for signs of distress such as sudden quiet or inactivity, complaints of chest pain, change in facial color, complaint of extreme heat, vomiting, and/or labored breathing, and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.

(f) Movement of the person can be accomplished in three ways, depending on the level of their cooperation; the person can be carried, allowed to stand and shuffle walk or be transported in a vehicle.

(g) Once secured in a vehicle, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person’s ability to breathe.

(h) If in custody and transported by ambulance/paramedic unit, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

302.11.2 DEVICE REMOVAL

Based on the prisoner’s combativeness or level of aggression, officers should employ appropriate control techniques and tactics when removing the WRAP.

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302.11.3 THE WRAP'S ANKLE STRAP

The ankle strap is one part of the WRAP restraint system. The ankle strap may be used alone (without the rest of the WRAP system) to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Use of the ankle strap will follow the same guidelines listed above for the WRAP.

302.12 APPLICATION OF AUXILIARY RESTRAINT DEVICES

Auxiliary restraint devices include transport belts, waist or belly chains, transportation chains, leg irons and other similar devices. Auxiliary restraint devices are intended for use during long-term restraint or transportation. They provide additional security and safety without impeding breathing, while permitting adequate movement, comfort and mobility.

Only department-authorized devices may be used. Any person in auxiliary restraints should be monitored as reasonably appears necessary.

302.13 REQUIRED DOCUMENTATION

If an individual is restrained and released without an arrest, the officer shall document the details of the detention and the need for handcuffs or other restraints.

If an individual is arrested, the use of restraints other than handcuffs shall be documented in the related report. The officer should include, as appropriate:

(a) How the suspect was transported and the position of the suspect.

(b) Observations of the suspect’s behavior and any signs of physiological problems.

(c) Any known or suspected drug use or other medical problems.

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Control Devices and Techniques

303.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and maintenance of control devices that are described herein.

303.2 POLICY

In order to control subjects who are violent or who demonstrate the intent to be violent, the Berkeley Police Department authorizes officers to use control devices and techniques in accordance with the guidelines in this policy and the Use of Force Policy.

303.3 ISSUING, CARRYING AND USING CONTROL DEVICES

Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police, or his/her designee.

Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device.

Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices.

When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

Except as otherwise provided in Section 303.9, kinetic energy projectiles and chemical agents shall not be used to disperse any assembly, protest, or demonstration (Penal Code 13652).

303.4 RESPONSIBILITIES

303.4.1 WATCH COMMANDER RESPONSIBILITIES

The Watch Commander may authorize the use of a control device by selected personnel or members of specialized units who have successfully completed the required training.

303.4.2 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

The Personnel and Training Sergeant, or designated instructor, shall control the inventory and issuance of all control devices and shall ensure that all damaged, inoperative, outdated or expended control devices or projectiles are properly disposed of, repaired or replaced.

Every control device will be periodically inspected by the Personnel and Training Sergeant or the designated instructor for a particular control device. The inspection shall be documented.

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303.4.3 USER RESPONSIBILITIES

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices.

Any damaged, inoperative, outdated or expended control devices or projectiles, along with documentation explaining the cause of the damage, shall be returned to the Personnel and Training Sergeant for disposition. Damage to City Property forms shall also be prepared and forwarded through the chain of command, when appropriate, explaining the cause of damage.

303.5 BATON AND COLLAPSIBLE BATON GUIDELINES

The need to immediately control a suspect must be weighed against the risk of causing serious injury. The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

When carrying a baton, including a collapsible baton, uniformed personnel shall carry the baton in its authorized holder on the equipment belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

303.6 OLEORESIN CAPSICUM (OC) SPRAY GUIDELINES

As with other control devices, OC spray (aka pepper spray) and pepper projectiles may be considered for use to bring under control an individual or groups of individuals who are engaging in, or are about to engage in violent behavior. Pepper projectiles and OC spray should not, however, be used against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

303.6.1 OC SPRAY

Uniformed personnel carrying OC spray shall carry the device in its holster on the equipment belt or external vest carrier. Plainclothes and non-field personnel may carry OC spray as authorized, in accordance with the needs of their assignment or at the direction of their supervisor.

303.6.2 PEPPER PROJECTILE SYSTEMS

Pepper projectiles (aka "Pava" rounds) are plastic spheres that are filled with a derivative of OC powder. Because the compressed gas launcher (aka "less lethal" launcher) delivers the projectiles with enough force to burst the projectiles on impact and release the OC powder, the potential exists for the projectiles to inflict injury if they strike the head, neck, spine or groin. Therefore, personnel using a launcher should not intentionally target those areas, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

Officers encountering a situation that warrants the use of a launcher shall notify a supervisor as soon as practicable. A supervisor shall respond to all incidents where the suspect has been hit or

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exposed to the chemical agent. The supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

303.6.3 TREATMENT FOR OC SPRAY EXPOSURE
Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

303.7 POST-APPLICATION NOTICE

Whenever OC has been introduced into a residence, building interior, vehicle or other enclosed area, officers should provide the owners or available occupants with notice of the possible presence of residue that could result in irritation or injury if the area is not properly cleaned. Such notice should include advisement that clean up will be at the owner's expense. Information regarding the method of notice and the individuals notified should be included in related reports.

303.8 LESS LETHAL PROJECTILE GUIDELINES

This department is committed to reducing the potential for violent confrontations. "Less lethal" projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

303.8.1 DEPLOYMENT AND USE
Only department-approved projectiles shall be carried and deployed. Approved projectiles may be used to compel an individual to cease his/her actions when such projectiles present a reasonable option.

Approved projectiles include:

(a) "Less Lethal" rounds: impact projectiles

(b) "Pava" rounds: impact projectiles containing OC/pepper spray

(c) "Marking" rounds: impact projectiles containing paint

Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

(a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles.

(b) The suspect has made credible threats to harm him/herself or others.

(c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.

(d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

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303.8.2 DEPLOYMENT CONSIDERATIONS
Before discharging projectiles, the officer should consider such factors as:

(a) Distance and angle to target.

(b) Type of projectiles employed.

(c) Type and thickness of subject's clothing.

(d) The subject's proximity to others.

(e) The location of the subject.

(f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

303.8.3 SAFETY PROCEDURES
Officers will inspect the launcher and projectiles at the beginning of each shift to ensure that the launcher is in proper working order and the projectiles are of the approved type and appear to be free from defects.

When it is not deployed, the launcher will be unloaded and properly and securely stored.

303.9 CROWD CONTROL REQUIREMENTS

Pursuant to California Penal Code 13652, kinetic energy projectiles and chemical agents shallonly be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectivelyreasonable to defend against a threat to life or serious bodily injury to any individual, includingany peace officer, or to bring an objectively dangerous and unlawful situation safely andeffectively under control, and only in accordance with all of the following requirements:

(a) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(b) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively

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reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(c) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(d) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(e) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(f) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(g) An objectively reasonable effort has been made to extract individuals in distress.

(h) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(i) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(j) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

1. A violation of an imposed curfew.
2. A verbal threat.
3. Noncompliance with a law enforcement directive.

As per City Council resolution (June 9, 2020), pepper spray for crowd control by employees ofthe Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as theCity Council removes the prohibition.

303.10 TRAINING FOR CONTROL DEVICES

The Personnel and Training Sergeant shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

(a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.

(b) All training and proficiency for control devices will be documented in the officer's training file.

(c) Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot

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demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

303.11 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to California Penal Code 13652.1 and the Berkeley Use of Force Policy.

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Conducted Energy Device

304.1 PURPOSE AND SCOPE

This policy provides guidelines for requesting a Conducted Energy Device (CED) from an outside agency and assisting the outside agency if the CED is deployed or discharged.

304.2 POLICY

The Conducted Energy Device (CED) is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. The appropriate use of such a device should result in fewer serious injuries to officers and suspects.

The use of police CEDs at the request of the Berkeley Police Department may be permitted with the approval of the Chief of Police or City Manager. Once approved, a CED will only be deployed by outside agency personnel responding to a request for assistance.

304.3 ISSUANCE AND CARRYING TASER DEVICES

Members of the Berkeley Police Department are currently not issued CEDs and shall not carry a CED while on duty.

304.4 VERBAL AND VISUAL WARNINGS

When an outside agency has been called in to assist, a verbal warning of the intended use of the CED should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to:

(a) Provide the individual with a reasonable opportunity to voluntarily comply.

(b) Provide other officers and individuals with a warning that the CED may be deployed.

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the case officer in the related report.

304.5 USE OF THE CED

The CED has limitations and restrictions requiring consideration before its use. The CED should only be used when its operator can safely approach the subject within the operational range of the device. Although the CED is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

304.5.1 APPLICATION OF THE TASER DEVICE

A CED may be requested (with approval from the Chief of Police or City Manager) when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person. Examples include circumstances wherein:

(a) The subject is violent or is physically resisting.

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(b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, him/herself or others.

Mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the CED to apprehend an individual.

304.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS

The use of the CED on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

(a) Individuals who are known to be pregnant.

(b) Elderly individuals or obvious juveniles.

(c) Individuals with obviously low body mass.

(d) Individuals who are handcuffed or otherwise restrained.

(e) Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capsicum (OC) spray.

(f) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

304.5.3 ACTIONS FOLLOWING DEPLOYMENTS

Officers shall notify a supervisor of all CED discharges. Confetti tags, the expended cartridge, along with both probes and wire, should be collected by the outside agency and handled according to their procedures.

304.5.4 DANGEROUS ANIMALS

The CED may be requested in order to be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog, if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

304.6 DOCUMENTATION

Officers shall document the request for, deployment and/or discharge of a CED in a related police report.

304.6.1 REPORTS

The officer should include the following in the arrest/crime report:

(a) Identification of all personnel firing TASER devices

(b) Identification of all witnesses

(c) Medical care provided to the subject

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(d) Observations of the subject's physical and physiological actions

(e) Any known or suspected drug use, intoxication or other medical problems

(f) A "Use of Force" Report is not necessary when an outside agency deploys or discharges a CED. However, the outside agency may be required to document its use according to their own policy or procedure.

304.7 MEDICAL TREATMENT

Consistent with local medical personnel protocols and absent extenuating circumstances, only appropriate medical personnel should remove TASER device probes from a person's body. Used TASER device probes shall be treated as a sharps biohazard, similar to a used hypodermic needle, and handled appropriately. Universal precautions should be taken.

All persons who have been struck by TASER device probes or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking. Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

(a) The person is suspected of being under the influence of controlled substances and/or alcohol.

(b) The person may be pregnant.

(c) The person reasonably appears to be in need of medical attention.

(d) The TASER device probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).

(e) The person requests medical treatment.

Any individual exhibiting signs of distress or who is exposed to multiple or prolonged applications (i.e., more than 15 seconds) shall be transported to a medical facility for examination or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the TASER device.

304.8 SUPERVISOR RESPONSIBILITIES

When possible, supervisors should respond to calls when they reasonably believe there is a likelihood the CED may be used. A supervisor should respond to all incidents where the CED was activated.

A supervisor should review each incident where a person has been exposed to an activation of the CED. Photographs of probe sites should be taken and witnesses interviewed.

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Firearms

306.1 PURPOSE AND SCOPE

This policy provides guidelines for issuing firearms, the safe and legal carrying of firearms, firearms maintenance and firearms training.

This policy does not apply to issues related to the use of firearms that are addressed in the Use of Force or Officer-Involved Shootings and Deaths policies.

This policy only applies to those members who are authorized to carry firearms.

306.2 POLICY

The Berkeley Police Department will equip its members with firearms to address the risks posed to the public and department members by violent and sometimes well-armed persons. The Department will ensure firearms are appropriate and in good working order and that relevant training is provided as resources allow.

306.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS

Members shall only use firearms and holsters that are issued or approved by the Department and have been thoroughly inspected by the Department Armorers. Except in an emergency or as directed by a supervisor, no firearm shall be carried by a member who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including, but not limited to, edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization of the member's Division Captain. This exclusion does not apply to the carrying of a single folding pocketknife.

306.3.1 HANDGUNS

The department authorized handgun is the Glock 17. Members desiring to carry an authorized but personally owned duty firearm may carry pistols manufactured by Glock, Sig Sauer, and the Smith and Wesson M&P series (Generation 2 or later) that fit the following criteria:

(a) Must fire 9mm, or.40 or.45 caliber ammunition

(b) The slide must be longer than 3.5 inches

(c) The minimum magazine capacity of 7 rounds in a factory supplied magazine

(d) Must be striker fired firearms (e.g. Glock, Smith and Wesson M&P, Sig Sauer P320)

(e) Trigger pulls must be maintained in accordance with manufacturer specifications

(f) Ported slides, barrels, and compensators are prohibited

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(g) All manufacture approved and installed safety devices shall be maintained according to manufacturer specifications

Any modifications made to the firearms (e.g. sights, installation of parts, etc.) must be performed by a Department Armorer or gunsmith approved by the Personnel and Training Sergeant or his or her designee. All modifications must conform to any specific policy(ies) that govern that modification. This does not apply to grip tape, tactical lights, or similar additions that are do not impact the firearms cycle of operation or require specialized knowledge or training to install.

Duty pistols shall be deployed with factory magazines that are designed for that firearm and fit flush with the grip. Aftermarket base plates designed to aid in reloading and malfunction clearing are authorized.

Once approved, personally owned duty firearms are subject to the following restrictions:

(a) The firearm shall be in good working order and confirm to the specifications outlined in this section.

(b) The firearm and accompanying duty holster shall be inspected by a Department Armorer prior to being carried and thereafter shall be subject to inspection whenever it is deemed necessary.

(c) Prior to carrying the firearm, members shall qualify under range supervision and thereafter shall qualify in accordance with the department qualification schedule. Members must demonstrate proficiency and safe handling, and that the firearm functions properly

(d) Members shall provide written notice of the make, model, color, serial number and caliber of the firearm to the Lead Armorer, who will maintain a list of the information.

306.3.2 SHOTGUNS

The authorized department-issued shotgun is the Remington 870 12 gauge. SRT personnel may deploy a breaching-specific Remington 870 after they have been trained and qualified with it.

When not deployed, the shotgun shall be properly secured consistent with department training in a locking weapons rack in the patrol or Special Response vehicle, equipment locker, or safe.

306.3.3 PATROL RIFLES

Rifles shall be of an AR15/M4 patterned design, comparable to or exceeding current industry standards for duty grade and quality. All rifles must have the following: 16 inch barrel, chambered in the 5.56x45mm NATO, sighting system (iron sights and/or optics), sling, and dedicated mounted light. Approved rifle manufacturers and models are subject to the Lead Armorer and Lead of FTU approval. Examples of approved brands and models include Colt LE6900 Series, Daniel Defense M4A1, Triarc Systems TSR-15S, and Bravo Company Manufacturing (BCM) M4. The entirety of the rifle must accumulatively meet current industry standards for duty grade and quality.

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Members may deploy the patrol rifle in any circumstance where the member can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

(a) Situations where the member reasonably anticipates an armed encounter.

(b) When a member is faced with a situation that may require accurate and effective fire at long range.

(c) Situations where a member reasonably expects the need to meet or exceed a suspect's firepower.

(d) When a member reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.

(e) When a member reasonably believes that a suspect may be wearing body armor.

(f) When authorized or requested by a supervisor.

(g) When needed to euthanize an animal.

When not deployed, the patrol rifle shall be properly secured consistent with department training in a locking weapons rack in the patrol vehicle, the officer's locker, or safe..

306.3.4 AUTHORIZED SECONDARY HANDGUN

Members desiring to carry personally owned secondary handguns are subject to the following restrictions:

(a) The handgun shall be in good working order and approved by the personnel and training sergeant or their designee.

(b) Only one secondary handgun may be carried at a time.

(c) The purchase of the handgun and ammunition shall be the responsibility of the member unless the ammunition is the same caliber and type provided for the primary duty firearm.

(d) The handgun shall be carried concealed at all times and in such a manner as to prevent unintentional cocking, discharge or loss of physical control.

(e) The handgun shall be inspected by Department Armorer prior to being carried and thereafter shall be subject to inspection whenever it is deemed necessary. Authority to carry a particular firearm lies with the Personnel and Training Sergeant or his or her designee.

(f) Ammunition shall be the same as department issue. If the caliber of the handgun is other than department issue, the Personnel and Training Sergeant or the authorized designee shall approve the ammunition.

(g) Prior to carrying the secondary handgun, members shall qualify under range supervision and thereafter shall qualify in accordance with the department qualification schedule. Members must demonstrate proficiency and safe handling, and that the handgun functions properly.

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(h) Members shall provide written notice of the make, model, color, serial number and caliber of a secondary handgun to the Personnel and Training Sergeant or his or her designee, who will maintain a list of the information.

306.3.5 AUTHORIZED OFF-DUTY FIREARMS

The carrying of firearms by members while off-duty is permitted by the Chief of Police but may be rescinded should circumstances dictate (e.g., administrative leave). Members who choose to carry a firearm while off-duty, based on their authority as peace officers, will be required to meet the following guidelines:

(a) The member may use his/her duty firearm or may use a personally owned firearm that is carried and inspected in accordance with the Personally Owned Duty Firearms requirements in this policy. A member carrying his/her duty firearm will be deemed to have complied with (c), (d) and (e) of this section.

1. The purchase of the personally owned firearm and ammunition shall be the responsibility of the member.

(b) The firearm shall be carried concealed at all times and in such a manner as to prevent accidental unintentional cocking, discharge or loss of physical control.

(c) It will be the responsibility of the member to submit the firearm to the Department Armorer for inspection prior to being personally carried. Thereafter the firearm shall be subject to periodic inspection by the Department Armorer.

(d) Prior to carrying any off-duty firearm, the member shall demonstrate to the Firearms and Tactics Unit (FTU) Staff that he/she is proficient in handling and firing the firearm and that it will be carried in a safe manner.

(e) The member will successfully qualify with the firearm prior to it being carried.

(f) Members shall provide written notice of the make, model, color, serial number and caliber of the firearm to the Personnel and Training Sergeant or his or her designee, who will maintain a list of the information.

(g) If a member desires to use more than one firearm while off-duty, he/she may do so, as long as all requirements set forth in this policy for each firearm are met.

(h) Members shall only carry department-authorized ammunition.

(i) When armed, officers shall carry their badges and Berkeley Police Department identification cards.

306.3.6 AMMUNITION

Members shall carry only department-authorized ammunition. Members shall be issued fresh duty ammunition in the specified quantity for all department-issued firearms annually during one of the member's firearms qualification. Replacements for unserviceable or depleted ammunition issued by the Department shall be dispensed by the FTU staff when needed, in accordance with established policy.

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Members carrying personally owned authorized firearms of a caliber differing from department-issued firearms shall be responsible for obtaining fresh duty ammunition in accordance with the above, at their own expense.

306.4 EQUIPMENT

Firearms carried on- or off-duty shall be maintained in a clean, serviceable condition. Maintenance and repair of authorized personally owned firearms are the responsibility of the individual member.

306.4.1 REPAIRS OR MODIFICATIONS

Each member shall be responsible for promptly reporting any damage or malfunction of an assigned firearm to a supervisor or the a member of the FTU staff.

Firearms that are the property of the Department or personally owned firearms that are approved for department use may be repaired or modified only by a person who is department-approved and certified as an armorer or gunsmith in the repair of the specific firearm. Such modification or repair must be authorized in advance by the Personnel and Training Sergeant or their designee and documented in armorer records..

Any repairs or modifications to the member's personally owned firearm shall be done at his/her expense and must be approved by the Personnel and Training Sergeant or their designee.

306.4.2 HOLSTERS

Only department-approved holsters shall be used and worn by members. Members shall periodically inspect their holsters to make sure they are serviceable and provide the proper security and retention of the handgun. All patrol holsters must provide Level 3 retention.

306.4.3 TACTICAL LIGHTS

Tactical lights may only be installed on a firearm carried on- or off-duty after they have been examined and approved by the Personnel and Training Sergeant or his or her designee. Once the approved tactical lights have been properly installed on any firearm, the member shall qualify with the firearm to ensure proper functionality and sighting of the firearm prior to carrying it.

306.4.4 OPTICS OR LASER SIGHTS

Optics or laser sights may only be installed on a firearm carried on- or off-duty after they have been examined and approved by the Personnel and Training Sergeant or his or her designee. Any approved sight shall only be installed in strict accordance with manufacturer specifications. Once approved sights have been properly installed on any firearm, the member shall qualify with the firearm to ensure proper functionality and sighting of the firearm prior to carrying it.

Except in an approved training situation, a member may only sight in on a target when the member would otherwise be justified in pointing a firearm at the target.

Laser sights are prohibited for duty use except as outlined in the policy covering Special Response Team. Laser sights may be installed on off duty firearms after they have been examined and approved by the Personnel and Training Sergeant or his or her designee.

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306.4.5 MICRO RED DOT EQUIPPED HANDGUNS

MRDS (micro red dot sight) equipped handguns are approved for duty use by the members of the Berkeley Police Department. All costs associated with the deployment of MRDS equipped handguns are the responsibility of the individual officer. Officers may purchase handguns which are specifically designed by the manufacturer to accept an MRDS or officers may also choose to have their personally owned handgun modified be a qualified gunsmith to accept an MRDS. Department owned handguns shall not be modified to accept an MRDS. All handguns shall be of a caliber and manufacturer as approved in this policy.

(a) MRDS equipped handguns shall have co-witnessing iron sights installed as a backup to the MRDS.

(b) The MRDS shall be approved by Berkeley Police FTU (Firearms and Training Unit) and department armorers. As technology improves, we can expect to see MRDS improve and the list of acceptable MRDS grow. The MRDS shall be installed to meet the manufacturer specifications.

(a) The current list of approved MRDS include the following: Trijicon RMR adjustable LED models, Holosun 507c, 508t, and 509t, Leupold DPP (Delta Point Pro), and Aimpoint Acro.

(c) MRDS handguns shall be zeroed at 25 yards.

(d) Batteries shall be replaced yearly during annual inspection and/or qualification. Removal of many MRDS require the officer to re-zero the optic and should be completed by a department armorer.

(e) Every officer desiring to carry an MRDS equipped handgun must have the weapon, optic, and method of mounting approved by Berkeley FTU and armorers.

(f) Every officer desiring to carry an MRDS equipped handgun on duty will complete a department lead MRDS specific training curriculum and pass a qualification course.

(g) Every officer desiring to carry an MRDS equipped handgun on duty shall use a level III holster that was designed to accommodate an MRDS equipped pistol.

306.5 SAFE HANDLING, INSPECTION AND STORAGE

Members shall maintain the highest level of safety when handling firearms and shall consider the following:

(a) Members shall not unnecessarily display or handle any firearm.

(b) Members shall be governed by all rules and regulations pertaining to the use of the range and shall obey all orders issued by the Firearms and Tactics Unit staff. Members shall not dry fire or practice quick draws except as instructed by the FTU Staff.

(c) Members shall not clean, repair, load or unload a firearm anywhere in the Department, except where clearing barrels are present.

(d) Shotguns or rifles removed from vehicles or the equipment storage room shall be loaded and unloaded in the parking lot and outside of the vehicle, using clearing barrels if available.

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(e) Members shall not place or store any firearm or other weapon on department premises except where the place of storage is locked. No one shall carry firearms into the jail section or any part thereof when securing or processing an arrestee, but shall place all firearms in a secured location. Members providing access to the jail section to persons from outside agencies are responsible for ensuring firearms are not brought into the jail section.

(f) Members shall not use any heavy caliber rifle, gas or other type of chemical weapon or firearm from the armory, except with approval of a supervisor.

(g) Any firearm authorized by the Department to be carried on- or off-duty that is determined by a member to be malfunctioning or in need of service or repair shall not be carried. It shall be promptly presented to the Department Armorer for inspection and repair. Any firearm deemed in need of repair or service will be immediately removed from service. If the firearm is the member's primary duty firearm, a replacement firearm will be issued to the member until the duty firearm is serviceable.

306.5.1 INSPECTION AND STORAGE

Handguns shall be inspected regularly and upon access or possession by another person. Shotguns and rifles shall be inspected at the beginning of the shift by the member to whom the weapon is issued. The member shall ensure that the firearm is carried in the proper condition and loaded with approved ammunition. Inspection of the shotgun and rifle shall be done while standing outside of the patrol vehicle. All firearms shall be pointed in a safe direction or into clearing barrels.

Personally owned firearms may be safely stored in lockers at the end of the shift. Department-owned firearms shall be stored in the appropriate equipment storage room, vehicle locking device, locker, or safe. Handguns may remain loaded if they are secured in an appropriate holster. Shotguns and rifles shall be unloaded in a safe manner outside the building and then stored in the appropriate equipment storage room.

306.5.2 STORAGE AT HOME

Members shall ensure that all firearms and ammunition are locked and secured while in their homes, vehicles or any other area under their control, and in a manner that will keep them inaccessible to children and others who should not have access. Members shall not permit department-issued firearms to be handled by anyone not authorized by the Department to do so. Members should be aware that negligent storage of a firearm could result in civil and criminal liability (Penal Code § 25100).

306.5.3 ALCOHOL AND DRUGS

Firearms shall not be carried by any member, either on- or off-duty, who has consumed an amount of an alcoholic beverage, taken any drugs or medication, or has taken any combination thereof that would tend to adversely affect the member’s senses or judgment.

306.5.4 STORAGE IN VEHICLES

When leaving a handgun in an unattended vehicle, members shall ensure that it is locked in the trunk, or in a locked container that is placed out of view, or in a locked container that is permanently

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affixed to the vehicle's interior and not in plain view, or in a locked toolbox or utility box permanently affixed to the vehicle (Penal Code § 16850; Penal Code § 25140; Penal Code § 25452).

If the vehicle does not have a trunk or a locked container, then the firearm should be locked within the center utility console that can be locked with a padlock, keylock, combination lock, or other similar locking device (Penal Code § 25140).

Officers are exempt from these requirements during circumstances requiring immediate aid or action in the course of official duties (Penal Code § 25140).

306.6 FIREARMS TRAINING AND QUALIFICATIONS

All members who carry a firearm while on-duty are required to successfully complete training and qualify with their duty firearms semi-annually. Members will qualify with off-duty and secondary firearms at least once a year. Training and qualifications must be on an approved range course.

At least annually, all members carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.

306.6.1 NON-CERTIFICATION OR NON-QUALIFICATION

If any member fails to meet minimum standards for firearms training or qualification for any reason, including injury, illness, duty status or scheduling conflict, that member shall submit a memorandum to his/her immediate supervisor prior to the end of the required training or qualification period.

Those who fail to meet minimum standards or qualify on their first shooting attempt shall be provided remedial training and will be subject to the following requirements:

(a) Additional range assignments may be scheduled to assist the member in demonstrating consistent firearm proficiency.

(b) Members shall be given credit for a range training or qualification when obtaining a qualifying score or meeting standards after remedial training.

(c) No range credit will be given for the following:

1. Unauthorized range make-up
2. Failure to meet minimum standards or qualify after remedial training

Members who repeatedly fail to meet minimum standards will be removed from field assignment and may be subject to disciplinary action.

306.7 FIREARM DISCHARGE

Except during training or recreational use, any member who discharges a firearm intentionally or unintentionally, on- or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Shootings and Deaths Policy. If a firearm was discharged as a use of force, the involved member shall adhere to the additional reporting requirements set forth in the Use of Force Policy.

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In all other cases, written reports shall be made as follows:

(a) If on-duty at the time of the incident, the member shall file a written report with his/her Division Captain or provide a recorded statement to investigators prior to the end of shift, unless otherwise directed.

(b) If off-duty at the time of the incident, the member shall file a written report or provide a recorded statement no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor.

306.7.1 DESTRUCTION OF ANIMALS

Members are authorized to use firearms to stop an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective. When practical members should seek supervisor approval prior to using a firearm to destroy an animal.

In circumstances where there is sufficient advance notice that a potentially dangerous animal may be encountered, department members should develop reasonable contingency plans for dealing with the animal (e.g., fire extinguisher, TASER® device, oleoresin capsicum (OC) spray, animal control officer). Nothing in this policy shall prohibit any member from shooting a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.

306.7.2 INJURED ANIMALS

A member may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical (Penal Code § 597.1(e)). When practical members should seek supervisor approval prior to using a firearm to destroy an animal.

Injured animals (with the exception of dogs and cats) may only be euthanized after a reasonable search to locate the owner has been made (Penal Code § 597.1(b)). Injured dogs and cats found without their owners shall be taken to an appropriate veterinarian for determination of whether they should be treated or humanely destroyed.

306.8 PERSONNEL AND TRAINING SERGEANT DUTIES

The range will be under the exclusive control of the FTU Staff. All members attending will follow the directions of the FTU. The FTU Staff will maintain a roster of all members attending the range and will submit the roster to the Personnel and Training Sergeant or his or her designee after each range date. Failure of any member to sign in may result in non-qualification.

The range shall remain operational and accessible to Department members during hours established by the Department.

The Department Armorers have the responsibility of making periodic inspection, at least once a year, of all duty firearms carried by members of this department to verify proper operation. The Personnel and Training Sergeant or their designee has the authority to deem any department-issued or personally owned firearm unfit for service. The member will be responsible for all repairs

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to his/her personally owned firearm and it will not be returned to service until inspected by the Department Armorer.

The FTU Staff have the responsibility for ensuring each member meets the minimum requirements during training shoots and, on at least a semi-annual basis, can demonstrate proficiency in the care, cleaning and safety of all firearms the member is authorized to carry.

The FTU Staff shall complete and submit to the Personnel and Training Sergeant documentation of the training courses provided. Documentation shall include a description of the training provided and, on a form that has been approved by the Department, a list of each member who completes the training. The Personnel and Training Sergeant or his or her designee should keep accurate records of all training shoots, qualifications, repairs, maintenance or other records.

306.9 FLYING WHILE ARMED

The Transportation Security Administration (TSA) has imposed rules governing law enforcement officers flying armed on commercial aircraft. The following requirements apply to officers who intend to be armed while flying on a commercial air carrier or flights where screening is conducted (49 CFR 1544.219):

(a) Officers wishing to fly while armed must be flying in an official capacity, not for vacation or pleasure, and must have a need to have the firearm accessible, as determined by the Department based on the law and published TSA rules.

(b) Officers must carry their Berkeley Police Department identification card, bearing the officer's name, a full-face photograph, identification number, the officer's signature and the signature of the Chief of Police or the official seal of the Department and must present this identification to airline officials when requested. The officer should also carry the standard photo identification needed for passenger screening by airline and TSA officials (e.g., driver license, passport).

(c) The Berkeley Police Department must submit a National Law Enforcement Telecommunications System (NLETS) message prior to the officer's travel. If approved, TSA will send the Berkeley Police Department an NLETS message containing a unique alphanumeric identifier. The officer must present the message on the day of travel to airport personnel as authorization to travel while armed.

(d) An official letter signed by the Chief of Police authorizing armed travel may also accompany the officer. The letter should outline the officer's need to fly armed, detail his/her itinerary, and include that the officer has completed the mandatory TSA training for a law enforcement officer flying while armed.

(e) Officers must have completed the mandated TSA security training covering officers flying while armed. The training shall be given by the department-appointed instructor.

(f) It is the officer's responsibility to notify the air carrier in advance of the intended armed travel. This notification should be accomplished by early check-in at the carrier's check-in counter.

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(g) Any officer flying while armed should discreetly contact the flight crew prior to take-off and notify them of his/her assigned seat.

(h) Discretion must be used to avoid alarming passengers or crew by displaying a firearm. The officer must keep the firearm concealed on his/her person at all times. Firearms are not permitted in carry-on luggage and may not be stored in an overhead compartment.

(i) Officers should try to resolve any problems associated with flying armed through the flight captain, ground security manager, TSA representative or other management representative of the air carrier.

(j) Officers shall not consume alcoholic beverages while aboard an aircraft, or within eight hours prior to boarding an aircraft.

306.10 CARRYING FIREARMS OUT OF STATE

Qualified, active, full-time officers of this department are authorized to carry a concealed firearm in all other states subject to the following conditions (18 USC § 926B):

(a) The officer shall carry his/her Berkeley Police Department identification card whenever carrying such firearm.

(b) The officer is not the subject of any current disciplinary action that prohibits them from carrying a firearm.

(c) The officer may not be under the influence of alcohol or any other intoxicating or hallucinatory drug.

(d) The officer will remain subject to this and all other department policies (including qualifying and training).

Officers are cautioned that individual states may enact local regulations that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property, or that prohibit or restrict the possession of firearms on any state or local government property, installation, building, base or park. Federal authority may not shield an officer from arrest and prosecution in such locally restricted areas.

Active law enforcement officers from other states are subject to all requirements set forth in 18 USC § 926B.

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Canines

308.1 PURPOSE AND SCOPE

This policy establishes guidelines for the use of canines to augment police services to the community including, but not limited to locating missing or at risk individuals and apprehending criminal offenders.

308.2 POLICY

It is the policy of the Berkeley Police Department that a request for canine unit assistance from an outside agency only be used to effectively and reasonably carry out legitimate law enforcement objectives

Per the 1982 Berkeley City Council Resolution (51,408 NS), police use of canines from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

(a) To apprehend a suspect where there is a threat to human life, the suspect is reasonably believed to be armed with a deadly weapon and the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect; or

(b) To locate missing persons; or

(c) To locate crime scenes.

The use of canines in crowd control is explicitly prohibited.

308.3 APPREHENSION GUIDELINES

A canine may be used to locate and apprehend a suspect if:

(a) The on-scene supervisor or Watch Commander reasonably believes that the individual has either committed, is committing or is threatening to commit any serious offense and

(b) If the suspect is believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of officers or the public.

It is recognized that situations may arise that do not fall within the provisions set forth in this policy. Such events require consideration of the totality of the circumstances and the use of an objective reasonableness standard applied to the decision to use a canine

Absent a reasonable belief that a suspect has committed, is committing or is threatening to commit a serious offense, mere flight from a pursuing officer, without any of the above conditions, shall not serve as the basis for the use of a canine to apprehend a suspect.

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In all applications, once the suspect has been located and no longer reasonably appears to present a threat or risk of escape, officers should confirm the handler secures the canine as soon as it becomes reasonably practicable.

If the canine has apprehended the suspect with a secure bite, and officers believe that the suspect no longer poses a threat, officers should request the handler, if not done already, command the canine to release the suspect.

308.4 PREPARATION FOR DEPLOYMENT

Prior to the use of a canine to search for or apprehend any suspect, the on-scene supervisor should carefully consider all pertinent information reasonably available at the time. The information should include, but is not limited to:

(a) The nature and seriousness of the suspected offense.

(b) Whether violence or weapons were used or are anticipated.

(c) The degree of resistance or threatened resistance, if any, the suspect has shown.

(d) The suspect's known or perceived age.

(e) The potential for injury to officers or the public caused by the suspect if the canine is not utilized.

(f) Any potential danger to the public and/or other officers at the scene if the canine is released.

(g) The potential for the suspect to escape or flee if the canine is not utilized.

As circumstances permit, the on-scene supervisor should make every reasonable effort to communicate with the canine handler and coordinate with other involved members to minimize the risk of unintended injury.

It is the canine handler's responsibility to evaluate each situation and determine whether the use of a canine is appropriate and reasonable. The canine handler shall have the authority to decline the use of the canine whenever he/she deems deployment is unsuitable.

A supervisor who is sufficiently apprised of the situation may prohibit deploying the canine.

Unless otherwise directed by a supervisor, assisting members should take direction from the handler in order to minimize interference with the canine.

308.5 WARNINGS AND ANNOUNCEMENTS

Unless it would increase the risk of injury or escape, a clearly audible warning announcing that a canine will be used if the suspect does not surrender should be made prior to releasing a canine. Officers should allow a reasonable time for a suspect to surrender and should request the handler quiet the canine momentarily in order to listen for any verbal response to the warning. If feasible, other members should be in a location opposite the warning to verify that the announcement could be heard. If available, warnings given in other languages should be used as necessary.

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In the event of an apprehension, the handling officer shall document in any related report how the warning was given and, if none was given, the reasons why.

308.6 REPORTING DEPLOYMENTS, BITES AND INJURIES

Whenever a canine deployment results in a bite or causes injury to an intended suspect, a supervisor should be promptly notified. The injured person shall be promptly treated by emergency medical services personnel and, if appropriate, transported to an appropriate medical facility for further treatment. The deployment and injuries should also be included in any related incident or arrest report.

308.7 NON-APPREHENSION GUIDELINES

Properly trained canines may also be used to track or search for non-criminals (e.g., lost children, individuals who may be disoriented or in need of medical attention). The Watch Commander is responsible for determining a canine's suitability for such assignments based on the conditions and the particular abilities of the canine. When the canine is deployed in a search or other non-apprehension operation, the following guidelines apply.

(a) Absent a change in circumstances that present an immediate threat to officers, the canine or the public, such applications should be conducted on-leash or under conditions that minimize the likelihood the canine will bite or otherwise injure the individual, if located.

(b) Unless otherwise directed by a supervisor, assisting members should take direction from the handler in order to minimize interference with the canine.

308.8 BOMB/EXPLOSIVE DETECTION

Because of the high risk of danger to the public and officers when a bomb or other explosive device is suspected, the use of a canine team trained in explosive detection may be considered. When available, an explosive-detection canine team may be used in accordance with current law and under certain circumstances, including:

(a) Assisting in the search of a building, structure, area, vehicle or article where an actual or suspected explosive device has been reported or located.

(b) Assisting with searches at transportation facilities and vehicles (e.g., buses, airplanes, trains).

(c) Preventive searches at special events, VIP visits, official buildings and other restricted areas. Searches of individuals should remain minimally intrusive and shall be strictly limited to the purpose of detecting explosives.

(d) Assisting in the search of scenes where an explosion has occurred and an explosive device or secondary explosive device is suspected.

At no time will an explosive-detection trained canine be used to render a suspected device safe or clear.

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Officer Response to Calls

309.1 PURPOSE AND SCOPE

This policy provides for the safe and appropriate response to emergency and non-emergency situations whether dispatched or self-initiated.

309.2 RESPONSE TO CALLS

Officers dispatched "Code-3" shall consider the call an emergency response and proceed immediately. Officers responding Code-3 shall continuously operate emergency lighting equipment, including at minimum a steady forward facing red light, and shall sound the siren as reasonably necessary pursuant to Vehicle Code § 21055.

Responding with emergency light(s) and siren does not relieve the officer of the duty to continue to drive with due regard for the safety of all persons. The use of any other warning equipment without a red light and siren does not provide any exemption from the Vehicle Code.

Officers should only respond Code-3 when so dispatched or when circumstances reasonably indicate an emergency response is required. Officers not authorized to respond Code-3 shall observe all traffic laws and proceed without the use of emergency lights and siren.

309.3 RESPONSIBILITIES OF RESPONDING OFFICERS

Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle.

The decision to continue a Code-3 response is at the discretion of the officer. If, in the officer's judgment, the roadway conditions or traffic congestion does not permit such a response without unreasonable risk, the officer may elect to respond to the call without the use of red lights and siren at the legal speed limit. An officer shall also discontinue the Code-3 response when directed by a supervisor.

309.4 COMMUNICATIONS RESPONSIBILITIES

A dispatcher shall assign a Code-3 response when an officer requests emergency assistance or available information reasonably indicates that the public is threatened with serious injury or death and immediate police response is needed. The dispatcher shall:

(a) Attempt to assign the closest available unit to the location requiring assistance

(b) Confirm and repeat the location where the Code-3 response is needed

(c) Notify and coordinate allied emergency services (e.g., fire and ambulance)

(d) Continue to obtain and broadcast information as necessary concerning the response and monitor the situation until it is stabilized or terminated

(e) Control all radio communications during the emergency and coordinate assistance under the direction of the Watch Commander or field supervisor

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309.5 SUPERVISORY RESPONSIBILITIES

Upon being notified that a Code-3 response has been initiated, the Watch Commander or the field supervisor shall verify the following:

(a) The proper response has been initiated

(b) No more than those units reasonably necessary under the circumstances are involved in the response

(c) Affected outside jurisdictions are being notified as practical

The field supervisor shall monitor the response until it has been stabilized or terminated and assert control by directing units into or out of the response if necessary. If, in the supervisor's judgment, the circumstances require additional units to be assigned a Code-3 response, the supervisor may do so.

It is the supervisor's responsibility to terminate a Code-3 response that, in his/her judgment is inappropriate due to the circumstances.

When making the decision to authorize a Code-3 response, the Watch Commander or the field supervisor should consider the following:

- The type of call
- The necessity of a timely response
- Traffic and roadway conditions
- The location of the responding units

309.6 FAILURE OF EMERGENCY EQUIPMENT

If the emergency equipment on the vehicle should fail to operate, the officer must terminate the Code-3 response and respond accordingly. In all cases, the officer shall notify the Watch Commander, field supervisor, or the Communications Center of the equipment failure so that another unit may be assigned to the emergency response.

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Domestic Violence

310.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to deter, prevent and reduce domestic violence through vigorous enforcement and to address domestic violence as a serious crime against society. This policy specifically addresses the commitment of this department to take enforcement action when appropriate, to provide assistance to victims and to guide officers in the investigation of domestic violence.

310.1.1 DEFINITIONS

Definitions related to this policy include:

Court order - All forms of orders related to domestic violence that have been issued by a court of this state or another, whether civil or criminal, regardless of whether service has been made.

310.2 POLICY

The Berkeley Police Department's response to incidents of domestic violence and violations of related court orders shall stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic violence is criminal behavior. It is also the policy of this department to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible. In order to break the cycle of violence, the department policy is pro-arrest and focuses on proving the case with or without the victim's cooperation whenever possible.

310.3 OFFICER SAFETY

The investigation of domestic violence cases often places officers in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede the responsibility of all officers to exercise due caution and reasonable care in providing for the safety of any officers and parties involved.

310.4 INVESTIGATIONS

The following guidelines should be followed by officers when investigating domestic violence cases:

(a) Calls of reported, threatened, imminent, or ongoing domestic violence and the violation of any court order are of extreme importance and should be considered among the highest response priorities. This includes incomplete 9-1-1 calls.

(b) When practicable, officers should obtain and document statements from the victim, the suspect, and any witnesses, including children, in or around the household or location of occurrence.

(c) Officers should list the full name and date of birth (and school if available) of each child who was present in the household at the time of the offense. The names of other children who may not have been in the house at that particular time should also be obtained for follow-up.

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(d) When practicable and legally permitted, video or audio record all significant statements and observations.

(e) All injuries should be photographed, regardless of severity, taking care to preserve the victim's personal privacy. Where practicable, photographs should be taken by a person of the same sex. Victims whose injuries are not visible at the time of the incident should be asked to contact the Detective Bureau in the event that the injuries later become visible.

(f) Officers should request that the victim complete and sign an authorization for release of medical records related to the incident when applicable.

(g) If the suspect is no longer at the scene, officers should make reasonable efforts to locate the suspect to further the investigation, provide the suspect with an opportunity to make a statement, and make an arrest or seek an arrest warrant if appropriate.

(h) Seize any firearms or other dangerous weapons in the home, if appropriate and legally permitted, for safekeeping or as evidence. If the domestic violence involved threats of bodily harm, any firearm discovered in plain view or pursuant to consent or other lawful search must be taken into temporary custody (Penal Code § 18250).

(i) When completing an incident or arrest report for violation of a court order, officers should include specific information that establishes that the offender has been served, including the date the offender was served, the name of the agency that served the order, and the provision of the order that the subject is alleged to have violated. When reasonably available, the arresting officer should attach a copy of the order to the incident or arrest report.

(j) Officers should take appropriate enforcement action when there is probable cause to believe an offense has occurred. Factors that should not be used as sole justification for declining to take enforcement action include:

1. Whether the suspect lives on the premises with the victim.
2. Claims by the suspect that the victim provoked or perpetuated the violence.
3. The potential financial or child custody consequences of arrest.
4. The physical or emotional state of either party.
5. Use of drugs or alcohol by either party.
6. Denial that the abuse occurred where evidence indicates otherwise.
7. A request by the victim not to arrest the suspect.
8. Location of the incident (public/private).
9. Speculation that the complainant may not follow through with the prosecution.
10. Actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or marital status of the victim or suspect.
11. The social status, community status, or professional position of the victim or suspect.

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310.4.1 IF A SUSPECT IS ARRESTED
If a suspect is arrested, officers should:

(a) Advise the victim that there is no guarantee the suspect will remain in custody.

(b) Provide the victim's contact information to the jail staff to enable notification of the victim upon the suspect's release from jail.

(c) Advise the victim whether any type of court order will be in effect when the suspect is released from jail.

310.4.2 IF NO ARREST IS MADE
If no arrest is made, the officer should:

(a) Advise the parties of any options, including but not limited to:

1. Voluntary separation of the parties.
2. Appropriate resource referrals (e.g., counselors, friends, relatives, shelter homes, victim witness unit).

(b) Document the resolution in a report.

310.5 VICTIM ASSISTANCE
Because victims may be traumatized or confused, officers should be aware that a victim's behavior and actions may be affected:

(a) Victims should be provided with the department's domestic violence information handout, even if the incident may not rise to the level of a crime.

(b) Victims should also be alerted to any available victim advocates, shelters, and community resources.

(c) When an involved person requests law enforcement assistance while removing essential items of personal property, officers should stand by for a reasonable amount of time.

(d) If the victim has sustained injury or complaints of pain, officers should seek medical assistance as soon as practicable.

(e) Officers should ask the victim whether the victim has a safe place to stay and assist in arranging transportation to an alternate shelter if the victim expresses a concern for the victim's safety or if the officer determines that a need exists.

(f) Officers should make reasonable efforts to ensure that children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.

(g) If appropriate, officers should seek or assist the victim in obtaining an emergency order if appropriate.

An officer shall advise an individual protected by a Canadian domestic violence protection order of available local victim services (Family Code § 6452).

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310.6 DISPATCH ASSISTANCE

All calls of domestic violence, including incomplete 9-1-1 calls, should be dispatched as soon as practicable.

Dispatchers are not required to verify the validity of a court order before responding to a request for assistance. Officers should request that dispatchers check whether any of the involved persons are subject to the terms of a court order.

310.7 FOREIGN COURT ORDERS

Various types of orders may be issued in domestic violence cases. Any foreign court order properly issued by a court of another state, Indian tribe or territory shall be enforced by officers as if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265). An otherwise valid out-of-state court order shall be enforced, regardless of whether the order has been properly registered with this state.

Canadian domestic violence protection orders shall also be enforced in the same manner as if issued in this state (Family Code § 6452).

310.8 VERIFICATION OF COURT ORDERS

Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should carefully review the actual order when available, and where appropriate and practicable:

(a) Ask the subject of the order about his/her notice or receipt of the order, his/her knowledge of its terms and efforts to respond to the order.

  1. If a determination is made that a valid foreign order cannot be enforced because the subject has not been notified or served the order, the officer shall inform the subject of the order, make a reasonable effort to serve the order upon the subject, and allow the subject a reasonable opportunity to comply with the order before enforcing the order. Verbal notice of the terms of the order is sufficient notice (Family Code § 6403).

(b) Check available records or databases that may show the status or conditions of the order.

  1. Registration or filing of an order in California is not required for the enforcement of a valid foreign order (Family Code § 6403).

(c) Contact the issuing court to verify the validity of the order.

(d) Contact a law enforcement official from the jurisdiction where the order was issued to verify information.

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Officers should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Officers should contact a supervisor for clarification when needed.

310.9 STANDARDS FOR ARRESTS

Officers investigating a domestic violence report should consider the following:

(a) An arrest should be made when there is probable cause to believe that a felony or misdemeanor domestic violence offense has been committed (Penal Code § 13701). Any decision to not arrest an adult when there is probable cause to do so requires supervisor approval.

1. Officers are only authorized to make an arrest without a warrant for a misdemeanor domestic violence offense if the officer makes the arrest as soon as probable cause arises (Penal Code § 836).

(b) An officer responding to a domestic violence call who cannot make an arrest will advise the victim of the victim's right to make a private person's arrest. The advisement should be made out of the presence of the suspect and shall include advising the victim how to safely execute the arrest. Officers shall not dissuade victims from making a lawful private person's arrest. Officers should refer to the provisions in the Private Persons Arrests Policy for options regarding the disposition of private person's arrests (Penal Code § 836(b)).

(c) Officers shall not cite and release a person for the following offenses (Penal Code § 853.6(a)(3)):

1. Penal Code § 243(e)(1) (battery against spouse, cohabitant)
2. Penal Code § 273.5 (corporal injury on spouse, cohabitant, fiancé/fiancée, person of a previous dating or engagement relationship, mother/father of the offender's child)
3. Penal Code § 273.6 (violation of protective order) if violence or threats of violence have occurred or the suspect has gone to the workplace or residence of the protected party
4. Penal Code § 646.9 (stalking)
5. Other serious or violent felonies specified in Penal Code § 1270.1

(d) In responding to domestic violence incidents, including mutual protective order violations, officers should generally be reluctant to make dual arrests. Officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person who has been determined to be the most significant, rather than the first, aggressor (Penal Code § 13701). In identifying the dominant aggressor, an officer shall consider:

1. The intent of the law to protect victims of domestic violence from continuing abuse.
2. The threats creating fear of physical injury.

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3. The history of domestic violence between the persons involved.
4. Whether either person acted in self-defense.

(e) An arrest shall be made when there is probable cause to believe that a violation of a domestic violence court order has been committed (Penal Code § 13701; Penal Code § 836), regardless of whether the offense was committed in the officer's presence. After arrest, the officer shall confirm that a copy of the order has been registered, unless the victim provides a copy (Penal Code § 836).

310.10 REPORTS AND RECORDS

(a) A written report shall be completed on all incidents of domestic violence. All such reports should be documented on the appropriate form, which includes information and notations specific to domestic violence incidents as required by Penal Code § 13730.

(b) Reporting officers should provide the victim with the case number of the report. The case number may be placed in the space provided on the domestic violence victim information handout provided to the victim. If the case number is not immediately available, an explanation should be given regarding how the victim can obtain the information at a later time.

(c) Officers who seize any firearm, ammunition, or other deadly weapon in a domestic violence incident shall issue the individual possessing such weapon a receipt that includes the name and residential mailing address of the owner or person who possessed the weapon and notice of where the weapon may be recovered, along with the applicable time limit for recovery (Penal Code § 18250; Penal Code § 18255; Penal Code § 33800; Family Code § 6389(c)).

310.11 RECORD-KEEPING AND DATA COLLECTION

This department shall maintain records of court orders related to domestic violence and the service status of each (Penal Code § 13710), as well as records on the number of domestic violence related calls reported to the Department, including whether weapons were used in the incident or whether the incident involved strangulation or suffocation (Penal Code § 13730). This information is to be reported to the Attorney General monthly. It shall be the responsibility of the Records Supervisor to maintain and report this information as required.

310.12 SERVICE OF COURT ORDERS

(a) An officer who obtains an emergency protective order from the court shall serve it on the restrained person if the person can be reasonably located and shall provide the person protected or the person's parent/guardian with a copy of the order. The officer shall file a copy with the court as soon as practicable and shall have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (Family Code § 6271; Penal Code § 646.91).

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(b) At the request of the petitioner, an officer at the scene of a reported domestic violence incident shall serve a court order on a restrained person (Family Code § 6383; Penal Code § 13710).

(c) Any officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm/ammunition be immediately surrendered (Family Code § 6389(c)).

(d) During the service of a protective order any firearm discovered in plain view or pursuant to consent or other lawful search shall be taken into temporary custody (Penal Code § 18250).

(e) If a valid Canadian order cannot be enforced because the person subject to the order has not been notified or served with the order, the officer shall notify the protected individual that reasonable efforts shall be made to contact the person subject to the order. The officer shall make a reasonable effort to inform the person subject to the order of the existence and terms of the order and provide the person with a record of the order, if available, and shall allow the person a reasonable opportunity to comply with the order before taking enforcement action (Family Code § 6452).

310.13 PUBLIC ACCESS TO POLICY

A copy of this domestic violence policy will be provided to members of the public upon request (Penal Code § 13701).

310.14 DECLARATION IN SUPPORT OF BAIL INCREASE

Any officer who makes a warrantless arrest for a felony or misdemeanor violation of a domestic violence restraining order shall evaluate the totality of the circumstances to determine whether reasonable cause exists to seek an increased bail amount. If there is reasonable cause to believe that the scheduled bail amount is insufficient to assure the arrestee's appearance or to protect the victim or family member of a victim, the officer shall prepare a declaration in support of increased bail (Penal Code § 1269c).

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Search and Seizure

311.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Berkeley Police Department personnel to consider when dealing with search and seizure issues.

311.2 POLICY

It is the policy of the Berkeley Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Officers seeking a consent search should obtain written consent on a *Berkeley Police Department Consent Search Form*, unless an officers safety or exigency issue exists. When either of the

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aforementioned exist, the officer shall obtain the consent on body worn camera (BWC) and document the reason in the MDT/incident/case report.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

311.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

(a) Members of this department will strive to conduct searches with dignity and courtesy.

(b) Officers should explain to the person being searched the reason for the search.

(c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.

(d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.

(e) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:

1. Another officer or a supervisor should witness the search.
2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

311.5 ASKING IF A PERSON IS ON PROBATION OR PAROLE

In an effort to foster community trust, officers should not ask if a person is on probation or parole when a person has satisfactorily identified themselves, either verbally or by presenting identification documents.

Officers may determine probation or parole status through standard records checks conducted in the course of a traffic safety or investigative stop. Officers should only ask when necessary to:

(a) Protect the safety of others, the person detained, or officers;

(b) Further a specific law enforcement investigative purpose (for example, sorting out multiple computer returns on a common name);

(c) To confirm probation and parole status subsequent to a records check.

If an officer needs to ask the question, “Are you on probation or parole?” the officer should do so while treating the person with dignity and respect, and being mindful that people may take offense at the question.

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311.6 WARRANTLESS SEARCHES OF INDIVIDUALS ON SUPERVISED RELEASE SEARCH CONDITIONS

In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement purpose or rehabilitative purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.

Individuals contacted or detained who are found to be on searchable Supervised Release for Violent Offenses[1] may be searched pursuant to the terms of their Supervised Release conditions. The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions for those on supervised release for nonviolent crimes[2], should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime or which demonstrate that the individual is connected in some way to criminal activity or that the individual is an imminent threat to officer or citizen safety. In the conduct of all such detentions and searches, officers shall consciously avoid the application of bias, shall not use such detentions or searches as a means to harass or annoy, and shall not conduct such detentions and searches in a manner that targets or is discriminatory toward any protected class.

1. *Offenses involving the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, and the use of force or threats to public safety. Battery on a Peace Officer (Penal Code § 243(b)), Reckless Evasion in a Vehicle (Vehicle Code § 2800.2(a)), or a violent felony as defined in Penal Code § 667.5(c).), fall into the categories of violent crimes, weapons offenses, sex crimes and/or crimes involving threats to public safety in accordance with state law.*
2. *"Non-Violent Offenses" are defined as offenses in which violence or use of a weapon or threat to life safety is not a factor.*

311.7 DOCUMENTATION

Officers shall document, via MDT disposition, Field Interview, Incident or Case Report, any search of a person, vehicle or location. Officers should consider documenting, as applicable, the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

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Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.

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Temporary Custody of Juveniles

312.1 PURPOSE AND SCOPE

This policy provides guidelines consistent with the Juvenile Justice and Delinquency Prevention Act for juveniles taken into temporary custody by members of the Berkeley Police Department (34 USC § 11133).

Guidance regarding contacting juveniles at schools or who may be victims is provided in the Child Abuse Policy.

312.1.1 DEFINITIONS

Definitions related to this policy include:

Juvenile non-offender - An abused, neglected, dependent, or alien juvenile who may be legally held for his/her own safety or welfare. This also includes any juvenile who may have initially been contacted for an offense that would not subject an adult to arrest (e.g., fine-only offense) but was taken into custody for his/her protection or for purposes of reuniting the juvenile with a parent, guardian, or other responsible person. Juveniles 11 years of age or younger are considered juvenile non-offenders even if they have committed an offense that would subject an adult to arrest.

Juvenile offender - A juvenile 12 to 17 years of age who is alleged to have committed an offense that would subject an adult to arrest (a non-status offense) (Welfare and Institutions Code § 602). It also includes an offense under Penal Code § 29610 for underage possession of a handgun or concealable firearm (28 CFR 31.303).

Non-secure custody - When a juvenile is held in the presence of an officer or other custody employee at all times and is not placed in a locked room, cell, or behind any locked doors. Juveniles in non-secure custody may be handcuffed but not to a stationary or secure object. Personal supervision, through direct visual monitoring and audio two-way communication is maintained. Monitoring through electronic devices, such as video, does not replace direct visual observation (Welfare and Institutions Code § 207.1; 15 CCR 1150).

Safety checks - Direct, visual observation personally by a member of this department performed at random intervals within time frames prescribed in this policy to provide for the health and welfare of juveniles in temporary custody.

Secure custody - When a juvenile offender is held in a locked room, a set of rooms, or a cell. Secure custody also includes being physically secured to a stationary object (15 CCR 1146).

Sight and sound separation - Located or arranged to prevent physical, visual, or auditory contact that is more than brief or inadvertent.

Status offender - A juvenile suspected of committing a criminal violation of the law that would not be a criminal violation but for the age of the offender. Examples may include running away, underage possession of tobacco, curfew violation, and truancy. A juvenile in custody on a court order or warrant based upon a status offense is also a status offender. This includes the

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habitually disobedient or truant juvenile under Welfare and Institutions Code § 601 and any juvenile suspected of an offense that would not subject an adult to arrest (e.g., fine-only offense).

312.2 POLICY

The Berkeley Police Department is committed to releasing juveniles from temporary custody as soon as reasonably practicable and keeping juveniles safe while they are in temporary custody at the Berkeley Police Department. Juveniles should be held in temporary custody only for as long as reasonably necessary for processing, transfer or release.

312.3 JUVENILES WHO SHOULD NOT BE HELD

Juveniles who exhibit any of the following conditions should not be held at the Berkeley Police Department:

(a) Unconscious

(b) Seriously injured

(c) A known suicide risk or obviously severely emotionally disturbed

(d) Significantly intoxicated except when approved by the Watch Commander. A medical clearance shall be obtained for minors who are under the influence of drugs, alcohol or any other intoxicating substance to the extent that they are unable to care for themselves (15 CCR 1151).

(e) Extremely violent or continuously violent

Officers taking custody of a juvenile who exhibits any of the above conditions should take reasonable steps to provide medical attention or mental health assistance and notify a supervisor of the situation (15 CCR 1142; 15 CCR 1151).

These juveniles should not be held at the Berkeley Police Department unless they have been evaluated by a qualified medical and/or mental health professional (15 CCR 1142).

If the officer taking custody of the juvenile believes the juvenile may be a suicide risk, the juvenile shall be under continuous direct supervision until evaluation, release or a transfer is completed (15 CCR 1142).

312.3.1 EMERGENCY MEDICAL CARE OF JUVENILES IN CUSTODY

When emergency medical attention is required for a juvenile, medical assistance will be called immediately. The Watch Commander shall be notified of the need for medical attention for the juvenile. Department members should administer first aid as applicable (15 CCR 1142).

312.3.2 SUICIDE PREVENTION OF JUVENILES IN CUSTODY

Department members should be alert to potential symptoms based upon exhibited behavior that may indicate the juvenile is a suicide risk. These symptoms may include depression, refusal to communicate, verbally threatening to kill him/herself or any unusual behavior which may indicate the juvenile may harm him/herself while in either secure or non-secure custody (15 CCR 1142).

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312.4 CUSTODY OF JUVENILES

Officers should take custody of a juvenile and temporarily hold the juvenile at the Berkeley Police Department when there is no other lawful and practicable alternative to temporary custody. Refer to the Child Abuse Policy for additional information regarding detaining a juvenile that is suspected of being a victim.

No juvenile should be held in temporary custody at the Berkeley Police Department without authorization of the arresting officer's supervisor or the Watch Commander. Juveniles taken into custody shall be held in non-secure custody unless otherwise authorized by this policy.

Any juvenile taken into custody shall be released to the care of the juvenile's parent or other responsible adult or transferred to a juvenile custody facility or to other authority as soon as practicable and in no event shall a juvenile be held beyond six hours from the time of his/her entry into the Berkeley Police Department (34 USC § 11133; Welfare and Institutions Code § 207.1).

312.4.1 CUSTODY OF JUVENILE NON-OFFENDERS

Non-offenders taken into protective custody in compliance with the Child Abuse Policy should generally not be held at the Berkeley Police Department. Custodial arrangements should be made for non-offenders as soon as reasonably possible. Juvenile non-offenders shall not be held in secure custody (34 USC § 11133; Welfare and Institutions Code § 206).

Juveniles 11 years of age or younger who have committed an offense that would subject an adult to arrest may be held in non-secure custody for the offenses listed in Welfare and Institutions Code § 602(b) (murder and the sexual assault offenses) and should be referred to a probation officer for a placement determination (Welfare and Institutions Code § 602.1).

312.4.2 CUSTODY OF JUVENILE STATUS OFFENDERS

Status offenders (e.g. runaways) should generally be released by citation or with a warning rather than taken into temporary custody. However, officers may take custody of a status offender if requested to do so by a parent or legal guardian in order to facilitate reunification (e.g., transported home or to the station to await a parent). Juvenile status offenders shall not be held in secure custody (34 USC § 11133).

(a) When a juvenile is a suspected runaway the officer shall:

1. Contact the parent, guardian or a responsible adult;
   - i. Allow the youth to speak with parent, guardian or responsible adult;
2. If it's determined that the youth is not a runaway, the youth should be released as soon as reasonably possible;
3. If it's confirmed that the youth is a runaway, proceed with standard documentation and reporting procedures;
4. Provide food, water, and access to lavatory facilities, as necessary; and,
5. If unable to contact a parent, guardian or responsible adult, or they do not cooperate with police and/or refuse take custody of their runaway juvenile, follow

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procedures described in the “Protective Custody” section of the Child Abuse Policy.

312.4.3 CUSTODY OF JUVENILE OFFENDERS

)Juvenile offenders should be held in non-secure custody while at the Berkeley Police Department unless another form of custody is authorized by this policy or is necessary due to exigent circumstances.

Generally, a juvenile offender may be taken into custody when authorized by a court order or when there is probable cause to believe the juvenile has committed an offense that would subject an adult to arrest (Welfare and Institutions Code § 625).

A juvenile offender who is 14 years of age or older and taken into custody for committing or attempting to commit a felony with a firearm shall not be released and be transported to a juvenile facility (Welfare and Institutions Code § 625.3).

In all other cases the juvenile offender may be:

(a) Transported to a juvenile facility.

(b) Released to a parent or other responsible adult after processing at the Department.

(c) Released upon warning or citation.

(d) Transported to his/her home or to the place where the juvenile offender was taken into custody (Welfare and Institutions Code § 207.2).

In determining which disposition is appropriate, the investigating officer or supervisor shall prefer the alternative which least restricts the juvenile’s freedom of movement, provided that alternative is compatible with the best interests of the juvenile and the community (Welfare and Institutions Code § 626).

Whenever a juvenile offender under the age of 14 is taken into custody, the officer should take reasonable steps to verify and document the child's ability to differentiate between right and wrong, particularly in relation to the alleged offense (Penal Code § 26).

312.5 ADVISEMENTS

Officers shall take immediate steps to notify the juvenile’s parent, guardian, or a responsible relative that the juvenile is in custody, the location where the juvenile is being held, and the intended disposition (Welfare and Institutions Code § 627).

Whenever a juvenile is taken into temporary custody, he/she shall be given the *Miranda* rights advisement regardless of whether questioning is intended. This does not apply to juvenile non-offenders taken into temporary custody for their safety or welfare (Welfare and Institutions Code § 625).

Anytime a juvenile offender is placed in secure custody, he/she shall be informed of the purpose of the secure custody, the length of time the secure custody is expected to last, and of the maximum six-hour limitation (Welfare and Institutions Code § 207.1).

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Juveniles taken into custody for an offense shall immediately be advised (or at least within one hour from being taken into custody, if possible) that they may make three telephone calls: one call completed to his/her parent or guardian; one to a responsible relative or his/her employer; and another call completed to an attorney. The calls shall be at no expense to the juvenile when completed to telephone numbers within the local calling area. Juveniles should be asked whether they are a caregiver and provided two more phone calls in the same manner as provided to adults in the Temporary Custody of Adults Policy (Welfare and Institutions Code § 627; Penal Code § 851.5).

312.6 JUVENILE CUSTODY LOGS

Any time a juvenile is held in custody at the Department, the custody shall be promptly and properly documented in the juvenile custody log, including:

(a) Identifying information about the juvenile.

(b) Date and time of arrival and release from the Berkeley Police Department (15 CCR 1150).

(c) Any charges for which the juvenile is being held.

The Special Victims Unit Sergeant shall later review and approve the log.

312.7 NO-CONTACT REQUIREMENTS

Sight and sound separation shall be maintained between all juveniles and adults while in custody at the Department (34 USC § 11133; Welfare and Institutions Code § 207.1; Welfare and Institutions Code § 208; 15 CCR 1144). There should also be sight and sound separation between non-offenders and juvenile and status offenders.

In situations where brief or accidental contact may occur (e.g., during the brief time a juvenile is being fingerprinted and/or photographed in booking), a member of the Berkeley Police Department (trained in the supervision of persons in custody) shall maintain a constant, immediate, side-by-side presence with the juvenile or the adult to minimize any contact. If inadvertent or accidental contact does occur, reasonable efforts shall be taken to end the contact (15 CCR 1144).

312.8 TEMPORARY CUSTODY REQUIREMENTS

Members assigned to monitor or process any juvenile at the Berkeley Police Department shall ensure the following:

(a) A supervisor should be notified if it is anticipated that a juvenile may need to remain at the Berkeley Police Department more than four hours. This will enable the supervisor to ensure no juvenile is held at the Berkeley Police Department more than six hours.

(b) A staff member of the same sex shall supervise personal hygiene activities and care, such as changing clothing or using the restroom, without direct observation to allow for privacy.

(c) Juveniles shall have reasonable access to toilets and wash basins (15 CCR 1143).

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(d) Food shall be provided if a juvenile has not eaten within the past four hours or is otherwise in need of nourishment, including any special diet required for the health of the juvenile (15 CCR 1143).

(e) Juveniles shall have reasonable access to a drinking fountain or water (15 CCR 1143).

(f) Juveniles shall have reasonable opportunities to stand and stretch, particularly if handcuffed or restrained in any way.

(g) Juveniles shall have privacy during family, guardian and/or lawyer visits (15 CCR 1143).

(h) Juveniles shall be permitted to remain in their personal clothing unless the clothing is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody (15 CCR 1143).

(i) Blankets shall be provided as reasonably necessary (15 CCR 1143).

1. The supervisor should ensure that there is an adequate supply of clean blankets.

(j) Adequate shelter, heat, light and ventilation should be provided without compromising security or enabling escape.

(k) Juveniles shall have adequate furnishings, including suitable chairs or benches.

(l) Juveniles shall have the right to the same number of telephone calls as an adult in temporary custody.

(m) No discipline may be administered to any juvenile, nor may juveniles be subjected to corporal or unusual punishment, humiliation or mental abuse (15 CCR 1142).

312.9 RELIGIOUS ACCOMMODATION

Juveniles have the right to the same religious accommodation as adults in temporary custody (see the Temporary Custody of Adults Policy).

312.10 USE OF RESTRAINT DEVICES

Juvenile offenders may be handcuffed in accordance with the Handcuffing and Restraints Policy. A juvenile offender may be handcuffed at the Berkeley Police Department when the juvenile presents a heightened risk. However, non-offenders and status offenders should not be handcuffed unless they are combative or threatening (15 CCR 1142).

Other restraints shall only be used after less restrictive measures have failed and with the approval of a supervisor. Restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others (15 CCR 1142).

Juveniles in restraints shall be kept away from other unrestrained juveniles or monitored in such a way as to protect the juvenile from abuse (15 CCR 1142).

312.11 PERSONAL PROPERTY

The officer taking custody of a juvenile offender or status offender at the Berkeley Police Department shall ensure a thorough search of the juvenile’s property is made and all property is

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removed from the juvenile, especially those items that could compromise safety, such as pens, pencils and belts.

The personal property of a juvenile should be placed in a property bag. The property should be kept in a monitored or secure location until the juvenile is released from the custody of the Berkeley Police Department.

312.12 SECURE CUSTODY

Only juvenile offenders 14 years of age or older may be placed in secure custody (Welfare and Institutions Code § 207; 15 CCR 1145).

Secure custody should only be used for juvenile offenders when there is a reasonable belief that the juvenile is a serious risk of harm to him/herself or others. Factors to be considered when determining if the juvenile offender presents a serious security risk to him/herself or others include the following (15 CCR 1145):

(a) Age, maturity and delinquent history

(b) Severity of offense for which the juvenile was taken into custody

(c) The juvenile offender's behavior

(d) Availability of staff to provide adequate supervision or protection of the juvenile offender

(e) Age, type and number of other individuals in custody at the facility

Members of this department shall not use secure custody for convenience when non-secure custody is, or later becomes, a reasonable option (15 CCR 1145).

Members of this department shall document the reasons for placing the juvenile in secure custody in the police report.

When practicable and when no locked enclosure is available, handcuffing one hand of a juvenile offender to a fixed object while otherwise maintaining the juvenile in non-secure custody should be considered as the method of secure custody. An employee must be present at all times to ensure the juvenile's safety while secured to a stationary object (15 CCR 1148).

Juveniles shall not be secured to a stationary object for more than 60 minutes. Supervisor approval is required to secure a juvenile to a stationary object for longer than 60 minutes and every 30 minutes thereafter (15 CCR 1148). Supervisor approval should be documented.

The decision for securing a minor to a stationary object for longer than 60 minutes and every 30 minutes thereafter shall be based upon the best interests of the juvenile offender (15 CCR 1148).

312.12.1 LOCKED ENCLOSURES

A thorough inspection of the area shall be conducted before placing a juvenile into the enclosure. A second inspection shall be conducted after removing the juvenile. Any damage noted to the room should be photographed and documented in the crime report.

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The following requirements shall apply to a juvenile offender who is held inside a locked enclosure:

(a) Juveniles shall have constant auditory access to department members (15 CCR 1147).

(b) Initial placement into and removal from a locked enclosure shall be logged (Welfare and Institutions Code § 207.1(d)).

(c) Unscheduled safety checks to provide for the health and welfare of the juvenile by a staff member, no less than once every 15 minutes, shall occur (15 CCR 1147; 15 CCR 1151).

1. The safety check should involve questioning the juvenile as to his/her well-being (sleeping juveniles or apparently sleeping juveniles should be awakened).

2. All safety checks shall be logged.

(d) Males and females shall not be placed in the same locked room (15 CCR 1147).

(e) Juvenile offenders should be separated according to severity of the crime (e.g., felony or misdemeanor).

(f) Restrained juveniles shall not be mixed in a cell or room with unrestrained juveniles.

312.13 SUICIDE ATTEMPT, DEATH OR SERIOUS INJURY OF A JUVENILE

The Watch Commander will ensure procedures are in place to address the suicide attempt, death or serious injury of any juvenile held at the Berkeley Police Department (15 CCR 1142; 15 CCR 1047). The procedures will address:

(a) Immediate notification of the on-duty supervisor, Chief of Police and Investigation Division Supervisor.

(b) Notification of the parent, guardian or person standing in loco parentis, of the juvenile.

(c) Notification of the appropriate prosecutor.

(d) Notification of the City attorney.

(e) Notification to the coroner.

(f) Notification of the juvenile court.

(g) In the case of a death, providing a report to the Attorney General under Government Code § 12525 within 10 calendar days of the death, and forwarding the same report to the Board of State and Community Corrections within the same time frame (15 CCR 1046). Upon receipt of a report of death of a minor from the administrator, the Board may, within 30 calendar days, inspect and evaluate the jail, lockup, or court holding facility pursuant to the provisions of 15 CCR 1046. Any inquiry made by the Board shall be limited to the standards and requirements set forth in 15 CCR 1046.

(h) A medical and operational review of deaths and suicide attempts pursuant to 15 CCR 1046.

(i) Evidence preservation.

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312.14 INTERVIEWING OR INTERROGATING JUVENILE SUSPECTS

No interview or interrogation of a juvenile should occur unless the juvenile has the apparent capacity to consent, and does consent to an interview or interrogation.

Prior to conducting a custodial interrogation, including the waiver of *Miranda* rights, an officer shall permit a juvenile 17 years of age or younger to consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived by the juvenile. The requirement to consult with legal counsel does not apply when (Welfare and Institutions Code § 625.6):

(a) Information is necessary to protect life or property from an imminent threat.

(b) The questions are limited to what is reasonably necessary to obtain the information relating to the threat.

312.14.1 MANDATORY RECORDINGS OF JUVENILES

Any interrogation of an individual under 18 years of age who is in custody and suspected of committing murder shall be audio and video recorded when the interview takes place at a department facility, jail, detention facility or other fixed place of detention. The recording shall include the entire interview and a *Miranda* advisement preceding the interrogation (Penal Code § 859.5).

This recording is not mandatory when (Penal Code § 859.5):

(a) Recording is not feasible because of exigent circumstances that are later documented in a report.

(b) The individual refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.

(c) The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.

(d) The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.

(e) The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an officer, the individual being interrogated or another individual. Such circumstances shall be documented in a report.

(f) A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.

(g) The questions are part of a routine processing or booking, and are not an interrogation.

(h) The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

These recordings shall be retained pursuant to the Records Maintenance and Release policy.

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312.15 FORMAL BOOKING

Any juvenile, 14 years of age or older, who is taken into custody for a felony, or any juvenile whose acts amount to a sex crime, should be booked, fingerprinted and photographed.

For all other acts defined as crimes, juveniles may be booked, fingerprinted or photographed upon the approval from the Watch Commander or Detective Bureau supervisor, giving due consideration to the following:

(a) The gravity of the offense

(b) The past record of the offender

(c) The age of the offender

312.16 RELEASE OF INFORMATION CONCERNING JUVENILES

Court decisions and legislation have combined to carefully specify situations in which information may be given out or exchanged when a case involves a juvenile. Members of this department shall not divulge any information regarding juveniles unless they are certain of the legal authority to do so.

A copy of the current policy of the juvenile court concerning authorized release of information and appropriate acknowledgment forms shall be kept with copies of this procedure in the Berkeley Police Department Policy Manual. Such releases are authorized by Welfare and Institutions Code § 827 (click here to view: W&I 827).

Welfare and Institutions Code § 828 authorizes the release of certain information to other agencies. It shall be the responsibility of the Support Services Bureau Lieutenant and the Detective Bureau Lieutenant to ensure that personnel of those bureaus act within legal guidelines.

312.17 BOARD OF STATE AND COMMUNITY CORRECTIONS CERTIFICATION

The Support Services Division Captain shall coordinate the procedures related to the custody of juveniles held at the Berkeley Police Department and ensure any required certification is maintained (Welfare and Institution Code § 210.2).

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Senior and Disability Victimization

313.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation and reporting of suspected abuse of certain adults who may be more vulnerable than others. This policy also addresses mandatory notification for Berkeley Police Department members as required by law (Penal Code § 368.6).

The Berkeley Police Department is committed to providing equal protection and demonstrating respect for all persons regardless of age or disabilities, and to conscientiously enforcing all criminal laws protecting elders, and adults and children with disabilities, regardless of whether these crimes also carry civil penalties (Penal Code § 368.6) (see Child Abuse Policy for child abuse investigations and reporting).

313.1.1 DEFINITIONS

Definitions related to this policy include:

Abuse of an elder (age 65 or older) or dependent adult - Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. Neglect includes self-neglect (Welfare and Institutions Code § 15610.05 et seq.; Penal Code § 368.5).

Department protocols (or protocols) - A procedure adopted by a local law enforcement agency consistent with the agency's organizational structure and stated in a policy adopted pursuant to this section, to effectively and accountably carry out a particular agency responsibility.

Dependent adult - An individual, regardless of whether the individual lives independently, between 18 and 64 years of age who has physical or mental limitations that restrict his/her ability to carry out normal activities or to protect his/her rights, including but not limited to persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. This also includes those admitted as inpatients to a 24-hour health facility, as defined in state law (Penal Code § 368; Welfare and Institutions Code § 15610.23).

Elder and dependent adult abuse - Any offense or attempted offense involving violence or neglect of an adult victim when committed by a person responsible for the adult's care, or any other act that would mandate reporting or notification to a social service agency or law enforcement (Penal Code § 368).

Senior and disability victimization - Means any of the following (Penal Code § 368.6):

(a) Elder and dependent adult abuse

(b) Unlawful interference with a mandated report

(c) Homicide of an elder, dependent adult, or other adult or child with a disability

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(d) Sex crimes against elders, dependent adults, or other adults and children with disabilities

(e) Child abuse of children with disabilities

(f) Violation of relevant protective orders

(g) Hate crimes against persons with actual or perceived disabilities, including but not limited to disabilities caused by advanced age, or those associated with them

(h) Domestic violence against elders, dependent adults, and adults and children with disabilities, including disabilities caused by advanced age

313.2 POLICY

The Berkeley Police Department will investigate all reported incidents of alleged elder and dependent adult abuse and ensure proper reporting and notification as required by law.

313.2.1 ARREST POLICY

It is the department policy to make arrests or to seek arrest warrants for elder and dependent adult abuse in accordance with Penal Code § 836 and, in the case of domestic violence, as allowed by Penal Code § 13701 (Penal Code § 368.6) (see Law Enforcement Authority and Domestic Violence policies for additional guidance).

313.2.2 ADHERENCE TO POLICY

All officers are required to be familiar with the policy and carry out the policy at all times, except in the case of an unusual compelling circumstance as determined and approved by a supervisor (Penal Code § 368.6).

Any supervisor who determines and approves an officer's deviation from this policy shall provide a written report to the Chief of Police that states the unusual compelling circumstances regarding the deviation. A copy of this report will be made available to the alleged victim and reporting party pursuant to department protocols (Penal Code § 368.6(c)(27)).

The Chief of Police shall retain the report for a minimum of five years and shall make it available to the state protection and advocacy agency upon request (Penal Code § 368.6(c)(27)).

313.3 MANDATORY NOTIFICATION

Members of the Berkeley Police Department shall notify the local office of the California Department of Social Services (CDSS) APS agency when they reasonably suspect, have observed, or have knowledge of an incident that reasonably appears to be abuse of an elder or dependent adult, or are told by an elder or dependent adult that the person has experienced abuse (Welfare and Institutions Code § 15630(b)).

Notification shall be made by telephone as soon as practicable and a written report shall be provided within two working days as provided in Welfare and Institutions Code § 15630(b)(c).

Notification shall also be made to the following agencies as soon as practicable or as provided below (Welfare and Institutions Code § 15630):

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(a) If the abuse is physical abuse and occurred in a long-term care facility (not a state mental health hospital or a state developmental center), notification shall be made as follows (Welfare and Institutions Code § 15630(b)(1)):

1. If there is serious bodily injury, notification shall be made by telephone and, within two hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
2. If there is physical abuse and no serious bodily injury, notification shall be made by telephone and, within 24 hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
3. If the abuse is allegedly caused by a resident with dementia and there is no serious bodily injury, notification shall be made by telephone and a written report to the local ombudsman within 24 hours.
4. When a report of abuse is received by the Department, the local ombudsman shall be called to coordinate efforts to provide the most immediate and appropriate response (Welfare and Institutions Code § 15630(b)).

(b) If the abuse is in a long-term care facility (not a state mental health or a state developmental center) and is other than physical abuse, a telephone report and a written report shall be made to the local ombudsman as soon as practicable (Welfare and Institutions Code § 15630(b)).

(c) The California Department of Public Health (DPH) shall be notified of all known or suspected abuse in a long-term care facility.

(d) The CDSS shall be notified of all known or suspected abuse occurring in a residential care facility for the elderly or in an adult day program.

(e) If the abuse occurred in an adult day health care center, DPH and the California Department of Aging shall be notified.

(f) The Division of Medi-Cal Fraud and Elder Abuse shall be notified of all abuse that constitutes criminal activity in a long-term care facility.

(g) The District Attorney's office shall be notified of all cases of physical abuse and financial abuse in a long-term care facility.

(h) If the abuse occurred at a state mental hospital or a state developmental center, notification shall be made to the designated investigators of the California Department of State Hospitals or the California Department of Developmental Services as soon as practicable but no later than two hours after law enforcement becomes aware of the abuse (Welfare and Institutions Code § 15630(b)).

1. When a report of abuse is received by the Department, investigation efforts shall be coordinated with the designated investigators of the California Department of State Hospitals or the California Department of Developmental Services (Welfare and Institutions Code § 15630(b)).

(i) If during an investigation it is determined that the elder or dependent adult abuse is being committed by a licensed health practitioner as identified in Welfare and

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Institutions Code § 15640(b), the appropriate licensing agency shall be immediately notified (Welfare and Institutions Code 15640(b)).

(j) When the Department receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, the licensing agency shall be notified by telephone as soon as practicable (Welfare and Institutions Code § 15640(e)).

The Detective Bureau supervisor is responsible for ensuring that proper notifications have occurred to the District Attorney's Office and any other regulatory agency that may be applicable based upon where the abuse took place (e.g., care facility, hospital) per Welfare and Institutions Code § 15630(b).

Notification is not required for a person who was merely present when a person self-administered a prescribed aid-in-dying drug or a person prepared an aid-in-dying drug so long as the person did not assist the individual in ingesting the aid-in-dying drug (Health and Safety Code § 443.14; Health and Safety Code § 443.18).

Failure to report, or impeding or inhibiting a report of abuse of an elder or dependent adult, is a misdemeanor (Welfare and Institutions Code §15630(h)).

313.3.1 NOTIFICATION PROCEDURE

Notification should include the following information, if known (Welfare and Institutions Code § 15630(e)):

(a) The name of the person making the report.

(b) The name and age of the elder or dependent adult.

(c) The present location of the elder or dependent adult.

(d) The names and addresses of family members or any other adult responsible for the care of the elder or dependent adult.

(e) The nature and extent of the condition of the elder or dependent adult.

(f) The date of incident.

(g) Any other information, including information that led the person to suspect elder or dependent adult abuse.

313.4 INVESTIGATIONS AND REPORTING

All reported or suspected cases of elder and dependent adult abuse require investigation and a report, even if the allegations appear unfounded or unsubstantiated (Penal Code § 368.6).

Investigations and reports related to suspected cases of elder and dependent adult abuse should address, as applicable:

(a) The overall basis for the contact. This should be done by the investigating officer in all circumstances where a suspected elder and dependent adult abuse victim is contacted.

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(b) Any relevant statements the victim may have made and to whom he/she made the statements.

(c) If a person is taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.

(d) Documentation of any visible injuries or any injuries identified by the victim. This should include photographs of such injuries, if practicable.

(e) Whether the victim was transported for medical treatment or a medical examination.

(f) Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other potential victims or witnesses who may reside in the residence.

(g) Identification of any prior related reports or allegations of abuse, including other jurisdictions, as reasonably known.

(h) Previous addresses of the victim and suspect.

(i) Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.

(j) Witness and suspect statements if available.

(k) Review of all portable audio/video recorders, devices, and other available video.

(l) Call history related to the elder or dependent adult including calls from mandated reporters or other individuals.

(m) Whether the abuse is related to a disability-bias hate crime and related bias motivations (Penal Code § 368.6) (see the Hate Crimes Policy for additional guidance).

(n) Results of investigations shall be provided to those agencies (Adult Protective Services (APS), long-term ombudsman) that referred or reported the elder or dependent adult abuse (Welfare and Institutions Code § 15640(f)).

(o) Whether a death involved the End of Life Option Act:

1. Whether or not assistance was provided to the person beyond that allowed by law (Health and Safety Code § 443.14).

2. Whether an individual knowingly altered or forged a request for an aid-in-dying drug to end a person's life without his/her authorization, or concealed or destroyed a withdrawal or rescission of a request for an aid-in-dying drug (Health and Safety Code § 443.17).

3. Whether coercion or undue influence was exerted on the person to request or ingest an aid-in-dying drug or to destroy a withdrawal or rescission of a request for such medication (Health and Safety Code § 443.17).

4. Whether an aid-in-dying drug was administered to a person without his/her knowledge or consent (Health and Safety Code § 443.17).

Any unexplained death of an adult who was in the care of a guardian or caretaker should be considered as potential elder or dependent adult abuse and investigated similarly.

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An unexplained or suspicious death of an elder, dependent adult, or other adult or child with a disability should be treated as a potential homicide until a complete investigation including an autopsy is completed, and it should not be assumed that the death of an elder or person with a disability is natural simply because of the age or disability of the deceased (Penal Code § 368.6(c)(18)).

313.4.1 ADDITIONAL INVESTIGATIVE CONSIDERATIONS

The following factors as provided in Penal Code § 368.6 should be considered when investigating incidents of elder and dependent adult abuse:

(a) Elder and dependent adult abuse, sex crimes, child abuse, domestic violence, and any other criminal act, when committed in whole or in part because of the victim's actual or perceived disability, including disability caused by advanced age, is also a hate crime (Penal Code § 368.6) (see the Hate Crimes Policy for additional guidance).

(b) Senior and disability victimization crimes are also domestic violence subject to the mandatory arrest requirements of Penal Code § 836 if they meet the elements described in Penal Code § 273.5, including but not limited to a violation by a caretaker or other person who is or was a cohabitant of the victim, regardless of whether the cohabitant is or was a relative of, or in an intimate personal relationship with, the victim (Penal Code § 368.6(c)(10)).

(c) Many victims of sexual assault and other sex crimes delay disclosing the crimes for reasons including but not limited to shame, embarrassment, self-doubt, fear of being disbelieved, and fear of retaliation by the perpetrator or others (Penal Code § 368.6(c)(11)).

(d) Victims and witnesses with disabilities, including cognitive and communication disabilities, can be highly credible witnesses when interviewed appropriately by trained officers or other trained persons (Penal Code § 368.6(c)(14)).

313.5 QUALIFIED INVESTIGATORS

Qualified investigators should be available to investigate cases of elder and dependent adult abuse. These investigators should:

(a) Conduct interviews in appropriate interview facilities.

(b) Be familiar with forensic interview techniques specific to elder and dependent adult abuse investigations.

(c) Present all cases of alleged elder and dependent adult abuse to the prosecutor for review.

(d) Coordinate with other enforcement agencies, social service agencies, and facility administrators as needed (Welfare and Institutions Code § 15650).

(e) Provide referrals to therapy services, victim advocates, guardians, and support for the victim and family as appropriate (see the Victim and Witness Assistance Policy for additional guidance).

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1. Ensure victims of sex crimes know their right to have a support person of their choice present at all times during an interview or contact (Penal Code § 368.6) (see the Sexual Assault Investigations Policy for additional guidance).
2. Referrals to the crime victim liaison as appropriate for victims requiring further assistance or information regarding benefits from crime victim resources.

(f) Participate in or coordinate with multidisciplinary investigative teams as applicable (Welfare and Institutions Code § 15610.55).

(g) Make reasonable efforts to determine whether any person committed unlawful interference in a mandated report.

313.6 PROTECTIVE CUSTODY

Before taking an elder or dependent adult abuse victim into protective custody when facts indicate the adult may not be able to care for him/herself, the officer should make reasonable attempts to contact APS. Generally, removal of an adult abuse victim from his/her family, guardian, or other responsible adult should be left to the welfare authorities when they are present or have become involved in an investigation.

Generally, members of this department should remove an elder or dependent adult abuse victim from his/her family or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the victim. Prior to taking an elder or dependent adult abuse victim into protective custody, the officer should take reasonable steps to deliver the adult to another qualified legal guardian, unless it reasonably appears that the release would endanger the victim or result in abduction. If this is not a reasonable option, the officer shall ensure that the adult is delivered to APS.

Whenever practicable, the officer should inform a supervisor of the circumstances prior to taking an elder or dependent adult abuse victim into protective custody. If prior notification is not practicable, officers should contact a supervisor promptly after taking the adult into protective custody.

When elder or dependent adult abuse victims are under state control, have a state-appointed guardian, or there are other legal holdings for guardianship, it may be necessary or reasonable to seek a court order on behalf of the adult victim to either remove the adult from a dangerous environment (protective custody) or restrain a person from contact with the adult.

313.6.1 EMERGENCY PROTECTIVE ORDERS

In any situation which an officer reasonably believes that an elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or threat of abuse (other than financial abuse alone), the officer may seek an emergency protective order against the person alleged to have committed or threatened such abuse (Family Code § 6250(d)).

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313.6.2 VERIFICATION OF PROTECTIVE ORDER

Whenever an officer verifies that a relevant protective order has been issued, the officer shall make reasonable efforts to determine if the order prohibits the person from possession of firearms or requires the relinquishment of firearms, and if the order does so, the officer shall make reasonable efforts to (Penal Code § 368.6(c)(19)):

(a) Inquire whether the restrained person possesses firearms. The officer should make this effort by asking the restrained person and the protected person.

(b) Query the California Law Enforcement Telecommunications System to determine if any firearms are registered to the restrained person.

(c) Receive or seize prohibited firearms located in plain view or pursuant to a consensual or other lawful search in compliance with Penal Code § 18250 et seq. and in accordance with department procedures.

313.7 INTERVIEWS

313.7.1 PRELIMINARY INTERVIEWS

Absent extenuating circumstances or impracticality, officers should audio record the preliminary interview with a suspected elder or dependent adult abuse victim. Officers should avoid multiple interviews with the victim and should attempt to gather only the information necessary to begin an investigation. When practicable, investigating officers should defer interviews until a person who is specially trained in such interviews is available.

313.7.2 DETAINING VICTIMS FOR INTERVIEWS

An officer should not detain an adult involuntarily who is suspected of being a victim of abuse solely for the purpose of an interview or physical exam without his/her consent or the consent of a guardian unless one of the following applies:

(a) Exigent circumstances exist, such as:

1. A reasonable belief that medical issues of the adult need to be addressed immediately.
2. A reasonable belief that the adult is or will be in danger of harm if the interview or physical exam is not immediately completed.
3. The alleged offender is a family member or guardian and there is reason to believe the adult may be in continued danger.

(b) A court order or warrant has been issued.

313.7.3 INTERVIEWS WITH A PERSON WITH DEAFNESS OR HEARING LOSS

An officer who is interviewing a victim or witness who reports or demonstrates deafness or hearing loss should secure the services of a qualified interpreter (as defined by Evidence Code § 754) prior to the start of the interview (Penal Code § 368.6) (see the Communications with Persons with Disabilities Policy for additional guidance).

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313.8 MEDICAL EXAMINATIONS

When an elder or dependent adult abuse investigation requires a medical examination, the investigating officer should obtain consent for such examination from the victim, guardian, agency, or entity having legal custody of the adult. The officer should also arrange for the adult's transportation to the appropriate medical facility.

In cases where the alleged offender is a family member, guardian, agency, or entity having legal custody and is refusing to give consent for the medical examination, officers should notify a supervisor before proceeding. If exigent circumstances do not exist or if state law does not provide for officers to take the adult for a medical examination, the supervisor should consider other government agencies or services that may obtain a court order for such an examination.

313.9 DRUG-ENDANGERED VICTIMS

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of an elder or dependent adult abuse victim who has been exposed to the manufacturing, trafficking, or use of narcotics.

313.9.1 OFFICER RESPONSIBILITIES

Officers responding to a drug lab or other narcotics crime scene where an elder or dependent adult abuse victim is present or where there is evidence that an elder or dependent adult abuse victim lives should:

(a) Document the environmental, medical, social, and other conditions of the adult, using photography as appropriate and the checklist or form developed for this purpose.

(b) Notify the Detective Bureau supervisor so an interagency response can begin.

313.9.2 DETECTIVE BUREAU RESPONSIBILITIES

The Detective Bureau should:

(a) Activate any available interagency response when notified that an officer has responded to a drug lab or other narcotics crime scene where an adult abuse victim is present or where evidence indicates that an adult abuse victim lives.

313.10 TRAINING

The Department should provide training on best practices in elder and dependent adult abuse investigations to members tasked with investigating these cases. The training should include:

(a) Participating in multidisciplinary investigations, as appropriate.

(b) Conducting interviews.

(c) Availability of therapy services for adults and families.

(d) Availability of specialized forensic medical exams.

(e) Cultural competence (including interpretive services) related to elder and dependent adult abuse investigations.

(f) Availability of victim advocates or other support.

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313.10.1 MANDATORY TRAINING

The Personnel and Training Sergeant shall ensure that appropriate personnel receive the required training, including:

(a) Materials from POST as described in Penal Code § 368.6(c)(5)(A).

(b) Advanced training on senior and disability victimization available from POST, the United States Department of Justice, the Disability and Abuse Project of the Spectrum Institute, or other sources as provided by Penal Code § 368.6(c)(16)(A).

1. Training should include the following:

(a) Information on the wide prevalence of elder and dependent adult abuse, sexual assault, other sex crimes, hate crimes, domestic violence, human trafficking, and homicide against adults and children with disabilities, including disabilities caused by advanced age, and including those crimes often committed by caretakers (Penal Code § 368.6(c)(1)).

(b) Information on the history of elder and dependent adult abuse and crimes against individuals with disabilities (see the POST Senior and Disability Victimization Policy Guidelines).

The Personnel and Training Sergeant shall also ensure that appropriate training is provided on this policy to dispatchers, community services officers, front desk personnel, and other civilian personnel who interact with the public (Penal Code § 368.6 (c)(7)).

313.11 RELEVANT STATUTES

Penal Code § 288 (a) and Penal Code § 288 (b)(2)

(a) Except as provided in subdivision (i), a person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1 (Of Crimes and Punishments of the Penal Code) upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b)(2) A person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

Penal Code § 368 (c)

A person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

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Penal Code § 368 (f)

A person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

Protections provided by the above Penal Code § 288 and Penal Code § 368 protect many persons with disabilities regardless of the fact they live independently.

Welfare and Institutions Code § 15610.05

"Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

Welfare and Institutions Code § 15610.06

"Abduction" means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

Welfare and Institutions Code § 15610.30

(a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

1. Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
2. Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
3. Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this section, "representative" means a person or entity that is either of the following:

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1. A conservator, trustee, or other representative of the estate of an elder or dependent adult.
2. An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

Welfare and Institutions Code § 15610.43

(a) "Isolation" means any of the following:

1. Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
2. Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.
3. False imprisonment, as defined in Section 236 of the Penal Code.
4. Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(b) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice. medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

(c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safe.

Welfare and Institutions Code § 15610.57

(a) "Neglect" means either of the following:

1. The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
2. The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

(b) Neglect includes, but is not limited to, all of the following:

1. Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
2. Failure to provide medical care for physical and mental health needs. A person shall not be deemed neglected or abused for the sole reason that the person voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

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3. Failure to protect from health and safety hazards.
4. Failure to prevent malnutrition or dehydration.
5. Substantial inability or failure of an elder or dependent adult to manage personal finances.
6. Failure of an elder or dependent adult to satisfy any of the needs specified in paragraphs (1) to (5), inclusive, for themselves as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

(c) Neglect includes being homeless if the elder or dependent adult is also unable to meet any of the needs specified in paragraphs (1) to (5), inclusive, of subdivision (b).

Welfare and Institutions Code § 15610.63

"Physical abuse" means any of the following:

(a) Assault, as defined in Section 240 of the Penal Code.

(b) Battery, as defined in Section 242 of the Penal Code.

(c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.

(d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(e) Sexual assault, that means any of the following:

1. Sexual battery, as defined in Section 243.4 of the Penal Code.
2. Rape, as defined in Section 261 of the Penal Code, or former Section 262 of the Penal Code.
3. Rape in concert, as described in Section 264.1 of the Penal Code.
4. Incest, as defined in Section 285 of the Penal Code.
5. Sodomy, as defined in Section 286 of the Penal Code.
6. Oral copulation, as defined in Section 287 or former Section 288a of the Penal Code.
7. Sexual penetration, as defined in Section 289 of the Penal Code.
8. Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.

(f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

1. For punishment.
2. For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

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3. For any purpose not authorized by the physician and surgeon.

313.12 JURISDICTION

The Berkeley Police Department has concurrent jurisdiction with state law enforcement agencies when investigating elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities (Penal Code § 368.5).

Adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect and may assist in criminal investigations upon request, if consistent with federal law, in such cases. However, this department will retain responsibility for the criminal investigations (Penal Code § 368.5).

Additional jurisdiction responsibilities for investigations of abuse involving various facilities and agencies may be found in Welfare and Institutions Code § 15650.

313.13 RECORDS BUREAU RESPONSIBILITIES

The Records Management is responsible for:

(a) Providing a copy of the elder or dependent adult abuse report to the APS, ombudsman, or other agency as applicable within two working days or as required by law (Welfare and Institutions Code § 15630; Welfare and Institutions Code § 15640(c)).

(b) Retaining the original elder or dependent adult abuse report with the initial case file.

313.14 CHIEF OF POLICE RESPONSIBILITIES

The Chief of Police or the authorized designee responsibilities include but are not limited to (Penal Code § 368.6):

(a) Taking leadership within the Department and in the community, including by speaking out publicly in major cases of senior and disability victimization, to assure the community of department support for the victims and their families and for others in the community who are terrorized and traumatized by the crimes, and to encourage victims and witnesses to the crimes or similar past or future crimes to report those crimes to help bring the perpetrators to justice and prevent further crimes.

(b) Developing and including department protocols in this policy, including but not limited to the following:

1. Protocols for seeking emergency protective orders by phone from a court at any time of day or night pursuant to Family Code § 6250(d).

2. Protocols for arrest warrants and arrests for senior and disability victimization for matters other than domestic violence and consistent with the requirements of Penal Code § 368.6(c)(9)(B) that include the following:

(a) In the case of a senior and disability victimization committed in an officer's presence, including but not limited to a violation of a relevant protective

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order, the officer shall make a warrantless arrest based on probable cause when necessary or advisable to protect the safety of the victim or others.

(b) In the case of a felony not committed in an officer's presence, the officer shall make a warrantless arrest based on probable cause when necessary or advisable to protect the safety of the victim or others.

(c) In the case of a misdemeanor not committed in the officer's presence, including but not limited to misdemeanor unlawful interference with a mandated report or a misdemeanor violation of a relevant protective order, or when necessary or advisable to protect the safety of the victim or others, the agency shall seek an arrest warrant based on probable cause.

(d) Protocol for seeking arrest warrants based on probable cause for crimes for which no arrest has been made.

3. Procedures for first responding officers to follow when interviewing persons with cognitive and communication disabilities until officers, or staff of other responsible agencies with more advanced training, are available. The procedure shall include an instruction to avoid repeated interviews whenever possible.

(c) For each department protocol, include either a specific title-by-title list of officer responsibilities or a specific office or unit in the Department responsible for implementing the protocol.

(d) Ensuring an appendix is created and attached to this policy that describes requirements for elder and dependent adult abuse investigations consistent with Penal Code § 368.6(c)(8)(B).

(e) Ensuring a detailed checklist is created and attached to this policy regarding first responding responsibilities that includes but is not limited to the requirements of Penal Code § 368.6(c)(23).

(f) Ensuring that all members carry out their responsibilities under this policy.

(g) Verifying a process is in place for transmitting and periodically retransmitting this policy and related orders to officers, including a simple and immediate way for officers to access the policy in the field when needed.

(h) Ensuring this policy is available to the Protection and Advocacy Agency upon request.

313.15 ELDER AND DEPENDENT ADULT ABUSE LIAISON

A department member appointed by the Chief of Police or the authorized designee will serve as the Elder and Dependent Adult Abuse Liaison. Responsibilities of the liaison include but are not limited to (Penal Code § 368.6):

(a) Acting as a liaison to other responsible agencies (defined by Penal Code § 368.6(b)(15)) to increase cooperation and collaboration among them while retaining the law enforcement agency’s exclusive responsibility for criminal investigations (Welfare and Institutions Code § 15650).

(b) Reaching out to the senior and disability communities and to the public to encourage prevention and reporting of senior and disability victimization.

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Discriminatory Harassment

314.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

314.2 POLICY

The City of Berkeley (City) prohibits harassment on the basis of sex, race, age, religion, color, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, pregnancy, sexual orientation, gender, gender identity, gender expression, military and veteran status, and any other classifications protected by state or federal law.

All employees (as well as applicants, unpaid interns or volunteers, and persons providing services pursuant to a contract) are guaranteed the right to a work place free of hostility and intimidation based on any of the above-referenced protected classifications.

The City will neither tolerate nor condone harassment of employees by managers, supervisors, co-workers, elected/appointed officials, or persons with whom the City has a business, service, or professional relationship.

The City prohibits retaliation defined below, against an individual who reports, files a complaint of, or otherwise opposes conduct he or she reasonably believes to be unlawful harassment, retaliation, or assists in the investigation of a complaint.

For purposes of this policy, Retaliation refers to taking a materially adverse action against an employee on the above-listed grounds. A materially adverse action includes, but is not limited to, the denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, and discharge. Adverse actions may also include threats, reprisals and adverse treatment that in the circumstances could dissuade or intimidate a reasonable person from raising a concern about a workplace condition or activity.

314.3 DEFINITIONS

Definitions related to this policy include:

314.3.1 DISCRIMINATION

The Department prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law.

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Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment can include making derogatory comments; making crude and offensive statements or remarks; making slurs or off-color jokes, stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters, or material; making inappropriate physical contact; or using written material or department equipment and/or systems to transmit or receive offensive material, statements, or pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

314.3.2 SEXUAL HARASSMENT

The Department prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment, position or compensation.

(b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.

(c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

314.3.3 ADDITIONAL CONSIDERATIONS

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles or standards, including:

(a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the California Fair Employment and Housing Council guidelines.

(b) Bona fide requests or demands by a supervisor that a member improve his/her work quality or output, that the member report to the job site on time, that the member comply with City or department rules or regulations, or any other appropriate work-related communication between supervisor and member.

314.4 RESPONSIBILITIES

This policy applies to all department personnel. All members shall follow the intent of these guidelines in a manner that reflects department policy, professional law enforcement standards and the best interest of the Department and its mission.

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Members are encouraged to promptly report any discriminatory, retaliatory or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher-ranking supervisor or manager. Complaints may also be reported directly to the City's Equal Employment Opportunity and Diversity (EEO) Officer, the Chief of Police, the Professional Standards Division Captain or the City Manager.

Any member who believes, in good faith, that he/she has been discriminated against, harassed or subjected to retaliation, or who has observed harassment or discrimination, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with resolution as stated below.

314.4.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of each supervisor and manager shall include, but are not limited to:

(a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.

(b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment or retaliation.

(c) Ensuring that his/her subordinates understand their responsibilities under this policy.

(d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.

(e) Making a timely determination regarding the substance of any allegation based upon all available facts.

(f) Notifying the Chief of Police in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment or retaliation no later than the next business day.

314.4.2 SUPERVISOR’S ROLE

Supervisors and managers shall be aware of the following considerations:

(a) Behavior of supervisors and managers should represent the values of the Department and professional law enforcement standards.

(b) False or mistaken accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members or issuing discipline, in a manner that is consistent with established procedures.

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314.4.3 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment or retaliation are encouraged to contact a supervisor, a manager, the Chief of Police, the Professional Standards Division Captain, the City Manager, the City's Equal Employment Opportunity and Diversity (EEO) Officer, or the California Department of Fair Employment and Housing (DFEH) for further information, direction or clarification (Government Code § 12950).

314.5 INVESTIGATION OF COMPLAINTS

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Department that all complaints of discrimination, retaliation or harassment shall be fully documented and promptly and thoroughly investigated.

314.5.1 SUPERVISOR RESOLUTION

Members who believe they are experiencing discrimination, harassment, or retaliation should be encouraged to inform the individual that the behavior is unwelcome, offensive, unprofessional, or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing the member's concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

314.5.2 FORMAL INVESTIGATION

If the complaint cannot be satisfactorily resolved through the process described above, a formal investigation will be conducted.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint or for offering testimony or evidence in any investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include, but is not limited to, details of the specific incident, frequency and dates of occurrences and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed or retaliated against because of their protected status, are encouraged to follow the chain of command but may also file a complaint directly with the City's Equal Employment Opportunity and Diversity (EEO) Officer, Chief of Police, Professional Standards Division Captain or the City Manager.

314.5.3 ALTERNATIVE COMPLAINT PROCESS

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Department. Members who believe that they have been harassed, discriminated against, or retaliated against are entitled to bring complaints of employment discrimination to

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federal, state, and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

314.6 DOCUMENTATION OF COMPLAINTS

All complaints or allegations shall be thoroughly documented on forms, or memoranda, and in a manner designated by the Chief of Police. The outcome of all reports shall be:

(a) Approved by the Chief of Police and,

(b) Maintained in accordance with the department's established records retention schedule.

314.6.1 NOTIFICATION OF DISPOSITION

The complainant and/or victim will be notified in writing of the disposition of the investigation.

314.7 WORKING CONDITIONS

The Support Services Division Captain or the authorized designee should be responsible for reviewing facility design and working conditions for discriminatory practices. This person should collaborate with other City employees who are similarly tasked (2 CCR 11034).

314.8 CONTACTS

City of Berkeley Equal Employment and Diversity Officer

2180 Milvia St., 1st Floor, Berkeley, CA 94704 - (510) 981-6811

In addition to contacting the EEO for the City, employees may also direct their complaints to the following agencies:

- California Department of Fair Employment and Housing: 1515 Clay Street, Suite 701, Oakland, CA 94612 - (510) 286-4095 or (800) 884-1684
- Equal Employment Opportunity Commission - Oakland Local Office, Oakland Federal Building: 1301 Clay Street, Suite 1170, North Tower, Oakland, CA 94612 - (510) 637-3230 or (800) 669-4000

There are time limits for filing complaints with the DFEH and EEOC. Employees are advised to contact the DFEH or EEOC directly to obtain information on the time limits for filing complaints with these agencies.

314.9 REQUIRED POSTERS

The Department shall display the required posters regarding discrimination, harassment and transgender rights in a prominent and accessible location for members (Government Code § 12950).

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314.10 TRAINING

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that the member has been advised of this policy, is aware of and understands its contents, and agrees to abide by its provisions during the member's term with the Department.

All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents, and agree that they will continue to abide by its provisions.

314.10.1 STATE-REQUIRED TRAINING

The Personnel and Training Sergeant should ensure that employees receive the required state training and education regarding sexual harassment, prevention of abusive conduct, and harassment based on gender identity, gender expression, and sexual orientation as follows (Government Code § 12950.1; 2 CCR 11024):

(a) Supervisory employees shall receive two hours of classroom or other effective interactive training and education within six months of assuming a supervisory position.

(b) All other employees shall receive one hour of classroom or other effective interactive training and education within six months of their employment or sooner for seasonal or temporary employees as described in Government Code § 12950.1.

(c) All employees shall receive refresher training every two years thereafter.

If the required training is to be provided by the Civil Rights Department online training courses, the Personnel and Training Sergeant should ensure that employees are provided the following website address to the training course: https://calcivilrights.ca.gov (Government Code § 12950; 2 CCR 11023).

314.10.2 TRAINING RECORDS

The Personnel and Training Sergeant shall be responsible for maintaining records of all discriminatory harassment training provided to members. Records shall be retained in accordance with established records retention schedules and for a minimum of two years (2 CCR 11024).

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Child Abuse

315.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation of suspected child abuse. This policy also addresses when Berkeley Police Department members are required to notify the county Child Protective Services (CPS) of suspected child abuse.

315.1.1 DEFINITIONS

Definitions related to this policy include:

Child - Unless otherwise specified by a cited statute, a child is any person under the age of 18 years.

Child abuse - Any offense or attempted offense involving violence or neglect with a child victim when committed by a person responsible for the child's care or any other act that would mandate notification to a social service agency or law enforcement (Penal Code § 11165.9; Penal Code § 11166).

315.2 POLICY

The Berkeley Police Department will investigate all reported incidents of alleged criminal child abuse and ensure CPS is notified as required by law.

315.3 MANDATORY NOTIFICATION

The child protection agency shall be notified when (Penal Code § 11166):

(a) There is a known or suspected instance of child abuse or neglect reported, which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or

(b) A person responsible for the child's welfare fails to adequately protect the child from abuse when the person knew or reasonably should have known that the child was in danger of abuse.

The District Attorney's office shall be notified in all instances of known or suspected child abuse or neglect reported to this department. Notification of the District Attorney is not required for reports only involving neglect by a person, who has the care or custody of a child, to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred (Penal Code § 11166).

When the abuse or neglect occurs at a licensed facility or is alleged to have resulted from the actions of a person who is required to have a state license (e.g., foster homes, group homes, day care), notification shall also be made to the California Department of Social Services or other applicable licensing authority. When the alleged abuse or neglect involves a child of a minor parent or a dependent adult, notification shall also be made to the attorney of the minor or the dependent adult within 36 hours (Penal Code 11166.1; Penal Code 11166.2).

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For purposes of notification, the abuse or neglect includes physical injury or death inflicted by other than accidental means upon a child by another person; sexual abuse (Penal Code § 11165.1); neglect (Penal Code § 11165.2); the willful harming or injuring of a child or the endangering of the person or health of a child (Penal Code § 11165.3); and unlawful corporal punishment or injury (Penal Code § 11165.4). Child abuse or neglect does not include a mutual affray between minors, nor does it include an injury caused by the reasonable and necessary force used by a peace officer acting within the course and scope of the peace officer's employment as a peace officer.

315.3.1 NOTIFICATION PROCEDURE

Notification should occur as follows (Penal Code § 11166):

(a) Notification shall be made immediately, or as soon as practicable, by telephone, fax or electronic transmission.

(b) A written follow-up report should be forwarded within 36 hours of receiving the information concerning the incident.

315.4 QUALIFIED INVESTIGATORS

Qualified investigators should be available for child abuse investigations. These investigators should:

(a) Conduct interviews in child appropriate interview facilities.

(b) Be familiar with forensic interview techniques specific to child abuse investigations.

(c) Present all cases of alleged child abuse to the prosecutor for review.

(d) Coordinate with other enforcement agencies, social service agencies and school administrators as needed.

(e) Provide referrals to therapy services, victim advocates, guardians and support for the child and family as appropriate.

(f) Participate in or coordinate with multidisciplinary investigative teams as applicable (Welfare and Institutions Code § 18961.7).

315.5 INVESTIGATIONS AND REPORTING

In all reported or suspected cases of child abuse, a report will be written. Officers shall write a report even if the allegations appear unfounded or unsubstantiated.

Investigations and reports related to suspected cases of child abuse should address, as applicable:

(a) The overall basis for the contact. This should be done by the investigating officer in all circumstances where a suspected child abuse victim was contacted.

(b) The exigent circumstances that existed if officers interviewed the child victim without the presence of a parent or guardian.

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(c) Any relevant statements the child may have made and to whom he/she made the statements.

(d) If a child was taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.

(e) Documentation of any visible injuries or any injuries identified by the child. This should include photographs of such injuries, if practicable.

(f) Whether the child victim was transported for medical treatment or a medical examination.

(g) Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other children who may reside in the residence.

(h) Identification of any prior related reports or allegations of child abuse, including other jurisdictions, as reasonably known.

(i) Previous addresses of the victim and suspect.

(j) Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.

All cases of the unexplained death of a child should be investigated as thoroughly as if it had been a case of suspected child abuse (e.g., a sudden or unexplained death of an infant).

315.5.1 EXTRA JURISDICTIONAL REPORTS

If a report of known or suspected child abuse or neglect that is alleged to have occurred outside this jurisdiction is received, department members shall ensure that the caller is immediately transferred to the agency with proper jurisdiction for the investigation of the case. If the caller cannot be successfully transferred to the appropriate agency, a report shall be taken and immediately referred by telephone, fax or electronic transfer to the agency with proper jurisdiction (Penal Code 11165.9).

315.6 PROTECTIVE CUSTODY

Before taking any child into protective custody, the officer should make reasonable attempts to contact CPS. Generally, removal of a child from his/her family, guardian or other responsible adult should be left to the child welfare authorities when they are present or have become involved in an investigation.

Generally, members of this department should remove a child from his/her parent or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the child. Prior to taking a child into protective custody, the officer should take reasonable steps to deliver the child to another qualified parent or legal guardian, unless it reasonably appears that the release would endanger the child or result in abduction. If this is not a reasonable option, the officer shall ensure that the child is delivered to CPS.

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Whenever practicable, the officer should inform a supervisor of the circumstances prior to taking a child into protective custody. If prior notification is not practicable, officers should contact a supervisor promptly after taking a child into protective custody.

Children may only be removed from a parent or guardian in the following situations when a court order cannot reasonably be obtained in a timely manner (Welfare and Institutions Code § 305):

(a) The officer reasonably believes the child is a person described in Welfare and Institutions Code § 300, or a commercially exploited child under Penal Code § 647 and Penal Code § 653.22, and further has good cause to believe that any of the following conditions exist:

1. The child has an immediate need for medical care.
2. The child is in immediate danger of physical or sexual abuse.
3. The physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In the case of a child left unattended, the officer shall first attempt to locate and determine if a responsible parent or guardian is available and capable of assuming custody before taking the child into protective custody.

(b) The officer reasonably believes the child requires protective custody under the provisions of Penal Code § 279.6, in one of the following circumstances:

1. It reasonably appears to the officer that a person is likely to conceal the child, flee the jurisdiction with the child or, by flight or concealment, evade the authority of the court.
2. There is no lawful custodian available to take custody of the child.
3. There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child.
4. The child is an abducted child.

(c) The child is in the company of, or under the control of, a person arrested for Penal Code § 278 (Detainment or concealment of child from legal custodian) or Penal Code § 278.5 (Deprivation of custody of a child or right to visitation) (Penal Code § 279.6).

A child taken into protective custody shall be delivered to CPS unless otherwise directed by court order.

315.6.1 CALIFORNIA SAFELY SURRENDERED BABY LAW

An individual having lawful custody of an infant less than 72 hours old is not guilty of abandonment if the individual voluntarily surrenders physical custody of the infant to personnel on-duty at a safe-surrender site, such as a hospital or fire department (Penal Code § 271.5). The law requires the surrender site to notify CPS.

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315.6.2 NEWBORNS TESTING POSITIVE FOR DRUGS
Under certain circumstances, officers can be prohibited from taking a newborn who is the subject of a proposed adoption into protective custody, even when the newborn has tested positive for illegal drugs or the birth mother tested positive for illegal drugs.

Officers shall instead follow the provisions of Welfare and Institutions Code § 305.6 to ensure that the newborn is placed with the adoptive parents when it is appropriate.

315.6.3 CHILD PROTECTIVE SERVICES - WARRANT SERVICE
There are times when CPS has investigated the parent(s)'s capability to care for the child prior to police involvement and have obtained a court order granting temporary custody of the child to CPS. In such a case the officer shall "serve" the warrant by handing the court order to the parent(s). The officer shall not sign the order or complete any Return of Service form for CPS.

315.7 INTERVIEWS

315.7.1 PRELIMINARY INTERVIEWS
Absent extenuating circumstances or impracticality, officers should record the preliminary interview with suspected child abuse victims. Officers should avoid multiple interviews with a child victim and should attempt to gather only the information necessary to begin an investigation. When practicable, investigating officers should defer interviews until a person who is specially trained in such interviews is available. Generally, child victims should not be interviewed in the home or location where the alleged abuse occurred.

315.7.2 DETAINING SUSPECTED CHILD ABUSE VICTIMS FOR AN INTERVIEW
An officer should not detain a child involuntarily who is suspected of being a victim of child abuse solely for the purpose of an interview or physical exam without the consent of a parent or guardian unless one of the following applies:

(a) Exigent circumstances exist, such as:

1. A reasonable belief that medical issues of the child need to be addressed immediately.
2. A reasonable belief that the child is or will be in danger of harm if the interview or physical exam is not immediately completed.
3. The alleged offender is the custodial parent or guardian and there is reason to believe the child may be in continued danger.

(b) A court order or warrant has been issued.

315.7.3 INTERVIEWS AT A SCHOOL
Any student at school who is a suspected victim of child abuse shall be afforded the option of being interviewed in private or selecting any qualified available adult member of the school staff to be present. The purpose of the staff member's presence is to provide comfort and support. The

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staff member shall not participate in the interview. The selection of a staff member should be such that it does not burden the school with costs or hardship (Penal Code § 11174.3).

315.8 MEDICAL EXAMINATIONS

If the child has been the victim of abuse that requires a medical examination, the investigating officer should obtain consent for such examination from the appropriate parent, guardian or agency having legal custody of the child. The officer should also arrange for the child's transportation to the appropriate medical facility.

In cases where the alleged offender is the custodial parent or guardian and is refusing consent for the medical examination, officers should notify a supervisor before proceeding. If exigent circumstances do not exist or if state law does not provide for officers to take the child for a medical examination, the notified supervisor should consider obtaining a court order for such an examination.

315.9 DRUG-ENDANGERED CHILDREN

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of children exposed to the manufacturing, trafficking or use of narcotics.

315.9.1 SUPERVISOR RESPONSIBILITIES

The Special Victims Unit Sergeant should:

(a) Work with professionals from the appropriate agencies, including CPS, other law enforcement agencies, medical service providers and local prosecutors to develop community specific procedures for responding to situations where there are children endangered by exposure to methamphetamine labs or the manufacture and trafficking of other drugs.

(b) Activate any available interagency response when an officer notifies the Detective Bureau supervisor that the officer has responded to a drug lab or other narcotics crime scene where a child is present or where evidence indicates that a child lives there.

315.9.2 OFFICER RESPONSIBILITIES

Officers responding to a drug lab or other narcotics crime scene where a child is present or where there is evidence that a child lives should:

(a) Document the environmental, medical, social and other conditions of the child with a Case Report and utilize photography for evidentiary purposes.

(b) Notify the Detective Bureau so an interagency response can begin.

315.10 STATE MANDATES AND OTHER RELEVANT LAWS

California requires or permits the following:

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315.10.1 RELEASE OF REPORTS

Information related to incidents of child abuse or suspected child abuse shall be confidential and may only be disclosed pursuant to state law and the Records Maintenance and Release Policy (Penal Code 841.5; Penal Code § 11167.5).

315.10.2 REQUESTS FOR REMOVAL FROM THE CHILD ABUSE CENTRAL INDEX (CACI)

Any person whose name has been forwarded to the California Department of Justice (DOJ) for placement in California's CACI, as a result of an investigation, may request that his/her name be removed from the CACI list. Requests shall not qualify for consideration if there is an active case, ongoing investigation or pending prosecution that precipitated the entry to CACI (Penal Code § 11169). All requests for removal shall be submitted in writing by the requesting person and promptly routed to the CACI hearing officer.

315.10.3 CACI HEARING OFFICER

The Detective Bureau supervisor will normally serve as the hearing officer but must not be actively connected with the case that resulted in the person's name being submitted to CACI. Upon receiving a qualified request for removal, the hearing officer shall promptly schedule a hearing to take place during normal business hours and provide written notification of the time and place of the hearing to the requesting party.

315.10.4 CACI HEARING PROCEDURES

The hearing is an informal process where the person requesting removal from the CACI list will be permitted to present relevant evidence (e.g., certified copy of an acquittal, factual finding of innocence) as to why his/her name should be removed. The person requesting the hearing may record the hearing at his/her own expense.

Formal rules of evidence will not apply and the hearing officer may consider, in addition to evidence submitted by the person requesting the hearing, any relevant information including, but not limited to, the following:

(a) Case reports including any supplemental reports

(b) Statements by investigators

(c) Statements from representatives of the District Attorney's Office

(d) Statements by representatives of a child protective agency who may be familiar with the case

After considering all information presented, the hearing officer shall make a determination as to whether the requesting party's name should be removed from the CACI list. Such determination shall be based on a finding that the allegations in the investigation are not substantiated (Penal Code § 11169).

If, after considering the evidence, the hearing officer finds that the allegations are not substantiated, he/she shall cause a request to be completed and forwarded to the DOJ that the

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person's name be removed from the CACI list. A copy of the hearing results and the request for removal will be attached to the case reports.

The findings of the hearing officer shall be considered final and binding.

315.10.5 CHILD DEATH REVIEW TEAM

This department should cooperate with any interagency child death review team investigation. Written and oral information relating to the death of a child that would otherwise be subject to release restrictions may be disclosed to the child death review team upon written request and approval of a supervisor (Penal Code § 11174.32).

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Missing Persons

316.1 PURPOSE AND SCOPE

This policy provides guidance for handling missing person investigations.

316.1.1 DEFINITIONS

At risk - Includes, but is not limited to (Penal Code § 14215):

- A victim of a crime or foul play.
- A person missing and in need of medical attention.
- A missing person who is age 11 or younger.
- A missing person with no pattern of running away or disappearing.
- A missing person who may be the victim of parental abduction.
- A mentally impaired missing person, including cognitively impaired or developmentally disabled.

Missing person - Any person who is reported missing to law enforcement when the person's location is unknown. This includes a child who has been taken, detained, concealed, enticed away or kept by a parent in violation of the law (Penal Code § 277 et seq.). It also includes any child who is missing voluntarily, involuntarily or under circumstances that do not conform to his/her ordinary habits or behavior, and who may be in need of assistance (Penal Code § 14215).

Missing person networks - Databases or computer networks available to law enforcement and that are suitable for information related to missing persons investigations. These include the National Crime Information Center (NCIC), the California Law Enforcement Telecommunications System (CLETS), and the Missing and Unidentified Persons System (MUPS).

316.2 POLICY

The Berkeley Police Department does not consider any report of a missing person to be routine and assumes that the missing person is in need of immediate assistance until an investigation reveals otherwise. The Berkeley Police Department gives missing person cases priority over property-related cases and will not require any time frame to pass before beginning a missing person investigation (Penal Code § 14211).

316.3 REQUIRED FORMS AND BIOLOGICAL SAMPLE COLLECTION KITS

The Detective Bureau Lieutenant, or his/her designee, should develop and make available forms and kits in accordance with this policy, state law, federal law and the California Peace Officer Standards and Training (POST) Missing Persons Investigations guidelines, including:

- Department report form for use in missing person cases
- Missing person investigation checklist that provides investigation guidelines and resources that could be helpful in the early hours of a missing person investigation (Penal Code § 13519.07)

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- Missing person school notification form
- Medical records release form from BPD
- California DOJ missing person forms as appropriate
- Biological sample collection kits

316.4 ACCEPTANCE OF REPORTS

Any member encountering a person who wishes to report a missing person or runaway shall render assistance without delay (Penal Code § 14211). This can be accomplished by accepting the report via telephone or in-person and initiating the investigation. Those members who are unable to render immediate assistance shall promptly dispatch or alert a member who can take the report.

A report shall be accepted in all cases and regardless of where the person was last seen, where the person resides or any other question of jurisdiction (Penal Code § 14211).

316.5 INITIAL INVESTIGATION

Officers or other members conducting the initial investigation of a missing person shall take the following investigative actions, as applicable:

(a) Respond to a dispatched call for service as soon as practicable.

(b) Interview the reporting party and any witnesses to determine whether the person qualifies as a missing person and, if so, whether the person may be at risk.

(c) Notify a supervisor immediately if there is evidence that a missing person is either at risk or may qualify for a public alert, or both (see the Public Alerts Policy).

(d) Broadcast a "Be on the Look-Out" (BOLO) bulletin if the person is under 21 years of age or there is evidence that the missing person is at risk. The BOLO should be broadcast as soon as practicable but in no event more than one hour after determining the missing person is under 21 years of age or may be at risk (Penal Code § 14211).

(e) Make entries into the appropriate missing person networks as follows:

1. Within two hours of the initial report, when the missing person is under 21 years old or is considered at risk.
2. In all other cases, as soon as practicable, but not later than four hours from the time of the officer's initial contact with the reporting party.

(f) Complete the appropriate report forms accurately and completely and initiate a search as applicable under the facts.

(g) Collect and/or review:

1. A photograph of the missing person, if available.
2. Any documents that may assist in the investigation, such as court orders regarding custody.

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3. Any other evidence that may assist in the investigation, including personal electronic devices (e.g., cell phones, computers).

(h) When circumstances permit and if appropriate, attempt to determine the missing person's location through his/her telecommunications carrier.

(i) Contact the appropriate agency if the report relates to a previously made missing person report and another agency is actively investigating that report. When this is not practical, the information should be documented in an appropriate report for transmission to the appropriate agency. If the information relates to an at-risk missing person, the member should notify a supervisor and proceed with reasonable steps to locate the missing person.

316.6 REPORT PROCEDURES AND ROUTING

Employees should complete all missing person reports and forms promptly and submit them for supervisor approval.

316.6.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of the supervisor shall include, but are not limited to:

(a) Reviewing and approving missing person reports upon receipt.

(b) Ensuring resources are deployed as appropriate.

(c) Initiating a command post as needed.

(d) Ensuring applicable notifications and public alerts are made and documented (Nixle, AMBER, etc.; See Public Alerts Policy)

(e) Ensuring that records have been entered into the appropriate missing persons networks.

(f) Taking reasonable steps to identify and address any jurisdictional issues to ensure cooperation among agencies.

If the case falls within the jurisdiction of another agency, the supervisor should facilitate transfer of the case to the agency of jurisdiction.

316.7 RECORDS MANAGEMENT RESPONSIBILITIES

The receiving member shall:

(a) As soon as reasonable under the circumstances, notify and forward a copy of the report to the law enforcement agency having jurisdiction over the missing person's residence in cases where the missing person is a resident of another jurisdiction (Penal Code § 14211).

(b) Notify and forward a copy of the report to the law enforcement agency in whose jurisdiction the missing person was last seen (Penal Code § 14211).

(c) Notify and forward a copy of the report to the law enforcement agency having jurisdiction over the missing person's intended or possible destination, if known.

(d) Forward a copy of the report to the Detective Bureau.

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(e) Coordinate with the NCIC Terminal Contractor for California to have the missing person record in the NCIC computer networks updated with additional information obtained from missing person investigations (34 USC § 41308).

316.8 FOLLOW-UP TIMELINE

(a) Adult Missing Person Cases: The initial assigned investigator handles the 24 hour and one week follow ups, then forwards the case to the Homicide Detail for follow up.

(b) Juvenile Missing Person/Runaway Cases: The initial assigned investigator handles the 24 hour follow up, then forwards the case to the Youth Services Detail for follow up.

316.9 DETECTIVE BUREAU FOLLOW-UP

In addition to completing or continuing any actions listed above, the investigator assigned to a missing person investigation:

(a) Shall ensure that the missing person's school is notified within 10 days if the missing person is a juvenile.

1. The notice shall be in writing and should also include a photograph (Education Code § 49068.6).
2. The investigator should meet with school officials regarding the notice as appropriate to stress the importance of including the notice in the child's student file, along with contact information if the school receives a call requesting the transfer of the missing child's files to another school.

(b) Should recontact the reporting person and/or other witnesses within 30 days of the initial report and within 30 days thereafter to determine if any additional information has become available via the reporting party.

(c) Should consider contacting other agencies involved in the case to determine if any additional information is available.

(d) Shall verify and update CLETS, NCIC and any other applicable missing person networks within 30 days of the original entry into the networks and every 30 days thereafter until the missing person is located (34 USC § 41308).

(e) Should continue to make reasonable efforts to locate the missing person and document these efforts at least every 30 days.

(f) Shall maintain a close liaison with state and local child welfare systems and the National Center for Missing and Exploited Children® (NCMEC) if the missing person is under the age of 21 and shall promptly notify NCMEC when the person is missing from a foster care family home or childcare institution (34 USC § 41308).

(g) Should make appropriate inquiry with the Coroner.

(h) Should obtain and forward medical and dental records, photos, X-rays and biological samples pursuant to Penal Code § 14212 and Penal Code § 14250.

(i) Shall attempt to obtain the most recent photograph for persons under 18 years of age if it has not previously been obtained and forward the photograph to California

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DOJ (Penal Code § 14210) and enter the photograph into applicable missing person networks (34 USC § 41308).

(j) Should consider making appropriate entries and searches in the National Missing and Unidentified Persons System (MUPS).

(k) In the case of an at-risk missing person or a person who has been missing for an extended time, should consult with a supervisor regarding seeking federal assistance from the FBI and the U.S. Marshals Service (28 USC § 586).

316.10 WHEN A MISSING PERSON IS FOUND

When any person reported missing is found, the assigned investigator shall document the location of the missing person in the appropriate report, notify the relatives and/or reporting party, as appropriate, and other involved agencies and refer the case for additional investigation if warranted.

The assigned investigator shall ensure that, upon receipt of information that a missing person has been located, the following occurs (Penal Code § 14213):

(a) The person's name is removed from MUPS.

(b) The missing person’s school is notified, if applicable.

(c) Notification shall be made to any other law enforcement agency that took the initial report or participated in the investigation within 24 hours.

316.10.1 UNIDENTIFIED PERSONS

Department members investigating a case of an unidentified person who is deceased or a living person who cannot assist in identifying him/herself should:

(a) Obtain a complete description of the person.

(b) Enter the unidentified person’s description into the NCIC Unidentified Person File.

(c) Use available resources, such as those related to missing persons, to identify the person.

316.11 CASE CLOSURE

The Detective Bureau Lieutenant, or his/her designee, may authorize the closure of a missing person case after considering the following:

(a) Closure is appropriate when the missing person is confirmed returned or evidence has matched an unidentified person or body.

(b) If the missing person is a resident of Berkeley or this department is the lead agency, the case should be kept under active investigation for as long as the person may still be alive. Exhaustion of leads in the investigation should not be a reason for closing a case.

(c) If this department is not the lead agency, the case can be made inactivate if all investigative leads have been exhausted, the lead agency has been notified and entries are made in the applicable missing person networks as appropriate.

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(d) A missing person case should not be closed or reclassified because the person would have reached a certain age or adulthood or because the person is now the subject of a criminal or civil warrant.

316.12 TRAINING

Subject to available resources, the Personnel and Training Sergeant should ensure that members of this department whose duties include missing person investigations and reports receive regular training that includes:

(a) The initial investigation:

1. Assessments and interviews
2. Use of current resources, such as Mobile Audio Video (MAV)
3. Confirming missing status and custody status of minors
4. Evaluating the need for a heightened response

(b) Briefing of department members at the scene.

(c) Identifying NCIC Missing Person File categories (e.g., disability, endangered, involuntary, juvenile and catastrophe).

(d) Verifying the accuracy of all descriptive information.

(e) Initiating a neighborhood investigation.

(f) Investigating any relevant recent family dynamics.

(g) Addressing conflicting information.

(h) Key investigative and coordination steps.

(i) Managing a missing person case.

(j) Additional resources and specialized services.

(k) Update procedures for case information and descriptions.

(l) Preserving scenes.

(m) Internet and technology issues (e.g., Internet use, cell phone use).

(n) Media relations.

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Public Alerts

317.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for alerting the public to important information and soliciting public aid when appropriate.

317.2 POLICY

Public alerts may be employed using the Emergency Alert System (EAS), local radio, television and press organizations and other groups to notify the public of incidents, or enlist the aid of the public, when the exchange of information may enhance the safety of the community. Various types of alerts may be available based upon each situation and the alert system's individual criteria.

317.3 TYPES OF ALERTS

Alameda County (AC) Alert: A notification sent to subscribers via phone, text and/or email.

Amber Alert: A notification regarding an abducted child

Blue Alert: A safety notification regarding an at large suspect who killed or injured a police officer

Emergency Alert System (EAS) Activation: A notification to be broadcast via radio and television

Emergency Digital Information System (EDIS): A notification sent to commercial media outlets for distribution

Nixle Alert: A notification sent to subscribers via phone and email

ReddiNet Alert: A notification sent to local hospitals regarding missing persons

Silver Alert: A notification regarding an elderly or cognitively impaired missing person

Yellow Alert: A notification regarding a hit and run injury accident

317.4 RESPONSIBILITIES

317.4.1 EMPLOYEE RESPONSIBILITIES

Employees of the Berkeley Police Department should notify their supervisor, Watch Commander or the Detective Bureau Lieutenant as soon as practicable upon learning of a situation where public notification, a warning or enlisting the help of the media and public could assist in locating a missing person, apprehending a dangerous person or gathering information.

317.4.2 SUPERVISOR RESPONSIBILITIES

A supervisor apprised of the need for a public alert is responsible to make the appropriate notifications based upon the circumstances of each situation. The supervisor shall promptly notify the appropriate division captain and the Public Information Officer when any public alert is generated.

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The supervisor in charge of the investigation to which the alert relates is responsible for ensuring the following:

(a) The alerts are updated, as necessary

(b) The alerts are canceled, when required

(c) All appropriate reports are completed

317.5 ALAMEDA COUNTY (AC) ALERT

AC Alert is an emergency notification system within Alameda County. It quickly provides critical information in a variety of situations such as missing persons, evacuations, road closures, severe weather, fires, etc. The alerts are distributed via phone call, text or email, depending on the user's preference.

317.5.1 AC ALERT ACTIVATION

Sworn employees holding the rank of sergeant and above are authorized to activate an AC Alert.

317.5.2 AC ALERT PROCEDURE

The alerts may be entered and activated by anyone with AC Alert credentials, usually a dispatcher. The user logs in and creates a "new notification" for email/text or a voice recording for phone calls.

317.6 AMBER ALERTS

The AMBER Alert™ Program is a voluntary partnership between law enforcement agencies, broadcasters, transportation agencies and the wireless industry, to activate urgent bulletins in child abduction cases.

317.6.1 AMBER ALERT CRITERIA

The following conditions must be met before activating an AMBER Alert (Government Code § 8594(a)):

(a) A child has been abducted or taken by anyone, including but not limited to a custodial parent or guardian.

(b) The victim is 17 years of age or younger, or has a proven mental or physical disability.

(c) The victim is in imminent danger of serious injury or death.

(d) There is information available that, if provided to the public, could assist in the child's safe recovery.

317.6.2 AMBER ALERT PROCEDURE

The supervisor in charge will ensure the following:

(a) An initial press release is prepared that includes all available information that might aid in locating the child:

1. The child's identity, age and description

2. A photograph, if available

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3. The suspect's identity, age and description, if known
4. Pertinent vehicle description
5. Detail regarding location of incident, direction of travel, potential destinations, if known
6. Name and telephone number of the Public Information Officer or other authorized individual to handle media liaison
7. A telephone number for the public to call with leads or information

(b) The Alameda County Sheriff's Office is contacted to initiate a local/countywide broadcast at (510) 667-7721. It is specific Alameda County protocol that the county alert is sent out before the statewide alert.

(c) The California Highway Patrol's Emergency Notification and Tactical Alert Center (ENTAC) is contacted to initiate a statewide broadcast at (916) 843-4199 (Government Code § 8594).

(d) The press release information is forwarded to the Sheriff's Department Emergency Communications Bureau so that general broadcasts can be made to local law enforcement agencies.

(e) Information regarding the missing person is entered into the California Law Enforcement Telecommunication System (CLETS), if appropriate.

(f) Information regarding the missing person is entered into the California Department of Justice Missing and Unidentified Persons System (MUPS)/National Crime Information Center (NCIC), if appropriate.

(g) The following resources are considered as circumstances dictate:

1. The local FBI office
2. National Center for Missing and Exploited Children (NCMEC)

317.7 BLUE ALERTS

Blue Alerts may be issued when an officer is killed, injured or assaulted and the suspect may pose a threat to the public or other law enforcement personnel.

317.7.1 BLUE ALERT CRITERIA

All of the following conditions must be met before activating a Blue Alert (Government Code § 8594.5):

(a) A law enforcement officer has been killed, suffered serious bodily injury or has been assaulted with a deadly weapon, and the suspect has fled the scene of the offense.

(b) The investigating law enforcement agency has determined that the suspect poses an imminent threat to the public or other law enforcement personnel.

(c) A detailed description of the suspect's vehicle or license plate is available for broadcast.

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(d) Public dissemination of available information may help avert further harm or accelerate apprehension of the suspect.

317.7.2 BLUE ALERT PROCEDURE

The supervisor in charge should ensure the following:

(a) An initial press release is prepared that includes all available information that might aid in locating the suspect:

1. The license number and/or any other available description or photograph of the vehicle
2. The suspect's identity, age and description, if known
3. A photograph of the suspect, if available
4. Detail regarding location of incident, direction of travel, potential destinations, if known
5. Name and telephone number of the Public Information Officer or other authorized individual to handle media liaison
6. A telephone number for the public to call with leads or information

(b) A request for a Blue Alert is made by contacting the California Highway Patrol's Emergency Notification and Tactical Alert Center (ENTAC) at (916) 843-4199.

(c) The information in the press release is forwarded to the Sheriff's Department Emergency Communications Bureau so that general broadcasts can be made to local law enforcement agencies.

(d) The following resources are considered as circumstances dictate:

1. Entry into the California Law Enforcement Telecommunication System (CLETS)
2. The FBI local office

317.8 EMERGENCY ALERT SYSTEM (EAS)

The Emergency Alert System is a federal system used to alert the public in the event of an emergency. Initiated by the California Highway Patrol, EAS messages are directed to participating radio, television and digital media outlets for immediate public dissemination of critical, time-sensitive information.

317.8.1 EAS ACTIVATION

Sworn employees holding the rank of sergeant and above are authorized to activate EAS.

317.8.2 EAS PROCEDURE

Write a 50-60 second Warning message to be broadcast by all AM, FM, TV and cable stations in the FCC local area plan. To ensure broadcast and timely rebroadcasts, the message should be kept under one minute. A call back contact number must be included for the media.

Telephone the Alameda County Sheriff's Dispatch Center at 510-667-7721 and tell them you are faxing an EAS message for broadcast. They will provide you with the appropriate fax number.

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317.9 EMERGENCY DIGITAL INFORMATION SYSTEM (EDIS)

The EDIS is provided by the Governor's Office of Emergency Services, and delivers official information about emergencies and disasters to law enforcement, news media and the public in California. Electronic, newswire-style emergency bulletins posted via EDIS are distributed by e-mail, and RSS feed. In addition, multi-media content (image, sound, or video files) can be posted on the EDIS Web site (www.edis.oes.ca.gov) for access by the media, law enforcement agencies and the public.

317.9.1 EDIS ACTIVATION

Sworn employees holding the rank of sergeant and above are authorized to activate EDIS.

317.9.2 EDIS PROCEDURE

The Communications Center may send a message via computer through the California Law Enforcement Telecommunications System (CLETS) or they may contact the State OES Warning Center 24/7 at (800) 421-2921 or (916) 845-8911.

317.10 NIXLE ALERT

Nixle is a local alert system that allows subscribers to receive alerts or advisories (via text and/or email) regarding upcoming events, community meetings, severe weather, criminal activity, traffic conditions or missing persons.

317.10.1 NIXLE ACTIVATION

A Nixle Alert may be sent by anyone with Nixle login credentials, this includes but is not limited to the PIO, Dispatch Supervisors, Area Coordinators and Watch Commanders. Officers must receive Supervisor approval before initiating a Nixle Alert.

317.10.2 NIXLE PROCEDURE

Compose a brief summary of the incident with pertinent information. Relay the information to one of the above listed persons for dissemination.

317.11 REDDINET ALERT

ReddiNet is a dedicated emergency medical communications network. It facilitates information exchange among emergency medical personnel, dispatch centers, hospitals and law enforcement. Usually, it is used by BPD when conducting a missing person investigation, so that local hospitals may be on the lookout for the missing person.

317.11.1 REDDINET ACTIVATION

Dispatchers and sworn officers are authorized to send a ReddiNet alert.

317.11.2 REDDINET PROCEDURE

Call the Alameda County Fire Department in Livermore (925) 422-7595 and relay the information. Notify BFD's Duty Chief via email, call dispatch to determine who it is, as it changes every 48 hours. The DC will need to be notified if the missing person is located, however, the ACDF does not need to be notified.

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317.12 SILVER ALERTS

Silver Alerts® is an emergency notification system for people who are 65 years of age or older, developmentally disabled or cognitively impaired and have been reported missing (Government Code § 8594.10).

317.12.1 SILVER ALERT CRITERIA

All of the following conditions must be met before activating a Silver Alert (Government Code § 8594.10):

(a) The missing person is 65 years of age or older, developmentally disabled or cognitively impaired.

(b) The department has utilized all available local resources.

(c) The investigating officer or supervisor has determined that the person is missing under unexplained or suspicious circumstances.

(d) The investigating officer or supervisor believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or that there are other factors indicating that the person may be in peril.

(e) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

317.12.2 SILVER ALERT PROCEDURE

Requests for a Silver Alert shall be made by contacting the California Highway Patrol's Emergency Notification and Tactical Alert Center (ENTAC) at (916) 843-4199. (Government Code § 8594.10)

317.13 YELLOW ALERTS

Yellow Alerts are notifications related to hit-and-run incidents resulting in the death or injury (Vehicle Code § 20001; Government Code § 8594.15).

317.13.1 YELLOW ALERT CRITERIA

All of the following conditions must be met before requesting the activation of a Yellow Alert (Government Code § 8594.15):

(a) A person has been killed or has suffered serious bodily injury due to a hit-and-run.

(b) It is likely the suspect may be seen on a state highway.

(c) There is additional information concerning the suspect's vehicle, including, but not limited to any of the following:

1. The suspect or the suspect's vehicle can be particularly described (e.g., a complete or partial license plate number)
2. Unique vehicle characteristics (e.g., make, model and color of suspect's vehicle)
3. The identity of the suspect

(d) Public assistance can mitigate danger to the public or quicken the apprehension of the suspect.

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317.13.2 YELLOW ALERT PROCEDURE

Requests for a Yellow Alert shall be made by contacting the California Highway Patrol's Emergency Notification and Tactical Alert Center (ENTAC) at (916) 843-4199. (Government Code § 8594.15)

317.14 MUTUAL AID

The experiences of other law enforcement jurisdictions that have implemented similar plans indicate an AMBER Alert or Blue Alert will generate a high volume of telephone calls to the handling agency.

The Sheriff's Department Emergency Communications Bureau facilities and staff can be made available in the event of a high call volume.

If the Watch Commander or Detective Bureau Lieutenant elects to use the services of the Sheriff's Department, the following will apply:

(a) Notify the Sheriff's Department Watch Commander of the incident and the request for assistance. He/she will provide you with a telephone number for the public to call.

(b) In the press release, direct the public to the telephone number provided by the Sheriff's Department Watch Commander.

(c) The Public Information Officer will continue to handle all press releases and media inquiries. Any press inquiries received by the Sheriff's Department will be referred back to this department.

The Berkeley Police Department shall assign a minimum of two detectives/officers to respond to the Sheriff's Department Emergency Communications Bureau to screen and relay information and any clues received from incoming calls. As circumstances dictate, more staff resources from the handling law enforcement agency may be necessary to assist the staff at the Emergency Communications Bureau.

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Victim and Witness Assistance

318.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that crime victims and witnesses receive appropriate assistance, that they are provided with information from government and private resources, and that the agency meets all related legal mandates.

Further, this policy formalizes the Department's existing prioritization of violent-crime investigations and aims to ensure persons engaged in sex work and other forms of sex trade, including trafficked persons, feel safe to report that they have been the victim of a violent crime.

318.2 POLICY

The Berkeley Police Department is committed to providing guidance and assistance to the victims and witnesses of crime. The members of the Berkeley Police Department will show compassion and understanding for victims and witnesses and will make reasonable efforts to provide the support and information identified in this policy.

318.3 CRIME VICTIMS

Officers should provide all victims with the applicable victim information handouts.

Officers should never guarantee a victim's safety from future harm but may make practical safety suggestions to victims who express fear of future harm or retaliation. Officers should never guarantee that a person qualifies as a victim for the purpose of compensation or restitution but may direct him/her to the proper written department material or available victim resources.

318.3.1 VICTIMS OF HUMAN TRAFFICKING

Officers investigating or receiving a report involving a victim of human trafficking shall inform the victim, or the victim's parent or guardian if the victim is a minor, that upon the request of the victim the names and images of the victim and his/her immediate family members may be withheld from becoming a matter of public record until the conclusion of the investigation or prosecution (Penal Code § 293).

318.3.2 PRIORITIZING SAFETY FOR SEX WORKERS

Officers will not arrest persons for offenses, including California Penal Code §§ 647(a), 647(b), 653.22, 372, and misdemeanor drug offenses, when a person is the victim or witness of a sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime.

318.4 VICTIM INFORMATION

The Detective Bureau Lieutenant shall ensure that victim information handouts are available and current. These should include as appropriate:

(a) Shelters and other community resources for victims of domestic violence.

(b) Community resources for victims of sexual assault.

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(c) Assurance that sexual assault victims will not incur out-of-pocket expenses for forensic medical exams, and information about evidence collection, storage and preservation in sexual assault cases (34 USC § 10449; 34 USC § 20109; Penal Code § 13823.95(a)).

(d) An explanation that victims of sexual assault who seek a standardized medical evidentiary examination shall not be required to participate or agree to participate in the criminal justice system, either prior to the examination or at any other time (Penal Code § 13823.95(b)).

(e) An advisement that a person who was arrested may be released on bond or some other form of release and that the victim should not rely upon an arrest as a guarantee of safety.

(f) A clear explanation of relevant court orders and how they can be obtained.

(g) Information regarding available compensation for qualifying victims of crime (Government Code § 13962).

(h) VINE® information (Victim Information and Notification Everyday), including the telephone number and whether this free service is available to allow victims to check on an offender's custody status and to register for automatic notification when a person is released from jail.

(i) Notice regarding U visa and T visa application processes.

(j) A place for the officer's name, badge number and any applicable case or incident number.

(k) The "Victims of Domestic Violence" card containing the names, phone numbers or local county hotlines of local shelters for battered women and rape victim counseling centers within the county and their 24-hour counseling service telephone numbers (Penal Code § 264.2).

(l) The rights of sexual assault victims card with the required information as provided in Penal Code § 680.2.

(m) Any additional information required by state law (Penal Code § 13701; Penal Code § 679.02; Penal Code § 679.04; Penal Code § 679.05; Penal Code § 679.026).

318.5 WITNESSES

Officers should never guarantee a witness' safety from future harm or that his/her identity will always remain confidential. Officers may make practical safety suggestions to witnesses who express fear of future harm or retaliation.

Officers should investigate allegations of witness intimidation and take enforcement action when lawful and reasonable.

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Hate Crimes

319.1 PURPOSE AND SCOPE

The purpose of this policy is to meet or exceed the provisions of Penal Code § 13519.6(c) and provides members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

319.1.1 DEFINITIONS

Hate crimes - A criminal act committed in whole or in part, because of one or more of the following actual or perceived characteristics of the victim (Penal Code § 422.55; Penal Code § 422.56; Penal Code § 422.57):

(a) Disability

(b) Gender, gender identity or gender expression

(c) Nationality

(d) Race or ethnicity

(e) Religion

(f) Sexual orientation

(g) Association with a person or group with one or more of these actual or perceived characteristics

(h) Examples of hate crimes include, but are not limited to:

1. Interfering with, oppressing or threatening any other person in the free exercise or enjoyment of any right or privilege secured by the constitution or laws because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6).
2. Defacing a person’s property because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6(b)).
3. Terrorizing a person with a swastika or burning cross (Penal Code § 11411).
4. Vandalizing a place of worship (Penal Code § 594.3).

The federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expands federal hate crimes to include crimes motivated by a victim's actual or perceived sex, sexual orientation, gender identity or disability (18 USC § 249).

Victim - Includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library or other victim or intended victim of the offense (Penal Code § 422.56).

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319.2 POLICY

The Berkeley Police Department recognizes and places a high priority on the rights of all individuals guaranteed under the state and federal constitution and incorporated in state and federal law.

319.3 PREVENTION AND PREPARATION

While it is recognized that not all crime can be prevented, this department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by, among other things:

(a) Make an affirmative effort to establish contact with persons and groups within the community who are likely targets of hate crimes and forming networks that address prevention and response.

(b) Accessing assistance by, among other things, activating the California Department of Justice Hate Crime Rapid Response Protocol when necessary.

(c) Providing victim assistance and community follow-up as outlined below.

(d) Educating community and civic groups about hate crime laws.

(e) Establishing a community relations liaison to work with community organizations and leaders to coordinate public meetings, local group meetings and school assemblies on recognizing, preparing for and preventing hate crimes.

319.4 HATE CRIME VS. HATE INCIDENT

Many acts of hate violence fall under the category of a hate crime, which is punishable by law. However, not all hate incidents are hate crimes. For example, verbal name calling, although offensive, is not a crime and must be accompanied by a viable threat of violence and the ability to carry out the threat.

For a hate incident to be categorized as a hate crime, it must violate a criminal law. A hate crime might include threatening phone calls, physical assaults, destruction of property, bomb threats, and/or the disturbance of religious meetings.

A hate incident that does not constitute a hate crime might include hate speech, display of offensive materials on one's property, the distribution of hate materials in public places, and the posting of hate materials that does not result in property damage. Even if a hate incident does not rise to the level of a hate crime, the victim will still need support and assistance and may have an actionable civil claim as well.

319.5 CRIMINAL STATUTES

The key criminal statutes on hate crimes are

(a) Penal Code § 422.6 which provides that it is a misdemeanor to both (a) threaten or injure an individual or (b) damage property because of the real or perceived beliefs or characteristics of the other person; and

(b) Penal Code § 422.7 which provides that it is a felony to both (a) threaten or injure an individual (when the injury could or does result in great bodily injury) or (b) damage

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property (when the damage is in excess of $950) because of the real or perceived beliefs or characteristics of the other person.

319.6 INVESTIGATIONS

Whenever any member of this department receives a report of a suspected hate crime or other activity that reasonably appears to involve a potential hate crime, the following should occur:

(a) Assigned officers should promptly contact the victim, witness or reporting party to investigate the matter further as circumstances may dictate

(b) A supervisor should be notified of the circumstances as soon as practical.

(c) Once in-progress aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of suspects at the scene), the assigned officers should take all reasonable steps to preserve evidence that establishes a possible hate crime.

(d) Based upon available information, officers should take appropriate action to mitigate further injury or damage to potential victims or the community.

1. Officers should contact the property owner to remove any evidence that cannot be physically removed (i.e., painted words or signs on a wall) by the officer once the offense is documented.

(e) The assigned officers should interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.

1. No victim of or a witness to a hate crime who is not otherwise charged with or convicted of a crime under state law may be detained for or turned over to federal authorities exclusively for any actual or suspected immigration violation (Penal Code § 422.93(b))

2. Statements of victims and witnesses should be audio or video recorded if practicable (see the Portable Audio/Video Recorders Policy).

(f) Depending on the situation, the assigned officers or supervisor may request additional assistance from detectives or other resources.

(g) The assigned officers should include all available evidence indicating the likelihood of a hate crime in the relevant reports. All related reports should be clearly marked as “Hate Crimes” and, absent prior approval of a supervisor, should be completed and submitted by the assigned officers before the end of the shift.

(h) The assigned officers will provide the victims of any suspected hate crime with a brochure on hate crimes (Penal Code § 422.92). Such brochures will also be available to members of the general public upon request. The assigned officers should also make reasonable efforts to assist the victims by providing available information on local assistance programs and organizations.

(i) The assigned officers and supervisor should take reasonable steps to ensure that any such situation does not escalate further and should provide information to the victim regarding legal aid (e.g., Possible Temporary Restraining Order through the District Attorney or City Attorney Penal Code § 136.2 or Civil Code § 52.1 as indicated).

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319.6.1 SUPERVISOR RESPONSIBILITY

The supervisor should confer with the initial responding officers to identify reasonable and appropriate preliminary actions. The supervisor should:

(a) Review related reports to verify whether the incident is appropriately classified as a hate crime for federal and state bias crime-reporting purposes.

(b) Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.

(c) Consider the need for further action to be taken for the protection of the victims or vulnerable sites, such as assigning an officer at specific locations that could become targets or increase neighborhood surveillance.

(d) Ensure that members who are responsible for the conduct and maintenance of information on criminal groups are notified and that they make appropriate inquiries and entries into criminal intelligence systems.

319.6.2 DETECTIVE BUREAU RESPONSIBILITY

If a hate crime case is assigned to the Detective Bureau, the assigned detective will be responsible for:

(a) Coordinating further investigation with the District Attorney and other appropriate law enforcement agencies.

(b) Maintaining contact with the victims and other involved individuals, as needed.

(c) Maintaining statistical data and tracking on suspected hate crimes as indicated for required reporting to the Attorney General (Penal Code § 13023). See the Records Management Policy.

(d) Make reasonable efforts to identify additional witnesses.

(e) Utilize available criminal intelligence systems as appropriate.

(f) Provide the supervisor and the Public Information Officer (PIO) with information that can be responsibly reported to the media.

    1. When appropriate, the PIO should reiterate that the hate crime will not be tolerated and will be taken seriously.

319.7 TRAINING

All members of this department will receive POST-approved training on hate crime recognition and investigation as provided by Penal Code § 13519.6. Training should include (Penal Code § 422.87):

(a) Recognition of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group, including disability bias, gender bias, and religion bias.

(b) Accurate reporting by officers, including information on the general underreporting of hate crimes.

(c) Distribution of hate crime brochures.

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319.8 APPENDIX

See attachments:

Statutes and Legal Requirements.pdf

Hate Crime Checklist.pdf

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Standards of Conduct

321.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Berkeley Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

321.2 POLICY

The continued employment or appointment of every member of the Berkeley Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

321.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

321.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

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The person countermanding the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

321.3.2 SUPERVISOR RESPONSIBILITIES

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

(a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.

(b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.

(c) Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.

(d) The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

321.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Employees shall at all times be courteous and civil to the public and to one another. They shall be quiet, orderly, attentive and respectful and shall exercise patience and discretion in the performance of their duties.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

321.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

321.5.1 LAWS, RULES AND ORDERS

(a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.

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(b) Disobedience of any legal directive or order issued by any department member of a higher rank.

(c) Violation of federal, state, local or administrative laws, rules or regulations.

321.5.2 ETHICS

(a) Using or disclosing one's status as a member of the Berkeley Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.

(b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.

(c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).

(d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.

(e) Offer or acceptance of a bribe or gratuity.

(f) Misappropriation or misuse of public funds, property, personnel or services.

321.5.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM

Discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful.

321.5.4 RELATIONSHIPS

(a) Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.

(b) Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.

(c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.

(d) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.

(e) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member

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knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.

321.5.5 ATTENDANCE

(a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.

(b) Unexcused or unauthorized absence or tardiness.

(c) Excessive absenteeism or abuse of leave privileges.

(d) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.

(e) Failure to sign in/out for duty on the timesheet, unless specifically authorized by a supervisor.

321.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

(a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.

1. Members of this department shall not disclose the name, address or image of any victim of human trafficking except as authorized by law (Penal Code § 293).

(b) Disclosing to any unauthorized person any active investigation information.

(c) The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.

(d) Loaning, selling, allowing unauthorized use, giving away or appropriating any Berkeley Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.

(e) Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

321.5.7 EFFICIENCY

(a) Neglect of duty.

(b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.

(c) Concealing, attempting to conceal, removing or destroying defective or incompetent work.

(d) Unauthorized sleeping during on-duty time or assignments.

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(e) Failure to notify the Department within 72 hours of any change in name, residence address or contact telephone number(s).

321.5.8 PERFORMANCE

(a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.

(b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.

(c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.

(d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.

(e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.

(f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:

    (a) While on department premises.

    (b) At any work site, while on-duty or while in uniform, or while using any department equipment or system.

    (c) Gambling activity undertaken as part of an officer official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.

(g) Entering any place of amusement while on duty, except when necessary in the performance of duty or periodic inspection.

(h) Improper political activity including:

    (a) Unauthorized attendance while on-duty at official legislative or political sessions.

    (b) Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.

(i) Engaging in political activities during assigned working hours except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.

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(j) Joining or participating in any employee organization except an employee organization which is composed solely of peace officers which concerns itself solely and exclusively with the wages, hours, working conditions, welfare and advancement of academic and vocational training in furtherance of the police profession and which is not subordinate to any other organization.

(k) Failure to secure the permission of a Commanding Officer before placing any material on a Departmental bulletin board.

(l) Using departmental business cards for anything other than official business.

(m) Any act on- or off-duty that brings discredit to this department.

321.5.9 CONDUCT

(a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency that may result in criminal prosecution or discipline under this policy.

(b) Unreasonable and unwarranted force to a person encountered or a person under arrest.

(c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.

(d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.

(e) Engaging in horseplay that reasonably could result in injury or property damage.

(f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.

(g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.

(h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.

(i) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.

(j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.

(k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.

(l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.

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(m) Incurring unauthorized expense - Employees shall not knowingly and intentionally incur any unauthorized Departmental expense or liability without approval of a superior officer or supervisor when necessary under emergency conditions.

(n) Failure to provide information to citizens - Employees shall comply whenever possible with requests by citizens for public information. If necessary, they shall direct such persons to the nearest location where information may be obtained.

(o) Failure to Identify - Employees on official business shall identify themselves as Berkeley Police employees or officers. When requested, employees shall promptly state their name, rank and badge number, except when disclosure of identity could compromise safety and/or an investigation (i.e., riot situations, undercover operations, etc.).

(p) Failure to maintain communication, when on duty or officially on call - Employees who are on duty or officially on call shall be directly available by normal communication or shall keep their office, supervisor, or commanding officer informed of the means by which they may be reached when not immediately available.

(q) Any other on-- or off--duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

321.5.10 SAFETY

(a) Failure to observe or violating department safety standards or safe working practices.

(b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).

(c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.

(d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.

(e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.

(f) Unsafe or improper driving habits or actions in the course of employment or appointment.

(g) Any personal action contributing to a preventable traffic collision in the course of employment or appointment.

(h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

321.5.11 INTOXICANTS

(a) Reporting for work:

1. Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.

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(b) Possession:

1. Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.

2. Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.

(c) Intoxicants on-duty:

1. Use of Intoxicants. Except as necessary in the performance of an official assignment, having the odor of an alcoholic beverage on the person, clothing, or breath, being under the influence of alcohol or other intoxicants, or the consumption of alcohol or other intoxicants while on duty is strictly prohibited.

2. A Command Officer must give prior approval for any use of alcohol in the performance of an official assignment.

(d) Prescription medication:

1. Employees may use prescription medications, except medical marijuana, while on duty pursuant to the specific instructions of a physician who has advised the employee that the prescribed medication in the amount actually ingested does not adversely affect the employee's ability to safely perform their duties, including tasks that require physical coordination, mental alertness and sound judgment, such as, operating office equipment and driving a vehicle, or, in the case of sworn officers, making detentions/arrests and handling weapons.

(e) Use of marijuana:

1. Possession of marijuana, including medical marijuana, or being under the influence of marijuana on or off-duty is prohibited and may lead to disciplinary action.

(f) Intoxicants in uniform:

1. No employee off duty and in uniform, or in any part of uniform dress, shall:

   i. Consume any alcoholic beverage or other intoxicant in public view or in any place accessible to the public;

   ii. Be in public with the odor of an alcoholic beverage on the person, clothing, or breath; or

   iii. Be under the influence of alcohol or other intoxicants.

(g) Intoxicants off-duty:

1. No off-duty employee shall consume any alcoholic beverage or other intoxicant to an extent which renders one unfit to report for one's next regular tour of duty (including having the odor of an alcoholic beverage on the person), which results in the of violation of any law, or which results in the commission of an obnoxious or offensive act which might tend to discredit the Department.

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Information Technology Use

322.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the proper use of department information technology resources, including computers, electronic devices, hardware, software and systems.

322.1.1 DEFINITIONS

Definitions related to this policy include:

Computer system - All computers (on-site and portable), electronic devices, hardware, software, and resources owned, leased, rented or licensed by the Berkeley Police Department that are provided for official use by its members. This includes all access to, and use of, Internet Service Providers (ISP) or other service providers provided by or through the Department or department funding. This does not include body worn cameras, see the Body Worn Cameras Policy for information regarding their use.

Hardware - Includes, but is not limited to, computers, computer terminals, network equipment, electronic devices, telephones, including cellular and satellite, pagers, modems or any other tangible computer device generally understood to comprise hardware.

Software - Includes, but is not limited to, all computer programs, systems and applications, including shareware.

Temporary file, permanent file or file - Any electronic document, information or data residing or located, in whole or in part, on the system including, but not limited to, spreadsheets, calendar entries, appointments, tasks, notes, letters, reports, messages, photographs or videos.

322.2 POLICY

It is the policy of the Berkeley Police Department that members shall use information technology resources, including computers, software and systems, that are issued or maintained by the Department in a professional manner and in accordance with this policy.

322.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to emails, texts, or anything published, shared, transmitted, or maintained through file-sharing software or any internet site that is accessed, transmitted, received, or reviewed on any department computer system.

The Department reserves the right to access, audit, and disclose, for whatever reason, any message, including attachments, and any information accessed, transmitted, received, or reviewed over any technology that is issued or maintained by the Department, including the department email system, computer network, and/or any information placed into storage on any department system or device. This includes records of all keystrokes or Web-browsing history made at any department computer or over any department network. The fact that access to a database, service, or website requires a username or password will not create an expectation of privacy if it is accessed through department computers, electronic devices, or networks.

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The Department shall not require a member to disclose a personal username or password for accessing personal social media or to open a personal social website; however, the Department may request access when it is reasonably believed to be relevant to the investigation of allegations of work-related misconduct (Labor Code § 980).

322.4 RESTRICTED USE

Members shall not access computers, devices, software or systems for which they have not received prior authorization or the required training. Members shall immediately report unauthorized access or use of computers, devices, software or systems by another member to their supervisors or Watch Commanders.

Members shall not use another person's access passwords, logon information and other individual security data, protocols and procedures unless directed to do so by a supervisor.

322.4.1 SOFTWARE

Members shall not copy or duplicate any copyrighted or licensed software except for a single copy for backup purposes in accordance with the software company's copyright and license agreement.

To reduce the risk of a computer virus or malicious software, members shall not install any unlicensed or unauthorized software on any department computer. Members shall not install personal copies of any software onto any department computer.

When related to criminal investigations, software program files may be downloaded only with the approval of the information systems technology (IT) staff and the member's supervisor.

No member shall knowingly make, acquire or use unauthorized copies of computer software that is not licensed to the Department while on department premises, computer systems or electronic devices. Such unauthorized use of software exposes the Department and involved members to severe civil and criminal penalties.

Introduction of software by members should only occur as part of the automated maintenance or update process of department- or City-approved or installed programs by the original manufacturer, producer or developer of the software.

Any other introduction of software requires prior authorization from IT staff and a full scan for malicious attachments.

322.4.2 HARDWARE

Access to technology resources provided by or through the Department shall be strictly limited to department-related activities. Data stored on or available through department computer systems shall only be accessed by authorized members who are engaged in an active investigation or assisting in an active investigation, or who otherwise have a legitimate law enforcement or department-related purpose to access such data. Any exceptions to this policy must be approved by a supervisor.

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322.4.3 INTERNET USE

Internet access provided by or through the Department shall be strictly limited to department-related activities. Internet sites containing information that is not appropriate or applicable to department use and which shall not be intentionally accessed include, but are not limited to, adult forums, pornography, gambling, chat rooms and similar or related Internet sites. Certain exceptions may be permitted with the express approval of a supervisor as a function of a member's assignment.

Downloaded information shall be limited to messages, mail and data files.

322.4.4 OFF-DUTY USE

Refer to the Personal Communication Devices Policy for guidelines regarding off-duty use of personally owned technology.

322.5 PROTECTION OF AGENCY SYSTEMS AND FILES

All members have a duty to protect the computer system and related systems and devices from physical and environmental damage and are responsible for the correct use, operation, care, and maintenance of the computer system.

Members shall ensure department computers and access terminals are not viewable by persons who are not authorized users. Computers and terminals should be secured, users logged off and password protections enabled whenever the user is not present. Access passwords, logon information, and other individual security data, protocols, and procedures are confidential information and are not to be shared. Password length, format, structure, and content shall meet the prescribed standards required by the computer system or as directed by a supervisor and shall be changed at intervals as directed by IT staff or a supervisor.

It is prohibited for a member to allow an unauthorized user to access the computer system at any time or for any reason. Members shall promptly report any unauthorized access to the computer system or suspected intrusion from outside sources (including the internet) to a supervisor.

322.6 INSPECTION OR REVIEW

A supervisor or the authorized designee has the express authority to inspect or review the computer system, all temporary or permanent files, related electronic systems or devices, and any contents thereof, whether such inspection or review is in the ordinary course of his/her supervisory duties or based on cause.

Reasons for inspection or review may include, but are not limited to, computer system malfunctions, problems or general computer system failure, a lawsuit against the Department involving one of its members or a member's duties, an alleged or suspected violation of any department policy, a request for disclosure of data, or a need to perform or provide a service.

The IT staff may extract, download or otherwise obtain any and all temporary or permanent files residing or located in or on the department computer system when requested by a supervisor or during the course of regular duties that require such information.

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Media Relations

324.1 PURPOSE AND SCOPE

This policy provides guidelines for media releases and media access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities.

As used in this policy, "Media" shall mean entities, their employees and official agents, whose primary service and professional purpose is the communication of news and information to the general public via print, radio, television or digital/electronic means.

324.2 POLICY

It is the policy of this department to provide accurate and timely information about crime, public safety and departmental activities to the news media and public.

(a) Within the confines of practicality and in accordance with law, it is the Department's intention to keep the community informed of and engaged in public safety issues relevant to their lives.

(b) In accordance with information release policy set forth in Policy 804, consideration shall be given to the confidentiality, integrity and security of investigations (e.g., reference to/discussion of suspect statements), compliance with applicable law, and the privacy rights of victims, witnesses and suspects prior to release of any information.

324.3 CATEGORIES

Categories of information that may be released to the media are:

(a) Routine: These are reports of incidents of human interest which would not affect normal police operations, and information about available police services.

(b) Major: These are reports of incidents that impact normal police operations and create a large volume of media interest, information about which is disseminated via the department's PIO, in conjunction with involved investigators.

(c) Policy News Release: These are reports about the internal operations of the Police Department, which originate from the Office of the Chief.

(d) Publicity Releases: These are reports about incidents and programs designed to arouse public interest, understanding, or involvement, dissemination of which are coordinated by the PIO upon the approval of the Chief of Police.

(e) Newsworthy Events: These are reports of major crimes, arrests, disasters, unusual occurrences, or traffic accidents which would be of interest to the media, including, but not limited to:

1. Any information necessary to obtain public assistance in the investigation of a crime or apprehension of a criminal suspect.

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2. Any information warning the public of danger, or of the nature and frequency of crime in the community.

324.4 RESPONSIBILITIES

The ultimate authority and responsibility for the release of information to the media shall remain with the Chief of Police, however, in situations not warranting immediate notice to the Chief of Police and in situations where the Chief of Police has given prior approval, Division Captains, Watch Commanders and designated Public Information Officer(s) may prepare and release information to the media in accordance with this policy and the applicable law.

(a) The release of police reports, official department documents, and information contained therein shall comply with the Records Maintenance and Release Policy.

(b) During non-business hours, the on-duty Watch Commander, or in his/her absence the senior on-duty Patrol Sergeant, shall be responsible for media relations and related notifications.

(c) Unless dissemination is authorized by policy and appropriate given the circumstances of the inquiry, media requests for information concerning any incident under investigation shall be referred to the PIO.

(d) When an employee of this Department provides information to the media, that employee shall, as soon as practical, inform the PIO of the scope of media's inquiry and of the information provided.

324.5 PUBLIC INFORMATION OFFICER (PIO)

The Berkeley Police Department's Public Information Officer (PIO) shall be a department employee appointed by the Chief of Police to serve as the primary liaison with representatives of the media.

324.5.1 PIO NOTIFICATIONS

The PIO shall be notified as soon as practical of the following offenses/situations:

(a) Arson (e.g., major events, series, offense with injuries).

(b) Bombing and explosions.

(c) Escapes.

(d) Kidnapping.

(e) Homicide.

(f) Deployment of the Special Response Team (SRT).

(g) In all other offenses/situations, when the Watch Commander determines circumstances warrant PIO notification.

Upon notification, the PIO shall determine the proper actions to be taken in accordance with department policy to ensure that good media relationships are maintained.

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324.5.2 PIO RESPONSIBILITIES

The PIO is responsible for providing relevant, timely, and accurate information to the media at disasters, major crime scenes, catastrophes, special events, and unusual occurrences.

During normal business hours when the PIO is absent, or on-duty but unavailable, the PIO's supervisor shall either serve as Acting PIO or designate a trained subordinate to temporarily serve in that capacity.

The PIO shall coordinate the preparation and release of factual information regarding all major Departmental incidents, major crimes, or other newsworthy events.

Whenever necessary or appropriate, the PIO may be called to an incident scene by the Watch Commander to perform in-field media liaison duties.

In the event of a major disturbance, disaster, or state of emergency, a second PIO may be designated to assist the primary PIO with media relations and public dissemination of information.

In the event the National Incident Management System (NIMS) is employed, the PIO will report to the Incident Commander (Command Section) and perform media liaison activities in support of the PIO Branch.

If a Joint Information Center (JIC) is activated, the department PIO, or his/her designee, will report to that location to coordinate information management with other involved agency PIOs.

324.6 MEDIA REQUESTS

Any media request for information or access to a law enforcement situation shall be referred to the designated department media representative, or if unavailable, to the first available Watch Commander. Prior to releasing any information to the media, employees shall consider the following:

(a) At no time shall any employee of this department make any comment or release any official information to the media without prior approval from a supervisor or the designated department media representative.

(b) In situations involving multiple law enforcement agencies, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this department.

(c) Under no circumstance should any member of this department make any comments to the media regarding any law enforcement incident not involving this department without prior approval of the Chief of Police.

(d) When the PIO receives a media request for information, he/she shall:

- The PIO will be responsible for notification of the City Manager's Office regarding non-routine contacts with media representatives as required by COB AR 1.14.
- When known or advised, the PIO should regularly report contacts with representatives of the media to his/her chain of command.
- Provide the requesting media representative relevant information permitted by law and department policy.

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- Unless precluded by law, policy or direction of a command rank officer, employees shall provide information requested by the PIO without delay.
- Review the facts of the case with the investigating officer or Detail prior to release of information concerning an ongoing criminal investigation.
- Obtain and review a copy of the police report(s).

324.6.1 MEDIA CONFERENCES

Media conferences shall only be called by the City Manager, Assistant City Manager, Chief of Police or individuals serving in those capacities, see COB AR 1.14.

(a) The department's PIO will act as a liaison between the media and the department in arranging for, or coordinating media conferences.

324.7 MEDIA ACCESS

Members of the media shall be provided access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities subject to the following conditions (Penal Code § 409.5(d)):

(a) The media representative shall provide a press pass or identification and evidence.

1. Press pass: While the Berkeley Police Department does not issue press passes/ credentials, we will honor those issued by outside agencies.
2. Identification AND evidence: Identification in the form of a state ID, passport or school ID, AND evidence which shows they are active media. "Evidence" may include recently published articles or photographs bearing their name and the name of the news media outlet;

(b) Either the press pass or identification shall be prominently displayed at all times while in areas otherwise closed to the public.

(c) In the event of a planned/pre-publicized event or demonstration they wish to cover, media are encouraged to contact the Department's Public Information Office in advance for media specific information or details.

(d) Media representatives may be prevented from interfering with emergency operations and criminal investigations.

1. Reasonable effort should be made to provide a safe staging area for the media that is near the incident and that will not interfere with emergency or criminal investigation operations.
   - All information released to the media should be coordinated through the department Public Information Officer or other designated spokesperson.
   - Employees allowing the entry of an authorized media representative shall advise that person of any known danger existing within the restricted area.
   - Employees should not provide general escort services to media representatives into, through or out of dangerous areas.

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- Employees shall not refuse to rescue media personnel who are in danger, providing such assistance can be provided with reasonable effort and without unnecessary hazard to rescuers.

2. Employees shall not take action which would prohibit media aircraft from flying over disaster scenes. Whenever the presence of media or other aircraft pose a threat to public or officer safety or significantly hampers incident operations, the field supervisor should consider requesting a Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Watch Commander. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration should be contacted (14 CFR 91.137).

(e) Employees shall, upon request of a private property owner or agent thereof, prohibit media access to private property wherein a crime scene is located.

1. Regarding access to crime scenes located on private property, media representatives have no right of access greater than the general public and, therefore, are subject to any access restrictions established by the owner or person in charge of the property

(f) No member of this department who is under investigation shall be subjected to media visits or interviews without the consent of the involved employee (Government Code § 3303(e)).

(g) Media interviews with individuals who are in custody shall not be permitted without the express consent of the person in custody. Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being photographed or televised.

(h) Persons in-custody shall not be interviewed by the media unless the following conditions exist:

1. The prisoner requests or consents to an interview (in writing) after being informed of the right to refuse to grant an interview.

2. If the prisoner has legal counsel, the attorney affirms his/her their client's request or consent to a media interview, and authorizes said activity.

- Whenever practical, the attorney's affirmation and authorization should be obtained in writing.

- When represented by legal counsel, any request by the media to interview or photograph a person in-custody shall be referred to the prisoner's attorney.

(i) Unless unavoidable, department employees shall not appear in authorized and facilitated photographs or filming of prisoners.

A tactical operation should be handled in the same manner as a crime scene, except the news media shall be permitted within the outer perimeter of the scene, subject to any restrictions as determined by the supervisor in charge. Department members shall not jeopardize a tactical

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operation in order to accommodate the news media. All comments to the media shall be coordinated through the Watch Commander or the Public Information Officer.

324.7.1 PROVIDING ADVANCE INFORMATION

To protect the safety and rights of officers and other persons, advance information about planned actions by law enforcement personnel, such as movement of persons in custody or the execution of an arrest or search warrant, should not be disclosed to the news media, nor should media representatives be invited to be present at such actions except with the prior approval of the Chief of Police.

Any exceptions to the above should only be considered for the furtherance of legitimate law enforcement purposes. Prior to approving any exception the Chief of Police will consider, at minimum, whether the release of information or presence of the media would unreasonably endanger any individual, prejudice the rights of any person or is otherwise prohibited by law.

324.8 SCOPE OF INFORMATION SUBJECT TO RELEASE

The Department will maintain a daily information log (available though the City of Berkeley's Open Data Portal) of significant law enforcement activities that shall be made available, upon request, to media representatives through the Watch Commander. This log will generally contain the following information:

(a) The date, time, location, case number, type of crime, extent of injury or loss, and names of individuals (except confidential informants) involved in crimes occurring within this jurisdiction unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation

(b) The date, time, location, case number, name, birth date and charges for each person arrested by this department unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation

(c) The time and location of other significant law enforcement activities or requests for service with a brief summary of the incident subject to the restrictions of this policy and applicable law

(d) Employees representing this department shall refrain from offering any opinion as to an arrestee's guilt or innocence, the merits of a particular case, or the existence, nature or value of evidence unless expressly authorized by the Chief of Police to issue such official comment.

At no time shall identifying information pertaining to a juvenile arrestee (13 years of age and under), victim or witness be publicly released without prior approval of a competent court. The identity of a minor 14 years of age or older shall not be publicly disclosed unless the minor has been arrested for a serious felony and the release of such information has been approved by the Watch Commander (Welfare and Institutions Code § 827.5).

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Identifying information concerning deceased individuals shall not be released to the media until notification of next of kin or otherwise cleared through the Coroner's Office.

Any requests for copies of related reports or additional information not contained in this log shall be referred to the designated department media representative, the custodian of records, or if unavailable, to the Watch Commander. Such requests will generally be processed in accordance with the provisions of the Public Records Act (Government Code § 6250, et seq.).

324.9 MEDIA RELEASES

"Media Releases" or other official media-directed documents shall be disseminated by the PIO, Patrol Division Watch Commander, or the Office of the Chief of Police in accordance with department information release policy.

(a) A press release of high media and public interest should be forwarded by the PIO to the City Manager's Office, when feasible, for review prior to public dissemination.

(b) Publications intended for the media which require significant Department time and effort (e.g., in-depth articles, feature stories, etc.) should be prepared by the PIO.

Documents intended for distribution to media representatives may be left at the Front Counter of the Public Safety Building.

Employees are encouraged to collaborate with the PIO to develop media releases regarding outstanding service performed by members of this department, significant events, community participation, and proactive projects that enhance the quality of life in Berkeley.

324.10 COMMUNICATIONS CENTER RESPONSIBILITIES

When the Communications Center receives a media inquiry for routine matters including, but not limited to, traffic conditions in Berkeley, Communications Center personnel shall furnish the information requested.

Specific or general media requests for information on newsworthy cases, (e.g., rape, major burglaries or robberies, felony assaults/batteries, cases involving death, etc.) received by the Communication Center shall be referred to the PIO (normal business hours) or Watch Commander (non-business hours.)

324.11 RESTRICTED INFORMATION

It shall be the responsibility of the authorized employee dealing with media requests to ensure that restricted information is not inappropriately released to the media by this department. When in doubt, authorized and available legal counsel should be obtained.

324.12 INVOLVED PARTY'S REQUEST FOR "NO RELEASE"

"No Release" shall be requested sparingly, and only when it is necessary for the successful investigation or prosecution of a case or the security of principals, witnesses, or the premises

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involved, when disclosure of event information would subject the victim to serious embarrassment of mental distress, or when required by law (e.g., PC §293).

(a) Any officer requesting "No Release" shall include at the end of his/her report full justification for the request.

(b) In the event a request for "No Release" is, or appears to be, for purely personal reasons, the requesting person should be advised police cases are matters of public record and, as such, are subject to media review.

(a) In certain situations, the officer may include at the top of his/her report, "Request No Release."

324.13 CONDUCT OF MEDIA REPRESENTATIVES

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

(a) The CSB Lieutenant shall investigate the allegation and, if appropriate, forward the results and action recommendation to the Chief of Police via the chain of command.

(b) Any official action that may affect the involved media representative, including, but not limited to, communication of the complaint to the person's media organization, shall be taken only at the direction of the Chief of Police.

324.14 SUGGESTED CHANGES TO MEDIA RELATIONS POLICY

Any suggestion for significant change in department policy and/or procedure concerning media relations received from a media representative shall be forwarded in writing to the Chief of Police via the recipient employee's chain of command.

(a) The Chief of Police shall be responsible for evaluating the suggested change and, if appropriate, directing its implementation.

(b) The PIO shall be responsible for advising the involved media representative of any changes and/or actions taken by the Department in response to their suggestion.

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Subpoenas and Court Appearances

325.1 PURPOSE AND SCOPE

This policy establishes the guidelines for department members who must appear in court. It will allow the Berkeley Police Department to cover any related work absences and keep the Department informed about relevant legal matters.

325.2 POLICY

Berkeley Police Department members will respond appropriately to all subpoenas and any other court-ordered appearances.

325.3 SUBPOENAS

Only department members authorized to receive a subpoena on behalf of this department or any of its members may do so. This may be accomplished by personal service to the officer or by delivery of two copies of the subpoena to the officer's supervisor or other authorized departmental agent (Government Code § 68097.1; Penal Code § 1328(c)).

The party that issues a civil subpoena to an officer to testify as a witness must tender the statutory fee of $275 with the subpoena for each day that an appearance is required before service is accepted of the subpoena (Government Code § 68097.2).

An immediate supervisor or authorized individual may refuse to accept service for a criminal subpoena if (Penal Code § 1328(d)(e)):

(a) He/she knows that he/she will be unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena.

(b) It is less than five days prior to the date listed for an appearance and he/she is not reasonably certain that service can be completed.

If, after initially accepting service of a criminal subpoena, a supervisor or other authorized individual determines that he/she is unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena, the supervisor or the subpoena clerk shall notify the server or the attorney named on the subpoena of such not less than 48 hours prior to the date listed for the appearance (Penal Code § 1328(f)).

325.3.1 SPECIAL NOTIFICATION REQUIREMENTS

Any member who is subpoenaed to testify, agrees to testify or provides information on behalf of or at the request of any party other than the City Attorney or the prosecutor shall notify his/her immediate supervisor without delay regarding:

(a) Any civil case where the City or one of its members, as a result of his/her official capacity, is a party.

(b) Any civil case where any other city, county, state or federal unit of government or a member of any such unit of government, as a result of his/her official capacity, is a party.

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(c) Any criminal proceeding where the member is called to testify or provide information on behalf of the defense.

(d) Any civil action stemming from the member's on-duty activity or because of his/her association with the Berkeley Police Department.

(e) Any personnel or disciplinary matter when called to testify or to provide information by a government entity other than the Berkeley Police Department.

The supervisor will then notify the Chief of Police and the appropriate prosecuting attorney as may be indicated by the case. The Chief of Police should determine if additional legal support is necessary.

No member shall be retaliated against for testifying in any matter.

325.3.2 CIVIL SUBPOENA

The Department will compensate members who appear in their official capacities on civil matters arising out of their official duties, as directed by the current memorandum of understanding or collective bargaining agreement.

The Department should seek reimbursement for the member's compensation through the civil attorney of record who subpoenaed the member.

325.3.3 OFF-DUTY RELATED SUBPOENAS

Members receiving valid subpoenas for off-duty actions not related to their employment or appointment will not be compensated for their appearance. Arrangements for time off shall be coordinated through their immediate supervisors.

325.4 FAILURE TO APPEAR

Any member who fails to comply with the terms of any properly served subpoena or court-ordered appearance may be subject to discipline. This includes properly served orders to appear that were issued by a state administrative agency.

325.5 STANDBY

To facilitate standby agreements, members are required to provide current contact telephone numbers to the subpoenaing party.

If a member on standby changes his/her location during the day, the member shall notify the subpoenaing party of how he/she can be reached. Members are required to remain on standby until released by the court or the party that issued the subpoena.

325.6 COURTROOM PROTOCOL

When appearing in court, members shall:

(a) Be punctual and prepared to proceed immediately with the case for which they are scheduled to appear.

(b) Dress in the department uniform or business attire.

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(c) Observe all rules of the court in which they are appearing and remain alert to changes in the assigned courtroom where their matter is to be heard.

325.6.1 TESTIMONY

Before the date of testifying, the subpoenaed member shall obtain a copy of relevant reports and become familiar with the content in order to be prepared for court.

Employees shall avoid any indication of bias, prejudice or anger and shall testify in a clear, concise and professional manner. Questions shall be answered truthfully and without trace of evasion. Personal behavior shall be exemplary while waiting to testify and while testifying.

325.7 OVERTIME APPEARANCES

When a member appears in court on his/her off-duty time, he/she will be compensated in accordance with the current memorandum of understanding or collective bargaining agreement.

325.8 RESPONSIBILITIES

The Records Management Supervisor, or his/her designee, shall be responsible for maintaining effective administrative liaison among the Courts, the District Attorney's Office and the Department on matters concerning police personnel who have been subpoenaed for appearances in criminal, civil or traffic court.

325.9 MASTER COURT CALENDAR - CRIMINAL CASES

A Master Court Appearance Calendar will be maintained by the Records Management Supervisor, or his/her designee. The calendar will provide current information on the status of subpoenas and court dates. The calendar will contain information concerning the status of current court cases requiring officers' appearance (e.g., going, canceled or rescheduled).

(a) A telephone Court Appearance recording is available 7 days a week, 24 hours per day. The Telephone Court Appearance recording may be accessed by dialing 981-7991.

325.10 CRIMINAL SUBPOENA RECEPTION AND SERVICE PROCEDURES

The Records Management Supervisor, or his/her designee, will receive and acknowledge receipt of all subpoenas for police personnel, either on the part of the people or of the defendant. Individual subpoenas will then be processed as follows:

(a) Subpoenas will be forwarded to the immediate supervisor of the subpoenaed employee.

(b) Supervisors will personally "serve" the employee and acknowledge service by signing the original subpoena.

(c) The subpoenaed employee will sign the subpoena, indicating receipt of the subpoena.

(d) Supervisors will return the original subpoena to the Record Management’s “Served Subpoenas” tray and give a copy of the subpoena to the employee.

(e) If service of the subpoena is not possible, the reason for "no service" will be noted on the subpoena. The supervisor shall also fill out a "Subpoena Continuation

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Request" form on behalf of the subpoenaed employee and attach it to the subpoena. Both subpoena and form shall be returned to the Record Management's "Served Subpoenas" tray.

(f) The Records Management Supervisor, or his/her designee, will return all subpoenas, served or unserved, to the issuing party.

325.11 EMPLOYEE RESPONSIBILITY

Upon receipt of a subpoena, the subpoenaed employee shall carefully review the case report to determine the need for his/her testimony. If the employee feels that he/she has been improperly subpoenaed, or that his/her testimony would be of little or no value, the officer should contact the subpoenaing party to discuss the matter.

If the subpoenaed employee will be unavailable to appear in court due to pre-approved leave of absence (i.e., vacation, training courses, parental leave), the "Subpoena Continuation Request" form shall be completed, attached to the subpoena and returned upon receipt. The form must be approved by the supervisor of the subpoenaed employee and then forwarded to the Records Management Supervisor, or his/her designee. The Records Management Supervisor, or his/her designee, shall forward the paperwork to the subpoenaing party and file a copy in the "Subpoena Master File".

Subpoenas are usually received by Records Management. Whenever an employee receives a subpoena directly from the District Attorney's Office or from any other source, including a personal notification to appear, the employee shall inform Records Management as soon as possible.

(a) Employees should comply with any subpoena that directs them to contact the District Attorney's Office. However, if any change is made regarding the date/time of appearance, cancellation or telephone stand-by status, the employee shall inform Records Management as soon as possible.

(b) Notification of Records Management in these situations is required so that the Records Management Supervisor, or his/her designee, can administer the subpoena process as outlined in this policy.

Officers who appear for court, on an off duty day, whether they testify or not, should have their subpoenas signed and dated by the issuing party, or his/her designee.

If the case is prolonged, and the officer is needed for more than one day, the officer should obtain a new subpoena from the subpoenaing party for each additional day of testimony.

325.12 CONFIRMATION OF CRIMINAL COURT APPEARANCE

The Records Management Supervisor, or his/her designee, shall confer with the assigned Deputy District Attorney during the afternoon hours of the business day prior to a scheduled court hearing to determine if:

(a) The case will proceed as scheduled;

(b) The subpoenaed employee's testimony will actually be needed for that court session;

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(c) If additional witnesses, information or evidence are needed.

In the event of a late cancellation or other change in an employee's scheduled court appearance, the Records Management Supervisor, or his/her designee, will arrange for the notification of the employee.

325.13 TRAFFIC SUBPOENAS RECEPTION AND SERVICE PROCEDURES

The Records Management Supervisor, or his/her designee, will record and acknowledge receipt of all traffic subpoenas. Traffic subpoenas include those requesting an actual appearance in court, Informal Discovery Request, and those requesting "Trial by Declaration".

(a) Traffic subpoenas will be forwarded and served upon the subpoenaed employee in the same manner as a criminal subpoena.

(b) The employee's supervisor shall take steps to ensure all traffic subpoenas, requests for "Trial by Declaration", “Informal Discovery Request” and requested documents are returned, to the Records Management Supervisor, or his/her designee, by the date specified. There is no specified date on an Informal Discovery Request. Informal Discovery Requests shall be returned within 10 days of the request.

1. If the supervisor determines that special circumstances justify a longer response time or is unable to serve the subpoena by the date specified, he/she shall fill out a Subpoena Continuation Request, on behalf of the subpoenaed employee, and route it to the Records Management Supervisor, or his/her designee.

2. If the subpoenaed employee will be unavailable to appear in court due to a pre-approved leave of absence (i.e., vacation, training courses, parental leave), the "Subpoena Continuation Request" form shall be completed and attached to the subpoena and returned upon receipt. The form must be approved by the supervisor of the subpoenaed employee and then forwarded to Records Management. Supervisor, or his/her designee.

If an officer becomes aware they cannot make a scheduled court appearance on the day of appearance, regardless of the reason, he/she must notify a supervisor and the issuing party.

325.14 TRAFFIC CITATION DISMISSALS

Only the Court can dismiss an issued citation. Employees who receive a traffic subpoena but determine there is a need to dismiss the original traffic citation because they are not able to recall sufficient information regarding the incident in order to testify in traffic court, or for any other reason, shall complete the following procedure:

(a) Complete a “Notice of Correction and Proof of Service” form

(b) Check the “Other” box for correction reason and write in, “Request the Court to consider dismissing in the interest of justice” or “Request the Court dismiss due to lack of officer recall” or any other reason

(c) Complete the dissemination process on the Notice of Correction and Proof of Service form:

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1. Copy to the Court, placed in team review tray;
2. Copy to cited party, mailed; and
3. Copy for officer

(d) Attach a photocopy of the form to the subpoena

(e) Sign the subpoena to acknowledge receipt

(f) Place the documents in the served subpoena tray, or return them to the supervisor.

325.15 SUBPOENAING OF RESIDENTS IN CRIMINAL CASES

Subpoenas for Berkeley residents from either the District Attorney' Office or an outside law enforcement agency, will be sent to Records Management for processing.

(a) The Records Management Supervisor, or his/her designee, shall stamp the subpoena, obtain a case number from Dispatch, and forward the subpoena to a Team 1 Sergeant (Mon-Thurs) or Team 5 Sergeant (Fri-Sun) for service.

(b) Upon completing service, the Proof of Service form shall be returned to Records Management's "Served Subpoenas" tray and the Records Management Supervisor, or his/her designee, will ensure the form is returned to the Court.

325.16 SUBPOENA DUCES TECUM

A subpoena duces tecum requires the production of records. Records must be produced by the production date. A subpoena duces tecum must be served 15 days before the production date.

A copy of the supporting affidavit must be attached to the subpoena duces tecum when the production of documents is requested.

An employee served with a subpoena duces tecum shall notify the Records Management Supervisor and give the subpoena to the Subpoena Clerk without delay. The latter shall ensure the necessary documents or objects are made available for the Court by the due date.

325.17 FOR CIVIL ACTIONS - OFFICER PRESENCE REQUIRED

The process for receiving a civil subpoena is the same as the process for a criminal subpoena.

Any officer served with a subpoena requiring appearance as a witness in any court or for the taking of a deposition in any civil action in connection with on-duty employment shall promptly deliver that subpoena to the Records Management Supervisor for processing. The supervisor will complete Part A of BPD Form J (Reimbursement for Appearance on Civil Subpoena) and make a copy for the master file in triplicate. The original will be given to the officer, the duplicate attached to the master file, and the triplicate forwarded to the Public Safety Business Office. On those occasions when the civil subpoena is delivered directly to the Subpoena Clerk he/she will prepare a BPD Form J without delay and route as prescribed above.

Following the officer's appearance in response to the civil subpoena, he/she shall complete Form J, attach it to their subpoena and forward the documents to the timekeeper.

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The Records Management Supervisor, or his/her designee, shall be responsible for maintaining adequate records of all required appearances of on-duty officers before a court or for the taking of a deposition in connection with any civil action or proceeding.

325.18 COMPENSATION FOR CIVIL ACTIONS - RECORDS PRODUCTION ONLY

When a civil subpoena duces tecum only requires production of the documents, the initial cost shall be $15, additional costs may be accumulated.A fee of 10 cents per page for copying records and 20 cents per page for copying of documents from microfilm shall be charged.

325.19 CIVIL CASES INVOLVING THE CITY

Any employee subpoenaed to testify in a civil case involving the City of Berkeley shall confer with the City Attorney in advance of testifying.

325.20 CIVIL CASES NOT INVOLVING THE CITY

Government Code § 68097.1 provides for the service of civil subpoenas and summons not associated with the City but involving department personnel. The following procedures will be followed regarding the acceptance and delivery of those subpoenas involving department personnel:

(a) Records Management staff or other personnel who are contacted by individuals attempting to serve such subpoena shall first contact the employee's immediate supervisor. The immediate supervisor shall ensure the subpoena/summons is personally served upon the named employee.

1. If unable to contact the immediate supervisor, personnel shall then contact another supervisor affiliated with the employee's Division.
2. In the event the above individuals are not available, such requests are to be directed to the Support Services Division Captain during regular business hours or, in his/her absence, the on duty Watch Commander or senior sergeant.

(b) The individual accepting the subpoena shall forward the summons via the chain of command for the named employee.

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Reserve Officers

326.1 PURPOSE AND SCOPE

The Berkeley Police Department Reserve Program was established to supplement and assist regular sworn police officers in their duties. This unit provides professional, sworn reserve officers who can augment regular staffing levels.

326.2 DEFINITIONS

Reserve Coordinator: The Community Services Bureau Sergeant will be designated as the Reserve Coordinator and will be in charge of administering the Reserve Program.

Police Reserve Officer: A duly appointed and sworn member of the Berkeley Police Department in accordance with applicable Penal and Administrative Codes of the State and policies of the City and the Department dealing with Police Reserve Officers.

Level I Police Reserve Officer: A Level I Police Reserve Officer is a trained and capable officer, as described in applicable sections of the California Penal Code and requirements set by the Committee of Peace Officer Standards and Training (POST) for recognition as a Level I Police Reserve Officer. A Level I officer is authorized to perform police functions while working alone, including general law enforcement patrol.

Level II Police Reserve Officer: A Level II Police Reserve Officer is a trained and capable officer, as described in applicable sections of the California Penal Code and requirements set by POST. A Level II officer may function as a Peace Officer under the supervision of an officer possessing a POST Basic Certificate. A Level II officer may work alone on specifically authorized assignments, which are not general law enforcement.

Level III Police Reserve Officer: Although authorized by POST, the Berkeley Police Department will not employ Level III Reserve Officers.

Support Activity: Support activity consists of the full range of duties within the Police Department to which a reserve officer may be assigned, including training.

326.3 SELECTION AND APPOINTMENT OF POLICE RESERVE OFFICERS

The Berkeley Police Department shall endeavor to recruit and appoint to the Reserve Program only those applicants who meet the high ethical, moral and professional standards set forth by this department.

326.3.1 PROCEDURE

All applicants shall be required to meet and pass the same pre-employment procedures as regular police officers before appointment.

Before appointment to the Reserve Program, an applicant must complete POST Peace Officer Orientation Modules I, II, or III or a POST approved basic academy.

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326.3.2 APPOINTMENT
Applicants who are selected for appointment to the Reserve Program shall, on the recommendation of the Chief of Police, be sworn in by the Chief of Police and take a loyalty oath to observe and obey all of the laws of the land and to carry out their duties to the best of their ability.

326.3.3 EMPLOYEES WORKING AS RESERVE OFFICERS
Qualified employees of this department, when authorized, may also serve as reserve officers. However, the Department must not utilize the services of a reserve or volunteer in such a way that it would violate employment laws or labor agreements (e.g., a detention officer working as a reserve officer for reduced or no pay). Therefore, the Reserve Coordinator should consult the Personnel and Training Bureau prior to an employee serving in a reserve or volunteer capacity (29 CFR 553.30).

326.4 RESERVE COORDINATOR
The Chief of Police shall delegate the responsibility for administering the Reserve Officer Program to the Community Services Bureau Sergeant.

The CSB Sergeant, serving as the Reserve Coordinator, shall have the responsibility of, but not be limited to:

(a) Assignment of reserve personnel

(b) Conducting reserve meetings

(c) Establishing and maintaining a reserve call-out roster

(d) Maintaining and ensuring performance evaluations are completed

(e) Monitoring individual reserve officer performance

(f) Monitoring the overall Reserve Program

(g) Maintaining liaison with other agency Reserve Coordinators

326.4.1 SUPERVISION OF RESERVE OFFICERS
Reserve officers who have attained the status of Level II shall be under the immediate supervision of a regular sworn officer (Penal Code 832.6). The immediate supervision requirement shall also continue for reserve officers who have attained Level I status unless special authorization is received from the Reserve Coordinator with the approval of the Division Captain.

326.4.2 SPECIAL AUTHORIZATION REQUIREMENTS
Reserve officers certified as Level I may, with prior authorization of the Reserve Coordinator and on approval of the Division Captain, be relieved of the "immediate supervision" requirement. Level I reserve officers may function under the authority of Penal Code § 832.6(a)(1) only for the duration of the assignment or purpose for which the authorization was granted.

In the absence of the Reserve Coordinator and the Division Captain, the Watch Commander may assign a certified Level I reserve officer to function under the authority of Penal Code § 832.6(a)(1) for specific purposes and duration.

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326.5 IDENTIFICATION OF RESERVE OFFICERS

All reserve officers will be issued a uniform badge and a Department identification card. The uniform badge shall be the same as that worn by a regular full-time officer but shall have three digits beginning with a 6 or a 7. The identification card will be the standard identification card with the exception that "Reserve" will be indicated on the card.

326.6 UNIFORM

Reserve officers shall conform to all uniform regulation and appearance standards of this department. Reserve officers are not required to have a Class A jacket. All reserve officer appointees are issued two sets of uniforms and all designated attire and safety equipment. All property issued to the reserve officer shall be returned to the Department upon termination or resignation.

326.7 FIELD TRAINING

Within one year of appointment, Level I or II reserve officers must successfully complete the Departmental Field Training Program.

(a) All reserve officers shall participate in mandated training such as firearms training and monthly reserve officer training.

1. Failure to participate in mandated training may result in termination, suspension or restricted status.

326.8 RESERVE OFFICER EVALUATIONS

While in field training, reserve officers will be continuously evaluated using standardized daily and weekly observation reports. The reserve will be considered a trainee until all of the training phases have been completed. Reserves having completed their field training will be evaluated annually using performance dimensions applicable to the duties and authorities granted to that reserve.

326.9 DUTIES OF RESERVE OFFICERS

Reserve officers assist regular officers in the enforcement of laws and in maintaining peace and order within the community. Assignments of reserve officers will usually be to augment the Operations Division. Reserve officers may be assigned to other areas within the Department as needed. Reserve officers are required to work a minimum of 16 hours per month.

326.9.1 POLICY COMPLIANCE

Reserve officers shall be required to adhere to all departmental policies and procedures. A copy of the policies and procedures will be made available to each reserve officer upon appointment and he/she shall become thoroughly familiar with these policies.

Whenever a rule, regulation, or guideline in this manual refers to a sworn regular full-time officer, it shall also apply to a sworn reserve officer unless by its nature it is inapplicable.

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326.9.2 SIGN-IN / OUT PROCEDURES

At the beginning of each tour of duty, reserve officers shall sign in on the Reserve Support Activity Log, indicating the nature of activity, and sign out at the conclusion of the tour.

(a) Reserve officers shall report to the supervisor of the activity that they are assigned to work, prior to working. Reserve officers working patrol shall determine which patrol team they are working with and report to the patrol supervisor of that team, as well as to the communications center, prior to working. If a reserve officer works beyond that patrol team's hours and onto another team, then the reserve officer shall report to the subsequent patrol sergeant as well. Conversely, they shall report to the supervisor of that activity at the conclusion of the activity/tour.

326.9.3 RESERVE OFFICER ASSIGNMENTS

Reserve officers will be assigned to duties by the Reserve Coordinator or his/her designee. A reserve officer may be assigned to the any of the following:

(a) Traffic enforcement including citations and tows

(b) Parking enforcement including citations and tows

(c) Vehicle collision reports

(d) Lost/found property reports

(e) Animal bite reports where the follow-up is reassigned to Animal Services

(f) Non-Criminal Incident reports

(g) Miscellaneous Service Complaints

(h) Supplemental reports based on incidents, witnesses, and neighborhood checks, etc.

(i) Hit and run misdemeanor cases with no viable leads (at the reserve officer's discretion, see the Traffic Collision Reporting Policy)

(j) Auto burglary, theft from auto, or malicious damage to vehicles with no viable leads (only if the victim is unable to complete an online report)

(k) Booking and/or transportation details (i.e. booking detainees into the BPD Jail or transporting detainees to Santa Rita Jail or Juvenile Hall)

(l) Custodial details (i.e. monitoring a detainee who is being medically treated at Highland, or an in-custody juvenile

(m) Traffic control details

(n) Special operation details (e.g., first amendment activities, the Kite Festival, Solano Stroll, etc.)

(o) Any other detail the Reserve Coordinator, or his/her designee, determines appropriate

326.9.4 PROHIBITED REPORTS

Unless sworn supervisory approval is obtained, or a standing agreement exists between a Reserve and the Reserve Coordinator, Reserve Officers, due to assigned/handling officer follow-up responsibilities, shall not be assigned to the following types of offenses:

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(a) Auto burglary, theft from auto cases, and malicious damage to vehicle with leads

(b) All misdemeanor assault/battery cases

(c) Felony hit and run cases and misdemeanor hit and run cases with leads

(d) Adult missing person cases

(e) Juvenile missing person cases

(f) Felony offenses

326.9.5 ARRESTS

Absent exigent circumstances, all arrests made by a reserve officer shall be approved by a patrol sergeant prior to leaving the scene of the arrest, and in all cases prior to booking.

326.10 INVESTIGATIONS AND COMPLAINTS

If a reserve officer has a complaint made against him/her or becomes involved in an internal investigation, that complaint or internal investigation may be investigated by the Reserve Coordinator, at the discretion of the Operations Division Captain.

Reserve officers are considered at-will employees. Government Code § 3300 et seq. applies to reserve officers with the exception that the right to hearing is limited to the opportunity to clear their name.

Any disciplinary action that may have to be administered to a reserve officer shall be accomplished as outlined in the Policy Manual.

326.11 INACTIVITY

Any Level I or II reserve officer who is inactive for a protracted period of time shall go through a field training update similar to that used upon the return of a regular officer to the Department after being reinstated to the Department.

326.12 FIREARMS REQUIREMENTS

Penal Code § 830.6(a)(1) designates a reserve officer as having peace officer powers during his/her assigned tour of duty, provided the reserve officer qualifies or falls within the provisions of Penal Code § 832.6.

326.12.1 CARRYING WEAPON ON DUTY

Penal Code § 830.6(a)(1) permits qualified reserve officers to carry a loaded firearm while on-duty.

326.12.2 CONCEALED FIREARMS

Berkeley Police Reserve Officers shall be allowed to carry a firearm when off duty as a Level I or II reserve officer and will be issued a CCW endorsement on their Departmental ID cards.

326.12.3 RESERVE OFFICER FIREARM TRAINING

All reserve officers are required to maintain proficiency with firearms used in the course of their assignments. Reserve officers shall qualify semi-annually with their on-duty firearm and annually

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with any off-duty or auxiliary firearms (see the Firearms policy for further information regarding qualifications).

326.13 EMERGENCY CALL-OUT FOR RESERVE PERSONNEL

One of the primary reasons for having a Reserve Program is to have a additional trained personnel that can respond in the event of an emergency such as a large fire, earthquake, riot or other such natural or civil emergency. For this reason, it is assumed that, within reason, reserve officers will respond in the event of an emergency.

The Reserve Coordinator shall develop a plan outlining an emergency call-out procedure for reserve officers.

326.13.1 TEMPORARY LEAVE

Any reserve officer who will be unavailable for emergency response shall notify the Reserve Coordinator in a timely manner regarding his/her unavailability.

(a) Normal and acceptable reasons would be for business trips, vacations or illness.

(b) Should exceptional circumstances occur, such as extended illness, military service, temporary change in business assignment, etc., a reserve officer may be considered unavailable for a protracted period of time only with the approval of the Reserve Coordinator.

326.14 RETIREMENT FROM THE BERKELEY POLICE RESERVE PROGRAM

Retirement is an honorary status that does not include any pension, benefits or privileges usually associated with peace officer retirements. Retired Berkeley Police Reserve Officers are authorized to carry concealed weapons based on their honorary retirement status (see Retiree Concealed Firearms Policy). Reserve officers will be eligible for retirement upon meeting any of the requirements listed below:

(a) They reach age 50 and have ten (10) years of continuous service.

(b) They have twenty (20) years of service at any age.

(c) In the event of medical disability, a reserve officer may retire at any age with ten (10) years of continuous service. If the disability occurs while working as a reserve officer, there will be no time requirement.

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Registered Offender Information

328.1 PURPOSE AND SCOPE

This policy establishes guidelines by which the Berkeley Police Department will address issues associated with certain offenders who are residing in the jurisdiction and how the Department will disseminate information and respond to public inquiries for information about registered sex, arson and drug offenders.

328.2 POLICY

It is the policy of the Berkeley Police Department to identify and monitor registered offenders living within this jurisdiction and to take reasonable steps to address the risks those persons may pose.

328.3 REGISTRATION

The Detective Bureau Lieutenant, in conjunction with the Jail Sergeant, shall establish a process to reasonably accommodate registration of certain offenders. The process should rebut any allegation on the part of the offender that the registration process was too confusing, burdensome, or difficult for compliance. If it is reasonable to do so, an investigator assigned to related investigations should conduct the registration in order to best evaluate any threat the person may pose to the community. Those assigned to register offenders should receive appropriate training regarding the registration process.

Upon conclusion of the registration process, the investigator shall ensure that the registration information is provided to the California Department of Justice (DOJ) in accordance with applicable law (Penal Code § 457.1; Penal Code § 290 et seq.).

The refusal of a registrant to provide any of the required information or complete the process should initiate a criminal investigation for failure to register.

328.3.1 CONTENTS OF REGISTRATION

The information collected from the registering offenders shall include a signed statement as required by the California DOJ, fingerprints and a photograph, and any other information required by applicable law (Penal Code § 457.1; Penal Code § 290 et seq.).

328.4 MONITORING OF REGISTERED OFFENDERS

The Detective Bureau Lieuteant should strive to establish a system to periodically, and at least once annually, verify that a registrant remains in compliance with his/her registration requirements after the initial registration. This verification should include:

(a) Efforts to confirm residence, such as an internet search, drive-by of the declared residence, or knock-and-talk contact.

(b) Review of information on the California DOJ website for sex offenders.

(c) Contact with a registrant's parole or probation officer.

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Any discrepancies should be reported to the California DOJ as appropriate, and may result in criminal prosecution.

The Detective Bureau Lieutenant should also establish a procedure to routinely disseminate information regarding registered offenders to Berkeley Police Department personnel, including timely updates regarding new or relocated registrants.

328.5 DISSEMINATION OF PUBLIC INFORMATION

Members will not unilaterally make a public notification advising the community of a particular registrant's presence in the community. Members who identify a significant risk or other public safety issue associated with a registrant should promptly advise their supervisor. The supervisor should evaluate the request and forward the information to the Chief of Police if warranted. A determination will be made by the Chief of Police, with the assistance of legal counsel as necessary, whether such a public alert should be made.

Members of the public requesting information on sex registrants should be provided the Megan's Law website or the Berkeley Police Department's website. Information on sex registrants placed on the Berkeley Police Department's website shall comply with the requirements of Penal Code § 290.46.

The Support Services Division Captain may release local registered offender information to residents only in accordance with applicable law (Penal Code § 290.45; Penal Code § 290.46; Penal Code § 457.1), and in compliance with a California Public Records Act (Government Code § 6250-6276.48) request.

328.5.1 LIMITED RELEASE WITHIN COLLEGE CAMPUS COMMUNITY

California law allows the following additional information regarding a registered sex offender on campus, whose information is not available to the public via the internet website, to be released to a campus community (Penal Code § 290.01(d)):

(a) The offender's full name

(b) The offender's known aliases

(c) The offender's sex

(d) The offender's race

(e) The offender's physical description

(f) The offender's photograph

(g) The offender's date of birth

(h) Crimes resulting in the registration of the offender under Penal Code § 290

(i) The date of last registration

For purposes of this section, campus community shall be defined as those persons present at or regularly frequenting any place constituting campus property, satellite facilities, laboratories, public areas contiguous to the campus and other areas set forth in Penal Code § 290.01(d).

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328.5.2 RELEASE NOTIFICATIONS

Registrant information that is released should include notification that:

(a) The offender registry includes only those persons who have been required by law to register and who are in compliance with the offender registration laws.

(b) The information is provided as a public service and may not be current or accurate.

(c) Persons should not rely solely on the offender registry as a safeguard against offenses in their communities.

(d) The crime for which a person is convicted may not accurately reflect the level of risk.

(e) Anyone who uses information contained in the registry to harass registrants or commit any crime may be subject to criminal prosecution.

(f) The purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders (Penal Code 290.45).

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Major Incident Notification

329.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members of this department in determining when, how and to whom notification of major incidents should be made.

329.2 POLICY

The Berkeley Police Department recognizes that certain incidents should be brought to the attention of supervisors or other specified personnel of this department to facilitate the coordination of activities and ensure that inquiries from the media and the public may be properly addressed.

329.3 MINIMUM CRITERIA FOR NOTIFICATION

Most situations where the media show a strong interest are also of interest to the Chief of Police and the affected Division Captain. The following list of incident types is provided as a guide for notification and is not intended to be all inclusive:

- Homicides
- Traffic accidents with fatalities
- Officer-involved shooting - on or off duty (see Officer-Involved Shootings and Deaths Policy for special notifications)
- Significant injury or death to employee - on or off duty
- Death of a prominent Berkeley official
- Arrest or investigation of a city employee or prominent Berkeley official
- Aircraft crash with major damage and/or injury or death
- In-custody deaths

329.4 WATCH COMMANDER RESPONSIBILITY

The Watch Commander is responsible for making the appropriate notifications. The Watch Commander shall make reasonable attempts to obtain as much information on the incident as possible before notification. The Watch Commander shall attempt to make the notifications as soon as practicable. Notification should be made by calling the home telephone number first and then by any other available contact numbers.

329.4.1 STAFF NOTIFICATION

In the event an incident occurs described in the Major Incident Notification Policy, the Chief of Police shall be notified along with the affected Division Captain and the Detective Lieutenant if that division is affected.

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329.4.2 DETECTIVE NOTIFICATION

If the incident requires that a detective respond from home, the immediate supervisor of the appropriate detail shall be contacted who will then contact the appropriate detective.

329.4.3 TRAFFIC BUREAU NOTIFICATION

In the event of a traffic fatality or major injury, the Traffic Sergeant shall be notified who will then contact the appropriate accident investigator. The Traffic Sergeant will notify the Traffic Lieutenant.

329.4.4 PUBLIC INFORMATION OFFICER (PIO)

The Public Information Officer shall be called after members of staff have been notified that it appears the media may have a significant interest in the incident.

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Death Investigation

330.1 PURPOSE AND SCOPE

The investigations of cases involving death include those ranging from natural cause to homicide. Some causes of death may not be readily apparent and some cases differ substantially from what they appeared to be initially. The thoroughness of death investigations cannot be emphasized enough.

330.2 DEATH FROM NATURAL CAUSES

If a death results from natural causes and a licensed physician will sign the death certificate, contact the Coroner's Office. Advise the Coroner's Office of the circumstances and follow their directions.

330.3 SUSPICIOUS DEATH

If death results from suicide, a non-criminal cause or natural cause when no licensed physician is qualified to sign the death certificate, the assigned officer shall:

(a) Investigate the circumstances surrounding the death.

(b) Consult with a sergeant at the scene.

(c) Notify the Coroner.

(d) Witness the search of the body by the Deputy Coroner and obtain a receipt for the body and personal effects.

330.4 INVESTIGATION CONSIDERATIONS

Death investigation cases require certain actions be taken. Paramedics shall be called in all suspected death cases unless the death is obvious (e.g., decapitated, decomposed). A supervisor shall be notified in all death investigations.

330.4.1 CORONER REQUEST

Government Code § 27491 and Health & Safety Code § 102850 direct the Coroner to inquire into and determine the circumstances, manner and cause of certain deaths. The Coroner shall be called in any of the following cases:

(a) Unattended deaths (No physician in attendance or during the continued absence of the attending physician. Also, includes all deaths outside hospitals and nursing care facilities).

(b) Deaths where the deceased has not been attended by either a physician or a registered nurse, who is a member of a hospice care interdisciplinary team, as defined by Health and Safety Code § 1746 in the 20 days prior to death.

(c) Physician unable to state the cause of death. Unwillingness does not apply. Includes all sudden, unexpected and unusual deaths and fetal deaths when the underlying cause is unknown.

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(d) Known or suspected homicide.

(e) Known or suspected suicide.

(f) Involving any criminal action or suspicion of a criminal act. Includes child and dependent adult negligence and abuse.

(g) Related to or following known or suspected self-induced or criminal abortion.

(h) Associated with a known or alleged rape or crime against nature.

(i) Following an accident or injury (primary or contributory). Deaths known or suspected as resulting (in whole or in part) from or related to accident or injury, either old or recent.

(j) Drowning, fire, hanging, gunshot, stabbing, cutting, starvation, exposure, alcoholism, drug addiction, strangulation or aspiration.

(k) Accidental poisoning (food, chemical, drug, therapeutic agents).

(l) Occupational diseases or occupational hazards.

(m) Known or suspected contagious disease and constituting a public hazard.

(n) All deaths in operating rooms and all deaths where a patient has not fully recovered from an anesthetic, whether in surgery, recovery room or elsewhere.

(o) In prison or while under sentence. Includes all in-custody and police involved deaths.

(p) All deaths of unidentified persons.

(q) All deaths of state hospital patients.

(r) Suspected Sudden Infant Death Syndrome (SIDS) deaths or Sudden Unexplained Infant Death.

(s) All deaths where the patient is comatose throughout the period of the physician's attendance. Includes patients admitted to hospitals unresponsive and expire without regaining consciousness.

The body shall not be disturbed or moved from the position or place of death without permission of the coroner.

330.4.2 SEARCHING DEAD BODIES

The Coroner or Deputy Coroner is generally the only person permitted to search a body known to be dead from any of the circumstances set forth in Government Code § 27491. The only exception is that an officer is permitted to search the body of a person killed in a traffic collision for the limited purpose of locating an anatomical donor card (Government Code § 27491.3). If such a donor card is located, the Coroner or a designee shall be promptly notified. Should exigent circumstances indicate to an officer that any search of a known dead body is warranted prior to the arrival of the Coroner or a designee; the investigating officer shall first obtain verbal consent from the Coroner or a designee (Government Code § 27491.2).

Whenever possible, a witness, preferably a relative to the deceased or a member of the household, should be requested to remain at the scene with the officer pending the arrival of the Coroner or a designee. The name and address of this person shall be included in the narrative of the death

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report. Whenever personal effects are removed from the body of the deceased by the Coroner or a designee, a receipt shall be obtained. This receipt shall be attached to the death report.

330.4.3 DEATH NOTIFICATION

The Coroner is responsible for notifying relatives or friends of the deceased, but department members shall assist as requested. When practical, and if not handled by the Coroner's Office, notification to the next-of-kin of the deceased person should be made, in person, by the supervisor assigned to the incident.

If the next-of-kin lives in another jurisdiction, a law enforcement official from that jurisdiction shall be requested to make the personal notification. If the relatives live outside this county, the Coroner may be requested to make the notification. The Coroner and any assigned detectives shall be advised if the next-of-kin notification has been made. Any notifications made, or requests for notifications, shall be documented in the associated report.

330.4.4 UNIDENTIFIED DEAD BODIES

If the identity of a dead body cannot be established after the Coroner arrives, the Coroner's office will issue a "John Doe" or "Jane Doe" number for the report.

330.4.5 DEATH INVESTIGATION REPORTING

All incidents involving a death shall be documented on the appropriate form.

330.4.6 SUSPECTED HOMICIDE

If the initially assigned officer suspects that the death involves a homicide or other suspicious circumstances, the Homicide Sergeant or designee shall be notified to determine the possible need for detectives to respond to the scene for further immediate investigation.

Pending arrival of the Homicide Detail, the assigned officer shall investigate the circumstances surrounding the death, including but not limited to obtaining statements, securing the scene, gathering evidence and making arrests.

330.4.7 EMPLOYMENT RELATED DEATHS OR INJURIES

Any member of this agency who responds to and determines that a death, serious illness, or serious injury has occurred as a result of an accident at or in connection with the victim's employment shall ensure that the nearest office of Cal-OSHA is notified by telephone immediately or as soon as practicable with all pertinent information (8 CCR 342(b)).

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Identity Theft

331.1 PURPOSE AND SCOPE

Identity theft is a growing trend that frequently involves related crimes in multiple jurisdictions. This policy is intended to provide guidelines for the reporting and investigation of such crimes.

331.2 REPORTING

In an effort to maintain uniformity in reporting, officers presented with the crime of identity theft (Penal Code § 530.6) shall initiate a report for victims residing within the jurisdiction of this department when the crime occurred. For incidents of identity theft occurring outside this jurisdiction, officers should observe the following:

(a) For any victim not residing within this jurisdiction, the officer may either take a courtesy report to be forwarded to the victim's residence agency or the victim should be encouraged to promptly report the identity theft to the law enforcement agency where he or she resides.

331.3 RELATED CRIMES

While the crime of identity theft should be reported to the law enforcement agency where the victim resides, officers of this department should investigate and report crimes occurring within this jurisdiction which have resulted from the original identity theft (e.g., the identity theft occurred elsewhere, but the credit card fraud occurred and is reported in this jurisdiction).

Officers should include all known incidents of fraudulent activity (e.g., credit card number applied for in victim's name when the victim has never made such an application).

331.4 ADDITIONAL REPORTS

Officers should also cross-reference all known reports made by the victim (e.g., U.S. Secret Service, credit reporting bureaus, U.S. Postal Service and DMV) with all known report numbers.

331.5 RESOURCES

The reporting officer should inform victims of identity theft that the California Identity Theft Registry is available to help those who are wrongly linked to crimes. The registry can be checked by law enforcement and other authorized persons to investigate whether a criminal history or want was created in the victim's name (Penal Code § 530.7). Information regarding the California Identity Theft Registry can be obtained by calling toll free (888) 880-0240.

331.6 FOLLOW UP

Following supervisory review and departmental processing, the initial report should be forwarded to the appropriate detective for follow up investigation, coordination with other agencies and prosecution as circumstances dictate.

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Communications with Persons with Disabilities

332.1 PURPOSE AND SCOPE

This policy provides guidance to members when communicating with individuals with disabilities, including those who are deaf or hard of hearing, have impaired speech or vision, or are blind.

332.1.1 DEFINITIONS

Definitions related to this policy include:

Auxiliary aids - Tools used to communicate with people who have a disability or impairment. They include, but are not limited to, the use of gestures or visual aids to supplement oral communication; a notepad and pen or pencil to exchange written notes; a computer or typewriter; an assistive listening system or device to amplify sound; a teletypewriter (TTY) or videophones (video relay service or VRS); taped text; qualified readers; or a qualified interpreter.

Disability or impairment - A physical or mental impairment that substantially limits a major life activity, including hearing or seeing, regardless of whether the disabled person uses assistive or adaptive devices or auxiliary aids. Individuals who wear ordinary eyeglasses or contact lenses are not considered to have a disability (42 USC § 12102).

Qualified interpreter - A person who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include oral interpreters, translators, sign language interpreters and intermediary interpreters.

332.2 POLICY

It is the policy of the Berkeley Police Department to reasonably ensure that people with disabilities, including victims, witnesses, suspects and arrestees have equal access to law enforcement services, programs and activities. Members must make efforts to communicate effectively with individuals with disabilities.

The Department will not discriminate against or deny any individual access to services, rights or programs based upon disabilities.

332.3 AMERICANS WITH DISABILITIES (ADA) COORDINATOR

The Chief of Police shall delegate certain responsibilities to the Audit and Inspection Sergeant, who shall act as the ADA Coordinator (28 CFR 35.107). The ADA Coordinator shall be directly responsible to the Professional Standards Division Captain or his/her designee.

The responsibilities of the ADA Coordinator shall include, but not be limited to:

(a) Working with the City ADA coordinator regarding the Berkeley Police Department's efforts to ensure equal access to services, programs and activities.

(b) Developing reports, new procedures, or recommending modifications to this policy.

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(c) Acting as a liaison with local disability advocacy groups or other disability groups regarding access to department services, programs and activities.

(d) Ensuring that a list of qualified interpreter services is maintained and available to each Watch Commander and Communications Center Manager. The list should include information regarding the following:

1. Contact information
2. Availability

(e) Developing procedures that will enable members to access auxiliary aids or services, including qualified interpreters, and ensure the procedures are available to all members.

(f) Ensuring signage is posted in appropriate areas, indicating that auxiliary aids are available free of charge to people with disabilities.

(g) Ensuring appropriate processes are in place to provide for the prompt and equitable resolution of complaints and inquiries regarding discrimination in access to department services, programs and activities.

332.4 FACTORS TO CONSIDER

Because the nature of any law enforcement contact may vary substantially from one situation to the next, members of this department should consider all information reasonably available to them when determining how to communicate with an individual with a disability. Members should carefully balance all known factors in an effort to reasonably ensure people who are disabled have equal access to services, programs and activities. These factors may include, but are not limited to:

(a) Members should not always assume that effective communication is being achieved. The fact that an individual appears to be nodding in agreement does not always mean he/she completely understands the message. When there is any doubt, members should ask the individual to communicate back or otherwise demonstrate their understanding.

(b) The nature of the disability (e.g., deafness or blindness vs. hard of hearing or low vision).

(c) The nature of the law enforcement contact (e.g., emergency vs. non-emergency, custodial vs. consensual contact).

(d) The availability of auxiliary aids. The fact that a particular aid is not available does not eliminate the obligation to reasonably ensure access. However, in an emergency, availability may factor into the type of aid used.

332.5 INITIAL AND IMMEDIATE CONSIDERATIONS

Recognizing that various law enforcement encounters may be potentially volatile and/or emotionally charged, members should remain alert to the possibility of communication problems.

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Members should exercise special care in the use of all gestures, and verbal and written communication to minimize initial confusion and misunderstanding when dealing with any individual with known or suspected disabilities.

In a non-emergency situation, when a member knows or suspects an individual requires assistance to effectively communicate, the member shall identify the individual's choice of auxiliary aid or service.

The individual's preferred communication method must be honored unless another effective method of communication exists under the circumstances (28 CFR 35.160).

Factors to consider when determining whether an alternative method is effective include:

(a) The methods of communication usually used by the individual.

(b) The nature, length and complexity of the communication involved.

(c) The context of the communication.

In emergency situations involving an imminent threat to the safety or welfare of any person, members may use whatever auxiliary aids and services that reasonably appear effective under the circumstances. This may include, for example, exchanging written notes or using the services of a person who knows sign language but is not a qualified interpreter, even if the person who is deaf or hard of hearing would prefer a qualified sign language interpreter or another appropriate auxiliary aid or service. Once the emergency has ended, the continued method of communication should be reconsidered. The member should inquire as to the individual's preference and give primary consideration to that preference.

If an individual who is deaf, hard of hearing or has impaired speech must be handcuffed while in the custody of the Berkeley Police Department, consideration should be given, safety permitting, to placing the handcuffs in the front of the body to facilitate communication using sign language or writing.

332.6 TYPES OF ASSISTANCE AVAILABLE

Berkeley Police Department members shall never refuse to assist an individual with disabilities who is requesting assistance. The Department will not charge anyone to receive auxiliary aids, nor shall they require anyone to furnish their own auxiliary aid or service as a condition for receiving assistance. The Department will make every reasonable effort to provide equal access and timely assistance to individuals who are disabled through a variety of services.

A person who is disabled may choose to accept department-provided auxiliary aids or services or they may choose to provide their own.

Department-provided auxiliary aids or services may include, but are not limited to, the assistance methods described in this policy.

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332.7 AUDIO RECORDINGS AND ENLARGED PRINT

The Department may develop audio recordings to assist people who are blind or have a visual impairment with accessing important information. If such a recording is not available, members may read aloud from the appropriate form, for example a personnel complaint form, or provide forms with enlarged print.

332.8 QUALIFIED INTERPRETERS

A qualified interpreter may be needed in lengthy or complex transactions (e.g., interviewing a victim, witness, suspect or arrestee), if the individual to be interviewed normally relies on sign language or speechreading (lip-reading) to understand what others are saying. The qualified interpreter should not be a person with an interest in the case or investigation involving the disabled individual. A person providing interpretation services may be required to establish the accuracy and trustworthiness of the interpretation in a court proceeding.

Qualified interpreters should be:

(a) Available within a reasonable amount of time but in no event longer than one hour if requested.

(b) Experienced in providing interpretation services related to law enforcement matters.

(c) Familiar with the use of VRS and/or video remote interpreting services.

(d) Certified in either American Sign Language (ASL) or Signed English (SE).

(e) Able to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.

(f) Knowledgeable of the ethical issues involved when providing interpreter services.

Members should use department-approved procedures to request a qualified interpreter at the earliest reasonable opportunity, and generally not more than 15 minutes after a request for an interpreter has been made or it is reasonably apparent that an interpreter is needed. No individual who is disabled shall be required to provide his/her own interpreter (28 CFR 35.160).

332.9 TTY AND RELAY SERVICES

In situations where an individual without a disability would have access to a telephone (e.g., booking or attorney contacts), members must also provide those who are deaf, hard of hearing or have impaired speech the opportunity to place calls using an available TTY (also known as a telecommunications device for deaf people, or TDD). Members shall provide additional time, as needed, for effective communication due to the slower nature of TTY and TDD communications.

The Department will accept all TTY or TDD calls placed by those who are deaf or hard of hearing and received via a telecommunications relay service (28 CFR 35.162).

Note that relay services translate verbatim, so the conversation must be conducted as if speaking directly to the caller.

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332.10 COMMUNITY VOLUNTEERS

Interpreter services may be available from community volunteers who have demonstrated competence in communication services, such as ASL or SE, and have been approved by the Department to provide interpreter services.

Where qualified interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, department members must carefully consider the nature of the contact and the relationship between the individual with the disability and the volunteer to ensure that the volunteer can provide neutral and unbiased assistance.

332.11 FAMILY AND FRIENDS

While family or friends may offer to assist with interpretation, members should carefully consider the circumstances before relying on such individuals. The nature of the contact and relationship between the individual with the disability and the person offering services must be carefully considered (e.g., victim/suspect).

Children shall not be relied upon except in emergency or critical situations when there is no qualified interpreter reasonably available.

Adults may be relied upon when (28 CFR 35.160):

(a) There is an emergency or critical situation and there is no qualified interpreter reasonably available.

(b) The person with the disability requests that the adult interpret or facilitate communication and the adult agrees to provide such assistance, and reliance on that adult for such assistance is reasonable under the circumstances.

332.12 REPORTING

Whenever any member of this department is required to complete a report or other documentation, and communication assistance has been provided, such services should be noted in the related report. Members should document the type of communication services utilized and whether the individual elected to use services provided by the Department or some other identified source. If the individual's express preference is not honored, the member must document why another method of communication was used.

All written communications exchanged in a criminal case shall be attached to the report or placed into evidence.

332.13 FIELD ENFORCEMENT

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve individuals with disabilities. The scope and nature of these activities and contacts will inevitably vary.

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The Department recognizes that it would be virtually impossible to provide immediate access to complete communication services to every member of this department. Members and/or supervisors must assess each situation and consider the length, complexity and importance of the communication, as well as the individual's preferred method of communication, when determining the type of resources to use and whether a qualified interpreter is needed.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to verbally request consent to search if the officer is unable to effectively communicate with an individual who is deaf or hard of hearing and requires communications assistance.

If available, officers should obtain the assistance of a qualified interpreter before placing an individual with a disability under arrest. Individuals who are arrested and are assisted by service animals should be permitted to make arrangements for the care of such animals prior to transport.

332.13.1 FIELD RESOURCES

Examples of methods that may be sufficient for transactions, such as checking a license or giving directions to a location or for urgent situations such as responding to a violent crime in progress, may, depending on the circumstances, include such simple things as:

(a) Hand gestures or visual aids with an individual who is deaf, hard of hearing or has impaired speech.

(b) Exchange of written notes or communications.

(c) Verbal communication with an individual who can speechread by facing the individual and speaking slowly and clearly.

(d) Use of computer, word processing, personal communication device or similar device to exchange texts or notes.

(e) Slowly and clearly speaking or reading simple terms to individuals who have a visual or mental impairment.

Members should be aware that these techniques may not provide effective communication as required by law and this policy depending on the circumstances.

332.14 CUSTODIAL INTERROGATIONS

In an effort to ensure that the rights of individuals who are deaf, hard of hearing or have speech impairment are protected during a custodial interrogation, this department will provide interpreter services before beginning an interrogation, unless exigent circumstances exist or the individual has made a clear indication that he/she understands the process and desires to proceed without an interpreter. The use of a video remote interpreting service should be considered, where appropriate, if a live interpreter is not available. *Miranda* warnings shall be provided to suspects who are deaf or hard of hearing by a qualified interpreter or by providing a written *Miranda* warning card.

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In order to ensure that communications during custodial investigations are accurately documented and are admissible as evidence, interrogations should be recorded whenever reasonably possible. See guidance on recording custodial interrogations in the Investigation and Prosecution Policy.

332.15 ARREST AND BOOKINGS

If an individual with speech or hearing disabilities is arrested, the arresting officer shall use department-approved procedures to provide a qualified interpreter at the place of arrest or booking as soon as reasonably practicable, unless the individual indicates that he/she prefers a different auxiliary aid or service or the officer reasonably determines another effective method of communication exists under the circumstances.

When gathering information during the booking process, members should remain alert to the impediments that often exist when communicating with those who are deaf, hard of hearing, who have impaired speech or vision, are blind, or have other disabilities. In the interest of the arrestee's health and welfare, the safety and security of the facility and to protect individual rights, it is important that accurate medical screening and booking information be obtained. If necessary, members should seek the assistance of a qualified interpreter whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by the individual.

Individuals who require and possess personally owned communication aids (e.g., hearing aids, cochlear processors) should be permitted to retain them while in custody.

332.16 COMPLAINTS

Pursuant to the City of Berkeley's ADA Grievance procedure (AR 1.13, as it may be amended from time to time) the Department shall investigate any complaint against the Department or its employees which alleges denial of accommodation or non-compliance with disability related civil rights laws with respect to the Department's services and programs. AR 1.13 should be referred to for more details. Generally, however, any individual who disputes a disability-related action or omission of the Department or of an employee of the Department may discuss his/her complaint with the ADA Coordinator. The ADA Coordinator may consult with the City's Disability Compliance Coordinator. The ADA Coordinator shall maintain on file (for a period of three years) any record of the dispute including any findings, recommendations and/or the outcome.

If the dispute is not resolved to the complainant's satisfaction, he or she may file a complaint with the City's Disability Compliance Coordinator. Pursuant to BMC 3.32.090, as it may be amended from time to time, such complaints may also be filed with the Police Review Commission.

332.17 COMMUNITY OUTREACH

Community outreach programs and other such services offered by this department are important to the ultimate success of more traditional law enforcement duties. This department will continue to work with community groups, local businesses and neighborhoods to provide equal access to such programs and services.

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332.18 TRAINING

To ensure that all members who may have contact with individuals who are disabled are properly trained, the Department will provide periodic training that should include:

(a) Awareness and understanding of this policy and related procedures, related forms and available resources.

(b) Procedures for accessing qualified interpreters and other available resources.

(c) Working with in-person and telephone interpreters and related equipment.

The Personnel and Training Sergeant shall be responsible for ensuring new members receive training related to interacting with individuals who have disabilities, including individuals who are deaf, hard of hearing, who have impaired speech or vision, or are blind. Those who may have contact with such individuals should receive refresher training at least once every two years thereafter. The Personnel and Training Sergeant shall maintain records of all training provided, and will retain a copy in each member's training file in accordance with established records retention schedules.

332.18.1 CALL-TAKER TRAINING

Emergency call-takers shall be trained in the use of TTY equipment protocols for communicating with individuals who are deaf, hard of hearing or who have speech impairments. Such training and information should include:

(a) The requirements of the ADA and Section 504 of the Rehabilitation Act for telephone emergency service providers.

(b) ASL syntax and accepted abbreviations.

(c) Practical instruction on identifying and processing TTY or TDD calls, including the importance of recognizing silent TTY or TDD calls, using proper syntax, abbreviations and protocol when responding to TTY or TDD calls.

(d) Hands-on experience in TTY and TDD communications, including identification of TTY or TDD tones.

Training should be mandatory for all the Communications Center members who may have contact with individuals from the public who are deaf, hard of hearing or have impaired speech. Refresher training should occur every six months.

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Private Persons Arrests

333.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the handling of private person's arrests made pursuant to Penal Code § 837.

333.2 ADVISING PRIVATE PERSONS OF THE ARREST PROCESS

Penal Code § 836(b) expressly mandates that all officers shall advise victims of domestic violence of the right to make a private person's arrest, including advice on how to safely execute such an arrest. In all other situations, officers should use sound discretion in determining whether or not to advise an individual of the arrest process.

(a) When advising any individual regarding the right to make a private person's arrest, officers should refrain from encouraging or dissuading any individual from making such an arrest and should instead limit advice to the legal requirements for such an arrest as listed below.

(b) Private individuals should be discouraged from using force to effect a private person's arrest, and absent immediate threat to their own safety or the safety of others, private individuals should be encouraged to refer matters to law enforcement officials for further investigation or arrest.

333.3 ARRESTS BY PRIVATE PERSONS

Penal Code § 837 provides that a private person may arrest another:

(a) For a public offense committed or attempted in his or her presence;

(b) When the person arrested has committed a felony, although not in his or her presence;

(c) When a felony has been in fact committed, and he or she has reasonable cause for believing the person arrested has committed it.

Unlike peace officers, private persons may <u>not</u> make an arrest on suspicion that a felony has been committed - the felony must in fact have taken place.

333.4 OFFICER RESPONSIBILITIES

Any officer presented with a private person wishing to make an arrest must determine whether or not there is reasonable cause to believe that such an arrest would be lawful (Penal Code § 847).

(a) Should any officer determine that there is no reasonable cause to believe that a private person's arrest is lawful, the officer should take no action to further detain or restrain the individual beyond that which reasonably appears necessary to investigate the matter, determine the lawfulness of the arrest and protect the public safety.

1. Any officer who confirms that a private person's arrest is unlawful shall promptly release the arrested individual pursuant to Penal Code § 849(b)(1). The officer must include the basis of such a determination in a related report.

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2. Absent reasonable cause to support a private person's arrest or other lawful grounds to support an independent arrest by the officer, the officer should advise the parties that no arrest will be made and that the circumstances will be documented in a related report.

(b) Whenever an officer determines that there is reasonable cause to believe that a private person's arrest is lawful, the officer may exercise any of the following options:

1. Take the individual into physical custody for booking
2. Release the individual pursuant to a Notice to Appear
3. Release the individual pursuant to Penal Code § 849

333.5 REPORTING REQUIREMENTS

In all circumstances in which a private person is claiming to have made an arrest, the individual must complete and sign a BPD Private Person's Arrest Form under penalty of perjury.

In addition to the Private Person's Arrest Form (and any other related documents such as citations, booking forms, etc.), officers shall complete a report regarding the circumstances and disposition of the incident.

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Anti-Reproductive Rights Crimes Reporting

334.1 PURPOSE AND SCOPE

This policy shall establish a procedure for the mandated reporting of Anti-Reproductive Rights Crimes (ARRC) to the Attorney General pursuant to the Reproductive Rights Law Enforcement Act (Penal Code § 13775 et seq.).

334.2 DEFINITIONS

Penal Code § 423.2 provides that the following acts shall be considered Anti-Reproductive Rights Crimes (ARRC) when committed by any person, except a parent or guardian acting towards his or her minor child or ward:

(a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider or assistant

(b) By non-violent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider or assistant

(c) Intentionally damages or destroys the property of a person, entity or facility, or attempts to do so, because the person, entity or facility is a reproductive health services client, provider, assistant or facility

334.3 REPORTING REQUIREMENTS TO THE ATTORNEY GENERAL

(a) Upon the receipt of the report of an ARRC, it shall be the responsibility of the employee taking such a report to also complete an ARRC Data Collection Worksheet (BCIA 8371) in accordance with the instructions contained on such forms.

(b) The ARRC Data Collection Worksheet shall be processed with all related reports and forwarded to the Investigation Division Captain.

(c) By the tenth day of each month, it shall be the responsibility of the Investigation Division Captain to ensure that a Summary Worksheet (BCIA 8370) is submitted to the Department of Justice Criminal Justice Statistics Center.

1. In the event that no ARRC(s) were reported during the previous month, a Summary Worksheet shall be submitted to Department of Justice with an indication that no such crimes were reported.

2. Any ARRC(s) reported in the Summary Worksheet shall be accompanied by a copy of the related Data Collection Worksheet(s).

3. Forms may be found here: Anti-Reproductive Rights Forms

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Anti-Reproductive Rights Crimes Reporting

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Limited English Proficiency Services

335.1 PURPOSE AND SCOPE

This policy provides guidance to members when communicating with individuals with limited English proficiency (LEP) (42 USC § 2000d).

335.1.1 DEFINITIONS

Definitions related to this policy include:

Authorized interpreter - A person who has been screened and authorized by the Department to act as an interpreter and/or translator for others.

Interpret or interpretation - The act of listening to a communication in one language (source language) and orally converting it to another language (target language), while retaining the same meaning.

Limited English proficient (LEP) - Any individual whose primary language is not English and who has a limited ability to read, write, speak or understand English. These individuals may be competent in certain types of communication (e.g., speaking or understanding) but still be LEP for other purposes (e.g., reading or writing). Similarly, LEP designations are context-specific; an individual may possess sufficient English language skills to function in one setting but these skills may be insufficient in other situations.

Qualified bilingual member - A member of the Berkeley Police Department, designated by the Department, who has the ability to communicate fluently, directly and accurately in both English and another language. Bilingual members may be fluent enough to communicate in a non-English language but may not be sufficiently fluent to interpret or translate from one language into another.

Translate or translation - The replacement of written text from one language (source language) into an equivalent written text (target language).

335.2 POLICY

It is the policy of the Berkeley Police Department to reasonably ensure that LEP individuals have meaningful access to law enforcement services, programs and activities, while not imposing undue burdens on its members.

The Department will not discriminate against or deny any individual access to services, rights or programs based upon national origin or any other protected interest or right.

335.3 LEP COORDINATOR

The Communications Center Manager is the designated LEP Coordinator.

The responsibilities of the LEP Coordinator include, but are not limited to:

(a) Coordinating and implementing all aspects of the Berkeley Police Department's LEP services to LEP individuals.

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(b) Developing procedures that will enable members to access LEP services, including telephonic interpreters, and ensuring the procedures are available to all members.

(c) Ensuring that a list of all qualified bilingual members and authorized interpreters is maintained and available to each Watch Commander and Communications Center Manager. The list should include information regarding the following:

1. Languages spoken
2. Contact information
3. Availability

(d) Ensuring signage stating that interpreters are available free of charge to LEP individuals is posted in appropriate areas and in the most commonly spoken languages.

(e) Reviewing existing and newly developed documents to determine which are vital documents and should be translated, and into which languages the documents should be translated.

(f) Annually assessing demographic data and other resources, including contracted language services utilization data and community-based organizations, to determine if there are additional documents or languages that are appropriate for translation.

(g) Identifying standards and assessments to be used by the Department to qualify individuals as qualified bilingual members or authorized interpreters.

(h) Periodically reviewing efforts of the Department in providing meaningful access to LEP individuals, and, as appropriate, developing reports, new procedures or recommending modifications to this policy.

(i) Receiving and responding to complaints regarding department LEP services.

(j) Ensuring appropriate processes are in place to provide for the prompt and equitable resolution of complaints and inquiries regarding discrimination in access to department services, programs and activities.

335.4 FOUR-FACTOR ANALYSIS

Since there are many different languages that members could encounter, the Department will utilize the four-factor analysis outlined in the U.S. Department of Justice (DOJ) Guidance to Federal Financial Assistance Recipients, available at the DOJ website, to determine which measures will provide meaningful access to its services and programs. It is recognized that law enforcement contacts and circumstances will vary considerably. This analysis, therefore, must remain flexible and will require an ongoing balance of four factors, which are:

1. The number or proportion of LEP individuals eligible to be served or likely to be encountered by department members, or who may benefit from programs or services within the jurisdiction of the Department or a particular geographic area.
2. The frequency with which LEP individuals are likely to come in contact with department members, programs or services.
3. The nature and importance of the contact, program, information or service provided.

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4. The cost of providing LEP assistance and the resources available.

335.5 TYPES OF LEP ASSISTANCE AVAILABLE

Berkeley Police Department members should never refuse service to an LEP individual who is requesting assistance, nor should they require an LEP individual to furnish an interpreter as a condition for receiving assistance. The Department will make every reasonable effort to provide meaningful and timely assistance to LEP individuals through a variety of services.

The Department will utilize all reasonably available tools, such as language identification cards, when attempting to determine an LEP individual's primary language.

LEP individuals may choose to accept department-provided LEP services at no cost or they may choose to provide their own.

Department-provided LEP services may include, but are not limited to, the assistance methods described in this policy.

335.6 WRITTEN FORMS AND GUIDELINES

Vital documents or those that are frequently used should be translated into languages most likely to be encountered. The LEP Coordinator will arrange to make these translated documents available to members and other appropriate individuals, as necessary.

335.7 AUDIO RECORDINGS

The Department may develop audio recordings of important or frequently requested information in a language most likely to be understood by those LEP individuals who are representative of the community being served.

335.8 QUALIFIED BILINGUAL MEMBERS

Bilingual members may be qualified to provide LEP services when they have demonstrated through established department procedures a sufficient level of skill and competence to fluently communicate in both English and a non-English language. Members utilized for LEP services must demonstrate knowledge of the functions of an interpreter/translator and the ethical issues involved when acting as a language conduit. Additionally, bilingual members must be able to communicate technical and law enforcement terminology, and be sufficiently proficient in the non-English language to perform complicated tasks, such as conducting interrogations, taking statements, collecting evidence or conveying rights or responsibilities.

When a qualified bilingual member from this department is not available, personnel from other City departments, who have been identified by the Department as having the requisite skills and competence, may be requested.

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335.9 AUTHORIZED INTERPRETERS

Any person designated by the Department to act as an authorized interpreter and/or translator must have demonstrated competence in both English and the involved non-English language, must have an understanding of the functions of an interpreter that allows for correct and effective translation, and should not be a person with an interest in the department case or investigation involving the LEP individual. A person providing interpretation or translation services may be required to establish the accuracy and trustworthiness of the interpretation or translation in a court proceeding.

Authorized interpreters must pass a screening process established by the City of Berkeley's Human Resources Department which demonstrates that their skills and abilities include:

(a) The competence and ability to communicate information accurately in both English and in the target language.

(b) Knowledge, in both languages, of any specialized terms or concepts peculiar to this department and of any particularized vocabulary or phraseology used by the LEP individual.

(c) The ability to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.

(d) Knowledge of the ethical issues involved when acting as a language conduit.

335.9.1 SOURCES OF AUTHORIZED INTERPRETERS

The Department may contract with authorized interpreters who are available over the telephone. Members may use these services with the approval of a supervisor and in compliance with established procedures.

Other sources may include:

- Qualified bilingual members of this department or personnel from other City departments.
- Individuals employed exclusively to perform interpretation services.
- Contracted in-person interpreters, such as state or federal court interpreters, among others.
- Interpreters from other agencies.

335.9.2 COMMUNITY VOLUNTEERS AND OTHER SOURCES OF LANGUAGE ASSISTANCE

Language assistance may be available from community volunteers who have demonstrated competence in either monolingual (direct) communication and/or in interpretation or translation (as noted in above), and have been approved by the Department to communicate with LEP individuals.

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Where qualified bilingual members or other authorized interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, department members must carefully consider the nature of the contact and the relationship between the LEP individual and the volunteer to ensure that the volunteer can provide neutral and unbiased assistance.

While family or friends of an LEP individual may offer to assist with communication or interpretation, members should carefully consider the circumstances before relying on such individuals. For example, children should not be relied upon except in exigent or very informal and non-confrontational situations.

335.10 CONTACT AND REPORTING

While all law enforcement contacts, services and individual rights are important, this department will utilize the four-factor analysis to prioritize service to LEP individuals so that such services may be targeted where they are most needed, according to the nature and importance of the particular law enforcement activity involved.

Whenever any member of this department is required to complete a report or other documentation, and interpretation services are provided to any involved LEP individual, such services should be noted in the related report. Members should document the type of interpretation services utilized and whether the individual elected to use services provided by the Department or some other identified source.

335.11 RECEIVING AND RESPONDING TO REQUESTS FOR ASSISTANCE

The Berkeley Police Department will take reasonable steps and will work with the Personnel and Training Bureau to develop in-house language capacity by hiring or appointing qualified members proficient in languages representative of the community being served.

335.11.1 EMERGENCY CALLS TO 9-1-1

Department members will make every reasonable effort to promptly accommodate LEP individuals utilizing 9-1-1 lines. When a 9-1-1 call-taker receives a call and determines that the caller is an LEP individual, the call-taker shall quickly determine whether sufficient information can be obtained to initiate an appropriate emergency response. If language assistance is still needed, the language is known and a qualified bilingual member is available in the Communications Center, the call shall immediately be handled by the qualified bilingual member.

If a qualified bilingual member is not available or the call-taker is unable to identify the caller's language, the call-taker will contact the contracted telephone interpretation service and establish a three-way call between the call-taker, the LEP individual and the interpreter.

Dispatchers will make every reasonable effort to dispatch a qualified bilingual member to the assignment, if available and appropriate.

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While 9-1-1 calls shall receive top priority, reasonable efforts should also be made to accommodate LEP individuals seeking routine access to services and information by utilizing the resources listed in this policy.

335.12 FIELD ENFORCEMENT

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve LEP individuals. The scope and nature of these activities and contacts will inevitably vary. Members and/or supervisors must assess each situation to determine the need and availability of language assistance to all involved LEP individuals and utilize the methods outlined in this policy to provide such assistance.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to request consent to search if the officer is unable to effectively communicate with an LEP individual.

If available, officers should obtain the assistance of a qualified bilingual member or an authorized interpreter before placing an LEP individual under arrest.

335.13 INVESTIGATIVE FIELD INTERVIEWS

In any situation where an interview may reveal information that could be used as the basis for arrest or prosecution of an LEP individual and a qualified bilingual member is unavailable or lacks the skills to directly communicate with the LEP individual, an authorized interpreter should be used. This includes interviews conducted during an investigation with victims, witnesses and suspects. In such situations, audio recordings of the interviews should be made when reasonably possible. Identification and contact information for the interpreter (e.g., name, address) should be documented so that the person can be subpoenaed for trial if necessary.

If an authorized interpreter is needed, officers should consider calling for an authorized interpreter in the following order:

- An authorized department member or allied agency interpreter
- An authorized telephone interpreter
- Any other authorized interpreter

Any *Miranda* warnings shall be provided to suspects in their primary language by an authorized interpreter or, if the suspect is literate, by providing a translated *Miranda* warning card.

The use of an LEP individual’s bilingual friends, family members, children, neighbors or bystanders may be used only when a qualified bilingual member or authorized interpreter is unavailable and there is an immediate need to interview an LEP individual.

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335.14 CUSTODIAL INTERROGATIONS

Miscommunication during custodial interrogations may have a substantial impact on the evidence presented in a criminal prosecution. Only qualified bilingual members or, if none is available or appropriate, authorized interpreters shall be used during custodial interrogations. *Miranda* warnings shall be provided to suspects in their primary language by the qualified bilingual member or an authorized interpreter.

In order to ensure that translations during custodial interrogations are accurately documented and are admissible as evidence, interrogations should be recorded whenever reasonably possible. See guidance on recording custodial interrogations in the Investigation and Prosecution Policy.

335.15 BOOKINGS

When gathering information during the booking process, members should remain alert to the impediments that language barriers can create. In the interest of the arrestee's health and welfare, the safety and security of the facility, and to protect individual rights, it is important that accurate medical screening and booking information be obtained. Members should seek the assistance of a qualified bilingual member whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by an LEP individual.

335.16 COMPLAINTS

The Department shall ensure that LEP individuals who wish to file a complaint regarding members of this department are able to do so. The Department may provide an authorized interpreter or translated forms, as appropriate. Complaints will be referred to the Internal Affairs Bureau.

Investigations into such complaints shall be handled in accordance with the Personnel Complaints Policy. Authorized interpreters used for any interview with an LEP individual during an investigation should not be members of this department.

Any notice required to be sent to an LEP individual as a complaining party pursuant to the Personnel Complaints Policy should be translated or otherwise communicated in a language-accessible manner.

335.17 COMMUNITY OUTREACH

Community outreach programs and other such services offered by this department are important to the ultimate success of more traditional law enforcement duties. This department will continue to work with community groups, local businesses and neighborhoods to provide equal access to such programs and services.

335.18 TRAINING

To ensure that all members who may have contact with LEP individuals are properly trained, the Department will provide periodic training on this policy and related procedures, including how to access department-authorized telephonic and in-person interpreters and other available resources.

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The Personnel and Training Sergeant shall be responsible for ensuring new members receive LEP training. Those who may have contact with LEP individuals should receive refresher training at least once every two years thereafter. The Personnel and Training Sergeant shall maintain records of all LEP training provided, and will retain a copy in each member's training file in accordance with established records retention schedules.

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Mandatory Employer Notification

336.1 PURPOSE AND SCOPE

The purpose of this policy is to describe the requirements and procedures to follow when a public or private school employee (teacher and non-teacher) has been arrested under certain circumstances.

336.2 POLICY

The Berkeley Police Department will meet the reporting requirements of California law to minimize the risks to children and others.

336.3 MANDATORY SCHOOL EMPLOYEE ARREST REPORTING

In the event a school employee is arrested for any offense enumerated below, the Chief of Police or his/her designee is required to report the arrest as follows.

336.3.1 ARREST OF PUBLIC SCHOOL TEACHER

In the event a public school teacher is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290, Penal Code § 261(a), or Education Code § 44010, the Chief of Police or his/her designee is mandated to immediately notify by telephone the superintendent of the school district employing the teacher and to immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed (Health and Safety Code § 11591; Penal Code § 291).

336.3.2 ARREST OF PUBLIC SCHOOL NON-TEACHER EMPLOYEE

In the event a public school non-teacher employee is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290, Penal Code § 261(a), or Education Code § 44010, the Chief of Police or his/her designee is mandated to immediately notify by telephone the superintendent of the school district employing the non-teacher and to immediately give written notice of the arrest to the governing board of the school district employing the person (Health and Safety Code § 11591; Penal Code § 291).

336.3.3 ARREST OF PRIVATE SCHOOL TEACHER

In the event a private school teacher is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290 or Education Code § 44010, the Chief of Police or his/her designee is mandated to immediately notify by telephone the private school authority employing the teacher

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and to immediately give written notice of the arrest to the private school authority employing the teacher (Health and Safety Code § 11591; Penal Code § 291.1).

336.3.4 ARREST OF COMMUNITY COLLEGE INSTRUCTOR

In the event a teacher or instructor employed in a community college district school is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591.5 or Health and Safety § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(9), or for any of the offenses enumerated in Penal Code § 290 or in Penal Code § 261(a)(1), the Chief of Police or the authorized designee is mandated to immediately notify by telephone the superintendent of the community college district employing the person, and shall immediately give written notice of the arrest to the California Community Colleges Chancellor's Office (Health and Safety Code § 11591.5; Penal Code § 291.5).

336.4 ARREST OF PERSONS EMPLOYED IN COMMUNITY CARE FACILITIES

In the event an employee of a community treatment facility, a day treatment facility, a group home, a short-term residential therapeutic program or a foster family agency is arrested for child abuse (as defined in Penal Code § 11165.6) and the employee is free to return to work where children are present, the investigating member shall notify the licensee of the charge of abuse (Health and Safety Code § 1522.2).

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Biological Samples

337.1 PURPOSE AND SCOPE

This policy provides guidelines for the collection of biological samples from those individuals required to provide samples upon conviction or arrest for certain offenses. This policy does not apply to biological samples collected at a crime scene or taken from a person in conjunction with a criminal investigation. Nor does it apply to biological samples from those required to register, for example, sex offenders.

337.2 POLICY

The Berkeley Police Department will assist in the expeditious collection of required biological samples from offenders in accordance with the laws of this state. Should force be necessary in order to obtain a sample, officers should only use the minimum amount of force necessary.

337.3 PERSONS SUBJECT TO DNA COLLECTION

Those who must submit a biological sample include (Penal Code § 296):

(a) A person, including a juvenile, upon conviction or other adjudication of any felony offense.

(b) A person, including a juvenile, upon conviction or other adjudication of any offense if the person has a prior felony on record.

(c) An adult arrested or charged with any felony.

337.4 PROCEDURE

When an individual is required to provide a biological sample, a trained employee shall obtain the sample in accordance with this policy.

337.4.1 COLLECTION

The following steps should be taken to collect a sample:

(a) Verify that the individual is required to provide a sample pursuant to Penal Code § 296; Penal Code § 296.1.

(b) Verify that a biological sample has not been previously collected from the offender by querying the individual's criminal history record for a DNA collection flag or, during regular business hours, calling the California Department of Justice (DOJ) designated DNA laboratory. There is no need to obtain a biological sample if one has been previously obtained.

(c) Use a DNA buccal swab collection kit provided by the California DOJ to perform the collection and take steps to avoid cross contamination.

337.5 INVOLUNTARY DNA COLLECTION

If a person refuses to cooperate with the sample collection process, officers should attempt to identify the reason for refusal and seek voluntary compliance without resorting to using force.

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Force will not be used in the collection of samples except as authorized by a court order or with the approval of the Watch Commander.

The following employees shall be involved in the administration of an involuntary DNA collection procedure:

(a) A sworn supervisor,

(b) An assigned officer and

(c) An assisting employee.

The incident supervisor shall involve as many assisting employees as may be required to ensure the restraint of the individual and to accomplish the DNA collection. The incident supervisor shall explain to the individual that their refusal will result in his/her physical restraint, and that reasonable force may be employed to promote the safety of all involved parties during the impending collection.

337.5.1 RESTRAINT EQUIPMENT

When available and practical, restraint equipment should be employed if its use would enhance the safety of persons involved in an involuntary DNA collection process.

“Restraint equipment”, as used in this policy, may include, but is not limited to, a padded phlebotomy chair, a hospital gurney equipped with soft-restraints and “The Wrap” restraint device. The use of restraint equipment shall not preclude the physical restraint of an individual’s person by an employee if such action is necessary to mitigate the potential for injury.

The incident supervisor shall monitor the restraint process to ensure only reasonable force is employed. If confronted with violent resistance, the incident supervisor may elect to terminate the procedure, and develop an alternate plan for the DNA collection.

Should employees use physical force to overcome an individual’s violent resistance to the DNA collection process, the incident supervisor shall adhere to the reporting protocols in the Use of Force Policy. The arresting officer shall document the conduct of the individual during the DNA collection procedure in his/her report.

In the event an individual is injured, or complains of injury, as a result of police action, the incident supervisor shall ensure medical service protocols are followed.

337.5.2 VIDEO RECORDING

A video recording shall be made anytime force is used to obtain a biological sample. The recording should document all staff participating in the process, in addition to the methods and all force used during the collection. The recording should be part of the investigation file, if any, or otherwise retained in accordance with the department’s records retention schedule (15 CCR 1059).

337.5.3 CELL EXTRACTIONS

If the use of force includes a cell extraction, the extraction shall be video recorded, including audio. Video shall be directed at the cell extraction event. The video recording shall be retained by the

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Department for the length of time required by statute. Notwithstanding the use of the video as evidence in a criminal proceeding, the tape shall be retained administratively (15 CCR 1059).

337.6 LEGAL MANDATES AND RELEVANT LAWS

California law provides for the following:

337.6.1 DOCUMENTATION RELATED TO FORCE

The Watch Commander shall prepare prior written authorization for the use of any force (15 CCR 1059). The written authorization (the BPD "Upgraded Search and DNA Collection Request" form) shall include information that the individual was asked to provide the requisite specimen, sample or impression and refused, and if applicable, the related court order authorizing the force.

337.6.2 BLOOD SAMPLES

A blood sample should only be obtained under this policy when:

(a) The California DOJ requests a blood sample and the individual consents, or

(b) A court orders a blood sample following a refusal.

The withdrawal of blood may only be performed in a medically approved manner by health care providers trained and qualified to draw blood. A California DOJ collection kit shall be used for this purpose (Penal Code § 298(a); Penal Code § 298(b)(2)).

337.6.3 LITIGATION

The Chief of Police or authorized designee should notify the California DOJ's DNA Legal Unit in the event this department is named in a lawsuit involving the DNA Data Bank sample collection, sample use or any aspect of the state's DNA Data Bank Program.

337.7 EXPUNGEMENT FROM CAL-DNA DATA BANK

California Penal Code § 299 sets forth the criteria for DNA Database sample expungement. Expungement can be accomplished easily and quickly when a DNA sample qualifies for removal from the State database and a person provides sufficient documentation of his/ her identity, legal status and criminal history to the California Department of Justice, DNA Database Program (CAL-DNA). A petitioner whose sample qualifies for DNA database sample expungement and who provides appropriate documentation can expedite the process so that neither a court hearing, nor a 180-day waiting period permitted by Section 299, likely will be necessary.

If CAL-DNA receives sufficient documentation showing that an individual meets the criteria for expungement of his or her DNA sample, CAL-DNA will review and research the request and issue a response to the petitioner indicating that the expungement was completed and the sample destroyed, or notify the petitioner of the legal reason the Department is required to retain the sample and profile.

A form to request CAL-DNA to expunge a DNA database sample and profile can be obtained by contacting the California Office of the Attorney General. The Attorney General's website is https://oag.ca.gov or a petitioner can call 800-952-5225. The form to request the expungement is the

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"Streamlined DNA Expungement Application Form" (State of California DLE 244). Expungement of a DNA sample and profile are the responsibility of the Department of Justice. The Berkeley Police Department has no influence on this decision.

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Chaplaincy Program

338.1 PURPOSE AND SCOPE

It is the policy of the Berkeley Police Department to implement a vibrant, interfaith chaplaincy program to support the men and women of the Berkeley Police Department, the employees of the City of Berkeley, and the Berkeley community. In addition, the program will help establish a strong link between the police department and the faith-based community.

338.2 POLICY

The chaplain's purpose is to render, on request, spiritual, practical and social guidance and comfort to members of the Berkeley Police Department and its ancillary support agencies. Chaplains shall also provide such services to the citizens of Berkeley at large.

338.3 DEFINITIONS

Police Chaplain: A volunteer who is an ordained/lay/spiritual leader from the community and a member in good standing of a recognized religious denomination or group. The police chaplain is not a law enforcement officer.

Program Manager: A sworn member of the Berkeley Police Department responsible for the overall management of the Chaplaincy Program. The Chief of Police will assign the Program Manager. The Program Manager will report directly to the Personnel and Training Bureau Lieutenant.

338.4 PARTICIPATION IN THE PROGRAM

Police chaplains will be chosen based on the following criteria:

(a) High standards with regard to moral and ethical character.

(b) Skill in ministry and pastoral care.

(c) Commitment to the policies, regulations and mission of the Berkeley Police Department and goodwill towards the citizens of Berkeley.

(d) In good standing as an ordained/lay/spiritual leader in a recognized religious denomination or group.

(e) Obtained written approval of the pastor or governing body of their particular denomination or group to become a Police Chaplain.

(f) Approved and appointed to the Police Chaplaincy Program by the Chief of Police.

338.5 POLICE CHAPLAINCY STRUCTURE

The Police Chaplaincy Program will be governed by the Chief of Police, and administered through the Professional Standards Division and the designated Program Manager. Assistant Chaplaincy Program Manager(s) may also be appointed.

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338.6 DUTIES OF THE PROGRAM MANAGER

The Program Manager's duties include, but are not limited to:

(a) Arranging training, overseeing equipment, ensuring scheduling, providing an avenue for problem/conflict resolution, and developing policy and procedures for the program under the guidance and supervision of the Berkeley Police Department administration.

(b) Considering complaints or problems associated with the program and assisting the Chief of Police in any decision to terminate the services of a chaplain who abuses privileges or fails in his/her responsibilities.

(c) Maintaining all files related to the program.

(d) Serving as a planner and consultant to the Personnel and Training Bureau Lieutenant and the Professional Standards Division Captain by providing recommendations to the Chief of Police regarding the appointment, background investigation and recruitment of prospective chaplains.

(e) Evaluating the performance of all assigned chaplains on an annual basis and maintaining those evaluation records.

338.7 DUTIES OF POLICE CHAPLAINS

The Berkeley Police Department's Chaplaincy Program is designed to respond to the needs of Berkeley Police Department personnel and their families. It is also designed to respond to the needs of all others in our community.

Typical duties of a police chaplain include:

(a) Providing spiritual or pastoral counseling or aid requested by Department employees, their families, or a member of the community.

(b) Responding when incidents of on-duty injuries or death occur.

(c) Visiting sick or injured employees, or family members, at their home or hospital when requested.

(d) Participating in funeral or memorial services for active or retired employees. Assist family members in preparation of funeral arrangements.

(e) Providing comfort, aid and assistance in the field for Berkeley Police Department personnel.

(f) Assisting Department officials in providing death or serious injury notifications.

(g) Responding to and assisting victims of major accidents, both at the scene and at the hospital.

(h) When requested, participating in Department promotion functions, award ceremonies, dinners and social events.

(i) Attending assigned training and program meetings.

(j) Becoming familiar with, and adhering to, the applicable policies and procedures of the Berkeley Police Department.

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(k) Working under the direction and assistance of the personnel administering the Police Chaplain Program.

(l) Maintaining high credibility within the program with regard to honesty and confidentiality.

(m) Complying with the orders and instructions of the officer-in-charge of any department function.

(n) Conversing with department employees when the need for ministerial services is requested or is apparent provided such communication does not interfere with department operations. Police chaplains are authorized to visit department facilities and incident scenes where activities indicate a need for ministerial services.

(o) Not verbalizing, while functioning as Berkeley Police Department Chaplains, any theology or doctrines particular to any individual group or denomination unless requested.

(p) Providing assistance, upon request, to the Peer Support / Critical Incident Stress Management Team.

338.8 CALL-OUT SITUATIONS

The following are examples of situations where a Police Chaplain call-out may be appropriate:

(a) Officer injury/death/accident

(b) Death notifications

(c) SIDS death

(d) Suicides

(e) Homicides

(f) Major disasters - natural or accidental

(g) Major injury vehicle collisions

(h) Death scenes

(i) Major structure fires

(j) Any other situation deemed appropriate by the Watch Commander or on-duty supervisor

338.9 CALL-OUTS

338.9.1 POLICE PROCEDURES

When an officer or supervisor determines a police chaplain is necessary, they shall contact Dispatch, request a call-out, and advise the following:

(a) Where the chaplain is needed, giving a specific location as to where the chaplain should respond, and

(b) A contact name and phone number for the chaplain to use upon his/her arrival.

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338.9.2 POLICE CHAPLAIN PROCEDURES
Police chaplains shall, upon a call-out notification from Dispatch, shall do the following:

(a) Obtain information regarding the call location, circumstances and contact person.

(b) Advise Dispatch by radio/telephone of their ETA, when they arrive on scene, any changes of location, etc.

(c) Upon arrival, contact the person, officer or supervisor as indicated by Dispatch.

(d) Assess the need for additional police chaplains, and if needed, call them directly.

338.10 DOCUMENTATION
After a call-out, the assigned chaplain shall provide the Program Manager with the following documented information:

(a) A summary of the call, covering the basics of who, what, when, where, why and how.

(b) A description of any problems associated with the call-out.

338.11 UNIFORMS
All chaplain uniform items will be approved by the Chief of Police. The police chaplain's uniform is outlined in the chaplain's uniform letter. All chaplain uniforms shall be maintained in good repair and worn in neat and clean fashion.

338.12 IDENTIFICATION
A BPD identification card shall be issued to each chaplain and shall be worn as identification when they are not in uniform and are performing chaplain duties. The identification card is the property of the Berkeley Police Department and is to be surrendered at the time of separation from the program. Loss of the identification card is to be reported to the on-duty shift supervisor or Program Manager immediately.

338.13 COMPLAINTS
All complaints about police chaplains shall be brought to the attention of the Program Manager and shall be forwarded to the Chief of Police via the chain of command.

338.14 SEPARATION
Separation of police chaplains will be done at the direction of the Chief of Police and may result from the following:

(a) Failure by the chaplain to knowingly abide by the established the International Conference of Police Chaplains' Canon of Ethics, or the Berkeley Police Department's policies, orders and procedures. The Program Manager shall keep an updated copy of all the aforementioned documents for reference.

(b) Failure to honor and abide by the authority of an "officer-in-charge" in the field.

(c) Failure to practice good, professional, ethical, and moral standards which may bring discredit to the program and the Berkeley Police Department.

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Community Relations

339.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for community relationship-building.

Additional guidance on community relations and outreach is provided in other policies, including the:

- Hate Crimes Policy.
- Limited English Proficiency Services Policy.
- Communications with Persons with Disabilities Policy.
- Chaplaincy Program Policy.
- Patrol Function Policy.
- Suspicious Activity Reporting Policy.

339.2 POLICY

It is the policy of the Berkeley Police Department to promote positive relationships between members of the department and the community by treating community members with dignity and respect and engaging them in public safety strategy development and relationship-building activities, and by making relevant policy and operations information available to the community in a transparent manner.

339.3 MEMBER RESPONSIBILITIES

Officers should, as time and circumstances reasonably permit:

(a) Make casual and consensual contacts with community members to promote positive community relationships.

(b) Become reasonably familiar with the schools, businesses and community groups in their assigned areas.

(c) Work with community members and the Community Services Bureau's Area Coordinators to identify issues and solve problems related to community relations and public safety.

(d) Conduct periodic foot patrols of their assigned areas to facilitate interaction with community members. Officers carrying out foot patrols should notify an appropriate supervisor and the Communications Center of their status (i.e., on foot patrol) and location before beginning and upon completion of the foot patrol. They should also periodically inform the Communications Center of their location and status during the foot patrol.

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339.4 AREA COORDINATORS

The Community Services Bureau Lieutenant and Sergeant should designate members of the Community Services Bureau (CSB) to serve as Area Coordinators. The Area Coordinators should report directly to the CSB Sergeant and are responsible for:

(a) Obtaining department-approved training related to his/her responsibilities.

(b) Responding to requests from department members and the community for assistance in identifying issues and solving problems related to community relations and public safety.

(c) Organizing surveys to measure the condition of the department's relationship with the community.

(d) Working with community groups, department members and other community resources to:

1. Identify and solve public safety problems within the community.
2. Organize programs and activities that help build positive relationships between department members and the community and provide community members with an improved understanding of department operations.

(e) Working with the Operations Division Captain to develop plans that allow officers the time to participate in community engagement and problem solving activities.

339.5 COMMUNITY AND YOUTH ACTIVITIES AND PROGRAMS

The Area Coordinators should organize or assist with programs and activities that create opportunities for department members and community members, especially youth, to interact in a positive setting. Examples of such programs and events include:

(a) Department-sponsored athletic programs (e.g., baseball, basketball, soccer, bowling).

(b) Police-community get-togethers (e.g., cookouts, meals, charity events).

(c) Youth leadership and life skills mentoring.

(d) Berkeley High School's Pathways/Law and Justice Class.

(e) Neighborhood Watch and crime prevention programs.

339.6 INFORMATION SHARING

The CSB Lieutenant, or their designee, should work with the Public Information Officer to develop methods and procedures for the convenient sharing of information (e.g., major incident notifications, significant changes in department operations, comments, feedback, positive events) between the Department and community members. Examples of information-sharing methods include:

(a) Nixle alerts.

(b) E-mails.

(c) Community meetings.

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(d) Social media (see the Department Use of Social Media Policy).

Information should be regularly refreshed, to inform and engage community members continuously.

339.7 LAW ENFORCEMENT OPERATIONS EDUCATION

The CSB Lieutenant, or their designee, should develop methods to educate community members on general law enforcement operations so they may understand the work that officers do to keep the community safe. Examples of educational methods include:

(a) Development and distribution of informational cards/flyers.

(b) City of Berkeley website postings.

(c) Instruction in schools.

(d) Department ride-alongs (see the Ride-Along Policy).

(e) Scenario/Simulation exercises with community member participation.

(f) Youth internships at the Department.

(g) Citizen academies.

Instructional information should include direction on the following:

(a) How community members should interact with the police during enforcement or investigative contacts.

(b) How community members can make a complaint to the Department regarding alleged misconduct or inappropriate job performance by department members.

(c) How community members can submit a commendation to the Chief regarding exemplary service by department members.

339.8 SAFETY AND OTHER CONSIDERATIONS

Department members responsible for community relations activities should consider the safety of the community participants and, as much as reasonably practicable, not allow them to be present in any location or situation that would jeopardize their safety.

Department members in charge of community relations events should ensure that participating community members have completed waiver forms before participation, if appropriate. A parent or guardian must complete the waiver form if the participating community member has not reached 18 years of age.

Community members are subject to a criminal history check before approval for participation in certain activities, such as citizen academies.

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Child and Dependent Adult Safety

340.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that children and dependent adults are not left without appropriate care in the event their caregiver or guardian is arrested or otherwise prevented from providing care due to actions taken by members of this department (Penal Code § 833.2(a)).

This policy does not address the actions to be taken during the course of a child abuse or dependent adult investigation. These are covered in the Child Abuse and Adult Abuse policies.

340.2 POLICY

It is the policy of this department to mitigate, to the extent reasonably possible, the stressful experience individuals may have when their parent or caregiver is arrested. The Berkeley Police Department will endeavor to create a strong, cooperative relationship with local, state and community-based social services to ensure an effective, collaborative response that addresses the needs of those affected, including call-out availability and follow-up responsibilities.

340.3 PROCEDURES DURING AN ARREST

When encountering an arrest or prolonged detention situation, officers should make reasonable attempts to determine if the arrestee is responsible for children or dependent adults. In some cases this may be obvious, such as when children or dependent adults are present. However, officers should inquire if the arrestee has caregiver responsibilities for any children or dependent adults who are without appropriate supervision. The following steps should be taken (Penal Code § 13517.7(b)(1)):

(a) Inquire about and confirm the location of any children or dependent adults.

(b) Look for evidence of children and dependent adults. Officers should be mindful that some arrestees may conceal the fact that they have a dependent for fear the individual may be taken from them.

(c) Consider inquiring of witnesses, neighbors, friends and relatives of the arrestee as to whether the person is responsible for a child or dependent adult.

Whenever reasonably possible, officers should take reasonable steps to accomplish the arrest of a parent, guardian or caregiver out of the presence of his/her child or dependent adult. Removing children or dependent adults from the scene in advance of the arrest will generally ensure the best outcome for the individual.

Whenever it is safe to do so, officers should allow the parent or caregiver to assure children or dependent adults that they will be provided care. If this is not safe or if the demeanor of the parent or caregiver suggests this conversation would be non-productive, the officer at the scene should explain the reason for the arrest in age-appropriate language and offer reassurance to the child or dependent adult that he/she will receive appropriate care.

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340.3.1 AFTER AN ARREST

Whenever an arrest is made, the officer should take all reasonable steps to ensure the safety of the arrestee's disclosed or discovered children or dependent adults.

Officers should allow the arrestee reasonable time to arrange for care of children and dependent adults. Temporary placement with family or friends may be appropriate. However, any decision should give priority to a care solution that is in the best interest of the child or dependent adult. In such cases the following guidelines should be followed:

(a) Allow the person reasonable time to arrange for the care of children and dependent adults with a responsible party, as appropriate.

  1. Officers should consider allowing the person to use his/her cell phone to facilitate arrangements through access to contact phone numbers, and to lessen the likelihood of call screening by the recipients due to calls from unknown sources.

(b) Unless there is evidence to the contrary (e.g., signs of abuse, drug use, unsafe environment), officers should respect the parent or caregiver's judgment regarding arrangements for care. It is generally best if the child or dependent adult remains with relatives or family friends that he/she knows and trusts because familiarity with surroundings and consideration for comfort, emotional state and safety are important.

  1. Except when a court order exists limiting contact, the officer should attempt to locate and place children or dependent adults with the non-arrested parent, guardian or caregiver.

(c) Provide for the immediate supervision of children or dependent adults until an appropriate caregiver arrives.

(d) Notify Child Protective Services or Adult Protective Services, if appropriate.

(e) Notify a field supervisor of the disposition of children or dependent adults.

If children or dependent adults are at school or another known location outside the household at the time of arrest, the arresting officer should attempt to contact the school or other known location and inform the principal or appropriate responsible adult of the caregiver's arrest and of the arrangements being made for the care of the arrestee's dependent. The result of such actions should be documented in the associated report.

340.3.2 DURING THE BOOKING PROCESS

During the booking process the arrestee shall be allowed to make additional telephone calls to relatives or other responsible individuals as is reasonably necessary to arrange for the care of any child or dependent adult. These telephone calls should be given as soon as practicable and are in addition to any other telephone calls allowed by law (Penal Code § 851.5(c)).

If an arrestee is unable to resolve the care of any child or dependent adult through this process, a supervisor should be contacted to determine the appropriate steps to arrange for care. These steps may include additional telephone calls or contacting a local, county or state services agency.

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340.3.3 SUPPORT AND COUNSELING REFERRAL

If, in the judgment of the handling officers, the child or dependent adult would benefit from additional assistance, such as counseling services, contact with a victim advocate or a crisis telephone number, the appropriate referral information may be provided.

340.4 DEPENDENT WELFARE SERVICES

Whenever an arrestee is unwilling or incapable of arranging for the appropriate care of any child or dependent adult, the handling officer should contact the appropriate welfare service or other department-approved social service to determine whether protective custody is appropriate (Welfare and Institutions Code § 305).

Only when other reasonable options are exhausted should a child or dependent adult be transported to the police facility, transported in a marked patrol car or taken into formal protective custody.

Under no circumstances should a child or dependent adult be left unattended or without appropriate care.

340.5 TRAINING

The Personnel and Training Sergeant is responsible to ensure that all personnel of this department who may be involved in arrests affecting children or dependent adults receive approved POST-approved training on effective safety measures when a parent, guardian or caregiver is arrested (Penal Code § 13517.7).

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Volunteer Program

341.1 PURPOSE AND SCOPE

It is the policy of this department to use qualified volunteers for specified tasks and duties in order to create efficiencies for the Department and improve services to the community. Volunteers are intended to supplement and support, rather than supplant, sworn officers and civilian personnel. Volunteers can be an important part of any organization and are proven to be a valuable asset to law enforcement agencies. Volunteers help to increase departmental responsiveness, delivery of services and information input, and provide new program opportunities. In addition, volunteers bring new skills and expertise to the Department and prompt new enthusiasm.

341.1.1 DEFINITION OF VOLUNTEER

An individual who performs a service for the Department without promise, expectation or receipt of compensation for services rendered. This may include unpaid chaplains, interns, persons providing administrative support and youth involved in a law enforcement education programs, among others.

341.2 VOLUNTEER MANAGEMENT

341.2.1 VOLUNTEER COORDINATOR

The Volunteer Coordinator shall be appointed by the Community Services Bureau Lieutenant. The function of the Volunteer Coordinator is to provide a central coordinating point for effective volunteer management within the Department, and to direct and assist staff and volunteer efforts to jointly provide more productive services. The Volunteer Coordinator should work with other Department staff on an ongoing basis to assist in the development and implementation of volunteer-staffed positions.

The Volunteer Coordinator, or his/her designee, shall be responsible for the following:

(a) Recruiting, selecting and training qualified volunteers for various positions.

(b) Facilitating the implementation of new volunteer activities and assignments.

(c) Maintaining records for each volunteer.

(d) Tracking and evaluating the contribution of volunteers.

(e) Maintaining a record of volunteer schedules and work hours.

(f) Completion and dissemination as appropriate of all necessary paperwork and information.

(g) Planning periodic recognition events.

(h) Administering discipline when warranted.

(i) Maintaining liaison with other volunteer-utilizing programs in the community and assisting in community-wide efforts to recognize and promote volunteering.

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341.2.2 RECRUITMENT

Volunteers should be recruited on a continuous and ongoing basis consistent with department policy on equal opportunity nondiscriminatory employment. A primary qualification for participation in the application process should be an interest in, and an ability to assist the Department in serving the public.

Requests for volunteers should be submitted in writing by interested staff to the Volunteer Coordinator through the requester's immediate supervisor. A complete position description and a requested time-frame should be included in the request. All parties should understand that the recruitment of volunteers is enhanced by creative and interesting assignments. The Volunteer Coordinator may withhold assignment of any volunteer until such time as the requesting unit is prepared to make effective use of volunteer resources.

341.2.3 SCREENING

All prospective volunteers should complete the volunteer application form. The Volunteer Coordinator or his/her designee should conduct a face-to-face interview with applicants under consideration.

A documented background investigation shall be completed on each volunteer applicant and shall include, but not necessarily be limited to, the following:

(a) Traffic and criminal background check. Fingerprints shall be obtained from all applicants and processed through the California Criminal Information Index.

(b) Employment

(c) References

(d) Credit check

A Computer Voice Stress Analysis (CVSA) may be required of each applicant depending on the type of assignment.

341.2.4 SELECTION AND PLACEMENT

Service as a volunteer with the Department shall begin with an official notice of acceptance or appointment to a volunteer position. Notice may only be given by an authorized representative of the Department, who will normally be the Volunteer Coordinator. No volunteer should begin any assignment until they have been officially accepted for that position and completed all required screening and paperwork. At the time of final acceptance, each volunteer should complete all required enrollment paperwork and will receive a copy of their position description and agreement of service with the Department. All volunteers shall receive a copy of the volunteer handbook and shall be required to sign a volunteer agreement.

Volunteers should be placed only in assignments or programs that are consistent with their knowledge, skills, abilities and the needs of the Department.

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341.2.5 TRAINING

Volunteers will be provided with an orientation program to acquaint them with the Department, personnel, policies and procedures that have a direct impact on their work assignment.

Volunteers should receive position-specific training to ensure they have adequate knowledge and skills to complete tasks required by the position and should receive periodic ongoing training as deemed appropriate by their supervisor or the Volunteer Coordinator.

Training should reinforce to volunteers that they may not intentionally represent themselves as, or by omission infer that they are sworn officers or other full-time members of the Department. They shall always represent themselves as volunteers.

All volunteers shall comply with the rules of conduct and with all orders and directives, either oral or written, issued by the Department.

341.2.6 FITNESS FOR DUTY

No volunteer shall report to work or be on-duty when his/her judgment or physical condition has been impaired by alcohol, medication, other substances, illness or injury.

Volunteers shall report to their supervisor any changes in status that may affect their ability to fulfill their duties. This includes, but is not limited to, the following:

(a) Driver license

(b) Medical condition

(c) Arrests

(d) Criminal investigations

All volunteers shall adhere to the guidelines set forth by this department regarding drug and alcohol use.

341.2.7 DRESS CODE

As representatives of the Department, volunteers are responsible for presenting a professional image to the community. Volunteers shall dress appropriately for the conditions and performance of their duties.

Volunteers shall conform to department-approved dress consistent with their duty assignment. Uniforms authorized for volunteers should be readily distinguishable from those worn by sworn officers. The uniform or identifiable parts of the uniform shall not be worn while off-duty except volunteers may choose to wear the uniform while in transit to or from official department assignments or functions provided an outer garment is worn over the uniform shirt so as not to bring attention to the volunteer while he/she is off duty.

Volunteers shall be required to return any issued uniform or department property at the termination of service.

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341.3 SUPERVISION OF VOLUNTEERS

Each volunteer who is accepted to a position with the Department must have a clearly identified supervisor who is responsible for direct management of that volunteer. This supervisor will be responsible for day-to-day management and guidance of the work of the volunteer and should be available to the volunteer for consultation and assistance.

A volunteer may be assigned as and act as a supervisor of other volunteers provided that the supervising volunteer is under the direct supervision of a paid staff member.

Functional supervision of volunteers is the responsibility of the supervisor in charge of the unit where the volunteer is assigned. Following are some considerations to keep in mind while supervising volunteers:

(a) Take the time to introduce volunteers to employees on all levels.

(b) Ensure volunteers have work space and necessary office supplies.

(c) Make sure the work is challenging. Do not hesitate to give them an assignment or task that will tap these valuable resources.

341.4 CONFIDENTIALITY

With appropriate security clearance, volunteers may have access to confidential information such as criminal histories or investigative files. Unless otherwise directed by a supervisor or departmental policy, all information shall be considered confidential. Only that information specifically identified and approved by authorized personnel shall be released. Confidential information shall be given only to persons who have a need and a right to know as determined by departmental policy and supervisory personnel.

Each volunteer will be required to sign a nondisclosure agreement before being given an assignment with the Department. Subsequent unauthorized disclosure of any confidential information, verbally, in writing or by any other means, by the volunteer is grounds for immediate dismissal and possible criminal prosecution.

Volunteers shall not address public gatherings, appear on radio or television, prepare any article for publication, act as correspondents to a newspaper or other periodical, release or divulge any information concerning the activities of the Department, or maintain that they represent the Department in such matters without permission from the proper department personnel.

341.5 PROPERTY AND EQUIPMENT

Volunteers will be issued an identification card that must be worn at all times while on-duty. Any fixed and portable equipment issued by the Department shall be for official and authorized use only. Any property or equipment issued to a volunteer shall remain the property of the Department and shall be returned at the termination of service. Loss of the identification card is to be reported to the on-duty shift supervisor or the Volunteer Coordinator immediately.

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341.5.1 VEHICLE USE

Volunteers assigned to duties such as vacation house checks or other assignments that require the use of a vehicle must first complete the following:

(a) A driving safety briefing and department approved driver safety course.

(b) Verification that the volunteer possesses a valid California Driver License.

(c) Verification that the volunteer carries current vehicle insurance.

The Volunteer Coordinator should ensure that all volunteers receive safety briefing updates and license and insurance verification at least once a year.

When operating a Department vehicle, volunteers shall obey all rules of the road, including seat belt requirements. Smoking is prohibited in all Department vehicles.

Volunteers shall not operate a marked patrol car (unless there is a prominently placed sign indicating that it is out of service) and are not authorized to operate a Department vehicle Code-3.

341.5.2 RADIO AND MDT USAGE

Volunteers shall successfully complete CLETS and radio procedures training prior to using the police radio or MDT and comply with all related provisions. The Volunteer Coordinator should ensure that radio and CLETS training is provided for volunteers whenever necessary.

341.6 DISCIPLINARY PROCEDURES/TERMINATION

A volunteer may be removed from the volunteer program at the discretion of the Chief of Police or the Volunteer Coordinator. Volunteers shall have no property interests in their continued appointment. However, if a volunteer is removed for alleged misconduct, the volunteer will be afforded an opportunity solely to clear his/her name through a liberty interest hearing which shall be limited to a single appearance before the Chief of Police or authorized designee.

Volunteers may resign from volunteer service with the Department at any time. It is requested that volunteers who intend to resign provide advance notice of their departure and a reason for their decision.

341.6.1 EXIT INTERVIEWS

Exit interviews, where possible, should be conducted with volunteers who are leaving their positions. The interview should ascertain why the volunteer is leaving the position and solicit the volunteer's suggestions on improving the position. When appropriate, the interview should also include a discussion on the possibility of involvement in some other capacity with the Department.

341.7 EVALUATION

An evaluation of the overall volunteer program will be conducted on an annual basis by the Volunteer Coordinator. Regular evaluations should be conducted with volunteers to ensure the best use of human resources available, to ensure personnel problems can be identified and dealt with promptly and fairly, and to ensure optimum satisfaction on the part of volunteers.

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Service Animals

342.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to ensure the rights of individuals who use service animals to assist with disabilities are protected in accordance with Title II of the Americans with Disabilities Act of 1990 (ADA).

342.1.1 DEFINITIONS

Definitions related to this policy include:

Service animal - A dog that is trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. The work or tasks performed by a service animal must be directly related to the individual's disability (28 CFR 35.104; Health and Safety Code § 113903).

A service animal also includes a miniature horse if the horse is trained to do work or perform tasks for people with disabilities, provided the horse is housebroken, is under the handler's control, the facility can accommodate the horse's type, size and weight, and the horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility (28 CFR 35.136(i)).

Service Dog in Training: A service dog in training is any dog that is being trained to assist a person with a disability. Other than guide dogs for the blind, there are no state-wide certifications, standards or qualifications for service dogs in training or their trainers. Thus, a service dog trainer may be the disabled owner of the dog or a licensed dog trainer.

342.2 POLICY

It is the policy of the Berkeley Police Department to provide services and access to persons with service animals in the same manner as those without service animals. Department members shall protect the rights of persons assisted by service animals in accordance with state and federal law.

342.3 IDENTIFICATION AND USE OF SERVICE ANIMALS

Some service animals may be readily identifiable. However, many do not have a distinctive symbol, harness or collar.

Service animals may be used in a number of ways to provide assistance, including:

- Guiding people who are blind or have low vision.
- Alerting people who are deaf or hard of hearing.
- Retrieving or picking up items, opening doors or flipping switches for people who have limited use of their hands, arms or legs.
- Pulling wheelchairs.
- Providing physical support and assisting with stability and balance.

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- Doing work or performing tasks for persons with traumatic brain injury, intellectual disabilities or psychiatric disabilities, such as reminding a person with depression to take medication.
- Alerting a person with anxiety to the onset of panic attacks, providing tactile stimulation to calm a person with post-traumatic stress disorder, assisting people with schizophrenia to distinguish between hallucinations and reality, and helping people with traumatic brain injury to locate misplaced items or follow daily routines.

342.4 MEMBER RESPONSIBILITIES

Service animals that are assisting individuals with disabilities are generally permitted in all public facilities and areas where the general public is allowed. Department members are expected to treat individuals with service animals with the same courtesy and respect that the Berkeley Police Department affords to all members of the public (28 CFR 35.136).

342.4.1 INQUIRY

If it is apparent or if a member is aware that an animal is a service animal, the individual generally should not be asked any questions as to the status of the animal. If it is unclear whether an animal meets the definition of a service animal, the member should ask the individual only the following questions (28 CFR 35.136(f)):

- Is the animal required because of a disability?
- What task or service has the service animal been trained to perform?

If the individual explains that the animal is required because of a disability and has been trained to work or perform at least one task, the animal meets the definition of a service animal and no further questions as to the animal's status should be asked. The individual should not be questioned about his/her disability nor should the person be asked to provide any license, certification or identification card for the service animal.

342.4.2 ANIMALS IN TRAINING

A service animal in training that is not a dog may be denied entry into public establishments.

A service dog in training may be allowed entry into public establishments under either of the following conditions:

(a) The individual with the disability advises they are in the process of training the dog to become a service animal, OR

(b) The individual advises they are not disabled but are in the process of training the dog to become a service animal and the person has some documentation to identify him or her as a dog trainer.

342.4.3 CONTACT

Service animals are not pets. Department members should not interfere with the important work performed by a service animal by talking to, petting or otherwise initiating contact with a service animal.

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342.4.4 REMOVAL

If a service animal is not housebroken or exhibits vicious behavior, poses a direct threat to the health of others, or unreasonably disrupts or interferes with normal business operations, an officer may direct the handler to remove the animal from the premises. Barking alone is not a threat nor does a direct threat exist if the person takes prompt, effective action to control the service animal (28 CFR 35.136(b)).

Each incident must be considered individually and past incidents alone are not cause for excluding a service animal. Removal of a service animal may not be used as a reason to refuse service to an individual with disabilities. Members of this department are expected to provide all services as are reasonably available to an individual with a disability, with or without a service animal.

342.4.5 COMPLAINTS

When handling calls of a complaint regarding a service animal, members of this department should remain neutral and should be prepared to explain the legal requirements concerning service animals to the concerned parties. Businesses are required to allow service animals to accompany their handlers into the same areas that other customers or members of the public are allowed (28 CFR 36.302).

Absent a violation of law independent of disability laws, officers should take no enforcement action beyond keeping the peace. Individuals who believe they have been discriminated against as a result of a disability should be referred to the Civil Rights Division of the U.S. Department of Justice (DOJ).

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Gun Violence Restraining Orders

343.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for petitioning and serving gun violence restraining orders and accounting for the firearms obtained pursuant to those orders (Penal Code § 18108).

343.1.1 DEFINITIONS

Definitions related to this policy include:

Gun violence restraining order - Civil restraining order prohibiting a named person from controlling, owning, purchasing, possessing, receiving, or otherwise having custody of any firearms or ammunition, including an ammunition magazine (Penal Code § 18100).

343.2 POLICY

It is the policy of the Berkeley Police Department to petition for and serve gun violence restraining orders in compliance with state law and to properly account for firearms and ammunition obtained by the Department pursuant to such orders.

343.3 GUN VIOLENCE RESTRAINING ORDERS

An officer who reasonably believes a person is a present danger to self or another person by controlling, owning, purchasing, possessing, receiving, or otherwise having custody of a firearm may request permission from the officer's supervisor to petition the court for a gun violence restraining order.

Officers petitioning the court should use the forms established by the Judicial Council (Penal Code § 18105). The petition should describe the number, types, and locations of any firearms and ammunition that the officer believes to be possessed or controlled by the person (Penal Code § 18107). The petition should also describe why less-restrictive alternatives are ineffective or inadequate for the circumstances (Penal Code § 18125; Penal Code § 18150; Penal Code § 18175).

If it is not practical under the circumstances to submit a written petition, an officer may submit the petition electronically or orally request a temporary order (Penal Code § 18122; Penal Code § 18140).

343.3.1 ADDITIONAL CONSIDERATIONS

Officers should also consider requesting permission to petition the court for a gun violence restraining order (Penal Code § 18108):

(a) When responding to a domestic disturbance where the residence is associated with a firearm registration or record.

(b) When responding to any call or incident when a firearm is present or when one of the involved parties owns or possesses a firearm.

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(c) During a contact with a person exhibiting mental health issues, including suicidal thoughts, statements, or actions if that person owns or possesses a firearm.

Officers should consider obtaining a mental health evaluation if the encounter involves a situation where there is a reasonable cause to believe that the person poses an immediate and present danger of causing personal injury to themselves or another person by having custody or control of a firearm (see the Mental Illness Commitments Policy) (Penal Code § 18108).

343.4 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS

An officer serving any gun violence restraining order shall:

(a) Verbally ask the subject of the order if he/she has any firearm, ammunition, or magazine in his/her possession or under his/her custody or control (Penal Code § 18160).

(b) Request that any firearms or ammunition be immediately surrendered and issue a receipt for the surrendered items (Penal Code § 18120).

(c) Take into temporary custody any firearm or other deadly weapon discovered in plain view or pursuant to consent or other lawful search (Penal Code § 18250) and issue the restrained person a Property Receipt.

(d) Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160).

(e) Submit the original proof of service form to Records Management so that it may be transmitted to the issuing court as soon as practicable but within one business day (Penal Code § 18115).

(f) As soon as practicable, but by the end of his/her shift, submit a copy of the proof of service to Telecom for prompt entry into the California Restraining and Protective Order System (Penal Code § 18115).

The officer should also inform the restrained person that he/she is required, within 24 hours, to surrender to a law enforcement agency any other firearms and ammunition he/she owns or that are in his/her custody or control or sell them to a firearms dealer. This notification should be documented.

All firearms and ammunition collected shall be handled and booked in accordance with the Property and Evidence Policy.

343.4.1 SERVICE OF ORAL GUN VIOLENCE RESTRAINING ORDERS

If a gun violence restraining order is obtained orally, the officer shall (Penal Code § 18140):

(a) Serve the order on the restrained person in the manner outlined above, if the restrained person can reasonably be located.

(b) File a copy of the order with the court as soon as practicable after issuance.

(c) Ensure the order is provided to the Records Management for entry into the computer database system for protective and restraining orders maintained by the Department of Justice.

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343.5 SEARCH WARRANTS

If a person who has been served with a gun violence restraining order refuses to surrender any firearm or ammunition, the officer should consider whether to seek a search warrant. If a search warrant is to be obtained, the preparation and service of the search warrant shall be done in accordance with the Warrant Service Policy. Additionally, (Penal Code § 1542.5):

(a) The officer serving the warrant shall take custody of any firearm or ammunition that is controlled, possessed or owned by the person who is the subject of the gun violence restraining order, including any discovered pursuant to the warrant, a consensual search or other lawful search.

(b) If the location being searched is jointly occupied and the firearm or ammunition is owned by a person other than the restrained person, the firearm or ammunition should not be seized if the following conditions are met:

1. The firearm or ammunition can be stored in a manner that does not allow the restrained person to have control or access.
2. There is no evidence that the owner unlawfully possesses the firearm or ammunition.

(c) If a locked gun safe belonging to someone other than the subject of a gun violence restraining order is discovered, the officer shall not search the contents of the safe unless the owner consents or there is a valid search warrant for the safe. Any search of the safe must be done in the owner's presence.

343.6 SUPPORT SERVICES BUREAU LIEUTENANT RESPONSIBILITIES

The Support Services Bureau Lieutenant, or designee,is responsible for ensuring:

(a) Proof of service of any gun violence restraining order served by an officer or received from the clerk of the court is entered in the computer database system for protective and restraining orders maintained by the Department of Justice within one business day of service if served by an officer, or within one business day of receipt of proof of service if served by a person other than a law enforcement officer (Penal Code § 18115).

(b) Oral orders are entered into the California Restraining and Protective Order System (Penal Code § 18140).

(c) Copies of receipts of surrendered firearms or ammunition issued by other agencies for gun violence restraining orders issued by the Department are properly maintained (Penal Code § 18120).

(d) Any relinquishment of firearm rights form received from the court is entered into the California Restraining and Protective Order System within one business day of receipt (Penal Code § 18115).

343.7 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS

Authorized members shall accept firearms and ammunition from any individual who is the subject of a gun violence restraining order. The member receiving any firearm or ammunition shall:

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(a) Record the individual's name, address and telephone number.

(b) Record the serial number of the firearm.

(c) Prepare an incident report and property report.

(d) Provide a property receipt to the individual who surrendered the firearms and ammunition.

(e) Package and submit the firearms and ammunition in accordance with the Property and Evidence Policy.

343.8 RELEASE OF FIREARMS AND AMMUNITION

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with Penal Code § 18120 and the Property and Evidence Policy.

343.9 TRAINING

The Personnel and Training Sergeant should ensure that members receive periodic training on the requirements of this policy (Penal Code § 18108).

343.10 POLICY AVAILABILITY

The Chief of Police or the authorized designee shall be responsible for making this policy available to the public upon request (Penal Code § 18108).

343.11 RENEWAL OF GUN VIOLENCE RESTRAINING ORDERS

The Detective Bureau supervisor is responsible for the review of a gun violence restraining order obtained by the Department to determine if renewal should be requested within the time prescribed by law (Penal Code § 18190).

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Off-Duty Law Enforcement Actions

344.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an officer as well as others at great risk and must be done with careful consideration. This policy is intended to provide guidelines for officers of the Berkeley Police Department with respect to taking law enforcement action while off-duty.

344.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged. Officers should not attempt to initiate enforcement action when witnessing minor crimes, such as suspected intoxicated drivers, reckless driving or minor property crimes. Such incidents should be promptly reported to the appropriate law enforcement agency.

Officers are not expected to place themselves in unreasonable peril. However, any sworn member of this department who becomes aware of an incident or circumstance that he/she reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage may take reasonable action to minimize the threat.

When public safety or the prevention of major property damage requires immediate action, officers should first consider reporting and monitoring the activity and only take direct action as a last resort.

344.3 FIREARMS

Officers of this department may carry firearms while off-duty in accordance with federal regulations and department policy. All firearms and ammunition must meet guidelines as described in the department Firearms Policy. When carrying firearms while off-duty officers shall also carry their department-issued badge or an authorized flat badge and identification.

Firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage or taken any drugs or medications or any combination thereof that could adversely affect the officer's senses or judgment.

344.4 DECISION TO INTERVENE

There is no legal requirement for off-duty officers to take law enforcement action. However, should officers decide to intervene, they must evaluate whether the action is necessary or desirable, and should take into consideration the following:

(a) The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.

(b) The inability to communicate with responding units.

(c) The lack of equipment, such as handcuffs, OC or baton.

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(d) The lack of cover.

(e) The potential for increased risk to bystanders if the off-duty officer were to intervene.

(f) Unfamiliarity with the surroundings.

(g) The potential for the off-duty officer to be misidentified by other peace officers or members of the public.

Officers should consider waiting for on-duty uniformed officers to arrive, and gather as much accurate intelligence as possible instead of immediately intervening.

344.4.1 INTERVENTION PROCEDURE

If involvement is reasonably necessary the officer should attempt to call or have someone else call 9-1-1 to request immediate assistance. The dispatcher should be informed that an off-duty officer is on-scene and should be provided a description of the officer if possible.

Whenever practicable, the officer should loudly and repeatedly identify him/herself as a police officer until acknowledged. Official identification should also be displayed.

344.4.2 INCIDENTS OF PERSONAL INTEREST

Officers should refrain from handling incidents of personal interest, (e.g., family or neighbor disputes) and should remain neutral. In such circumstances officers should call the responsible agency to handle the matter.

344.4.3 NON-SWORN RESPONSIBILITIES

Non-sworn personnel should not become involved in any law enforcement actions while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable.

344.4.4 OTHER CONSIDERATIONS

When encountering a non-uniformed officer in public, uniformed officers should wait for acknowledgement by the non-uniformed officer in case he/she needs to maintain an undercover capability.

344.5 REPORTING

Any off-duty officer who engages in any law enforcement activity, regardless of jurisdiction, shall notify the Watch Commander as soon as practicable. The Watch Commander shall determine whether a report should be filed by the employee.

Officers should cooperate fully with the agency having jurisdiction in providing statements or reports as requested or as appropriate.

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Native American Graves Protection and Repatriation

345.1 PURPOSE AND SCOPE

This policy is intended ensure the protection and security of ancient or historic grave sites, including notification of personnel responsible for cultural items, in compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) (25 USC § 3001 et seq.).

345.1.1 DEFINITIONS

Definitions related to this policy include (43 CFR 10.2):

Funerary objects and associated funerary objects - Objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains, or that were made exclusively for burial purposes or to contain human remains.

Native American human remains - The physical remains of the body of a person of Native American ancestry.

Objects of cultural patrimony - Objects having ongoing historical, traditional or cultural importance that is central to the Native American group or culture itself and therefore cannot be appropriated or conveyed by any individual, including members of the Native American group or Native Hawaiian organization. Such objects must have been considered inalienable by the Native American group at the time the object was separated from the group.

Sacred objects - Specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions.

345.2 POLICY

It is the policy of the Berkeley Police Department that the protection of Native American human remains, funerary objects, associated funerary objects, sacred objects or objects of cultural patrimony is the responsibility of all members. Such protection includes minimizing destruction, contamination, inadvertent disruption or complicated custody transfer processes.

345.3 COMPLIANCE WITH THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

Upon discovery or arrival upon a scene where it reasonably appears that a Native American grave, human remains, funerary objects, associated funerary objects, sacred objects or objects of cultural patrimony are exposed or otherwise unsecured, members shall secure the site in the same manner as a crime scene. All activity at the scene other than scene preservation activity must cease (43 CFR 10.4).

No photography or video recording may be permitted by the media or any group or individual who may wish to exhibit the remains.

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Without delay, the appropriate agency or group shall be notified to respond and take control of the scene. These include the following (43 CFR 10.4):

- Federal land - Appropriate agency at the U.S. Department of the Interior or U.S. Department of Agriculture
- State land/Private land - The Coroner, when appropriate (Health and Safety Code § 7050.5)
- Tribal land - Responsible Indian tribal official

345.4 EVIDENCE AND PROPERTY

If the location has been investigated as a possible homicide scene prior to identification as a NAGPRA site, investigators shall work with other appropriate agencies and individuals to ensure the proper transfer and repatriation of any material collected. Members shall ensure that any remains or artifacts located at the site are expediently processed (43 CFR 10.6).

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Honor Guard

346.1 PURPOSE AND SCOPE

The Honor Guard represents the Berkeley Police Department both within the local community and in the greater public safety community at ceremonies such as officer funerals, law enforcement memorials and promotional ceremonies. The core mission of the Honor Guard is to convey the Department's respect, empathy and condolences in a formal setting in order to assist a grieving community, but it may also be utilized to celebrate achievement, and other occasions in which a presentation of the colors is appropriate.

346.2 POLICY

The Honor Guard shall provide official Department representation at ceremonial occasions as directed by the Chief of Police or his/her designee. These occasions may include, but are not limited to: officers killed in the line of duty, officers that die during service, officers that die after retirement, out of agency services (e.g. citizen honorariums, parades, civic events, etc.), and National and State memorial services (e.g. National Law Enforcement Memorial Week, Medal of Honor/Life Saving awards ceremonies, etc.).

The Honor Guard shall aspire to the highest level of professionalism in all aspects of operation, and its members shall maintain the highest standards of professional cleanliness, bearing and integrity while performing their duties.

346.3 COMMAND STRUCTURE

346.3.1 ADMINISTRATOR

The Honor Guard Administrator will be the Professional Standards Division Captain, who will be responsible for the overall administration of the Honor Guard.

346.3.2 COMMANDER

The Honor Guard Commander will be the Personnel and Training Lieutenant, who will be responsible for planning, organizing, staffing, training, directing and coordinating all ceremonial Honor Guard functions.

346.3.3 TEAM LEADER

The Honor Guard Team Leader will hold the rank of Officer or Sergeant and will be nominated by the Honor Guard, for approval by the Honor Guard Administrator. The Team Leader will be responsible for on-site implementation and direction of an Honor Guard detail at a ceremonial function. The Team Leader may also be responsible for pre-function arrangements such as transportation, as delegated by the Honor Guard Commander. In the event the Team Leader is not available to prepare or attend an Honor Guard function, the Team Leader will appoint an Officer-In-Charge to act as the Team Leader.

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346.3.4 QUARTERMASTER
The Honor Guard Quartermaster will be appointed by the Honor Guard Commander and will be responsible for equipment and uniform acquisition and distribution, liaison with the Departmental Uniform Committee and Personnel and Training Bureau, and for the maintenance of records under his/her control.

346.3.5 LEAD TRAINER
The Honor Guard Lead Trainer will be responsible for preparing and coordinating both on-going training for the Team and the initial training of any new members.

346.3.6 JOINT RESPONSIBILITIES
The Quartermaster, Team Leader and Lead Trainer positions may be occupied by the same person if necessary.

346.4 MEMBERSHIP
The Honor Guard will consist of at least eight members, but up to as many as 12 (not including commanders), who are able to perform the ceremonial duties as required.

346.4.1 REQUIREMENTS

(a) Applicants will have completed the police officer probationary period.

(b) Applicants will complete the standard special assignment application process to include a review of their leave usage, performance appraisal reports, supervisor input, and a panel interview.

(c) The applicant's ability to maintain military bearing and appearance while performing precise tasks in adverse conditions for prolonged periods of time will also be assessed.

(d) Successful applicants will display a willingness and ability to respond to Honor Guard assignments, training and other details with minimal notice.

346.4.2 MEMBER RESPONSIBILITIES
Member responsibilities include, but are not limited to:

(a) Maintaining all issued equipment and uniforms in excellent condition,

(b) Returning all issued uniforms and equipment in excellent condition to the Honor Guard’s Quartermaster when membership in the Honor Guard has ended, or at the conclusion of a detail,

(c) Maintaining outstanding personal appearance,

(d) Attending all assignments, training and other details as assigned unless providing legitimate excuse, and

(e) Performing all duties properly.

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346.4.3 REMOVAL
Any member who fails to fulfill their obligation to the Honor Guard as identified in this policy may be removed from the unit after appropriate review by the Professional Standards Division Captain and Honor Guard Commander.

346.4.4 DEPLOYMENT
Honor Guard members designated to participate in a detail shall first be selected from available on-duty members who are working their normal shifts. In all instances where a member is participating in an Honor Guard function they shall be on-duty, whether in an overtime or straight time status.

(a) An Honor Guard detail (consisting of two to four members) will routinely be sent to public safety funerals and memorials within the Nine County Bay Area (the nine counties which border the San Francisco Bay) as determined by the Professional Standards Division Captain.

(b) For public safety funerals and memorials outside the Nine County Bay Area but within 200 miles of the City of Berkeley, a two member Honor Guard detail may be sent upon direction of the Professional Standards Division Captain.

(c) For public safety funerals and memorials outside the 200 mile radius, a detail may be sent based on exceptional circumstances and only with the approval of the Chief of Police.

346.5 TRAINING
Members of the Honor Guard may be authorized six scheduled training sessions annually and additional practices as needed for a killed in the line of duty service or tragic event hosted by our department.

Members who fail to attend at least three practices or who decline three Honor Guard assignments within a calendar year may be subject to removal from the Honor Guard.

346.6 UNIFORM
Unless the privilege is rescinded by the Chief of Police, former Honor Guard members who served the Team honorably for at least five years may wear an Honor Guard shoulder/epaulet chord on their Class A uniform coat.

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Firearms and Tactics Unit

347.1 PURPOSE AND SCOPE

This policy sets forth guidelines governing the organization and operation of the Department's Firearms and Tactics Unit (FTU).

347.2 POLICY

The FTU shall serve to develop, design, implement, instruct, manage, and evaluate all phases of a comprehensive program to enhance the firearms and tactical skills of officers. The FTU also serves to provide training in Less than Lethal and chemical agent systems as well as to coordinate the maintenance, servicing, and repair of Departmentally authorized weapons.

347.3 PROCEDURES

The FTU shall be administered by a Program Coordinator, who is responsible to the Professional Standards Division's Personnel and Training Sergeant.

The Program Coordinator shall submit reports summarizing the Unit's activities and projects, as needed, through the Personnel and Training Sergeant and Lieutenant to the Professional Standards Division Captain.

347.4 UNIT COMPOSITION

The FTU is composed of the following positions of responsibility:

(a) Firearms Program Coordinator as defined in section 347.5.

(b) Firearms Instructors: Officers selected by the Department who have completed a POST Certified Firearms Instructor course.

(c) Less than Lethal Instructor: A Firearms Instructor who has been qualified to train officers in Less than Lethal systems deployed by the Department.

(d) Armorers: Officers selected by the department who are trained and certified to service and repair Departmentally authorized firearms.

(e) Lead Armorer: An Armorer who is selected by the Personnel and Training Sergeant that works with the Program Coordinator and the Personnel and Training Sergeant to schedule and task, weapons maintenance, repair and inventory tracking. The Lead Armorer also manages the equipment in the indoor range and gun cleaning room.

(f) Chemical Agent Instructors: Officers selected by the Department who have completed minimum of 40 hours of formal chemical agent instruction training.

(g) Lead Chemical Agent Instructor: A Chemical Agent Instructor selected by the Personnel and Training Sergeant who is responsible for coordinating training and gas mask fit testing as well as the purchase and management of related equipment.

Assignments are based on experience, training and ability, not Departmental rank.

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347.5 PROGRAM COORDINATOR

The FTU is administered by a Program Coordinator, who is responsible to the Personnel and Training Sergeant.

The responsibilities of the Program Coordinator include:

(a) Coordinate, develop, manage, and evaluate all Department sponsored firearms training and tactics programs

(b) Facilitate and remain cognizant of special weapons training programs and be responsive to specialized firearms training needs.

(c) Coordinate the selection, evaluation, and the continuing education needs of Firearms Instructors and Armorers.

(d) Serve as the primary resource in firearms, firearms related equipment and firearms training matters for Department Command Staff. Responsibilities in this area include:

1. Serve as a resource for firearms related training materials, and equipment and provide presentations to Department Staff on these matters.
2. Work with the Lead Armorer to research, evaluate, and implement changes to Department issued ammunition, authorized firearms, related equipment, and/or related Department procedures, regulations, or rules.
3. Serve on the Use of Force Review Board when a firearm was involved in the incident under review.

(e) Prepare, submit, justify and track requisitions for firearms training related equipment, materials, and supplies.

(f) Receive, disburse, and monitor firearms training related equipment, materials and supplies.

(g) Work with Departmental Defensive Tactics Instructors to coordinate joint/concurrent use of force training for officers.

(h) Coordinate with Firearms Instructors and the Personnel and Training Sergeant to ensure unit and departmental training and equipment goals are identified and met.

(i) Establish, maintain, and update an accessible central information depository for firearms related equipment and training matters.

347.6 SELECTION

The Selection Panel for all positions described in this policy shall consist of the Firearms and Tactics Coordinator, Lead Armorer and a Firearms Instructor chosen by the Personnel and Training Sergeant.

Final authority for selection shall rest with the Chief of Police based upon the recommendations of the Selection Panel.

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Youth Services Detail

348.1 PURPOSE AND SCOPE

The purpose of this policy is to define the role and responsibilities of the Youth Services Detail.

348.2 POLICY

The Berkeley Police Department is committed to the development and perpetuation of programs designed to investigate, mitigate and prevent juvenile delinquency. While all personnel are responsible for participating in and supporting this commitment, the Youth Services Detail is the primary unit responsible for the coordination and disposition of juvenile-related issues.

348.3 DEFINITION

As used in this policy, the terms “juvenile”, “minor” and “youth” define a person under the age of 18 years old.

348.4 YOUTH SERVICES DETAIL

348.4.1 GENERAL DUTIES

The Youth Services Detail (YSD) is part of the Special Victims Unit (SVU) and is supervised by the SVU Sergeant. The SVU Sergeant reports directly to the Detective Bureau Lieutenant.

Civilian attire will normally be worn by sworn personnel assigned to the Detail and regulation uniforms will be worn by School Resource Officers while on school grounds.

Any member of the Department who wishes to engage in any community delinquency prevention program in an official capacity shall obtain the approval of the Special Victims Unit Sergeant.

YSD shall be responsible for the following general duties/activities:

(a) Disposition of youthful offenders who have committed an offense

(b) Maintain cooperative relationships with other agencies concerned with the instruction, training and general welfare of youth

(c) Present or provide case information to the District Attorney's Office or the Juvenile Probation Department

(d) Coordinate with other divisions of the Department investigating cases involving youth

(e) Provide consultation services for all youth

(f) Provide written reports and records of all work performed

(g) Service of juvenile warrants

348.4.2 INVESTIGATIONS

YSD shall be responsible for the investigation of the following offenses:

(a) Child abuse cases such as:

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1. Neglect
2. Physical abuse
3. Emotional abuse
4. Sexual abuse
    (a) The Youth Services Detail will investigate cases of sexual abuse when the victim is under 14 years of age
    (b) The Sex Crimes Detail will investigate cases of sexual abuse when the victim is 14 years of age or older.

(b) Child abandonment or familial abduction

(c) Crimes and non-criminal incidents occurring on a school campus where a Youth Services Detail School Resource Officer is assigned

When no YSD Detective is available, the responsibility for initial investigation shall reside with the Operations Division.

YSD is not responsible for the investigation of any criminal case, or interrogation of any person involved in offenses, not specified above, regardless of the age of the victim or responsible.

YSD Detectives will assist the handling officer in, or assume follow-up responsibility for the investigation of an offense not specified above at the direction of the SVU Sergeant, or his/her chain of command.

348.5 SCHOOL DISTRICT CONTACT

YSD will be responsible for non-emergency contacts with and notifications to schools (e.g., K-12, excluding college-level institutions).

(a) If the need arises to make immediate contact at any Berkeley school, the officer shall first make contact with someone from the school administration (e.g., Principal, Vice-Principal, etc.) to notify them of the issue at hand and assess if they can provide support to the investigation.

(b) YSD will be responsible for notifying a school, in writing, when an enrolled student is reported missing, and should do so within 10 days of the date of report (Education Code § 49068.6).

(c) Requests for Berkeley Unified School District student directory information (e.g., student's name, address, phone, etc.) shall be directed to the School Resource Officer.

348.6 SCHOOL RESOURCE OFFICER

As staffing permits, the Berkeley Police Department will select officers to work with the Berkeley Unified School District as School Resource Officers (SROs). These officers will serve as a public safety liaison between this department and the staff/students of designated schools.

Under the supervision of the SVU Sergeant, the SRO's responsibilities include:

(a) Protect life and property

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(b) Enforce laws and local ordinances

(c) When on-duty and present on-site, investigate all offenses reported and/or occurring at his/her assigned campus

(d) Crime prevention and suppression

(e) Report preparation and related testimony

(f) Handle all youth dispositions that come to their attention as a result of his/her on-site contacts and investigations

(g) Act as a resource to the school with respect to delinquency prevention

(h) Collaborate with school staff on presentations regarding law enforcement and public safety subject matters, and offer perspective and guidance on ethical issues faced by youth

(i) Provide, within the scope of their authority and training, counsel and advice to students on an individual basis

(j) Provide security for various school activities

(k) Provide information and assistance to the public

(l) Perform other tasks, as assigned

The primary duty station of an SRO will be the public school campus at which he/she is assigned.

The SRO, while present at their assigned campus, will act only in the capacity of a peace officer, and not as a school official.

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Tactical Rifle Operator Program

349.1 PURPOSE AND SCOPE

The purpose of this policy is to outline administrative protocols for the Tactical Rifle Operator Program.

349.2 POLICY

The Berkeley Police Department shall employ authorized sworn personnel equipped with tactical rifles to exercise expeditious control over critical incidents or potentially violent situations.

Tactical Rifle Operators shall conduct themselves with respect to Patrol Response Procedures described in relevant Department policy documents, and in accordance with Tactical Rifle Operator Procedures set forth in this policy.

349.3 DEFINITIONS

Definitions related to this policy include:

Tactical Rifle - The rifle, detachable box magazines, and ammunition authorized by the Chief of Police for use by designated Tactical Rifle Operators.

Tactical Rifle Operator (TRO) - A sworn employee of the Berkeley Police Department who has been trained and qualified to possess and deploy a tactical rifle in the course of their primary duty assignment.

349.4 EMPLOYEE OWNED TACTICAL RIFLES

Employees who purchase their own tactical rifles for on-duty use must adhere to this policy and the procedures herein. Employee owned rifles may not be deployed without the successful completion of the required training and the approval of the Lead Armorer and Division Captain.

349.5 TACTICAL RIFLE SPECIFICATIONS

(a) **Rifles:** Rifles: Rifles shall be of an AR15/M4 patterned design, comparable to or exceeding current industry standards for duty grade and quality. All rifles must have the following: 16 inch barrel, chambered in the 5.56x45mm NATO, sighting system (iron sights and/or optics), sling, and dedicated mounted light. Approved rifle manufacturers and models are subject to the Lead Armorer and Lead of FTU approval. Examples of approved brands and models include Colt LE6900 Series, Daniel Defense M4A1, Triarc Systems TSR-15S, and Bravo Company Manufacturing (BCM) M4. The entirety of the rifle must accumulatively meet current industry standards for duty grade and quality.

(b) **Magazines:** 30 round Colt factory magazines and Magpul polymer magazines (PMAGS) or their equivalent are authorized for duty use.

(c) **Aiming Devices:** Lasers and/or other electronic aiming devices are not approved for duty use unless authorized by the Chief of Police.

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(d) **Ammunition:** Duty ammunition will be supplied by the Department. Only departmentally approved ammunition shall be used for duty.

(e) **Accessories:** Approved aftermarket accessories include, but are not limited to:

1. Pistol grips
2. Stocks
3. Accessory rail systems
4. Optic sighting devices
5. Slings
6. Lights

It is the responsibility of the Departmental Armorer to install all approved aftermarket accessories on tactical rifles.

349.6 DEPLOYMENT OF RIFLES

Tactical rifles shall be deployed only by Tactical Rifle Operators.

In light of known or potential risks, a TRO should deploy the firearm which best meets the needs of the police response, and in which he/she has the greatest accuracy and operational confidence.

349.7 STORAGE OF RIFLES

TROs shall be responsible for the care and storage of their assigned tactical rifle and associated equipment.

349.7.1 GENERAL

(a) When not in use, TROs shall securely store their tactical rifle in a carry case within an authorized location at the Public Safety Building (PSB) or Traffic Substation.

1. A TRO may temporarily store his/her tactical rifle in a location other than the PSB or Traffic Substation to facilitate training or other official duty, provided all reasonable safety and security precautions are taken during transportation and storage.

(b) When stored, the tactical rifle shall be in the following condition:

1. Selector lever is in the “safe” position;
2. The chamber of the weapon is empty; and
3. The magazine well is vacant.

349.7.2 INTO SERVICE

(a) When placed into service and transported in a vehicle, the tactical rifle shall be maintained*:

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1. Within its carry case in the vehicle's secure trunk; (sedan only) or in a storage rack specifically designed to secure the tactical rifle within the vehicle's passenger compartment (sedan, truck, or SUV).
    - *There may be times when placing the rifle in the trunk or storage rack isn't feasible, such as when responding to a call in progress immediately after briefing. On such occasions, the rifle may be placed in the vehicle on a seat or floorboard, with the understanding that it will be deployed or otherwise secured upon arrival at the scene.

(b) When placed into service and transported in a vehicle, the tactical rifle shall be in the following operational condition:

1. Selector lever is in the "safe" position; and,
2. The chamber of the weapon is empty.

(c) When a tactical rifle is placed into service in conformance with this policy, a loaded magazine may be inserted into and maintained within the magazine well.

349.7.3 REMOVAL FROM SERVICE

When a tactical rifle is removed from service and returned to storage, a TRO shall perform the following firearm safety procedures:

(a) Remove the tactical rifle from the vehicle's weapon rack or its carry case;

(b) Confirm the selector lever is in the "safe" position;

(c) Confirm the magazine well is vacant;

1. If necessary, remove the magazine from the magazine well and secure it in the tactical rifle carry case;

(d) Lock the bolt open and conduct a visual and physical inspection to ensure the chamber is empty;

(e) Close the bolt on an empty chamber; and,

(f) Secure the rifle within its carry case.

When not secured in an authorized location, the tactical rifle shall be under the control of the TRO.

349.8 MAINTENANCE OF RIFLES

A TRO shall be responsible for routine maintenance of their tactical rifle, including effective cleaning and sufficient lubrication subsequent to weapon use.

Advanced maintenance (i.e., that which is beyond normal cleaning and lubrication) and periodic 'quality/assurance' inspection of tactical rifles shall be the responsibility of trained and certified departmental armorers or their designee.

349.9 MODIFICATION OF RIFLES

A TRO shall not make or facilitate unauthorized modifications, maintenance or repair of a tactical rifle.

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Modification to a tactical rifle may only occur upon the authorization of the Operations Division Captain and when carried out by certified departmental armorers.

Defective parts or parts needing replacement will be the financial responsibility of the weapon's owner. Departmental Armorers shall be responsible for the installation of replacement parts outside of the factory, or factory service providers.

349.10 PROGRAM ADMINISTRATION

The coordination and administration of the Program shall be the responsibility of a Patrol Bureau Lieutenant designated by the Operations Division Captain.

The Firearms and Tactics Unit (FTU) will develop and implement a training program for TROs that will address:

(a) Initial and periodic training and qualification for TROs;

(b) Weapon system fundamentals, including, but not limited to, tactical rifle nomenclature, operation, emergency action procedures, and render safe procedures.

(c) Tactical containment procedures employed by the Special Response Team, including, but not limited to, fundamental tactics and communication protocols.

349.11 SELECTION

349.11.1 CRITERIA

Officers may apply for appointment to the Program if the following criteria are met:

(a) Applicants must be a full time, sworn officer, with a minimum of one year of experience as a sworn officer with the Berkeley Police Department.

1. Upon recommendation of the Operations Division Captain, appointment of an applicant officer to the Program will be at the discretion of the Chief of Police.

(b) Applicants must have demonstrated their ability to work with minimal supervision.

(c) Applicants must have demonstrated their ability to maintain a calm and professional demeanor during stressful situations.

(d) Applicants must have demonstrated their ability to exercise good judgment and make sound decisions.

(e) Applicants must have demonstrated their ability to handle firearms safely and effectively during departmental firearms training.

349.11.2 PROCESS

The selection process shall include:

(a) A review of the applicant’s personnel file for sustained complaints involving the improper use of force, poor judgment, dishonesty or mistreatment of equipment.

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(b) A review of comments by the applicant's supervisors and commanding officers, as presented in annual evaluations and the applicant's special assignment form, relating to the applicant's job performance and suitability to be a TRO.

(c) A review of the applicant's firearms training records and comments by FTU instructors regarding the applicant's participation and demonstrated abilities during firearms training.

(d) The applicant will participate in an interview panel comprised of officers, sergeants and/or command officers assigned by the Operations Division Captain.

1. The interview will include questions regarding the Use of Force Policy as well as situational questions intended to assess the applicant's qualifications.

349.11.3 INACTIVITY

A TRO who has been inactive for any period of time may be reactivated at the discretion of the Operations Division Captain.

(a) A TRO requesting reactivation to the Program must meet the previously listed minimum selection criteria and successfully complete a recertification training and related firearms qualification program.

When an officer becomes inactive, resigns, or is decertified from the Program, his/her departmentally purchased equipment shall be returned to the Department in the unmodified condition it was issued.

349.12 DECERTIFICATION PROCESS

A TRO may be decertified by the Chief of Police for any of the following reasons:

(a) When work performance has been deemed "Unsatisfactory" or "Needs Improvement" over an extended period of time in the TRO's Performance Appraisal Report and the TRO has not demonstrated significant improvement in the course of a Performance Improvement Plan.

(b) Failure to attend or successfully complete required Program training.

(c) Any documented mistreatment, neglect, or improper use of a tactical rifle, other firearm or weapon.

(d) Exhibiting a pattern of unsafe weapon handling or tactics during tactical rifle deployment or firearms training programs.

(e) Demonstration of poor judgment or inability to make sound decisions during his/her regular assigned duties.

(f) Failure to comply with the provisions of this policy.

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Public Appearances

350.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines and procedures for employees involved in public events and appearances.

350.2 POLICY

Employees will represent the City of Berkeley and the Police Department at public events and appearances, when requested or required, and shall conduct themselves in a courteous, respectful and professional manner.

350.3 PROCEDURES

With regard to the Department's commitment to community participation in problem solving and crime prevention, employees will make reasonable efforts to participate in public events in a manner that will promote community engagement, problem solving and crime prevention.

350.4 REQUESTS FOR APPEARANCE

350.4.1 NEIGHBORHOOD WATCH

Employees who receive inquiries or requests for an employee appearance at a neighborhood watch meeting shall direct the person to contact the Operations Division Assistant or forward the information on their behalf.

Upon receipt, the Operations Division Assistant will complete a Neighborhood Watch/Event Notice form and route it to the patrol team that will be on-duty at the time of the event. The sergeant of the patrol team receiving the notice shall assign an officer to attend, preferably the beat officer.

350.4.2 PLANNED EVENTS

Employees who receive inquiries or requests for an employee appearance at anything other than a neighborhood watch meeting, such as a block party or grade school presentation, shall direct the person to contact the Community Services Bureau (CSB) or forward the information to CSB on their behalf.

Upon receipt, CSB will attempt to fulfill the request using Area Coordinators.If none are available for the date/time specified, CSB will forward the information to the Operations Division Assistant.The Operations Division Assistant will complete a Neighborhood Watch/Event Notice form and route it to the patrol team that will be on-duty at the time of the event. The sergeant of the patrol team receiving the notice shall assign an officer to attend, preferably the beat officer.

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350.4.3 SHORT NOTICE

Employees who receive inquiries or requests on short notice (e.g. 2 hours before) for an employee appearance at either a neighborhood watch meeting or a planned event shall notify their supervisor verbally and via email with a cc to the CSB Sergeant. The supervisor will determine if the request can be fulfilled based on staffing.The employee shall receive authorization from their supervisor prior to committing to appear at the event.

350.5 INABILITY TO ATTEND

If, due to an emergency or unforeseen conflict, the assigned officer cannot attend the scheduled event, that officer's sergeant shall assign another officer to the event or make a reasonable effort to attend the event on behalf of the initially assigned officer.

Should police personnel be unable to attend a scheduled event, the assigned officer shall, at his/her soonest opportunity, make a courtesy call to the contact person listed on the Notice form and explain the situation.The assigned officer's sergeant shall confirm the contact person has been notified.

350.6 OFF-DUTY EVENTS

Employees who wish to attend a public event off-duty and in uniform must have completed their probationary period of employment at the Berkeley Police Department.

(a) Eligible employees wishing to attend an event shall do the following:

1. Determine what kind of event it is, i.e. a presentation regarding a law enforcement career vs. a discussion about current events;
2. Confirm with the school or location that permission has been granted for the officer's appearance.
3. Send an email to their supervisor requesting permission to attend and giving the details of the event (i.e. date, time, location, etc.).

(b) If the request is approved, the officer shall:

1. On the day of the event, notify the Communications Center that he/she is in uniform and off-duty, and provide the location and expected duration of the event.
2. While in route to the event, make an effort to conceal the upper portion of their BPD uniform.

Employees attending events outside of Berkeley will not be allowed to bring a department vehicle, either for transportation or as part of the presentation, unless extraordinary circumstances exist and supervisor approval is obtained.

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Public Safety Fixed Video Surveillance Cameras

351.1 PURPOSE AND SCOPE

This policy provides guidance for the placement and monitoring of City of Berkeley public safety video cameras, as well as the management, maintenance, storage and release of the captured images.

This policy only applies to fixed, overt, marked public safety video surveillance systems utilized by the Department. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department.

351.2 POLICY

The Berkeley Police Department utilizes a public safety video surveillance system to enhance its anti-crime strategy, to effectively allocate and deploy personnel, and to enhance public safety and security in public areas. Cameras may be placed in strategic locations throughout the City to detect and deter crime, to help safeguard against potential threats to the public, to help manage emergency response situations during natural and man-made disasters and to assist City officials in providing services to the community.

Video surveillance in public areas will be conducted in a legal and ethical manner while recognizing and protecting constitutional standards of privacy.

351.3 OPERATIONAL GUIDELINES

Only City Council-approved video surveillance equipment shall be utilized. Members authorized to review video surveillance should only monitor public areas and public activities where no reasonable expectation of privacy exists. The City Manager shall obtain Council approval for any proposed additional locations for the use of video surveillance technology.

351.3.1 PLACEMENT AND MONITORING

Camera placement will be guided by the underlying purpose or strategy associated with the overall video surveillance plan. As appropriate, the Chief of Police should confer with other affected City departments when evaluating camera placement. Environmental factors, including lighting, location of buildings, presence of vegetation, or other obstructions, should also be evaluated when determining placement.

Camera placement includes, but is not limited to: existing cameras such as those located at San Pablo Park, cameras placed in Council identified and approved intersections throughout the City, and potential future camera locations as approved by City Council.

Current City Council approved locations:

- 6th Street at University Avenue
- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way

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- San Pablo Avenue at Dwight Way
- 7th Street at Ashby Avenue
- San Pablo Avenue at Ashby Avenue
- Sacramento Street at Ashby Avenue
- College Avenue at Ashby Avenue
- Claremont Avenue at Ashby Avenue
- 62nd Street at King Street

The cameras shall only record video images and not sound. Recorded images may be used for a variety of purposes, including criminal investigations. The public video surveillance system may be useful for the following purposes:

(a) To prevent, deter, and identify criminal activity.

(b) To address identified areas of criminal activity.

(c) To respond to critical incidents.

(d) To assist in identifying, apprehending, and prosecuting offenders.

(e) To document officer and offender conduct during interactions to safeguard the rights of the public and officers.

(f) To augment resources in a cost-effective manner.

(g) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.

Images from each camera should be recorded in a manner consistent with the underlying purpose of the particular camera.

Unauthorized recording, viewing, reproduction, dissemination, or retention is prohibited.

351.3.2 FIXED CAMERA MARKINGS

All public areas monitored by public safety surveillance equipment shall be marked in a conspicuous manner with appropriate signs to inform the public that the area is under police surveillance. Signs should be well lit, placed appropriately and without obstruction to ensure visibility.

351.3.3 INTEGRATION WITH OTHER TECHNOLOGY

The Department is prohibited from integrating or accessing system capabilities of the video surveillance system with other systems, such as gunshot detection, automated license plate recognition, facial recognition and other video-based analytical systems.

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351.4 VIDEO SUPERVISION

Supervisors should monitor video surveillance access and usage to ensure members are within department policy and applicable laws. Supervisors should ensure such use and access is appropriately documented.

351.4.1 VIDEO LOG

No one without authorization will be allowed to login and view the recordings. Those who are authorized and login should automatically trigger the audit trail function to ensure compliance with the guidelines and policy.

351.4.2 PROHIBITED ACTIVITY

Public safety video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.

Public safety video surveillance systems shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.

Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.

Public safety video surveillance systems and recordings are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

351.5 STORAGE AND RETENTION OF MEDIA

The Department shall retain all recordings for a minimum of 60 days. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

Any recordings needed as evidence in a criminal or civil proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures.

351.5.1 EVIDENTIARY INTEGRITY

All downloaded and retained media shall be treated in the same manner as other evidence. Media shall be accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, digital masking of innocent or uninvolved individuals to preserve anonymity,

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authenticity certificates and date and time stamping, shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.

351.6 RELEASE OF VIDEO IMAGES

All recorded video images gathered by the public safety video surveillance equipment are for the official use of the Berkeley Police Department.

Requests for recorded video images from the public or the media shall be processed in the same manner as requests for department public records.

Requests for recorded images from other law enforcement agencies shall be referred to the Watch Commander for release in accordance with a specific and legitimate law enforcement purpose.

Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process.

351.7 VIDEO SURVEILLANCE AUDIT

The Audits and Inspections Sergeant or the authorized designee will conduct an annual review of the public safety video surveillance system. The review should include an analysis of the cost, benefit and effectiveness of the system, including any public safety issues that were effectively addressed or any significant prosecutions that resulted, and any systemic operational or administrative issues that were identified, including those related to training, discipline or policy.

The results of each review shall be appropriately documented and maintained by the Audits and Inspections Sergeant or the authorized designee and other applicable advisory bodies. Any recommendations for training or policy should be promptly addressed.

351.8 TRAINING

All department members authorized to operate or access public video surveillance systems shall receive appropriate training. Training should include guidance on the use of cameras, associated software, and review of relevant policies and procedures, including this policy. Training should also address state and federal law related to the use of video surveillance equipment and privacy.

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FLASH/SOUND DIVERSIONARY DEVICES

353.1 PURPOSE AND SCOPE

The purpose of this order is to establish guidelines for the deployment and use of flash/sound diversionary devices

Only specifically trained personnel of this Department are authorized to use flash/sound diversionary devices, sometimes referred to as "flash bangs", in situations when the use of a less-lethal diversion would facilitate entry, enable an arrest, restore order, and/or potentially reduce the risk of injury to officers or community members.

353.2 POLICY

It is the policy of the Berkeley Police Department to utilize flash/sound diversionary devices in unique situations as provided in this policy.

353.3 JUSTIFICATIONS FOR USE

Circumstances justifying the use of flash/sound diversionary devices may include, but not be limited to:

(a) Barricaded subject and/or hostage situations

(b) High-risk warrant services

(c) Discouraging dangerous animals from attacking

(d) Riotous situations

(e) Circumstances wherein distraction of violent and/or emotionally disturbed persons and/or those under the influence of alcohol/drugs is believed necessary to facilitate apprehension/custody.

(f) Situations wherein the Incident Commander or on-scene Supervisor deems their use necessary to safely resolve the incident.

353.4 PROCEDURES AND PERSONS AUTHORIZED TO CARRY DEPLOY DIVERSIONARY DEVICES

Only personnel who have successfully completed departmentally approved training in the proper use and deployment of flash/sound diversionary devices shall be certified/authorized to carry/deploy flash/sound diversionary devices during actual operations or training. Refresher training on their use should be provided to members of Special Response Team every two years.

353.5 AUTHORIZATION FOR USE

Except in extreme emergencies (i.e., life-threatening situations), flash/sound diversionary devices shall not be used without prior authorization of the Incident Commander/On-scene Supervisor.

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353.6 DEPLOYMENT CONSIDERATIONS

Prior to deploying flash/sound diversionary devices, personnel shall consider available information and circumstances (i.e., presence of young children, elderly persons, flammable materials, small loose objects, etc). Circumstances may indicate that exterior deployment is preferable to deployment on the interior of a structure. Whenever possible, devices should be deployed to an area visible to the deploying officer. A flash bang pole may also be utilized to facilitate deployment.

353.7 SAFETY EQUIPMENT

All personnel carrying flash/sound diversionary devices in an actual incident or situation shall wear fire-retardant gloves and eye protection. The previously mentioned equipment is mandatory for training.

Because flash/sound diversionary devices have the potential to ignite flammable materials, a portable fire extinguisher or the Fire Department shall be readily accessible whenever devices are carried and may be deployed.

353.8 DOCUMENTATION AND REVIEW

Whenever flash/sound diversionary devices are carried by personnel in an actual situation or incident, that fact shall be noted in the after-action report or police report. In the event devices are deployed, the circumstances surrounding their deployment shall be fully described.

The Chief of Police or his or her designee shall be responsible for reviewing any deployment of flash/sound diversionary devices to ensure that policy is/was followed.

353.9 REPORTING REQUIREMENTS

Flash/sound diversionary devices are registered by serial number with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Typically, the Department's purchase of new devices is reported directly (by case-lot serial numbers) to ATF by the device manufacturer via ATF Form 5. The National Firearms Act requires the Department to notify ATF upon the use/expenditure of flash/sound diversionary devices. The SRT Light Sound Diversionary Device Instructor shall be responsible for submitting written notification to ATF when devices listed have been used/ expended. Notification to ATF may be in the form of Department Letterhead with a description of the device, serial numbers, and date used. This notification may be done quarterly to include multiple uses, but it should be submitted for a time period not to exceed three-month span of time. If there are no uses in a given quarter, no reporting is necessary.

Bureau of Alcohol, Tobacco, and Firearms
National Firearms Branch
244 Neely Road
Martinsburg, WV 25405

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(304)616-4500

353.10 INSPECTION AND STORAGE

The SRT Team Leader is responsible for ensuring that all flash/sound diversion devices are inspected annually. This inspection shall ensure that the Department's devices are properly prepared and in good condition. Devices used beyond their recommended lifetimes shall be designated for use in training only.

Flash/sound diversionary devices should be stored in a cool, dry location within the armory, on a separate shelf away from fixed ammunition. Devices may be temporarily issued to SRT Team members, or other designated personnel, provided appropriate records are maintained. Devices should be carried securely in a pouch/carrier with a retention strap or flap. Loans of Departmentally owned equipment to other agencies must be pre-approved by the Chief or his/her designee.

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Precision Rifle Operator Program

354.1 PURPOSE AND SCOPE

The purpose of this policy is to outline administrative protocols for the Precision Rifle Operator Program. It is also intended to communicate procedures governing the training, deployment, storage, and maintenance of the precision rifles issued to selected members of the Special Response Team.

354.2 POLICY

The Berkeley Police Department shall employ select authorized sworn personnel equipped with precision rifles to exercise expeditious control over critical incidents or potentially violent situations.

Precision Rifle Operators shall conduct themselves with respect to Patrol Response and Special Response Team Procedures described in relevant Department policy documents, and in accordance with the Precision Rifle Operator Procedures set forth in this policy.

354.3 PRECISION RIFLE SPECIFICATIONS

- **Rifles:**

The Remington 700,bolt action,.308-caliber rifle.

Barrett Model 99, bolt action,.50-caliber rifle.

Accuracy International Lapua, bolt action,.338 rifle.

- **Magazines:**

The Remington 700, and the Accuracy International have a five and ten round magazine.

The Barrett Model 99 does not have a magazine.

- **Aiming Devices:**

Lasers and/or other electronic aiming devices are not approved for duty use unless authorized by the Chief of Police.

- **Ammunition:**

Duty ammunition will be supplied by the Department. Only departmentally approved ammunition shall be used for duty.

Accessories:

- **Approved aftermarket accessories include, but are not limited to:**

1. Pistol grips
2. Stocks

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3. Accessory rail systems
4. Optic sighting devices
5. Slings
6. Lights

354.4 DEPLOYMENT OF RIFLES

Precision Rifles shall be deployed only by Precision Rifle Operators.

In light of known or potential risks, a Precision Rifle Operator should deploy the firearm which best meets the needs of the police response, and in which he/she has the greatest accuracy and operation confidence.

Not including deployment during a planned operation, a Precision Rifle Operator who deploys a precision rifle shall make a verbal notification of the deployment to the incident commander, as soon as practical.

Precision rifles are intended to augment the Special Response Team during a planned operation, a spontaneous event, or other critical incidents. These rifles are not intended to be deployed during 'routine' calls for service. The deployment will be consistent with the specialized training that each operator receives.

The Barrett Model 99-.50 caliber rifle shall only be used for disabling a motor vehicle in extreme circumstances (i.e. confronting an armored vehicle or vehicle intentionally targeting a crowd, this is the only tool in BPD's possession to potentially disable an engine block), unless exigent circumstances exist. The use of Barrett Model 99 rifle must be incompliance with Policy 300 (Use of Force policy). When feasible, this tactical decision should be made with an incident commander's approval.

354.5 STORAGE OF RIFLES

Precision Rifle Operators shall be responsible for the care and storage of their assigned rifle and associated equipment.

354.5.1 GENERAL STORAGE

(a) When not in use, Precision Rifle Operators shall securely store their rifle in authorized location at the Public Safety Building (PSB).

  (a) A Precision Rifle Operator may temporarily store his/her rifle in a location other than the PSB to facilitate training or other official duty, provided all reasonable safety and security precautions are taken during transportation and storage.

(b) When in storage, the rifle shall be in the following condition:

  (a) Selector lever is in the "safe" position;

  (b) The chamber of the weapon is empty.

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354.6 INTO SERVICE

(a) When placed into service and transported in a vehicle, the rifle shall be maintained*:

  (a) In the vehicle's secure trunk; In a storage rack specifically designed to secure the rifle within the vehicle's passenger compartment

    (a)

(b) When placed into service and transported in a vehicle, the rifle shall be in the following operational condition:

  (a) Selector lever is in the "safe" position; and,

  (b) The chamber of the weapon is empty.

354.7 REMOVAL FROM SERVICE

When a rifle is removed from service and returned to storage, a Precision Rifle Operator shall perform the following firearm safety procedures

(a) Confirm the selector lever is in the "safe" position;

(b) Open the chamber and conduct a visual and physical inspection to ensure the chamber is empty;

(c) Close the bolt on an empty chamber; and,

(d) Secure the rifle.

When not secured in an authorized location, the rifle shall be under the control of the Precision Rifle Operator.

354.8 MAINTENANCE OF RIFLES

Precision Rifle Operator shall be responsible for routine maintenance of their rifle, including effective cleaning and sufficient lubrication subsequent to weapon use.

Advanced maintenance (i.e., that which is beyond normal cleaning and lubrication), authorized modification to, and periodic 'quality/assurance' inspection of rifles shall be the responsibility of trained and certified department armorers.

354.9 MODIFICATIONS OF RIFLES

A Precision Rifle Operator shall not make or facilitate unauthorized modifications, maintenance or repair of a rifle.

Modification to a rifle may only occur upon the authorization from a Special Response Team Commander and carried out by certified department armorers or factory service providers.

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Maintenance and repair of defective parts or parts needing replacement will be the financial responsibility of the department. Departmental Armorers shall be responsible for the installation of replacement parts outside of the factory, or factory service providers.

354.10 PROGRAM ADMINISTRATION

The coordination and administration of the Program shall be the responsibility of the Special Response Team leadership.

The Special Response Team will maintain a training program for Precision Rifle Operators that addresses at a minimum the following :

(a) Initial and periodic training and qualification;

(b) Weapon system fundamentals, including, but not limited to, rifle nomenclature, operation, emergency action procedures, and render safe procedures.

(c) Special Response Team fundamental tactics and communication protocols.

(d) Accuracy and precision drills.

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Chapter 4 - Patrol Operations

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Patrol Function

400.1 PURPOSE AND SCOPE

The purpose of this policy is to define the patrol function and address intra-organizational cooperation and information sharing.

400.2 POLICY

The Berkeley Police Department provides patrol services 24 hours a day, seven days a week and will prioritize responses to requests for emergency services using available resources to enhance the safety of the public and department members.

400.3 INFORMATION SHARING

To the extent feasible, all information relevant to the mission of the Department should be shared among all divisions and specialized units on a timely basis. Members should be provided with opportunities on a regular basis to share information during the daily briefings and to attend briefings of other divisions or specialized units.

Additionally, information should be shared with outside agencies and the public in conformance with department policies and applicable laws. Members are encouraged to share information with other units and divisions.

400.4 CROWDS, EVENTS AND GATHERINGS

Officers may encounter gatherings of people, including but not limited to, civil demonstrations, civic, social and business events, public displays, parades and sporting events. Officers should monitor such events as time permits in an effort to keep the peace and protect the safety and rights of those present. A patrol supervisor should be notified when it becomes reasonably foreseeable that such an event may require increased monitoring, contact or intervention.

Officers responding to an event or gathering that warrants law enforcement involvement should carefully balance the speech and association rights of those present with applicable public safety concerns before taking enforcement action.

Generally, officers should consider seeking compliance through advisements and warnings for minor violations and should reserve greater enforcement options for more serious violations or when voluntary compliance with the law is not achieved.

Officers are encouraged to contact organizers or responsible persons to seek voluntary compliance that may address relevant public safety/order concerns.

Officers should consider enforcement of applicable state and local laws, such as Penal Code § 602.1 (obstructing or intimidating business operators), when the activity blocks the entrance or egress of a facility or location and when voluntary compliance with the law is not achieved.

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400.5 FUNCTION

Patrol will generally be conducted by uniformed officers in clearly marked law enforcement vehicles in assigned jurisdictional areas of Berkeley. The function of patrol is to respond to calls for assistance and reports of criminal activity, act as a deterrent to crime, enforce state and local laws, identify community needs, provide support and assistance to the community and respond to emergencies.

Patrol services include, but are not limited to:

(a) Responding to emergency calls for service.

(b) Apprehending criminal offenders.

(c) Providing mutual aid and assistance to other agencies for emergency and law enforcement-related activities.

(d) Preventing criminal acts, traffic violations and collisions, maintaining public order and discovering hazardous situations or conditions.

(e) Responding to reports of criminal and non-criminal acts.

(f) Responding to routine calls for service, such as public assistance or public safety.

(g) Carrying out crime prevention activities such as residential inspections, business inspections and community presentations.

(h) Carrying out community oriented policing and problem-solving activities including the application of resources to improve or resolve specific problems or situations and contacting or assisting members of the public in a positive way.

(i) Directing and controlling traffic.

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Fair and Impartial Policing

401.1 PURPOSE AND SCOPE

This policy is intended to reaffirm the commitment of the Berkeley Police Department to fair and impartial policing; to clarify the circumstances in which officers can consider race, ethnicity and other demographics; and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way.

California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This policy explicitly prohibits racial profiling and other biased policing. This policy describes the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in making law enforcement decisions.

401.1.1 DEFINITIONS

Definitions related to this policy include:

Bias-based policing - Any police-initiated action that relies on the race, ethnicity or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being engaged in criminal activity.

401.2 POLICY

Investigative detentions, traffic stops, arrests, searches and property seizures by officers will be based on a standard of reasonable suspicion or probable cause. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause.

Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities except when officers are:

(a) Seeking specific person(s) who have been described in part by any of the above listed characteristics, or

(b) The person(s) are being sought for a specific law enforcement purpose.

Discrimination or harassment based on a trait or class described above is considered a “serious allegation” of misconduct.

401.3 RESPONSIBILITY TO REPORT AND TAKE CORRECTIVE ACTION

Employees who become aware of another employee engaging in biased policing shall adhere to reporting procedures set forth in the Discriminatory Harassment Policy.

A supervisor or command officer who becomes aware of biased policing shall adhere to notification and administrative procedures set forth in the Personnel Complaints Policy.

All reports of biased policing shall be investigated in accordance with the Personnel Complaints Policy.

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401.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Chief of Police or the authorized designee shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and reported annually to the DOJ (Penal Code § 13012; Penal Code § 13020).

401.4.1 DEMOGRAPHIC DATA PROCEDURES

All sworn officers shall provide demographic statistical data once for each individual as listed below:

(a) All vehicle and bicycle detentions.

(b) All pedestrian detentions

(c) Anytime anyone is detained, regardless of the cause

(d) Anytime anyone is searched regardless of the cause.

Officers shall provide demographic statistical data pursuant to the requirements of the RIPA statute, AB 953.

401.5 ADMINISTRATION

Each year, the Operations Division Captain shall review the efforts of the Department to prevent racial or biased based profiling and submit an overview, including public concerns and complaints, to the Chief of Police.

The annual report should not contain any identifying information about any specific complaint, member of the public or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors should review the annual report and discuss the results with those they are assigned to supervise.

401.6 TRAINING

Training on racial or bias-based profiling and review of this policy should be conducted as directed by the Personnel and Training Bureau.

(a) All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of racial or bias-based profiling.

(b) Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.

(c) Each sworn member of this department who received initial racial or bias-based profiling training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial, identity and cultural trends (Penal Code § 13519.4(i)).

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Briefing Training

402.1 PURPOSE AND SCOPE

Briefing training is generally conducted at the beginning of the officer's assigned shift. Briefing provides an opportunity for important exchange between employees and supervisors. A supervisor generally will conduct Briefing; however officers may conduct Briefing for training purposes with supervisor approval.

Briefing should accomplish, at a minimum, the following basic tasks:

(a) Briefing officers with information regarding daily patrol activity, with particular attention given to unusual situations and changes in the status of wanted persons, stolen vehicles and major investigations

(b) Notifying officers of changes in schedules and assignments

(c) Reminding officers of new or updated policies

(d) Reviewing recent incidents for training purposes

(e) Providing training on a variety of subjects

402.2 PREPARATION OF MATERIALS

The supervisor conducting Briefing is responsible for preparation of the materials necessary for a constructive briefing. Supervisors may delegate this responsibility to a subordinate officer in his or her absence or for training purposes.

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Crime and Disaster Scene Integrity

403.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance in handling a major crime or disaster scene.

403.2 POLICY

It is the policy of the Berkeley Police Department to secure crime or disaster scenes so that evidence is preserved, and to identify and mitigate the dangers associated with a major crime or disaster scene for the safety of the community and those required to enter or work near the scene.

403.3 SCENE RESPONSIBILITY

The first officer at the scene of a crime or major incident is generally responsible for the immediate safety of the public and preservation of the scene. Officers shall also consider officer safety and the safety of those persons entering or exiting the area, including those rendering medical aid to any injured parties. Once an officer has assumed or been assigned to maintain the integrity and security of the crime or disaster scene, the officer shall maintain the crime or disaster scene until he/she is properly relieved by a supervisor or other designated person.

403.4 FIRST RESPONDER CONSIDERATIONS

The following list generally describes the first responder's function at a crime or disaster scene. This list is not intended to be all-inclusive, is not necessarily in order and may be altered according to the demands of each situation:

(a) Broadcast emergency information, including requests for additional assistance and resources.

(b) Provide for the general safety of those within the immediate area by mitigating, reducing or eliminating threats or dangers.

(c) Locate or identify suspects and determine whether dangerous suspects are still within the area.

(d) Provide first aid to injured parties if it can be done safely.

(e) Evacuate the location safely as required or appropriate.

(f) Secure the inner perimeter.

(g) Protect items of apparent evidentiary value.

(h) Secure an outer perimeter.

(i) Identify potential witnesses.

(j) Start a chronological log noting critical times and personnel allowed access.

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403.5 SEARCHES

Officers arriving at crime or disaster scenes are often faced with the immediate need to search for and render aid to victims, and to determine if suspects are present and continue to pose a threat. Once officers are satisfied that no additional suspects are present and there are no injured persons to be treated, those exigent circumstances will likely no longer exist. Officers should thereafter secure the scene and conduct no further search until additional or alternate authority for the search is obtained, such as consent or a search warrant.

403.5.1 CONSENT

When possible, officers should seek written consent to search from authorized individuals. However, in the case of serious crimes or major investigations, it may be prudent to also obtain a search warrant. Consent as an additional authorization may be sought, even in cases where a search warrant has been granted.

403.6 EXECUTION OF HEALTH ORDERS

Any sworn member of this department is authorized to enforce all orders of the local health officer that have been issued for the purpose of preventing the spread of any contagious, infectious or communicable disease (Health and Safety Code § 120155).

403.7 ADDITIONAL INVESTIGATIVE STEPS

Once the scene is stabilized, the handling officer or the on-scene supervisor should begin requesting additional resources. The following list generally describes requests that may or may not fit the need for investigating the incident properly. This list is not intended to be all-inclusive, is not necessarily in order and may be altered according to the demands of each situation.

(a) Request detectives to the scene

(b) Make proper notifications, PIO, DCO etc.(see Major Incidents policy)

(c) Photographs (See Digital Evidence policy)

(d) Request an Identification Technician to the scene for photographs and evidence collection.

(e) Request a sketch of the scene (see section 403.10)

(f) Notify the coroner

403.8 IDENTIFICATION TECHNICIANS

Identification Technicians (ID Techs) are provided with special training to cover the following skills:

(a) Recovering latent fingeprints and palm prints

(b) Recovering foot, tool, and tire impressions

(c) Photographing crime or accident scenes

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(d) Collecting, preserving, and transporting physical evidence, including biological materials

ID Techs responding to a scene shall report to the handling officer to ensure knowledge of their presence and to confer on what needs to be processed, collected or photographed. The handling officer should rely upon the expert knowledge of the ID Tech for determining the most practical method for evidence collection.

To ensure their safety, officers shall remain on scene with the ID Tech until the ID Tech's work is completed or until they advise the officer that he/she is free to leave.

403.8.1 EVIDENCE COLLECTION

Most evidence can be collected at the scene by the handling or an assisting officer. However on large scale investigations, an ID Tech may be requested to collect evidence from the scene. In general, certain evidence should only be collected by the ID Technician. These items may include:

1. Blood stained objects or dried physiological materials shall be air-dried in a protected environment, individually packaged into paper bags or bundles, and appropriately marked for identification.
2. Physiological materials such as human tissue may be collected as evidence and require specific unique handling to preserve its evidentiary value. In such cases, officers should contact the Identification Technician or the Homicide Detail or, if after hours, the on-call homicide investigator for details on proper handling.
3. Physical evidence, such as liquid blood samples, must be placed in proper containers and delivered promptly to the laboratory, or placed in the Property Room refrigerator.
4. Other items possibly supporting latent prints and/or trace evidence must be protected from any movement or action that might destroy or contaminate the viability of this evidence

It should be noted that non-sworn personnel, including ID Techs are not trained in drug/narcotic testing and shall refer/surrender any drugs/narcotics to the handling officer for proper handling and booking (see Property and Evidence policy).

403.9 CHAIN OF CUSTODY

The chain of custody is the written record of all individuals who have maintained control of evidence. The chain of custody begins when an item of evidence is collected and is maintained until the final disposition is made. The chain of custody assures continual accountability. Each individual in the chain is responsible for evidence while under his/her control.

The chain of custody shall be documented on the outside of most evidence packaging but should also be documented in the associated case report (see also the Property and Evidence policy).

403.10 CRIME SCENE SKETCHES

If the decision is made for a crime scene sketch, the officer preparing the sketch should make sure that the sketch includes, at minimum:

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(a) An arrow or indicator of the direction of north.

(b) Geographical location, such as a street address or an intersection of streets.

(c) An indicator of the type of room if the sketch is inside a building, ie., living room, bedroom, etc.

(d) Date and time of preparation.

Each sketch of a crime scene may include, as appropriate:

(a) Dimensions and measurements.

(b) Location of significant features, i.e., vehicles, other buildings, victims, witnesses, suspects, etc.

In large scale investigations, such as a homicide or a fatal vehicle collision, the Traffic Bureau's laser scanner may be utilized to provide more accurate measurements.

403.11 LABORATORY EXAMINATION REQUESTS

It shall be the responsibility of the Detective Bureau to take appropriate action to get physical evidence to the laboratory for examination.

(a) Detectives are required to evaluate each case assigned to their Detail, determine what actions will be necessary to complete the investigation, and make appropriate laboratory examination requests, (e.g. DNA test, fiber analysis, etc.)

(b) Evidence submitted to the laboratory for examination must include a record of the following information:

1. Name of the officer last having custody of the item.
2. Date and time the evidence was delivered to the laboratory.
3. Signature of the person in the laboratory receiving the evidence, including date and time of receipt.

(c) Employees will request written results of laboratory analysis at the time a request for laboratory services is made.

(d) When the laboratory examinations are completed, the evidence will be picked up and returned to the Property Room.

(e) Copies of the written results will be attached to the case.

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Ride-Along Program

405.1 PURPOSE AND SCOPE

The Ride-Along Program provides an opportunity for specified individuals to experience the Berkeley Police Department first hand. This policy provides the requirements and the approval process for the Ride-Along Program.

405.1.1 ELIGIBILITY

The Berkeley Police Department Ride-Along Program is offered to Berkeley Police Aides, Public Safety Dispatchers, Citizen Academy participants, Berkeley High School Justice Academy participants, potential Berkeley Police Department employees, and individuals specifically authorized by the Patrol Watch Commander or Personnel and Training Sergeant. Every attempt will be made to accommodate interested persons, however, any applicant may be disqualified without cause.

The following factors may be considered in disqualifying an applicant and are not limited to:

- Being under 15 years of age
- Prior criminal history
- Pending criminal action
- Pending lawsuit against the Department
- Denial by any supervisor

405.2 PARTICIPANTS

Police Aides - Police aides will ride a minimum of 4 hours every other month with a Berkeley Police Officer. The aides are expected to make their own ride-along arrangements, obtaining approval from the Personnel and Training Bureau Sergeant no less than 3 days in advance of the selected ride-along date.

Public Safety Dispatchers - Public Safety Dispatchers will be permitted to ride-along with a patrol officer with the expressed permission of the on-duty Dispatch Supervisor or Communications Center Manager and the on-duty Patrol Watch Commander. Training is the primary reason for allowing dispatchers the opportunity to participate in the ride-along program. No dispatcher shall be allowed to participate in the ride-along program if his/her absence will result in a staffing shortage in the Communications Center. The ride-along shall not exceed four hours in duration.

Citizen Academy and BHS Justice Academy Participants - Citizen Academy and BHS Justice Academy Participants will be permitted to ride-along with a Patrol Officer with the expressed permission of the Justice Academy Liaison. The ride-along shall not exceed four hours in duration.

Potential Berkeley Police Department Employees - Police Officer and Public Safety Dispatcher candidates in the hiring process will be permitted to ride-along with a patrol officer with the expressed permission of the Personnel and Training Bureau Sergeant.

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Individuals Specifically Authorized by the Chief of Police or his/her Designee - Individuals shall submit their request, in writing, to the Chief of Police or his/her designee. The Chief of Police, or his/her designee, will render a decision based upon the totality of the circumstances.

It is the policy of the Department that only requests of an exceptional nature/circumstances will be approved for a ride-along.

405.3 PROCEDURE TO REQUEST A RIDE-ALONG

Generally, ride-along requests will be scheduled by the Personnel and Training Sergeant. The Personnel and Training Sergeant will schedule a date, based on the availability and staffing of Patrol. If the ride-along request is denied, a representative of the Department will contact the applicant and advise him/her of the denial.

On the day of the ride-along, at the PSB, the participant will complete a Ride-Along waiver form. Information requested will include a valid ID or California driver's license, address, and telephone number. If the participant is under 18 years of age, a parent/guardian must be present to complete the Ride-Along waiver form. The waiver form will be forwarded to the respective Watch Commander for review. Once the ride-along is completed, the Watch Commander will forward the waiver form to the Personnel and Training Bureau.

405.3.1 SUITABLE ATTIRE

Any person approved for a ride-along is required to be suitably dressed in collared shirt, blouse or jacket, slacks and shoes. Sandals, T-shirts, tank tops, shorts and ripped or torn blue jeans are not permitted. Hats and ball caps will not be worn in the police vehicle. The Watch Commander or field supervisor may refuse a ride along to anyone not properly dressed.

405.3.1 PEACE OFFICER RIDE-ALONGS

Off-duty members of this department or any other law enforcement agency will not be permitted to ride-along with on-duty officers without the expressed consent of the Watch Commander. In the event that such a ride-along is permitted, the off-duty employee shall not be considered on-duty and shall not represent themselves as a peace officer or participate in any law enforcement activity except as emergency circumstances may require.

405.3.2 RIDE-ALONG CRIMINAL HISTORY CHECK

All Ride-along applicants are subject to a criminal history check. The criminal history check may include a local records check and a Department of Justice Automated Criminal History System check through CLETS prior to their approval as a ride-along with a law enforcement officer (provided that the ride-along is not an employee of the Berkeley Police Department) (CLETS Policies, Practices and Procedures Manual § 1.6.1.F.2.).

405.4 OFFICER'S RESPONSIBILITY

The officer shall advise Dispatch that a ride-along is present in the vehicle before going into service. Officers shall consider the safety of the ride-along at all times. Officers should use sound discretion when encountering a potentially dangerous situation, and if feasible, let the participant

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out of the vehicle in a well-lighted place of safety. The officer shall advise Dispatch of the situation and as soon as practical have another police unit respond to pick up the participant at that location. The ride-along may be continued or terminated at this time.

405.5 CONTROL OF RIDE-ALONG

The assigned employee shall maintain control over the ride-along at all times and instruct him/her in the conditions that necessarily limit their participation. These instructions should include:

(a) The ride-along will follow the directions of the officer

(b) The ride-along will not become involved in any investigation, handling of evidence, discussions with victims or suspects, or handling any police equipment

(c) The ride-along may terminate the ride at any time and the officer may return the observer to their home or to the station if the ride-along interferes with the performance of the officer's duties

(d) No ride-along shall be allowed in the Jail

(e) Officers will not allow any ride-alongs to be present in any residences or situations that would jeopardize their safety or cause undue stress or embarrassment to a victim or any other citizen

(f) Under no circumstance shall a civilian ride along be permitted to enter a private residence with an officer without the expressed consent of the resident or other authorized person

(g) The officer should explain beats and general procedures to the ride-along. Questions should be encouraged and every effort should be made to answer questions in an understandable manner

(h) Officers should give the ride-along brief instruction in the use of the radio should the need for them to use it arise

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Hazardous Material Response

406.1 PURPOSE AND SCOPE

Hazardous materials present a potential harm to employees resulting from their exposure. To comply with Title 8, California Code of Regulations, § 5194, the following is to be the policy of this department.

406.1.1 HAZARDOUS MATERIAL DEFINED

A hazardous material is a substance which by its nature, containment and reactivity, has the capability of inflicting harm during exposure; characterized as being toxic, corrosive, flammable, reactive, an irritant or strong sensitizer and thereby posing a threat to health when improperly managed.

406.2 HAZARDOUS MATERIAL RESPONSE

Employees may encounter situations involving suspected hazardous materials, such as at the scene of a traffic accident, chemical spill or fire. When employees come into contact with a suspected hazardous material, certain steps should be taken to protect themselves and citizens.

The following steps should be considered at any scene involving suspected hazardous materials:

(a) Attempt to identify the type of hazardous substance. (Identification can be determined by placard, driver's manifest or statements from the person transporting).

(b) Notify the Fire Department.

(c) Provide first-aid for injured parties if it can be done safely and without contamination.

(d) Begin evacuation of the immediate area and surrounding areas, depending on the substance. Voluntary evacuation should be considered; however, depending on the substance, mandatory evacuation may be necessary.

(e) Notify the local health authority. Such notification is mandatory when a spilled or released item is a pesticide (Health and Safety Code § 105215).

(f) Notify the Department of Toxic Substances Control. This is mandatory when an officer comes in contact with, or is aware of, the presence of a suspected hazardous substance at a site where an illegal controlled substance is or was manufactured (Health and Safety § 25354.5).

406.3 REPORTING EXPOSURE(S)

Department personnel who believe that they have been exposed to a hazardous material shall immediately report the exposure to a supervisor. Each exposure shall be documented by the employee in accordance with the On-Duty Injuries policy.

Injury or illness caused or believed to be caused from exposure to hazardous materials shall be reported the same as any other on-duty injury or illness in addition to a crime report or incident report.

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406.3.1 SUPERVISOR RESPONSIBILITY

When a supervisor has been informed that an employee has been exposed to a hazardous material, he/she shall ensure that immediate medical treatment is obtained and appropriate action is taken to lessen the exposure.

To ensure the safety of employees, safety equipment is available through supervisory personnel. Safety items not maintained by the Department will be obtained through the Fire Department.

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Response to Bomb Calls

408.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to assist members of the Berkeley Police Department in their initial response to incidents involving explosives, explosive devices, explosion/bombing incidents or threats of such incidents. Under no circumstances should these guidelines be interpreted as compromising the safety of first responders or the public. When confronted with an incident involving explosives, safety should always be the primary consideration.

408.2 POLICY

It is the policy of the Berkeley Police Department to place a higher priority on the safety of persons and the public over damage or destruction to public or private property.

408.3 RECEIPT OF BOMB THREAT

Department members receiving a bomb threat should obtain as much information from the individual as reasonably possible, including the type, placement and alleged detonation time of the device.

If the bomb threat is received on a recorded line, reasonable steps should be taken to ensure that the recording is preserved in accordance with established department evidence procedures.

The member receiving the bomb threat should ensure the Watch Commander or Duty Command Officer (DCO) is immediately advised and informed of the details. This will ensure the appropriate personnel are dispatched, and, as appropriate, the threatened location is given an advance warning.

408.4 GOVERNMENT FACILITY OR PROPERTY

A bomb threat targeting a government facility may require a different response based on the government agency.

408.4.1 BERKELEY POLICE DEPARTMENT PUBLIC SAFETY BUILDING

If the bomb threat is against the Berkeley Police Department's Public Safety Building (PSB), the Watch Commander will direct and assign officers as required for coordinating a general building search or evacuation of the police department,, as he/she deems appropriate.

408.4.2 OTHER COUNTY OR MUNICIPAL FACILITY OR PROPERTY

If the bomb threat is against a county or municipal facility within the jurisdiction of the Berkeley Police Department but that is not the property of this department, the appropriate agency will be promptly informed of the threat. Assistance to the other entity may be provided as the Watch Commander deems appropriate.

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408.4.3 FEDERAL BUILDING OR PROPERTY

If the bomb threat is against a federal building or property, the Federal Protective Service should be immediately notified. The Federal Protective Service provides a uniformed law enforcement response for most facilities, which may include use of its Explosive Detector Dog teams.

If the bomb threat is against a federal government property where the Federal Protective Service is unable to provide a timely response, the appropriate facility's security or command staff should be notified.

Bomb threats against a military installation should be reported to the military police or other military security responsible for the installation.

408.5 PRIVATE FACILITY OR PROPERTY

When a member of this department receives notification of a bomb threat at a location within the City of Berkeley, the member receiving the notification should obtain as much information as reasonably possible from the notifying individual, including:

(a) The location of the facility.

(b) The nature of the threat.

(c) Whether the type and detonation time of the device is known.

(d) Whether the facility is occupied and, if so, the number of occupants currently on-scene.

(e) Whether the individual is requesting police assistance at the facility.

(f) Whether there are any internal facility procedures regarding bomb threats in place, such as:

1. No evacuation of personnel and no search for a device.
2. Search for a device without evacuation of personnel.
3. Evacuation of personnel without a search for a device.
4. Evacuation of personnel and a search for a device.

The member receiving the bomb threat information should ensure that the Watch Commanderor DCO is immediately notified.

408.6 INITIAL RESPONSE

When handling an incident where a threat of an explosive device has been made, the following guidelines, while not all inclusive, should be followed:

(a) Treat all bomb threats as valid.

(b) Leave the decision to evacuate a building to the building manager or person in charge, unless a suspected explosive device is located.

1. The police have the authority to force an evacuation of the premises, and the evacuees shall be moved at least 300 feet away and out of the line of sight of the target building.The evacuees shall be told to bring their belongings with them and stage nearby

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(c) Do not transmit on any equipment that is capable of producing radio frequency energy within the evacuation area. This includes the following:

1. Two-way radios
2. Body Worn Cameras
3. Cell phones
4. Other personal communication devices

(d) Ascertain if there have been previous threats of an explosive device at this location.

1. If there have been prior threats, and the person in charge of the building decides to evacuate the building, the occupants should reassemble at a different location from where they assembled during previous evacuations.

(e) Search the premises, in the company of a person who is familiar with the areas to be searched.No more than one officer should search any given area at one time.

(f) Search the outside of the building before entering. Once cleared, search the building starting at the lowest floor and work upward. The search should cover, at minimum, all public-access areas, restrooms (with a special emphasis on trash containers), window sills, shrubbery, etc.

(g) Assist in evacuation, if commenced, and require occupants to reassemble at least 300 feet away from the target building and out of the direct line of sight.

(h) Be calm; avoid panic behavior.

(i) See that all doors and windows are opened.

(j) If no suspicious items are located after a reasonable search, notify the person responsible for premises exactly that, and no more.Do not say that there are no explosives on the premises.

(k) If the threat is time specific, terminate search activity of the area at least 30 minutes before, and do not resume until at least 30 minutes after the threatened time of detonation.

408.7 FOUND DEVICE

When handling an incident involving a found suspected explosive device, the following guidelines, while not all inclusive, should be followed:

(a) No known or suspected explosive item should be considered safe regardless of its size or apparent packaging.

(b) The device should not be touched or moved except by the bomb squad or military explosive ordnance disposal team.

(c) Personnel should not transmit on any equipment that is capable of producing radio frequency energy within the evacuation area around the suspected device. This includes the following:

1. Two-way radios

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2. Body Worn Cameras
3. Cell phones
4. Other personal communication devices

(d) The appropriate notifications shall be made in the following order:

(a) The Berkeley Police Department Bomb Squad Commander and at least two Berkeley Police Department Bomb Technicians. The Bomb Technician Sergeant or the Senior Bomb Technician responding to the incident and the Bomb Squad Commander are the only persons authorized to request mutual aid assistance.

(b) The Communications center will call the University of California Police Department (UCPD) and request mutual aid assistance only under the following circumstances:

i. If the Communications Center is unable to contact any of the Berkeley Police Department Bomb Technicians within 15 minutes of calling/paging them.

ii. No Berkeley Police Department Bomb Technicians are able to respond to the scene.

iii. At the direction of the Bomb Technician Sergeant (or the Senior Bomb Technician) or Bomb Squad Commander.

(c) If University of California Police Department (UCPD) Bomb Technicians are unable to respond, the Communications Center will call the Alameda County Sheriff's Office and request mutual aid assistance.

(d) Berkeley Fire Department.

(e) The Patrol Watch Commander, or in his/her absence, the Duty Command Officer.

(f) The Investigations Division Captain will be notified if the found device constitutes a violation of the 12300 series of the Penal Code.

(g) 60th Civil Engineering Squadron - Travis Air Force Base (only if suspected military device)

(e) The largest perimeter reasonably possible, at least 300 feet, should initially be established around the device based upon available personnel and the anticipated danger zone

(f) A safe access route should be provided for support personnel and equipment.

(g) Search the area for secondary devices as appropriate and based upon available resources.

(h) Consider evacuation of buildings and personnel near the device or inside the danger zone and the safest exit route.

(i) Promptly relay available information to the Watch Commander or DCO including:

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2. The exact location of the device.
3. A full description of the device (e.g., size, shape, markings, construction).
4. The anticipated danger zone and perimeter.
5. The areas to be evacuated or cleared.

408.8 EXPLOSION/BOMBING INCIDENTS

When an explosion has occurred, there are multitudes of considerations which may confront the responding officers. As in other catastrophic events, a rapid response may help to minimize injury to victims, minimize contamination of the scene by gathering crowds, or minimize any additional damage from fires or unstable structures.

408.8.1 CONSIDERATIONS

Officers responding to explosions, whether accidental or a criminal act, should consider the following actions:

(a) Assess the scope of the incident, including the number of victims and extent of injuries, and the possibility of secondary devices.

(b) Request additional personnel and resources, as appropriate.

(c) Assist with first aid.

(d) Identify and take appropriate precautions to mitigate scene hazards, such as collapsed structures, bloodborne pathogens and hazardous materials.

(e) Assist with the safe evacuation of victims, if possible.

(f) Establish an inner perimeter to include entry points and evacuation routes.

(g) Search for additional or secondary devices.

(h) Preserve evidence.

(i) Establish an outer perimeter and evacuate if necessary.

(j) Identify witnesses.

408.8.2 NOTIFICATIONS

When an explosion has occurred, the following people should be notified as appropriate:

- Fire department
- The Watch Commander or DCO
- Bomb squad
- Additional department personnel, such as Property Crime detectives
- ID Technician
- Other law enforcement agencies, including local, state or federal agencies, such as the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

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- Other government agencies, as appropriate

408.8.3 CROWD MANAGEMENT

Only authorized members with a legitimate need should be permitted access to the scene. Spectators and other unauthorized individuals should be restricted to a safe distance as is reasonably practicable given the available resources and personnel.

408.8.4 PRESERVATION OF EVIDENCE

As in any other crime scene, steps should immediately be taken to preserve the scene. The Watch Commander or DCO should assign officers to protect the crime scene area, which could extend over a long distance. Consideration should be given to the fact that evidence may be imbedded in nearby structures or hanging in trees and bushes.

408.9 RENDER SAFE AND TRANSPORTATION OF EXPLOSIVE DEVICES

(a) It will be the responsibility of the Explosive Ordinance Disposal (EOD) Technicians to direct searches for additional devices, render safe and arrange for the transportation of explosive materials.

1. His/her decisions in these matters will be final unless relieved by a Commanding Officer.

(b) The assigned EOD Technicians shall assist the Detectives assigned by the Investigations Division Captain in the investigation of all explosives, incendiary devices and bombings, if needed.

(c) Detailed information as to the construction of an explosive device, the reason it may have failed to detonate, or method used in rendering safe shall not be released to the news media.

(d) All officers are required to be familiar with the fundamentals of bomb investigation contained herein and shall follow the stated procedures.

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Crisis Intervention

409.1 PURPOSE AND SCOPE

This policy provides guidelines for utilizing the Department's Crisis Intervention Team and interacting with those who may be experiencing a mental health or emotional crisis. Interaction with such individuals has the potential for miscommunication and violence. It often requires an officer to evaluate a person's mental state and intent in order to effectively and legally interact with the individual.

409.1.1 DEFINITIONS

Definitions related to this policy include:

Mental Health Consumer - A description commonly used within the mental health community when referring to an individual diagnosed with a mental illness, who is involved in a mental health crisis, and/or utilizes mental health services.

Mobile Crisis Team - The Mobile Crisis Team (MCT) is a mobile emergency mental health service staffed by licensed mental health professionals and interns. The MCT offers crisis intervention, counseling follow-up and consultation services. The MCT work collaboratively with police personnel, including CIT officers, and act as professional adjuncts. MCT clinicians may be used by CIT officers as consultants regarding crisis intervention. The MCT may also generate referrals for mental health consumers and disposition recommendations for CIT officers.

Person in Crisis - A person whose level of distress or mental health symptoms have exceeded the person's internal ability to manage his/her behavior or emotions. A crisis can be precipitated by any number of things, including an increase in the symptoms of mental illness despite treatment compliance; non-compliance with treatment, including a failure to take prescribed medications appropriately; or any other circumstance or event that causes the person to engage in erratic, disruptive or dangerous behavior that may be accompanied by impaired judgment.

409.2 POLICY

The Berkeley Police Department is committed to providing a consistently high level of service to all members of the community and recognizes that persons in crisis may benefit from intervention. The Department will collaborate, where feasible, with mental health professionals to develop an overall intervention strategy to guide its members' interactions with those experiencing a mental health crisis. This is to ensure equitable and safe treatment of all involved.

409.3 SIGNS

Members should be alert to any of the following possible signs of mental health issues or crises:

(a) A known history of mental illness

(b) Threats of or attempted suicide

(c) Loss of memory

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(d) Incoherence, disorientation or slow response

(e) Delusions, hallucinations, perceptions unrelated to reality or grandiose ideas

(f) Depression, pronounced feelings of hopelessness or uselessness, extreme sadness or guilt

(g) Social withdrawal

(h) Manic or impulsive behavior, extreme agitation, lack of control

(i) Lack of fear

(j) Anxiety, aggression, rigidity, inflexibility or paranoia

Members should be aware that this list is not exhaustive. The presence or absence of any of these should not be treated as proof of the presence or absence of a mental health issue or crisis.

409.4 COORDINATION WITH MENTAL HEALTH PROFESSIONALS

The Personnel and Training Officer will collaborate with mental health professionals to develop an education and response protocol. It should include a list of community resources, to guide department interaction with those who may be suffering from mental illness or who appear to be in a mental health crisis.

409.5 FIRST RESPONDERS

Safety is a priority for first responders. It is important to recognize that individuals under the influence of alcohol, drugs or both may exhibit symptoms that are similar to those of a person in a mental health crisis. These individuals may still present a serious threat to officers; such a threat should be addressed with reasonable tactics. Nothing in this policy shall be construed to limit an officer's authority to use reasonable force when interacting with a person in crisis.

Officers are reminded that mental health issues, mental health crises and unusual behavior alone are not criminal offenses. Individuals may benefit from treatment as opposed to incarceration.

An officer responding to a call involving a person in crisis should:

(a) Promptly assess the situation independent of reported information and make a preliminary determination regarding whether a mental health crisis may be a factor.

(b) Request available cover officers and specialized resources, such as the Mobile Crisis Team and/or a CIT member (if available), as deemed necessary and, if it is reasonably believed that the person is in a crisis situation, use conflict resolution and de-escalation techniques to stabilize the incident if possible.

(c) If feasible, and without compromising safety, turn off flashing lights, bright lights or sirens.

(d) Attempt to determine if weapons are present or available.

1. Prior to making contact, and whenever possible and reasonable, conduct a search of the Department of Justice Automated Firearms System via the

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California Law Enforcement Telecommunications System (CLETS) to determine whether the person is the registered owner of a firearm (Penal Code § 11106.4).

(e) Take into account the person's mental and emotional state and potential inability to understand commands or to appreciate the consequences of his/her action or inaction, as perceived by the officer.

(f) Secure the scene and clear the immediate area as necessary.

(g) If feasible, employ tactics, such as time, distance and cover, to preserve the safety of all involved parties.

(h) Determine if a crime(s) has been committed and what course of action should be followed based on the circumstances presented.

(i) Request a supervisor, as warranted.

(j) Evaluate any available information that might assist in determining cause or motivation for the person's actions or stated intentions.

(k) If circumstances reasonably permit, consider and employ alternatives to force.

409.6 DE-ESCALATION

Officers should consider that taking no action or passively monitoring the situation may be the most reasonable response to a mental health crisis.

Once it is determined that a situation is a mental health crisis and immediate safety concerns have been addressed, responding members should be aware of the following considerations and should generally:

- Evaluate safety conditions.
- Introduce themselves and attempt to obtain the person's name.
- Be patient, polite, calm, courteous and avoid overreacting.
- Speak and move slowly and in a non-threatening manner.
- Moderate the level of direct eye contact.
- Remove distractions or disruptive people from the area, if possible.
- Demonstrate active listening skills (e.g., summarize the person's verbal communication).
- Provide for sufficient avenues of retreat or escape should the situation become volatile.

Responding officers generally should not:

- Use stances or tactics that can be interpreted as aggressive.
- Allow others to interrupt or engage the person.
- Corner a person who is not believed to be armed, violent or suicidal.
- Argue, speak with a raised voice or use threats to obtain compliance.

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409.7 INCIDENT ORIENTATION

When responding to an incident that may involve mental illness or a mental health crisis, the officer should request that the dispatcher provide critical information as it becomes available. This includes:

(a) Whether the person relies on drugs or medication, or may have failed to take his/her medication.

(b) Whether there have been prior incidents, suicide threats/attempts, and whether there has been previous police response.

(c) Contact information for a treating physician or mental health professional.

(d) Whether there are guns registered to the person.

(e) What, if any, vehicles are registered to the person.

(f) Information regarding additional persons at the location of the incident.

Additional resources and a supervisor should be requested as warranted.

409.8 SUPERVISOR RESPONSIBILITIES

Upon request, a supervisor should respond to the scene of interactions with those in crisis. Responding supervisors should:

(a) Attempt to secure appropriate and sufficient resources such as additional officers, the Mobile Crisis Team and/or a CIT member.

(b) Closely monitor any use of force, including the use of restraints, and ensure that those subjected to the use of force are provided with timely access to medical care (see the Handcuffing and Restraints Policy).

(c) Consider strategic disengagement. Absent an imminent threat to the public and, as circumstances dictate, this may include removing or reducing law enforcement resources or engaging in passive monitoring.

(d) Ensure that all reports are completed and that incident documentation uses appropriate terminology and language.

409.9 INCIDENT REPORTING

Members engaging in any oral or written communication associated with a mental health crisis should be mindful of the sensitive nature of such communications and shall exercise appropriate discretion when referring to or describing persons and circumstances.

Members having contact with a person in crisis shall keep related information confidential, except to the extent that revealing information is necessary to conform to department reporting procedures or other official mental health or medical proceedings.

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409.9.1 DIVERSION
Individuals who are not being arrested should be processed in accordance with the Mental Illness Commitments Policy.

409.10 NON-SWORN INTERACTION WITH PEOPLE IN CRISIS

Non-sworn members may be required to interact with persons in crisis in an administrative capacity, such as dispatching, fingerprinting, jail booking procedures, releasing property and responding to records requests.

(a) Members should treat all individuals equally and with dignity and respect.

(b) If a member believes that he/she is interacting with a person in crisis, he/she should proceed patiently and in a calm manner.

(c) Members should be aware and understand that the person may make unusual or bizarre claims or requests.

If a person's behavior makes the Professional Staff feel unsafe, if the person is or becomes disruptive or violent, or if the person acts in such a manner as to cause the Professional Staff to believe that the person may be harmful to him/herself or others, an officer should be promptly summoned to provide assistance.

409.11 EVALUATION

The Department's Crime Analyst should ensure an annual report documenting the number of mental health related calls for service is completed and submitted to the Chief of Police through the chain of command.

409.12 TRAINING

In coordination with the mental health community and appropriate stakeholders, the Department will develop and provide comprehensive education and training to all department members toassist themin effectively interacting with persons in crisis.

The Berkeley Police Departmentwill strive to provided available Peace Officer Standards and Training (POST)-approved advanced officer training on interaction with persons with mental disabilities, welfare checks and crisis intervention (Penal Code § 11106.4; Penal Code § 13515.25; Penal Code § 13515.27; Penal Code § 13515.30).

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Mental Illness Commitments

410.1 PURPOSE AND SCOPE

This policy provides guidelines for when officers may take a person into custody for psychiatric evaluation and treatment (5150 commitment) (Welfare and Institutions Code § 5150).

410.2 POLICY

It is the policy of the Berkeley Police Department to protect the public and individuals through the legal and appropriate use of the 72-hour treatment and evaluation commitment process (5150 commitment).

410.3 AUTHORITY

An officer having probable cause may take a person into custody and place the person in an approved mental health facility for a 72-hour treatment and evaluation when the officer believes that, as a result of a mental disorder, the person is a danger to him/herself or others or the person is gravely disabled (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5585.50).

When determining whether to take a person into custody, officers are not limited to only determining if the person is an imminent danger and shall consider reasonably available information about the historical course of the person's mental disorder, which may include evidence presented from any of the following (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05):

(a) The person who is being evaluated or anyone designated by the person

(b) An individual who is providing or has provided mental health treatment or related support services to the person

(c) A family member

410.4 CONSIDERATIONS AND RESPONSIBILITIES

Any officer handling a call involving an individual who may qualify for a 5150 commitment should consider, as time and circumstances reasonably permit:

(a) Available information that might assist in determining the cause and nature of the person's action or stated intentions.

(b) Conflict resolution and de-escalation techniques.

(c) Community or other resources available to assist in dealing with mental health issues.

While these steps are encouraged, nothing in this section is intended to dissuade officers from taking reasonable action to ensure the safety of the officers and others.

Officers should consider a 5150 commitment over arrest when mental health issues appear to be a mitigating factor for people who are suspected of committing minor crimes or creating other public safety issues.

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410.4.1 SECURING OF PROPERTY

When a person is taken into custody for evaluation, or within a reasonable time thereafter, and unless a responsible relative, guardian or conservator is in possession of the person's personal property, the officer shall take reasonable precautions to safeguard the individual's personal property in his/her possession or on the premises occupied by the person (Welfare and Institutions Code § 5150). The officer shall document the disposition of the person's property on the application.

410.5 SEARCH PRIOR TO TRANSPORTATION

Prior to transportation, the officer taking a mentally disordered person into custody pursuant to W&I 5150, or who facilitates the person's request for voluntary psychiatric evaluation, shall ensure the person is searched for weapons or items that could present a safety hazard or security concern to ambulance personnel.

410.6 TRANSPORTATION

Persons wishing to self-commit or who are being detained pursuant to W&I 5150 shall be transported to an appropriate care facility via ambulance.

Communication Center personnel shall be responsible for requesting the appropriate ambulance service, based on information communicated by the requesting officer and requirements set forth in the service contract(s) maintained with the Alameda County EMS governing non-medical W&I 5150 transportation.

Persons requiring medical clearance prior to delivery to a psychiatric care facility shall be transported to the appropriate receiving hospital as determined by ambulance personnel.

Officers shall evaluate the mentally disordered person's potential for violence when considering transportation logistics.

Operations Division personnel shall be responsible for post-commitment transportation of a person on a "POLICE HOLD" from the involved psychiatric treatment facility.

(a) Individuals cleared with a "fit for incarceration" from a psychiatric facility such as John George Pavilion or Alta Bates Hospital, may be transported to either the Berkeley City or Santa Rita Jail. Consideration should be given to any additional investigation or interviews needed for the case.

410.7 DOCUMENTATION

The officer shall complete an application for a 72-hour detention for evaluation and treatment, provide it to the transporting personnel assigned to that patient and retain a copy of the application as the case report.

The application shall include the circumstances for officer involvement; the probable cause to believe the person is, as a result of a mental health disorder, a danger to others or him/herself or gravely disabled; and all information used for the determination of probable cause (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05).

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The officer should also provide a verbal summary to any transporting personnel regarding the circumstances leading to the involuntary detention.

410.7.1 ADVISEMENT

The officer taking a person into custody for evaluation shall advise the person of:

(a) The officer's name and agency.

(b) The fact that the person is not under criminal arrest but is being taken for examination by mental health professionals and the mental health staff will advise him/her of their rights.

(c) The name of the facility to which the person is being taken.

(d) If the person is being taken into custody at his/her residence, he/she should also be advised that he/she may take a few personal items, which the officer must approve, and may make a telephone call or leave a note indicating where he/she is being taken. The officer should also ask if the person needs assistance turning off any appliance or water.

The advisement shall be given in a language the person understands. If the person cannot understand an oral advisement, the information shall be provided in writing (Welfare and Institutions Code § 5150).

410.8 VOLUNTARY EVALUATIONS

410.8.1 VOLUNTARY EVALUATIONS - NOT MEETING THE W&I 5150 CRITERIA

When an officer encounters an individual who desires to be voluntarily evaluated for a W&I 5150 commitment but, in the officer's opinion, doesn't meet the criteria for a hold, the officer should:

(a) Facilitate the transport of the person to an appropriate facility that is able to conduct an evaluation.

(b) Document the circumstances surrounding the individual's desire to pursue a voluntary evaluation in an MDT or Incident Report.

If at any point the person changes his/her mind regarding the voluntary evaluation, the person shall be allowed to decline transport.

410.8.2 VOLUNTARY EVALUATIONS - MEETING THE W&I 5150 CRITERIA

When an officer encounters an individual who desires to be voluntarily evaluated for a W&I 5150 commitment AND, in the officer's opinion, MEETS the criteria, the officer should:

(a) Facilitate the transport of the person to an appropriate facility that is able to conduct an evaluation.

(b) Complete a W&I 5150 application.

Completing the application safeguards for the possibility that the person may change their mind regarding the voluntary commitment during transport and be allowed to leave, when they are actually in need of an evaluation at a psychiatric facility.

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410.9 CRIMINAL OFFENSES

410.9.1 MINOR OFFENSES

Officers investigating an individual who is suspected of committing a minor criminal offense and who is being taken on a 5150 commitment should resolve the criminal matter by issuing a warning or citation, or completing a report with an out of custody request for a warrant.

410.9.2 SERIOUS OFFENSES

When an individual who may qualify for a 5150 commitment has committed a serious criminal offense that would normally result in an arrest and transfer to a jail facility, the officer should:

(a) Arrest the individual when there is probable cause to do so.

(b) Notify the appropriate supervisor of the facts supporting the arrest and the facts that would support the 5150 commitment.

(c) Facilitate the individual's transfer to an appropriate mental health facility.

(d) Indicate "POLICE HOLD" and note the applicable crime(s) on the W&I 5150 application.

(e) Advise the transporting personnel that the subject is on a police hold.

(f) Complete the police report and any supporting documents that will be needed once the individual is released from the psychiatric detention.

(g) Notify oncoming shifts of the future need to transport the subject once he/she is deemed fit for incarceration (see section 410.6 a regarding transportation).

410.10 FIREARMS AND OTHER WEAPONS

Whenever a person is taken into custody for a 5150 commitment, the handling officers should seek to determine if the person owns or has access to any firearm or other deadly weapon defined in Welfare and Institutions Code § 8100. Officers should consider whether it is appropriate and consistent with current search and seizure law under the circumstances to seize any such firearms or other dangerous weapons (e.g., safekeeping, evidence, consent).

Officers are cautioned that a search warrant is needed before entering a residence or other place to search, unless lawful, warrantless entry has already been made (e.g., exigent circumstances, consent). A search warrant may also be needed before searching for or seizing weapons.

The handling officers shall issue a receipt describing the deadly weapon or any firearm seized, and list any serial number or other identification that is on the firearm. Officers shall advise the person of the procedure for the return of any firearm or other weapon that has been taken into custody (Welfare and Institutions Code § 8102 (b)) (see Property and Evidence Policy).

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410.10.1 PETITION FOR RETURN OF FIREARMS AND OTHER WEAPONS

Whenever the handling officer has cause to believe that the future return of any confiscated weapon might endanger the person or others, the officer shall detail those facts and circumstances in a report. The report shall be forwarded to the Detective Bureau, which shall be responsible for initiating a petition to the Superior Court for a hearing in accordance with Welfare and Institutions Code § 8102(c), to determine whether the weapon will be returned.

The petition to the Superior Court shall be initiated within 30 days of the release of the individual from whom such weapon has been confiscated, unless the Department makes an ex parte application to the court to extend the time to file such a petition, up to a maximum of 60 days. At the time any such petition is initiated, the Department shall send written notice to the individual informing him/her of the right to a hearing on the issue, that he/she has 30 days to confirm with the court clerk any desire for a hearing and that the failure to do so will result in the forfeiture of any confiscated weapon.

410.11 TRAINING

This department will strive to provide Peace Officer Standards and Training (POST)-approved advanced officer training on interaction with persons with mental disabilities, 5150 commitments and crisis intervention.

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Cite and Release Policy

411.1 PURPOSE AND SCOPE

This policy provides guidance on when to release adults who are arrested for a criminal misdemeanor offense on a written notice to appear (citation) and when to hold for court or bail.

411.2 POLICY

It is the policy of the Berkeley Police Department to release all persons arrested on misdemeanor or other qualifying charges on a citation with certain exceptions (Penal Code § 853.6).

If there is a reason for non-release, the Department's mission to protect the community will be the primary consideration when determining whether to release any individual in lieu of holding for court or bail.

411.3 RELEASE BY CITATION

Except in cases where a reason for non-release as described below exists, adults arrested for a misdemeanor offense, including a private person's arrest, shall be released from custody on a citation (Penal Code § 853.6).

The citing officer shall, at the time the defendant signs the notice to appear, call attention to the time and place for appearance and take any other steps they deem necessary to ensure that the defendant understands their written promise to appear.

411.3.1 FIELD CITATIONS

In most cases an adult arrested for a misdemeanor offense may be released in the field on a citation in lieu of physical arrest when booking and fingerprinting is not practicable or immediately required provided the individual can be satisfactorily identified, there is no outstanding arrest warrant for the individual and none of the below described disqualifying circumstances are present (Penal Code § 853.6; Penal Code § 1270.1).

When a booking photo or fingerprints are needed for the furtherance of any investigation, the person should be released on citation after booking instead of on a field citation.

411.3.2 RELEASE AFTER BOOKING

In some cases it may not be feasible or desirable to release a person in the field. The person should instead be released on citation after booking at the jail.

411.4 NON-RELEASE

411.4.1 DISQUALIFYING OFFENSES

An adult arrested on any of the following disqualifying charges shall not be released on citation and shall be transported to the appropriate detention facility or held for court or bail after booking (Penal Code § 1270.1):

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(a) Misdemeanor domestic battery (Penal Code § 243(e)(1))

(b) Felony domestic battery (Penal Code § 273.5)

(c) Serious or violent felonies (Penal Code § 1270.1(a)(1))

(d) Felony intimidation of witnesses and victims (Penal Code § 136.1)

(e) Violation of a protective order and the arrested person has made threats, used violence, or has gone to the protected person's workplace or residence (Penal Code § 273.6)

(f) Stalking (Penal Code § 646.9)

(g) Misdemeanor violations of a protective order relating to domestic violence if there is a reasonable likelihood the offense will continue or the safety of the individuals or property would be endangered (Penal Code § 853.6)

411.4.2 REASONS FOR NON-RELEASE

A person arrested for a misdemeanor shall be released on a citation unless there is a reason for non-release. A supervisor may authorize a release on citation regardless of whether a reason for non-release exists when it is determined to be in the best interest of the Department and does not present an unreasonable risk to the community (e.g., release of an intoxicated or ill person to a responsible adult).

Reasons for non-release include (Penal Code § 853.6(i)):

(a) The person arrested is so intoxicated that they could be a danger to themselves or to others. Release may occur as soon as this condition no longer exists.

(b) The person arrested requires medical examination or medical care or is otherwise unable to care for their own safety.

(c) The person is arrested for one or more of the offenses listed in Vehicle Code § 40302, Vehicle Code § 40303, and Vehicle Code § 40305.

(d) There are one or more outstanding arrest warrants for the person (see Misdemeanor Warrants elsewhere in this policy).

(e) The person could not provide satisfactory evidence of personal identification.

    (a) If a person released on citation does not have satisfactory identification in his/her possession, a right thumbprint or fingerprint should be obtained on the citation form.

(f) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by the immediate release of the person arrested.

(g) There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by the release of the person arrested.

(h) The person arrested demands to be taken before a magistrate or has refused to sign the notice to appear.

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(i) There is reason to believe that the person would not appear at the time and place specified in the notice to appear. The basis for this determination shall be specifically documented. Reasons may include:

  (a) Previous failure to appear is on record

  (b) The person lacks ties to the area, such as a residence, job, or family

  (c) Unusual circumstances lead the officer responsible for the release of prisoners to conclude that the suspect should be held for further investigation

(j) A previous conviction, citation, or arrest for misdemeanor or felony retail theft from a store in the previous six months.

(k) There is probable cause to believe that the person arrested is guilty of committing organized retail theft.

When a person is arrested on a misdemeanor offense and is not released by criminal citation, the reason for non-release shall be noted on the Probable Cause Declaration (PC Dec).

411.5 MISDEMEANOR WARRANTS

An adult arrested on a misdemeanor warrant may be released, with supervisor approval, unless any of the following conditions exist:

(a) The misdemeanor cited in the warrant involves violence

(b) The misdemeanor cited in the warrant involves a firearm

(c) The misdemeanor cited in the warrant involves resisting arrest

(d) The misdemeanor cited in the warrant involves giving false information to a peace officer

(e) The person arrested is a danger to themselves or others due to intoxication or being under the influence of drugs or narcotics

(f) The person requires medical examination or medical care or was otherwise unable to care for their own safety

(g) The person has other ineligible charges pending against themselves

(h) There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person

(i) The person refuses to sign the notice to appear

(j) The person cannot provide satisfactory evidence of personal identification

(k) The warrant of arrest indicates that the person is not eligible to be released on a notice to appear

Release under this section shall be done in accordance with the provisions of this policy.

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411.6 JUVENILE CITATIONS

Completion of criminal citations for juveniles is generally not appropriate except when cited into traffic court for any of the following:

(a) Misdemeanor traffic violations of the Vehicle Code such as 12500(a) or 14601.1(a)

(b) Violations of the Berkeley Municipal code

(c) Marijuana violations (i.e., possession, transport, sales)

All other misdemeanor violations for juveniles shall be documented with a case number and referred to Juvenile Probation with a Notice to Appear.

411.7 REQUESTING CASE NUMBERS

Many cases involving a criminal citation release can be handled without requesting a case number. Traffic situations and local code violations can be documented on the reverse side of the records copy of the citation. Most Penal Code sections will require a case number to document the incident properly in a report. This section does not preclude an officer from requesting a case number if the offiver feels the situation should be documented more thoroughly in a case report.

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Foreign Diplomatic and Consular Representatives

412.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that members of the Berkeley Police Department extend appropriate privileges and immunities to foreign diplomatic and consular representatives in accordance with international law.

412.2 POLICY

The Berkeley Police Department respects international laws related to the special privileges and immunities afforded foreign diplomatic and consular representatives assigned to the United States.

All foreign diplomatic and consular representatives shall be treated with respect and courtesy, regardless of any privileges or immunities afforded them.

412.3 CLAIMS OF IMMUNITY

If a member comes into contact with a person where law enforcement action may be warranted and the person claims diplomatic or consular privileges and immunities, the member should, without delay:

(a) Notify a supervisor.

(b) Advise the person that his/her claim will be investigated and he/she may be released in accordance with the law upon confirmation of the person's status.

(c) Request the person's identification card, either issued by the U.S. Department of State (DOS), Office of the Chief of Protocol, or in the case of persons accredited to the United Nations, by the U.S. Mission to the United Nations. These are the only reliable documents for purposes of determining privileges and immunities.

(d) Contact the DOS Diplomatic Security Command Center at 571-345-3146 or toll free at 866-217-2089, or at another current telephone number and inform the center of the circumstances.

(e) Verify the immunity status with DOS and follow any instructions regarding further detention, arrest, prosecution and/or release, as indicated by the DOS representative. This may require immediate release, even if a crime has been committed.

Identity or immunity status should not be presumed from the type of license plates displayed on a vehicle. If there is a question as to the status or the legitimate possession of a Diplomat or Consul license plate, a query should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state.

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412.4 ENFORCEMENT

If the DOS is not immediately available for consultation regarding law enforcement action, members shall be aware of the following:

(a) Generally, all persons with diplomatic and consular privileges and immunities may be issued a citation or notice to appear. However, the person may not be compelled to sign the citation.

(b) All persons, even those with a valid privilege or immunity, may be reasonably restrained in exigent circumstances for purposes of self-defense, public safety or the prevention of serious criminal acts.

(c) An impaired foreign diplomatic or consular representative may be prevented from driving a vehicle, even if the person may not be arrested due to privileges and immunities.

1. Investigations, including the request for field sobriety tests, chemical tests and any other tests regarding impaired driving may proceed but they shall not be compelled.

(d) The following persons may not be detained or arrested, and any property or vehicle owned by these persons may not be searched or seized:

1. Diplomatic-level staff of missions to international organizations and recognized family members
2. Diplomatic agents and recognized family members
3. Members of administrative and technical staff of a diplomatic mission and recognized family members
4. Career consular officers, unless the person is the subject of a felony warrant

(e) The following persons may generally be detained and arrested:

1. International organization staff; however, some senior officers are entitled to the same treatment as diplomatic agents.
2. Support staff of missions to international organizations
3. Diplomatic service staff and consular employees; however, special bilateral agreements may exclude employees of certain foreign countries.
4. Honorary consular officers
5. Whenever an officer arrests and incarcerates, or detains for investigation for over two hours, a person with diplomatic and consular privileges and immunities, the officer shall promptly advise the person that he/she is entitled to have his/her government notified of the arrest or detention (Penal Code § 834c). If the individual wants his/her government notified, the officer shall begin the notification process.

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412.5 DOCUMENTATION

All contacts with persons who have claimed privileges and immunities afforded foreign diplomatic and consular representatives should be thoroughly documented and the related reports forwarded to DOS.

412.6 DIPLOMATIC IMMUNITY TABLE

Reference table on diplomatic immunity:

Category	Arrested or Detained	Enter Residence Subject to Ordinary Procedures	Issued Traffic Citation	Subpoenaed as Witness	Prosecuted	Recognized Family Members
Diplomatic Agent	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Member of Admin and Tech Staff	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Service Staff	Yes (note (a))	Yes	Yes	Yes	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
Career Consul Officer	Yes if for a felony and pursuant to a warrant (note (a))	Yes (note (d))	Yes	No for official acts Testimony may not be compelled in any case	No for official acts. Yes otherwise (note (a))	No immunity or inviolability
Honorable Consul Officer	Yes	Yes	Yes	No for official acts Yes otherwise.	No for official acts Yes otherwise	No immunity or inviolability
Consulate Employees	Yes (note (a))	Yes	Yes	No for official acts Yes otherwise.	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
Int'l Org Staff (note (b))	Yes (note (c))	Yes (note (c))	Yes	Yes (note (c))	No for official acts. Yes otherwise (note (c))	No immunity or inviolability

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Diplomatic-Level Staff of Missions to Int'l Org	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Support Staff of Missions to Int'l Orgs	Yes	Yes	Yes	Yes	No for official acts Yes otherwise	No immunity or inviolability

Notes for diplomatic immunity table:

(a) This table presents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.

(b) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or in the prevention of serious criminal acts.

(c) A small number of senior officers are entitled to be treated identically to diplomatic agents.

(d) Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.

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Rapid Response and Deployment

413.1 PURPOSE AND SCOPE

Violence that is committed in schools, workplaces and other locations by individuals or a group of individuals who are determined to target and kill persons and to create mass casualties presents a difficult situation for law enforcement. The purpose of this policy is to identify guidelines and factors that will assist responding officers in situations that call for rapid response and deployment.

413.2 POLICY

The Berkeley Police Department will endeavor to plan for rapid response to crisis situations, and to coordinate response planning with other emergency services as well as with those that are responsible for operating sites that may be the target of a critical incident.

Nothing in this policy shall preclude the use of reasonable force, deadly or otherwise, by members of the Department in protecting themselves or others from death or serious injury.

413.3 DEFINITIONS

Active Shooter - An Active Shooter is an individual who places other persons in immediate peril of death or great bodily injury by engaging in random or systematic shooting, typically with the intent to commit multiple homicides. For the purpose of this order, this term will also apply to a person who uses any deadly weapon to systematically or randomly inflict death or great bodily injury upon other persons.

Barricaded Suspect - A barricaded suspect is an individual who is hiding or holding out in a room or building, is known or believed to be armed with a dangerous weapon, and has displayed or threatened violence toward other persons. The suspect may or may not be holding hostages, but there is no indication that his or her actions are likely to result in the immediate death or great bodily injury of innocent persons.

Mass Casualty Incident - According to the World Health Organization, a mass casualty incident is an incident which generates more patients at one time than locally available resources can manage using routine procedures. It requires exceptional emergency arrangements and additional or extraordinary assistance.

On-Scene Incident Commander - The on-scene incident commander is the first officer to arrive at the scene of an incident of an active shooter. The officer shall assume command of the situation and coordinate the activities and operations of responding personnel consistent with the objective of this order until relieved by a higher authority.

413.4 FIRST RESPONSE

If there is a reasonable belief that acts or threats by a suspect are placing lives in imminent danger, first responding officers should consider reasonable options to reduce, prevent or eliminate the threat. Officers must decide, often under a multitude of difficult and rapidly evolving circumstances,

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whether to advance on the suspect, take other actions to deal with the threat or wait for additional resources.

If a suspect is actively engaged in the infliction of serious bodily harm or other life-threatening activity toward others, officers shall take immediate action, if reasonably possible, while requesting additional assistance.

Officers should remain aware of the possibility that an incident may be part of a coordinated multi-location attack that may require some capacity to respond to other incidents at other locations.

When deciding on a course of action officers should consider:

(a) Whether to advance on or engage a suspect who is still a possible or perceived threat to others. Any advance or engagement should be based on information known or received at the time.

(b) Whether to wait for additional resources or personnel. This does not preclude an individual officer from taking immediate action.

(c) Whether individuals who are under imminent threat can be moved or evacuated with reasonable safety.

(d) Whether the suspect can be contained or denied access to victims.

(e) Whether the officers have the ability to effectively communicate with other personnel or resources.

(f) Whether planned tactics can be effectively deployed.

(g) The availability of rifles, shotguns, shields, breaching tools, control devices and any other appropriate tools, and whether the deployment of these tools will provide a tactical advantage.

In a case of a barricaded suspect with no hostages and no immediate threat to others, officers should consider summoning and waiting for additional assistance (Special Response Team).

413.5 COMMAND RESPONSIBILITIES

As soon as practical, a supervisor or command officer shall assume the role of Incident Commander. As additional personnel arrive on scene, the Incident Commander should consider implementing the Incident Command System, which may include the assignment of a Tactical Commander. Absent compelling reasons to the contrary, the Incident Commander shall ensure the tactics described above have been initiated to contain and eliminate the immediate threat.

Secondary responsibilities of the Incident Commander may include the assignment of additional duties normally associated with scene management. Such tasks include, but are not limited to:

(a) The establishment of an incident command post

(b) Setting up inner perimeter containment and outer perimeter control

(c) Evacuation of persons from nearby areas that could be in imminent danger

(d) Establishing staging areas and shelter locations

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(e) Assigning a Press Information Officer

(f) Ensuring that post-operation reporting requirements have been addressed

If an active shooter incident develops into a long-term hostage or barricaded suspect situation, or results in a protracted crime scene investigation, the Department will attempt to meet our ongoing staffing needs without outside assistance. However, as with any mass casualty incident, the on scene supervisor or Incident Commander shall notify the Chief or Assistant Chief of Inspectors at the Alameda County District Attorney's Office to utilize their assistance with investigation of the incident and/or providing victim services. Contact can be made via the Alameda County Sheriff's Office Emergency Services Dispatch. If additional staffing is required, a formal request for mutual aid shall be made to the Alameda County Sheriff's Office.

It shall be the responsibility of the Incident Commander to organize and convene a debriefing session as soon as possible following an active shooter incident. The debriefing will be available to all interested law enforcement agencies in the area and will be conducted to enhance preparedness and to increase knowledge of such incidents.

413.6 CONSIDERATIONS

When dealing with a crisis situation members should:

(a) Assess the immediate situation and take reasonable steps to maintain operative control of the incident.

(b) Obtain, explore and analyze sources of intelligence and known information regarding the circumstances, location and suspect involved in the incident.

(c) Attempt to attain a tactical advantage over the suspect by reducing, preventing or eliminating any known or perceived threat.

(d) Attempt, if feasible and based upon the suspect’s actions and danger to others, a negotiated surrender of the suspect and release of the hostages.

413.7 PLANNING

The Operations Division Captain or his/her designee should coordinate critical incident planning. Planning efforts should consider:

(a) Identification of likely critical incident target sites, such as schools, shopping centers, entertainment and sporting event venues.

(b) Availability of building plans and venue schematics of likely critical incident target sites.

(c) Communications interoperability with other law enforcement and emergency service agencies.

(d) Training opportunities in critical incident target sites, including joint training with site occupants.

(e) Evacuation routes in critical incident target sites.

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(f) Patrol first-response training.

(g) Coordination of emergency medical and fire services.

(h) Equipment needs.

(i) Mutual aid agreements with other agencies.

(j) Coordination with private security providers in critical incident target sites.

413.8 TRAINING

The Personnel and Training Bureau should include rapid response to critical incidents in the training plan. This training should address:

(a) Orientation to likely critical incident target sites, such as schools, shopping centers, entertainment and sporting event venues.

(b) Communications interoperability with other law enforcement and emergency service agencies.

(c) Patrol first-response training, including patrol rifle, shotgun, breaching tool and control device training.

  (a) This should include the POST terrorism incident training required for officers assigned to field duties (Penal Code § 13519.12).

(d) First aid, including gunshot trauma.

(e) Reality-based scenario training (e.g., active shooter, disgruntled violent worker).

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Use of Narcan (Naloxone)

414.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines and regulations governing the utilization of Narcan by Berkeley Police Department employees with the objective to reduce the number of fatal opiate overdoses and increase employee safety.

414.2 POLICY

It is the policy of the Berkeley Police Department that employees are required to be trained in the use and appropriate administration of Narcan.

414.3 STANDING ORDER

The Alameda County Emergency Medical Services Agency (EMSA) Medical Director has authorized employees who have received training in the application of Narcan to possess and administer Narcan. See attachment: BPD Narcan Signed Medical Standing Order .

414.4 DEFINITIONS

Naloxone Hydrochloride (Narcan): A prescription medication used for the treatment of a known or suspected opioid overdose; a narcotic antagonist which works by affecting opiate receptor sites within the brain.

Intranasal: Administered through the nose; the nasal cavity is covered by a thin mucosa, which is extremely vascular and provides a direct route into the blood stream of the subject. Therefore, wehn Narcan is administered, via spray into the subject's nose it can be quickly effective.

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

Employee: Any sworn or non-sworn member of the Berkeley Police Department who is likely to be in a location where narcotics are found, tested or stored.

414.5 NARCAN COORDINATOR

The First Aid/CPR Training Coordinator, or their designee, shall act as the Narcan Coordinator. The Narcan Coordinator's responsibilities include:

(a) Maintaining records of issued Narcan kits

(b) Maintaining a list of employees trained in Narcan administration

(c) Obtaining new Narcan kits prior to their expiration

(d) Coordinating new or continued Narcan training for employees

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414.6 PROCEDURE

(a) Only employees who have completed authorized training in the use and application of Narcan shall be assigned to carry and utilize Narcan.

(b) The Watch Commander, or their designee, shall ensure there are an adequate number of trained employees on every shift who carry Narcan in the field. The Narcan Coordinator shall maintain a list of personnel authorized to carry Narcan in order to aid the Watch Commander in this task.

(c) Sworn personnel assigned to the Operations Division shall be assigned long-term Narcan kits. The kits shall be maintained in accordance with the provisions of this policy. Other sworn personnel assigned or opting to carry Narcan, shall complete an Equipment Inventory Log, including the Narcan kit number, date and time the equipment is logged out and returned. The Narcan kit and all related equipment must be returned to the designated secure storage area at the end of each shift, unless permission is granted to specific employees for long-term use.

(d) Employees who are trained in accordance with the Alameda County EMSA mandated training guidelines shall deploy with Narcan kits in the field. However, the officer shall retain the discretion to administer or not administer Narcan to persons experiencing or suspected of experiencing opioid-related overdoses. There is no legal or departmental obligation to administer Narcan.

(e) Employees who administer Narcan are protected from civil and criminal liability if they “act with reasonable care” and “in good faith.” This is accomplished by administering Narcan according to the established training protocol.

(f) Narcan must be stored in a climate controlled area and in a location where access to the medication can be secured and controlled.

(g) Each assigned employee shall conduct a pre-service inspection of the Narcan kit and confirm its condition. The employee shall inspect the secured safety case to ensure it is clean and not damaged or expired.

(h) Assigned employees shall carry the Narcan kit in a location that can be easily accessed and utilized when needed but out of direct sunlight.

414.7 NARCAN ADMINISTRATION

(a) Employees trained in the use of Narcan are authorized to use it without prior approval in cases where an opiate overdose is suspected.

(b) When using Narcan employees should maintain universal precautions against blood borne pathogens.

(c) Prior to administration of Narcan, employees must assess the victim for lack of breathing, pulse and unresponsiveness. Employees should conduct a brief visual survey for any obvious evidence of drug use or exposure.

(d) If an employee determines a victim is suffering from opiate based over-dose, the employee shall request Emergency Medical Services (EMS) immediately prior to the administration of Narcan.

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(e) Narcan shallbe administered by employees utilizing an intranasal method approved by the local EMS Director and in accordance with training guidelines.

414.8 DOCUMENTATION AND REPORTING

(a) Any employee administering Narcan shall detail its use in the BPD Narcan Report .

(b) The supervisor approving the report shall ensure it contains enough information to meet applicable state reporting requirements and that a copy of the report is routed to the EMSA for auditing purposes.

414.9 MAINTENANCE AND REPLACEMENT

(a) The daily inspection of Narcan kits shall be the responsibility of the officers who are assigned the kit for field deployment. The maintenance and replacement of Narcan kits shall be the responsibility of the Narcan Coordinator or their designee. Used, lost, or damaged Narcan kits shall be reported to a supervisor and returned to the Narcan Coordinator for replacement.

(b) Narcan can only be obtained by prescription and shall be ordered for the Berkeley Police Department on an as needed basis by the Berkeley Police Department's Narcan Coordinator or their designee.

414.10 TRAINING

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

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Immigration Law

415.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Berkeley Police Department relating to immigration and interacting with federal immigration officials. This policy includes elements from the California Government Code 7284, also known as the California Values Act, and from Berkeley City Council Resolution No. 68,131-N.S., "City of Refuge Policy Regarding Interaction with U.S. Immigration and Customs Enforcement".

415.1.1 DEFINITIONS

The following definitions apply to this policy (Government Code § 7284.4):

Criminal immigration violation - Any federal criminal immigration violation that penalizes a person's presence in, entry or reentry to, or employment in, the United States. This does not include any offense where a judicial warrant already has been issued.

Judicial warrant - An arrest warrant for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge.

415.2 POLICY

It is the policy of the Berkeley Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public, in compliance with California law and Berkeley City Council policy. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

415.3 CITY COUNCIL RESOLUTIONS

The City of Berkeley was declared by City Council resolution to be a City of Refuge in 1971. Subsequent City Council resolutions in 1986, 2007, and 2016 reaffirmed and built upon the original policy. Most recently, on July 25, 2017, City Council provided city-wide policy under Resolution 68,131-N.S., which is incorporated within this policy in full below:

(a) No department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information status of individuals in the City of Berkeley unless required by law.

(b) No department agency, commission, officer or employee shall deny access to any City services or benefits to residents on the basis of their immigration status.

(c) The prohibition set forth shall include but is not limited to:

1. Assisting or cooperating, in one's official capacity, with any Department of Homeland Security (DHS) investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provision of federal immigration law, except as required by law.

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2. Requesting information about, or disseminating information regarding, the immigration status of any individual, except as required by law.
3. Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City of Berkeley any question regarding immigration status.
4. It is the policy of the City of Berkeley to not allow any individual or organization to enter City facilities if their presence would disrupt city operations. Because the City Council believes that ICE activities in city facilities would constitute a severe disruption to the provision of city services, any request by ICE to any City officer or employee shall be immediately forwarded to the site director/supervisor and the Department Director for review and consultation with the City Attorney to ensure the safety of City employees and residents accessing city services and compliance with applicable state and federal laws.
5. Except in limited circumstances where ICE agents have a valid judicial warrant, after review and consultation with the Department Director and City Attorney, City departments, agencies, commissions, officers or employees are not required to:
   - Cooperate with ICE agents
   - Answer ICE agents' questions
   - Comply with an ICE Administrative Warrant
   - Immediately comply with a subpoena served by ICE agents
   - Speak with ICE agents at all

   City officers or employees shall not consent to a warrantless search by ICE agents of a non-public area or non-public City records.

   Employees must immediately notify site director/supervisor to report the interaction or warrants served. The site director/supervisor must immediately notify the Department Director for review and consultation with the City Attorney.

6. If any City resident has questions regarding their immigration status, City staff shall not refer them to Immigrations and Customs Enforcement or any other government agency. Instead City staff shall refer such individuals to local non-profit immigration law organizations. A list of such organizations shall be compiled and disseminated at City buildings and on the City's website. The City Manager is also encouraged to increase and enhance partnerships with community-based organizations, legal service providers, and educational institutions to provide resources for families and City residents facing deportation or other adverse immigration actions.
7. All requests for documents by ICE to City personnel shall be immediately forwarded to the Department Director for review and consultation with the City Attorney to ensure the safety of City employees and residents, and compliance with applicable state and federal laws.

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415.4 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or interacting with members of the Berkeley Police Department will not automatically lead to an immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members of the Berkeley Police Department shall treat all individuals equally and without regard to race, ethnicity or national origin in any way that would violate the United States or California constitutions.

415.5 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

415.6 DETENTIONS AND ARRESTS

An officer shall not investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including: inquiring into an individual's immigration status; detaining an individual on the basis of a hold request; providing information regarding a person's release date in response to a notification request from immigration authorities; providing personal information about an individual including but not limited to the individual home address or work address; making or participating in arrests based on civil immigration warrants; assisting immigration authorities in enforcement activities, or performing the functions of an immigration officer. (Government Code § 7284.6).

An officer shall not detain any individual, for any length of time, for a civil violation of federal immigration laws, or a related civil warrant, or for any violation of federal immigration laws (Government Code § 7284.6).

415.7 FEDERAL REQUESTS FOR ASSISTANCE

Absent an urgent issue of officer safety or other emergency circumstances, requests by federal immigration Enforcement and Removal Operations (ERO) officials for assistance from this department should be immediately directed to the Watch Commander. ICE's ERO is the principal immigration enforcement division. The Watch Commander shall be responsible for determining whether the requested assistance would be permitted under City policy and the California Values Act (Government Code § 7284.2 et seq.). The Watch Commander shall decline requests for assistance from ERO officials for immigration enforcement purposes, and notify the Chief of Police through the chain of command regarding the request as soon as practical.

Should a request be received for an urgent issue of officer safety or other emergency circumstance, the Communications Center should notify the Watch Commander or senior sergeant on duty, who should coordinate a response in order to make a scene safe, respond to the scene to manage the incident, and notify the Chief of Police through the chain of command as soon as practical.

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Should a request be received for operational assistance from ICE's Homeland Security Investigations (HSI) unit, the Commander shall convey the request to the Chief of Police through the chain of command for consideration. HSI investigates transnational crimes which can imperil local community safety, such as Counter-Terrorism, Child Exploitation, Human Trafficking/Human Smuggling and Transnational Gangs and Narcotics Trafficking. Assistance may be provided so long as the other provisions of this policy are followed.

415.7.1 IMMIGRATION DETAINERS

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6).

Notification to a federal authority may only be made in connection with an outstanding criminal warrant.

415.7.2 NOTICE TO INDIVIDUALS

Individuals in custody shall be given a copy of documentation received from U.S. Immigration and Customs Enforcement (ICE) regarding a hold, notification, or transfer request along with an advisement that the Berkeley Police Department will not comply with the request (Government Code § 7283.1).

If, pursuant to court order, the Berkeley Police Department provides ICE with notification that an individual is being, or will be, released on a certain date, the same notification shall be provided in writing to the individual and to his/her attorney or to one additional person who the individual may designate (Government Code § 7283.1). Unless required by federal or state law, or court order, the Berkeley Police Department shall not provide information to ICE about an individual's release date.

415.7.3 ICE INTERVIEWS

The Berkeley Police Department shall not provide ICE personnel access to the Berkeley jail to interview any individual in custody about civil immigration violations.

415.7.4 TRANSFERS TO IMMIGRATION AUTHORITIES

Members of the Berkeley Police Department shall not transfer an individual to immigration authorities.

415.7.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Detective Bureau Lieutenant or his/her designee shall ensure that data regarding the number of transfers of an individual to immigration authorities, as permitted by Government Code § 7284.6(a)(4), and the offense that allowed for the transfer is collected and provided to the Records Supervisor for required reporting to the DOJ (Government Code § 7284.6(c)(2) - see also the Records Management Policy).

415.8 U VISA AND T VISA NON-IMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

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Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U visa or T visa status shall be forwarded in a timely manner to the Support Services Division Captain or his/her designee. The Support Services Division Captain, or his/her designee shall:

(a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.

(b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.

(c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.

1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.

2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). Form I-914 Supplement B certification shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).

(d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.

415.8.1 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code § 236.1 shall complete the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Officers and their supervisors shall complete the above process and the documents needed certifying victim cooperation for a U visa or T visa application pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 90 days of a request from the victim or victim's family related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within 14 days of the request.

415.8.2 REPORTING TO LEGISLATURE

The Support Services Division Captain shall ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).

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415.9 TRAINING

The Personnel and Training Sergeant shall ensure that all appropriate members receive training on this policy.

Training regarding this policy should include:

(a) Prohibitions contained in the California Values Act (Government Code § 7284 et seq.).

(b) Prohibitions contained in Berkeley City Council Resolution 68,131-N.S.

(c) Procedures for evaluating and responding to emergency requests for assistance, requests from ERO officials, and requests from HSI officials.

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Emergency Utility Service

416.1 PURPOSE AND SCOPE

The City Public Works Department has personnel available to handle emergency calls 24 hours per day. Calls for service during non-business hours are frequently directed to the Police Department. Requests for such service received by this department should be handled in the following manner.

416.1.2 BROKEN WATER LINES

The City's responsibility ends at the water meter; any break or malfunction in the water system from the water meter to the citizen's residence or business is the customer's responsibility. Public Works can only turn off the valve at the meter. The citizen can normally accomplish this.

If a break occurs on the City side of the meter, emergency personnel should be called as soon as practical by the Communications Center.

416.1.3 ELECTRICAL LINES

City Public Works does not maintain electrical lines to street light poles. When a power line poses a hazard, an officer should be dispatched to protect against personal injury or property damage that might be caused by power lines. The Electric Company or Public Works should be promptly notified, as appropriate.

416.1.4 RESERVOIRS, PUMPS, WELLS, ETC.

Public Works maintains the reservoirs and public water equipment, as well as several underpass and other street drainage pumps. In the event of flooding or equipment malfunctions, emergency personnel should be contacted as soon as possible.

416.1.5 EMERGENCY NUMBERS

A current list of emergency personnel who are to be called for municipal utility emergencies is maintained by the Communications Center.

416.2 TRAFFIC SIGNAL MAINTENANCE

Public Works is responsible for the maintenance of all traffic signals within the City.

416.2.1 OFFICER’S RESPONSIBILITY

Upon observing a damaged or malfunctioning signal, the officer will advise the the Communications Center of the location and problem with the signal. The dispatcher should make the necessary notification to Public Works.

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Aircraft Accidents

417.1 PURPOSE AND SCOPE

The purpose of this policy is to provide department members with guidelines for handling aircraft accidents.

This policy does not supersede, and is supplementary to, applicable portions of the Crime and Disaster Scene Integrity, Disaster Response Plan and Hazardous Material Response policies.

417.1.1 DEFINITIONS

Definitions related to this policy include:

Aircraft - Any fixed wing aircraft, rotorcraft, balloon, blimp/dirigible or glider that is capable of carrying a person or any unmanned aerial vehicle other than those intended for non-commercial recreational use.

417.2 POLICY

It is the policy of the Berkeley Police Department to provide an appropriate emergency response to aircraft accidents. This includes emergency medical care and scene management.

417.3 ARRIVAL AT SCENE

Officers or other authorized members tasked with initial scene management should establish an inner and outer perimeter to:

(a) Protect persons and property.

(b) Prevent any disturbance or further damage to the wreckage or debris, except to preserve life or rescue the injured.

(c) Preserve ground scars and marks made by the aircraft.

(d) Manage the admission and access of public safety and medical personnel to the extent necessary to preserve life or to stabilize hazardous materials.

(e) Maintain a record of persons who enter the accident site.

(f) Consider implementation of an Incident Command System (ICS).

417.4 INJURIES AND CASUALTIES

Members should address emergency medical issues and provide care as a first priority.

Those tasked with the supervision of the scene should coordinate with the National Transportation Safety Board (NTSB) before the removal of bodies. If that is not possible, the scene supervisor should ensure documentation of what was disturbed, including switch/control positions and instrument/gauge readings.

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417.5 NOTIFICATIONS

When an aircraft accident is reported to this department, the responding supervisor shall ensure notification is or has been made to NTSB, the Federal Aviation Administration (FAA), and when applicable, the appropriate branch of the military.

Supervisors shall ensure other notifications are made once an aircraft accident has been reported. The notifications will vary depending on the type of accident, extent of injuries or damage, and the type of aircraft involved. When an aircraft accident has occurred, it is generally necessary to notify the following:

(a) Fire department

(b) Appropriate airport tower

(c) Emergency medical services (EMS)

417.6 CONTROLLING ACCESS AND SCENE AUTHORITY

Prior to NTSB arrival, scene access should be limited to authorized personnel from the:

(a) FAA.

(b) Fire department, EMS or other assisting law enforcement agencies.

(c) Coroner.

(d) Air Carrier/Operators investigative teams with NTSB approval.

(e) Appropriate branch of the military, when applicable.

(f) Other emergency services agencies (e.g., hazardous materials teams, biohazard decontamination teams, fuel recovery specialists, explosive ordnance disposal specialists).

The NTSB has primary responsibility for investigating accidents involving civil aircrafts. In the case of a military aircraft accident, the appropriate branch of the military will have primary investigation responsibility.

After the NTSB or military representative arrives on-scene, the efforts of this department will shift to a support role for those agencies.

If the NTSB or a military representative determines that an aircraft or accident does not qualify under its jurisdiction, the on-scene department supervisor should ensure the accident is still appropriately investigated and documented.

417.7 DANGEROUS MATERIALS

Members should be aware of potentially dangerous materials that might be present. These may include, but are not limited to:

(a) Fuel, chemicals, explosives, biological or radioactive materials and bombs or other ordnance.

(b) Pressure vessels, compressed gas bottles, accumulators and tires.

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(c) Fluids, batteries, flares and igniters.

(d) Evacuation chutes, ballistic parachute systems and composite materials.

417.8 DOCUMENTATION

All aircraft accidents occurring within the City of Berkeley shall be documented. At a minimum the documentation should include the date, time and location of the incident; any witness statements, if taken; the names of BPD members deployed to assist; other City resources that were utilized; and cross reference information to other investigating agencies. Suspected criminal activity should be documented on the appropriate crime report.

417.8.1 WRECKAGE

When reasonably safe, members should:

(a) Obtain the aircraft registration number (N number) and note the type of aircraft.

(b) Attempt to ascertain the number of casualties.

(c) Obtain photographs or video of the overall wreckage, including the cockpit and damage, starting at the initial point of impact, if possible, and any ground scars or marks made by the aircraft.

1. Military aircraft may contain classified equipment and therefore shall not be photographed unless authorized by a military commanding officer (18 USC § 795).

(d) Secure, if requested by the lead authority, any electronic data or video recorders from the aircraft that became dislodged or cell phones or other recording devices that are part of the wreckage.

(e) Acquire copies of any recordings from security cameras that may have captured the incident.

417.8.2 WITNESSES

Members tasked with contacting witnesses should obtain:

(a) The location of the witness at the time of his/her observation relative to the accident site.

(b) A detailed description of what was observed or heard.

(c) Any photographs or recordings of the accident witnesses may be willing to voluntarily surrender.

(d) The names of all persons reporting the accident, even if not yet interviewed.

(e) Any audio recordings of reports to 9-1-1 regarding the accident and dispatch records.

417.9 MEDIA RELATIONS

The Public Information Officer (PIO) should coordinate a response to the media, including access issues, road closures, detours and any safety information that is pertinent to the surrounding community. Any release of information regarding details of the accident itself should

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be coordinated with the NTSB or other authority who may have assumed responsibility for the investigation.

Depending on the type of aircraft, the airline or the military may be responsible for family notifications and the release of victims' names. The PIO should coordinate with other involved entities before the release of information.

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Obtaining Air Support

418.1 PURPOSE AND SCOPE

The use of a police helicopter can be invaluable in certain situations. This policy specifies potential situations where the use of a helicopter may be requested and the responsibilities for making a request.

418.2 REQUEST FOR HELICOPTER ASSISTANCE

If a supervisor or officer in charge of an incident determines that the use of a helicopter would be beneficial, a request to obtain helicopter assistance may be made to the City Manager. If it is an emergency situation wherein the City Manager is not immediately available, the request may be made to the Chief of Police.

418.2.1 REQUEST FOR ASSISTANCE FROM ANOTHER AGENCY

After consideration and approval of the request for a helicopter, the Watch Commander, or his/her designee, will request the Communications Center contact the closest agency having helicopter support available. The Communications Center will apprise that agency of the specific details of the incident prompting the request.

418.2.2 CIRCUMSTANCES UNDER WHICH AID MAY BE REQUESTED (PER CITY COUNCIL RESOLUTION NO. 51.408 N.S.)

Police use of helicopters from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

(a) To assist in case of a disaster; or

(b) To assist in rescue efforts (specifically excluding the rescue of hostages); or

(c) To assist in locating missing persons.

While it is recognized that the availability of helicopter support will generally provide valuable assistance to ground personnel, the presence of a helicopter will rarely replace the need for officers on the ground.

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Field Training Officer Program

419.1 PURPOSE AND SCOPE

The Field Training Officer Program is intended to provide a standardized program to facilitate the officer's transition from the academic setting to the actual performance of general law enforcement duties of the Berkeley Police Department.

It is the policy of this department to assign all new police officers to a structured Field Training Officer Program that is designed to prepare the new officer to perform in a patrol assignment, and possessing all skills needed to operate in a safe, productive, and professional manner.

419.2 FIELD TRAINING OFFICER - SELECTION AND TRAINING

The Field Training Officer (FTO) is an experienced officer trained in the art of supervising, training, and evaluating entry level and lateral police officers in the application of their previously acquired knowledge and skills.

419.2.1 SELECTION PROCESS

FTOs will be selected based on the following requirements:

(a) Desire to be an FTO

(b) Minimum of three years of patrol experience, two of which shall be with this department

(c) Demonstrated ability as a positive role model

(d) Participate in an internal oral interview selection process

(e) Evaluation by supervisors and current FTOs

(f) Possess a POST Basic certificate

419.2.2 TRAINING

An officer selected as a Field Training Officer shall successfully complete a POST certified (40-hour) Field Training Officer's Course prior to being assigned as an FTO.

All FTOs must complete a 24-hour Field Training Officer update course every three years while assigned to the position of FTO (11 CCR 1004).

All FTOs must meet any training mandate regarding crisis intervention behavioral health training pursuant to Penal Code § 13515.28.

419.3 STATUS CHANGE OR REMOVAL FROM PROGRAM

419.3.1 VOLUNTARY

Field Training Sergeants and/or Field Training Officers may voluntarily leave the Program by resignation or upon an approved request for transfer to "inactive" status.

(a) The notice of resignation or request for transfer to "inactive" status shall be submitted in writing by the requesting sergeant or officer to the Field Training Lieutenant.

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(b) A request for transfer to “inactive” status shall include the period of anticipated inactivity and, if known, the date of return to active service with the Program.

(c) A request for transfer to “inactive” status shall not be effective until expressly approved by the Operations Division Captain.

419.3.2 INVOLUNTARY

A Program staff member (i.e., lieutenant, sergeant or officer) may be involuntarily transferred to an “inactive” status by the Operations Division Captain in the following circumstances:

(a) Failure to meet any of the minimum qualification criteria outlined in this policy.

(b) Failure to perform the duties of the member’s position as outlined in this policy, or as may be assigned by the Program’s chain of command.

(c) Failure to meet acceptable standards of individual performance in his/her primary duty assignment.

(d) If the member is the subject employee of a personnel complaint investigation and, due to the nature of the alleged misconduct, the integrity of the Program or the member’s service could be impugned.

A Program staff member shall remain in an “inactive” status until the circumstances causing the temporary status change have been resolved.

A Program staff member who has been transferred to “inactive” status shall not perform any action, duty or responsibility associated with the Program unless expressly authorized by the Operations Division Captain or Chief of Police.

A Program staff member may be removed from the Program by the Chief of Police only for cause and as a disposition of a sustained disciplinary investigation.

419.4 FIELD TRAINING OFFICER PROGRAM SUPERVISOR

The FTO Program supervisors should be selected from the rank of sergeant or above by the Operations Division Captain or a designee and should possess, or be eligible to receive, a POST Supervisory Certificate.

The responsibilities of the FTO Program supervisor include the following:

(a) Assignment of trainees to FTOs

(b) Conduct FTO meetings

(c) Maintain and ensure FTO/trainee performance evaluations are completed

(d) Maintain, update, and issue the Field Training Manual to each trainee

(e) Monitor individual FTO performance

(f) Monitor overall FTO Program

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(g) Maintain liaison with FTO coordinators of other agencies

(h) Maintain liaison with academy staff on recruit performance during the academy

(i) Develop ongoing training for FTOs

The FTO Program supervisor will be required to successfully complete a POST-approved Field Training Administrator's Course within one year of appointment to this position (11 CCR 1004(c)).

419.5 TRAINEE DEFINED

Any entry level or lateral police officer newly appointed to the Berkeley Police Department who has successfully completed a POST approved Basic Academy.

419.6 REQUIRED TRAINING

Entry level officers shall be required to successfully complete the Field Training Program, consisting of a minimum of 16 weeks (11 CCR 1004; 11 CCR 1005).

The training period for a lateral officer may be modified depending on the trainee's demonstrated performance and level of experience. A lateral officer may be exempt from the Field Training Program requirement if the officer qualifies for an exemption as provided in 11 CCR 1005(a)(B).

To the extent practicable, entry level and lateral officers should be assigned to a variety of Field Training Officers, shifts, and geographical areas during their Field Training Program.

419.6.1 FIELD TRAINING MANUAL

Each new officer will be issued a Field Training Manual before his/her Orientation Training Phase. This manual is an outline of the subject matter and/or skills necessary to properly function as an officer with the Berkeley Police Department. The officer shall become knowledgeable of the subject matter as outlined. He/she shall also become proficient with those skills as set forth in the manual.

The Field Training Manual will specifically cover those policies, procedures, rules, and regulations adopted by the Berkeley Police Department.

419.7 EVALUATIONS

Evaluations are an important component of the training process and shall be completed as outlined below.

419.7.1 FIELD TRAINING OFFICER

The FTO will be responsible for the following:

(a) Complete and submit a written evaluation on the performance of his/her assigned trainee to the FTO Coordinator on a daily basis.

(b) Review the Daily Trainee Performance Evaluations with the trainee each day.

(c) Complete a detailed end-of-phase performance evaluation on his/her assigned trainee at the end of each phase of training.

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(d) Sign off all completed topics contained in the Field Training Manual, noting the method(s) of learning and evaluating the performance of his/her assigned trainee.

419.7.2 FTO SERGEANT
FTO Sergeants shall review and approve the Daily Trainee Performance Evaluations.

419.7.3 TRAINEE
At the completion of the Field Training Program, the trainee shall submit a confidential performance evaluation on each of their FTOs and on the Field Training Program.

419.8 DOCUMENTATION
All documentation of the Field Training Program will be retained in the officer's training files and will consist of the following:

(a) Daily Trainee Performance Evaluations

(b) End-of-phase evaluations

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Foot Pursuits

420.1 PURPOSE AND SCOPE

This policy provides guidelines to assist officers in making the decision to initiate or continue the pursuit of suspects on foot.

420.2 POLICY

It is the policy of this department that officers, when deciding to initiate or continue a foot pursuit, continuously balance the objective of apprehending the suspect with the risk and potential for injury to department members, the public or the suspect.

Officers are expected to act reasonably, based on the totality of the circumstances.

420.3 DECISION TO PURSUE

The safety of department members and the public shall be one of the primary consideration when determining whether a foot pursuit should be initiated or continued. Officers must be mindful that immediate apprehension of a suspect may not outweigh the safety of the public and department members, depending on the seriousness of the suspect's actions and danger he or she may immediately pose to the public if not immediately apprehended.

Officers may be justified in initiating a foot pursuit of any individual the officer reasonably believes is about to engage in, is engaging in or has engaged in criminal activity. The decision to initiate or continue such a foot pursuit, however, must be continuously re-evaluated in light of the circumstances presented at the time.

Mere flight by a person who is not suspected of criminal activity shall not serve as justification for engaging in an extended foot pursuit without the development of reasonable suspicion regarding the individual’s involvement in criminal activity or being wanted by law enforcement.

Deciding to initiate or continue a foot pursuit is a decision that an officer must make quickly and under unpredictable and dynamic circumstances. It is recognized that foot pursuits may place department members and the public at significant risk. Therefore, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a foot pursuit because of the perceived risk involved.

If circumstances permit, surveillance and containment are generally the safest tactics for apprehending fleeing persons. In deciding whether to initiate or continue a foot pursuit, an officer should consider reasonable alternatives to a foot pursuit based upon the circumstances and resources available, such as:

(a) Containment of the area.

(b) Saturation of the area with law enforcement personnel, including assistance from other agencies.

(c) A canine search.

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(d) Thermal imaging or other sensing technology.

(e) Air support.

(f) Apprehension at another time when the identity of the suspect is known or there is information available that would likely allow for later apprehension, and the need to immediately apprehend the suspect does not reasonably appear to outweigh the risk of continuing the foot pursuit.

420.4 GENERAL GUIDELINES

When reasonably practicable, officers should consider alternatives to engaging in or continuing a foot pursuit when:

(a) Directed by a supervisor to terminate the foot pursuit; such an order shall be considered mandatory

(b) The officer is acting alone.

(c) Two or more officers become separated, lose visual contact with one another, or obstacles separate them to the degree that they cannot immediately assist each other should a confrontation take place. In such circumstances, it is generally recommended that a single officer keep the suspect in sight from a safe distance and coordinate the containment effort.

(d) The officer is unsure of his/her location and direction of travel.

(e) The officer is pursuing multiple suspects and it is not reasonable to believe that the officer would be able to control the suspect should a confrontation occur.

(f) The physical condition of the officer renders him/her incapable of controlling the suspect if apprehended.

(g) The officer loses radio contact with the dispatcher or with assisting or backup officers.

(h) The suspect enters a building, structure, confined space, isolated area or dense or difficult terrain, and there are insufficient officers to provide backup and containment. The primary officer should consider discontinuing the foot pursuit and coordinating containment pending the arrival of sufficient resources.

(i) The officer becomes aware of unanticipated or unforeseen circumstances that unreasonably increase the risk to officers or the public.

(j) The officer reasonably believes that the danger to the pursuing officers or public outweighs the objective of immediate apprehension.

(k) The officer loses possession of his/her firearm or other essential equipment.

(l) The officer or a third party is injured during the pursuit, requiring immediate assistance, and there are no other emergency personnel available to render assistance.

(m) The suspect’s location is no longer definitely known.

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(n) The identity of the suspect is established or other information exists that will allow for the suspect's apprehension at a later time, and it reasonably appears that there is no immediate threat to department members or the public if the suspect is not immediately apprehended.

(o) The officer's ability to safely continue the pursuit is impaired by inclement weather, darkness or other environmental conditions.

420.5 RESPONSIBILITIES IN FOOT PURSUITS

420.5.1 INITIATING OFFICER RESPONSIBILITIES

Unless relieved by another officer or a supervisor, the initiating officer shall be responsible for coordinating the progress of the pursuit. When acting alone and when practicable, the initiating officer should not attempt to overtake and confront the suspect but should attempt to keep the suspect in sight until sufficient officers are present to safely apprehend the suspect.

Early communication of available information from the involved officers is essential so that adequate resources can be coordinated and deployed to bring a foot pursuit to a safe conclusion. Officers initiating a foot pursuit should, at a minimum, broadcast the following information as soon as it becomes practicable and available:

(a) Location and direction of travel

(b) Call sign identifier

(c) Reason for the foot pursuit, such as the crime classification

(d) Number of suspects and description, to include name if known

(e) Whether the suspect is known or believed to be armed with a dangerous weapon

Officers should be mindful that radio transmissions made while running may be difficult to understand and may need to be repeated.

Absent extenuating circumstances, any officer unable to promptly and effectively broadcast this information should terminate the foot pursuit. If the foot pursuit is discontinued for any reason, immediate efforts for containment should be established and alternatives considered based upon the circumstances and available resources.

When a foot pursuit terminates, the officer will broadcast his/her location and the status of the pursuit termination (e.g., suspect in custody, lost sight of suspect), and will direct further actions as reasonably appear necessary, to include requesting medical aid as needed for officers, suspects or members of the public.

420.5.2 ASSISTING OFFICER RESPONSIBILITIES

Whenever any officer announces that he/she is engaged in a foot pursuit, all other officers should minimize non-essential radio traffic to permit the involved officers maximum access to the radio frequency.

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420.5.3 SUPERVISOR RESPONSIBILITIES

Upon becoming aware of a foot pursuit, the supervisor shall make every reasonable effort to ascertain sufficient information to direct responding resources and to take command, control and coordination of the foot pursuit. The supervisor should respond to the area whenever possible; the supervisor does not, however, need not be physically present to exercise control over the foot pursuit. The supervisor shall continuously assess the situation in order to ensure the foot pursuit is conducted within established department guidelines.

The supervisor shall terminate the foot pursuit when the danger to pursuing officers or the public appears to unreasonably outweigh the objective of immediate apprehension of the suspect.

Upon apprehension of the suspect, the supervisor shall promptly proceed to the termination point to direct the post-foot pursuit activity.

420.5.4 THE COMMUNICATIONS CENTER RESPONSIBILITIES

Upon notification or becoming aware that a foot pursuit is in progress, the dispatcher is responsible for:

(a) Clearing the radio channel of non-emergency traffic.

(b) Coordinating pursuit communications of the involved officers.

(c) Broadcasting pursuit updates as well as other pertinent information as necessary.

(d) Ensuring that a field supervisor is notified of the foot pursuit.

(e) Notifying and coordinating with other involved or affected agencies as practicable.

(f) Notifying the Watch Commander as soon as practicable.

(g) Assigning an incident number and logging all pursuit activities.

420.6 REPORTING REQUIREMENTS

The initiating officer shall document the incident. Documentation may be accomplished via an MDT, Field Interview, Incident or Case Report. The following information should be contained in the report:

(a) Date and time of the foot pursuit.

(b) Initial reason and circumstances surrounding the foot pursuit.

(c) Course and approximate distance of the foot pursuit.

(d) Alleged offenses.

(e) Involved vehicles and officers.

(f) Whether a suspect was apprehended as well as the means and methods used.

1. Any use of force shall be reported and documented in compliance with the Use of Force Policy.

(g) Arrestee information, if applicable.

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(h) Any injuries and/or medical treatment.

(i) Any property or equipment damage.

(j) Name of the supervisor at the scene or who handled the incident.

Assisting officers taking an active role in the apprehension of the suspect shall complete supplemental reports as necessary or as directed.

The supervisor reviewing the report will make a preliminary determination that the pursuit appears to be in compliance with this policy or that additional review and/or follow-up is warranted.

In any case in which a suspect is not apprehended and there is insufficient information to support further investigation, a supervisor may authorize that the initiating officer need not complete a formal report.

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Contacts and Temporary Detentions

421.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for temporarily detaining but not arresting persons in the field, conducting field interviews (FI) and pat-down searches, and the taking and disposition of photographs.

421.1.1 DEFINITIONS

Definitions related to this policy include:

Consensual encounter - When an officer contacts an individual but does not create a detention through words, actions, or other means. In other words, a reasonable individual would believe that his/her contact with the officer is voluntary.

Field interview - The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purpose of determining the individual's identity and resolving the officer's suspicions.

Field photographs - Posed photographs taken of a person during a contact, temporary detention, or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a body-worn camera, or public safety camera when persons are not posed for the purpose of photographing are not considered field photographs.

Pat-down search - A type of search used by officers in the field to check an individual for dangerous weapons. It involves a thorough patting-down of clothing to locate any weapons or dangerous items that could pose a danger to the officer, the detainee, or others.

Reasonable suspicion - When, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

Temporary detention - When an officer intentionally, through words, actions, or physical force, causes an individual to reasonably believe he/she is required to restrict his/her movement without an actual arrest. Temporary detentions also occur when an officer actually restrains a person's freedom of movement.

421.2 POLICY

The Berkeley Police Department respects the right of the public to be free from unreasonable searches or seizures. Due to an unlimited variety of situations confronting the officer, the decision to temporarily detain a person and complete a field interview (FI), pat-down search, or field photograph shall be left to the officer based on the totality of the circumstances, officer safety considerations, and constitutional safeguards.

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421.3 FIELD INTERVIEWS

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a person, and conduct an FI, when there is articulable, reasonable suspicion to do so. A person, however, shall not be detained longer than is reasonably necessary to resolve the officer's suspicion.

Nothing in this policy is intended to discourage consensual contacts. Frequent casual contact with consenting individuals is encouraged by the Berkeley Police Department to strengthen community involvement, community awareness, and problem identification.

421.3.1 INITIATING A FIELD INTERVIEW

When initiating the stop, the officer should be able to point to specific facts which, when considered with the totality of the circumstances, reasonably warrant the stop. Such facts include but are not limited to an individual's:

(a) Appearance or demeanor suggesting that he/she is part of a criminal enterprise or is engaged in a criminal act

(b) Actions suggesting that he/she is engaged in a criminal activity

(c) Presence in an area at an inappropriate hour of the day or night

(d) Presence in a particular area is suspicious

(e) Carrying of suspicious objects or items

(f) Excessive clothes for the climate or clothes bulging in a manner that suggest he/she is carrying a dangerous weapon

(g) Location in proximate time and place to an alleged crime

(h) Physical description or clothing worn that matches a suspect in a recent crime

(i) Prior criminal record or involvement in criminal activity as known by the officer

421.4 PAT-DOWN SEARCHES

Once a valid stop has been made, and consistent with the officer's training and experience, an officer may pat a suspect's outer clothing for weapons if the officer has a reasonable, articulable suspicion the suspect may pose a safety risk. The purpose of this limited search is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear of violence. Circumstances that may establish justification for performing a pat-down search include but are not limited to:

(a) The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.

(b) Where more than one suspect must be handled by a single officer.

(c) The hour of the day and the location or neighborhood where the stop takes place.

(d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.

(e) The actions and demeanor of the suspect.

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(f) Visual indications which suggest that the suspect is carrying a firearm or other weapon.

Whenever practicable, a pat-down search should not be conducted by a lone officer. A cover officershould be positioned to ensure safety and should not be involved in the search.

421.5 FIELD PHOTOGRAPHS

All available databases should be searched before photographing any field detainee. If a photograph is not located, or if an existing photograph no longer resembles the detainee, the officer shall carefully consider, among other things, the factors listed below.

421.5.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT

Field photographs may be taken when the subject being photographed knowingly and voluntarily gives consent. When taking a consensual photograph, the officer should have the individual read and sign the appropriate form accompanying the photograph.

421.5.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT

Field photographs may be taken without consent only if they are taken during a detention that is based upon reasonable suspicion of criminal activity, and the photograph serves a legitimate law enforcement purpose related to the detention. The officer must be able to articulate facts that reasonably indicate that the subject was involved in or was about to become involved in criminal conduct.

If, prior to taking a photograph, the officer's reasonable suspicion of criminal activity has been dispelled, the detention must cease and the photograph should not be taken.

All field photographs and related reports shall be submitted to a supervisor and retained in compliance with this policy.

421.5.3 SUPERVISOR RESPONSIBILITIES

While it is recognized that field photographs often become valuable investigative tools, supervisors should monitor such practices in view of the above listed considerations. This is not to imply that supervisor approval is required before each photograph is taken.

Access to, and use of, field photographs shall be strictly limited to law enforcement purposes.

421.6 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an incident may become unavailable or the integrity of their statements compromised with the passage of time, officers should, when warranted by the seriousness of the case, take reasonable steps to promptly coordinate with an on-scene supervisor and/or criminal investigator to utilize available members for the following:

(a) Identifying all persons present at the scene and in the immediate area.

1. When feasible, a recorded statement should be obtained from those who claim not to have witnessed the incident but who were present at the time it occurred.
2. Any potential witness who is unwilling or unable to remain available for a formal interview shall not be detained absent reasonable suspicion to detain or

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probable cause to arrest. Without detaining the individual for the sole purpose of identification, officers should attempt to identify the witness prior to his/her departure.

(b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by Berkeley Police Department members.

1. A written, verbal, or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transport.

421.7 DISPOSITION OF PHOTOGRAPHS

All detainee photographs must be assigned an incident or case number and uploaded to the BPD evidence database or booked into the property room.

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Watch Commanders

423.1 PURPOSE AND SCOPE

Each patrol shift must be directed by supervisors who are capable of making decisions and communicating in a manner consistent with departmental policies, procedures, practices, functions and objectives. To accomplish this goal, a Lieutenant heads each watch.

423.2 DESIGNATION AS ACTING WATCH COMMANDER

When a Lieutenant is unavailable for duty as Watch Commander, in most instances the senior qualified sergeant shall be designated as acting Watch Commander. This policy does not preclude designating a less senior sergeant as an acting Watch Commander when operational needs require or training permits.

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Mobile Data Terminal Use

424.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the proper access, use and application of the Mobile Data Terminal (MDT) system in order to ensure appropriate access to confidential records from local, state and national law enforcement databases, and to ensure effective electronic communications between department members and the Communications Center.

424.2 POLICY

Berkeley Police Department members using the MDT shall comply with all appropriate federal and state rules and regulations and shall use the MDT in a professional manner, in accordance with this policy.

424.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to messages accessed, transmitted, received or reviewed on any department technology system (see the Information Technology Use Policy for additional guidance).

424.4 RESTRICTED ACCESS AND USE

MDT use is subject to the Information Technology Use and Protected Information policies.

Members shall not access the MDT system if they have not received prior authorization and the required training. Members shall immediately report unauthorized access or use of the MDT by another member to their supervisors or Watch Commanders.

Use of the MDT system to access law enforcement databases or transmit messages is restricted to official activities, business-related tasks and communications that are directly related to the business, administration or practices of the Department. In the event that a member has questions about sending a particular message or accessing a particular database, the member should seek prior approval from his/her supervisor.

Sending derogatory, defamatory, obscene, disrespectful, sexually suggestive, harassing or any other inappropriate messages on the MDT system is prohibited and may result in discipline.

It is a violation of this policy to transmit a message or access a law enforcement database under another member's name or to use the password of another member to log in to the MDT system unless directed to do so by a supervisor. Members are required to log off the MDT or secure the MDT when it is unattended. This added security measure will minimize the potential for unauthorized access or misuse.

424.4.1 USE WHILE DRIVING

Use of the MDT by the vehicle operator should be limited to times when the vehicle is stopped. Information that is required for immediate enforcement, investigative, tactical or safety needs should be transmitted over the radio.

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Short transmissions, such as a license plate check, are permitted if it reasonably appears that it can be done safely. In no case shall an operator attempt to send or review lengthy messages while the vehicle is in motion.

424.5 DOCUMENTATION OF ACTIVITY

Except as otherwise directed by a supervisor or other department-established protocol, all calls for service assigned by a dispatcher should be communicated by voice over the police radio and electronically via the MDT unless security or confidentiality prevents such broadcasting.

MDT and voice transmissions are used to document the member's daily activity. To ensure accuracy:

(a) All contacts or activity shall be documented at the time of the contact.

(b) Whenever the activity or contact is initiated by voice, it should be documented by a dispatcher.

(c) Whenever the activity or contact is not initiated by voice, the member shall document it via the MDT.

424.5.1 STATUS CHANGES

All changes in status (e.g., arrival at scene, meal periods, in service) will be transmitted over the police radio.

Members responding to in-progress calls should advise changes in status over the radio to assist other members responding to the same incident.

424.6 EQUIPMENT CONSIDERATIONS

424.6.1 MALFUNCTIONING MDT

Whenever possible, members will not use vehicles with malfunctioning MDTs. Whenever members must drive a vehicle in which the MDT is not working, they shall notify the Communications Center. It shall be the responsibility of the dispatcher to document all information that will then be transmitted verbally over the police radio.

424.6.2 BOMB CALLS

When investigating reports of possible bombs, members should not communicate on their MDTs when in the evacuation area of a suspected explosive device. Radio frequency emitted by the MDT could cause some devices to detonate.

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Body Worn Cameras

425.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

425.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

425.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

(a) Establishing a system for uploading, storing and security of recordings.

(b) Designating persons responsible for uploading recorded data.

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(c) Establishing a maintenance system to ensure availability of BWCs.

(d) Establishing a system for tagging and categorizing data according to the type of incident captured.

(e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.

(f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.

(g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

425.5 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

425.6 SUPERVISOR RESPONSIBILITIES

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy

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(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

425.7 ACTIVATION OF THE BODY WORN CAMERA

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

(a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.

(b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.

(c) Self-initiated field contacts in which a member would normally notify the Communications Center.

(d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

(e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.

(f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

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425.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

(a) **Witnesses:** In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.

(b) **Victims:** Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.

1. **Domestic Violence Victims**: Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.

2. **Child Abuse and Sexual Assault Victims:** Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.

(c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (See Penal Code 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

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425.9 ACTIVATION IN CROWD CONTROL SITUATIONS

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

425.10 SURREPTITIOUS USE OF THE BWC

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

425.11 CESSATION OF RECORDING

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:

(a) Discussion of tactical or confidential information with other law enforcement personnel.

(b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.

(c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.

(d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

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Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

425.12 EXPLOSIVE DEVICE

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

425.13 PROHIBITED USE OF BODY WORN CAMERAS

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

425.14 PROCESSING AND HANDLING OF RECORDINGS

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

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Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

425.15 RETENTION REQUIREMENTS

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

425.17 REVIEW OF RECORDINGS BY A MEMBER

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

(a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed

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the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

(b) Personnel uploading secured BWC video files shall not view the files unless authorized.

(c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.

(d) Prior to the conclusion of the criminal interview process, the involved member and/or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.

(e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

> "In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

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425.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

(a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.

(b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.

(c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.

(d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

425.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

425.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

425.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

425.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

(a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.

(b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.

(c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.

(d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.

(e) The evidence management system shall only be accessed on City premises.

(f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

425.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy.Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

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425.18.3 MEDIA

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

425.20 TRAINING REQUIRED

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.

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Public Recording of Law Enforcement Activity

426.1 PURPOSE AND SCOPE

This policy provides guidelines for handling situations in which members of the public photograph or audio/video record law enforcement actions and other public activities that involve members of this department. In addition, this policy provides guidelines for situations where the recordings may be evidence.

426.2 POLICY

The Berkeley Police Department recognizes the right of persons to lawfully record members of this department who are performing their official duties. Members of this department will not prohibit or intentionally interfere with such lawful recordings. Any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully.

Officers should exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

426.3 RECORDING LAW ENFORCEMENT ACTIVITY

Members of the public who wish to observe and/or record law enforcement activities are limited only in certain aspects.

(a) Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).

(b) Beyond the act of photographing or recording, individuals may not interfere with the law enforcement activity. Examples of interference include, but are not limited to:

1. Tampering with a witness or suspect.
2. Inciting others to violate the law.
3. Being so close to the activity as to present a clear safety hazard to the officers.
4. Being so close to the activity as to interfere with an officer's effective communication with a suspect or witness.

(c) The individual may not present an undue safety risk to the officers, him/herself or others.

426.4 OFFICER RESPONSE

Officers should promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence. If practicable, officers should wait for the supervisor to arrive before taking enforcement action or seizing any cameras or recording media.

Whenever practicable, officers or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or

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behavior to be unlawful. Accompanying the warnings should be clear directions on what an individual can do to be compliant; directions should be specific enough to allow compliance. For example, rather than directing an individual to clear the area, an officer could advise the person that he/she may continue observing and recording from the sidewalk across the street.

If an arrest or other significant enforcement activity is taken as the result of a recording that interferes with law enforcement activity, officers shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

426.5 SUPERVISOR RESPONSIBILITIES

A supervisor should respond to the scene when requested or any time the circumstances indicate a likelihood of interference or other unlawful behavior.

The supervisor should review the situation with the officer and:

(a) Request any additional assistance as needed to ensure a safe environment.

(b) Take a lead role in communicating with individuals who are observing or recording regarding any appropriate limitations on their location or behavior. When practical, the encounter should be recorded.

(c) When practicable, allow adequate time for individuals to respond to requests for a change of location or behavior.

(d) Ensure that any enforcement, seizure or other actions are consistent with this policy and constitutional and state law.

(e) Explain alternatives for individuals who wish to express concern about the conduct of Department members, such as how and where to file a complaint.

426.6 SEIZING RECORDINGS AS EVIDENCE

Officers should not seize recording devices or media unless (42 USC § 2000aa):

(a) There is probable cause to believe the person recording has committed or is committing a crime to which the recording relates, and the recording is reasonably necessary for prosecution of the person.

1. Absent exigency or consent, a warrant should be sought before seizing or viewing such recordings. Reasonable steps may be taken to prevent erasure of the recording.

(b) There is reason to believe that the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.

(c) The person consents.

1. To ensure that the consent is voluntary, the request should not be made in a threatening or coercive manner.

2. If the original recording is provided, a copy of the recording should be provided to the recording party, if practicable. The recording party should be permitted to be present while the copy is being made, if feasible. Another way to obtain the

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evidence is to transmit a copy of the recording from a device to a department-owned device.

Recording devices and media that are seized will be submitted within the guidelines of the Property and Evidence Policy.

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Medical Marijuana

427.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for investigating the acquisition, possession, transportation, delivery, production or use of marijuana under California's medical marijuana laws.

427.1.1 DEFINITIONS

Definitions related to this policy include:

Cardholder - A person issued a current identification card.

Compassionate Use Act (CUA) (Health and Safety Code § 11362.5) - California law intended to provide protection from prosecution to those who are seriously ill and whose health would benefit from the use of marijuana in the treatment of illness for which marijuana provides relief. The CUA does not grant immunity from arrest but rather provides an affirmative defense from prosecution for possession of medical marijuana.

Identification card - A valid document issued by the California Department of Public Health to both persons authorized to engage in the medical use of marijuana and also to designated primary caregivers.

Medical marijuana - Marijuana possessed by a patient or primary caregiver for legitimate medical purposes.

Medical Marijuana Program (MMP) (Health and Safety Code § 11362.7 et seq.) - California laws passed following the CUA to facilitate the prompt identification of patients and their designated primary caregivers in order to avoid unnecessary arrests and provide needed guidance to law enforcement officers. MMP prohibits arrest for possession of medical marijuana in certain circumstances and provides a defense in others.

Patient - A person who is entitled to the protections of the CUA because he/she has received a written or oral recommendation or approval from a physician to use marijuana for medical purposes or any person issued a valid identification card.

Primary caregiver - A person designated by the patient, who has consistently assumed responsibility for the patient's housing, health or safety, who may assist the patient with the medical use of marijuana under the CUA or the MMP (Health and Safety Code § 11362.5; Health and Safety Code § 11362.7).

Statutory amount - No more than 8 ounces of dried, mature, processed female marijuana flowers ("bud") or the plant conversion (e.g., kief, hash, hash oil), and no more than six mature or 12 immature marijuana plants (roots, stems and stem fibers should not be considered) (Health and Safety Code § 11362.77).

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427.2 POLICY

It is the policy of the Berkeley Police Department to prioritize resources to forgo making arrests related to marijuana that the arresting officer reasonably believes would not be prosecuted by state or federal authorities.

California's medical marijuana laws are intended to provide protection to those who are seriously ill and whose health would benefit from the use of medical marijuana.

However, California medical marijuana laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of marijuana. The Berkeley Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under California law and public resources.

427.3 INVESTIGATION

A sworn supervisor shall be summoned to the scene of any situation where a suspect asserts a claim of medical marijuana prior to any enforcement action being taken. Supervisors are expected to oversee the investigation to ensure enforcement actions are consistent with this policy.

Investigations involving the possession, delivery, production or use of marijuana generally fall into one of several categories:

(a) Investigations when no person makes a medicinal claim.

(b) Investigations when a medicinal claim is made by a cardholder.

(c) Investigations when a medicinal claim is made by a non-cardholder.

427.3.1 INVESTIGATIONS WITH NO MEDICINAL CLAIM

In any investigation involving the possession, delivery, production or use of marijuana or drug paraphernalia where no person claims that the marijuana is used for medicinal purposes, the officer should proceed with a criminal investigation if the amount is greater than permitted for personal use under the Control, Regulate and Tax Adult Use of Marijuana Act (Health and Safety Code § 11362.1; Health and Safety Code § 11362.2). A medicinal defense may be raised at any time, so officers should document any statements and observations that may be relevant to whether the marijuana was possessed or produced for medicinal purposes.

427.3.2 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A CARDHOLDER

A cardholder or designated primary caregiver in possession of an identification card shall not be arrested for possession, transportation, delivery or cultivation of medical marijuana at or below the statutory amount unless there is probable cause to believe that (Health and Safety Code § 11362.71; Health and Safety Code § 11362.78):

(a) The information contained in the card is false or falsified.

(b) The card has been obtained or used by means of fraud.

(c) The person is otherwise in violation of the provisions of the MMP.

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(d) The person possesses marijuana but not for personal medical purposes.

Officers who reasonably believe that a person who does not have an identification card in his/her possession has been issued an identification card may treat the investigation as if the person had the card in his/her possession.

Cardholders may possess, transport, deliver or cultivate medical marijuana in amounts above the statutory amount if their doctor has concluded that the statutory amount does not meet the patient's medical needs (Health and Safety Code § 11362.71; Health and Safety Code § 11362.77). Investigations involving cardholders with more than the statutory amount of marijuana should be addressed as provided in this policy for a case involving a medicinal claim made by a non-cardholder.

427.3.3 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A NON-CARDHOLDER

No patient or primary caregiver should be arrested for possession or cultivation of an amount of medical marijuana if the officer reasonably believes that marijuana is in a form and amount reasonably related to the qualified patient's current medical needs (Health and Safety Code § 11362.5). This arrest guidance also applies to sales, transportation or delivery of medical marijuana, or maintaining/renting a drug house or building that may be a nuisance if otherwise in compliance with MMP (Health and Safety Code § 11362.765).

Officers are not obligated to accept a person's claim of having a physician's recommendation when the claim cannot be readily verified with the physician but are expected to use their judgment to assess the validity of the person's medical-use claim.

Officers should review any available written documentation for validity and whether it contains the recommending physician's name, telephone number, address and medical license number for verification.

Officers should generally accept verified recommendations by a physician that statutory amounts do not meet the patient's needs (Health and Safety Code § 11362.77).

427.3.4 INVESTIGATIONS INVOLVING A STATE LICENSEE

No person issued a state license under the Business and Professions Code shall be arrested or cited for cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution or sale of medical cannabis or a medical cannabis product related to qualifying patients and primary caregivers when conducted lawfully. Whether conduct is lawful may involve questions of license classifications, local ordinances, specific requirements of the Business and Professions Code and adopted regulations. Officers should consider conferring with a supervisor, the applicable state agency or other member with special knowledge in this area and/or appropriate legal counsel before taking enforcement action against a licensee or an employee or agent (Business and Professions Code § 26032).

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427.3.5 ADDITIONAL CONSIDERATIONS

Officers should consider the following when investigating an incident involving marijuana possession, delivery, production or use:

(a) Because enforcement of medical marijuana laws can be complex, time consuming and call for resources unavailable at the time of initial investigation, officers may consider submitting a report to the prosecutor for review, in lieu of making an arrest. This can be particularly appropriate when:

1. The suspect has been identified and can be easily located at a later time.
2. The case would benefit from review by a person with expertise in medical marijuana investigations.
3. Sufficient evidence, such as photographs or samples, has been lawfully obtained.
4. Other relevant factors, such as available department resources and time constraints prohibit making an immediate arrest.

(b) Whenever the initial investigation reveals an amount of marijuana greater than the statutory amount, officers should consider the following when determining whether the form and amount is reasonably related to the patient's needs:

1. The amount of marijuana recommended by a medical professional to be ingested.
2. The method of ingestion (e.g., smoking, eating, nebulizer).

(c) Before proceeding with enforcement related to collective gardens or dispensaries, officers should consider conferring with a supervisor, an applicable state regulatory agency or other member with special knowledge in this area and/or appropriate legal counsel (Business and Professions Code § 26010; Business and Professions Code § 26060). Licensing, zoning and other related issues can be complex. Patients, primary caregivers and cardholders who collectively or cooperatively cultivate marijuana for medical purposes may be licensed or may have a defense in certain circumstances (Business and Professions Code § 26032; Business and Professions Code § 26033).

(d) Investigating members should not order a patient to destroy marijuana plants under threat of arrest.

427.3.6 EXCEPTIONS

This policy does not apply to, and officers should consider taking enforcement action for the following:

(a) Persons who engage in illegal conduct that endangers others, such as driving under the influence of marijuana in violation of the Vehicle Code (Health and Safety Code § 11362.5).

(b) Marijuana possession in jails or other correctional facilities that prohibit such possession (Health and Safety Code § 11362.785).

(c) Smoking marijuana (Health and Safety Code § 11362.79):

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1. In any place where smoking is prohibited by law.
2. In or within 1,000 feet of the grounds of a school, recreation center or youth center, unless the medical use occurs within a residence.
3. On a school bus.
4. While in a motor vehicle that is being operated.
5. While operating a boat.

(d) Use of marijuana by a person on probation or parole, or on bail and use is prohibited by the terms of release (Health and Safety Code § 11362.795).

427.4 FEDERAL LAW ENFORCEMENT

Officers should provide information regarding a marijuana investigation to federal law enforcement authorities when it is requested by federal law enforcement authorities or whenever the officer believes those authorities would have a particular interest in the information.

427.5 PROPERTY AND EVIDENCE UNIT SUPERVISOR RESPONSIBILITIES

The Property and Evidence Unit supervisor should ensure that marijuana, drug paraphernalia or other related property seized from a person engaged or assisting in the use of medical marijuana is not destroyed pending any charges and without a court order. The Property and Evidence Unit supervisor is not responsible for caring for live marijuana plants.

With the Detective Bureau Lieutenant's approval and upon the prosecutor’s decision to forgo prosecution, or the dismissal of charges or an acquittal, the Property and Evidence Unit supervisor should, as soon as practicable, return to the person from whom it was seized any useable medical marijuana, plants, drug paraphernalia or other related property that was seized as evidence. Absent approval from the Detective Bureau Lieutenant, the owner should be advised to seek a court order for the return of the property.

Medical marijuana booked for "safekeeping" may be returned to the listed owner without additional approval needed.

The Property and Evidence Unit supervisor may release marijuana to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Detective Bureau Lieutenant.

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First Amendment Assemblies

428.1 PURPOSE

The purpose of this policy is to provide policy and procedural guidance to Berkeley Police Department personnel involved in the planning, response and/or deployment of police personnel for crowd situations.

428.2 MISSION STATEMENT

The mission of the Berkeley Police Department in crowd situations is to facilitate free expression, de-escalate violence and resolve conflict peacefully with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly.

(a) Appropriate action will be determined by the Incident Commander in the field, and will be based on the behavior of the people in the crowd.

(b) Police action shall be reasonable, intended to prevent lawlessness or restore order, and may include responses ranging from no police action to full crowd control tactics.

428.3 POLICY

In the event a crowd situation is determined to be a peaceful protest or demonstration, wherein participants are exercising their rights to free speech in a lawful manner, the policy of the Berkeley Police Department shall be to facilitate the event to the extent possible.

The Department shall make it a priority to establish lines of communication with the demonstrators both before and during the crowd situation. The Department shall consider social media as one means of communication.

In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of criminal behavior and violence, the Berkeley Police Department will take steps to restore order.

(a) Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes or a dispersal order.

(b) Prior to issuing a dispersal order, BPD shall make efforts to safely arrest those committing crimes while preserving the rights of citizens to demonstrate.

(c) Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.

428.4 USE OF FORCE

Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in the Use of Force Policy.

(a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons and chemical agents should not be used on persons participating in a crowd

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situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.

1. Verbal commands to stand followed by control holds (e.g., wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.
2. If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.
3. Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.

(b) Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)

(c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a "rake" or "jab") as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.

1. Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine or groin except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person.
2. Officers on a skirmish line shall not use batons to collectively push a crowd in a particular direction prior to dispersal orders being given unless exigent circumstances exist. This requirement does not apply to officers on a skirmish line who are using force in compliance with Graham v. Conner.

(d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).

(e) Less-lethal munitions shall only be fired at a specific target and officers shall be mindful of the increased risk of hitting an unintended target due to unexpected movement of members of the crowd. Officers may never use less-lethal munitions indiscriminately against a crowd or group of people.

Personnel deployments during demonstrations should include clear and specific objectives.

In squad or team movement, the type and scope of force used shall be at the discretion of the Incident Commander, Field Commander, Squad or Team Leader.

De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed prior to the use of any force, consistent with the Department's Use of Force policy.

Kinetic energy projectiles and chemical agents for crowd control purposes shall only be deployed by officers who have received POST training for crowd control if the use is objectively reasonable

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to defend against a threat to life or serious bodily injury to any individual, including an officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control (Penal Code 13652).

Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

- A violation of an imposed curfew.
- A verbal threat.
- Noncompliance with a law enforcement directive.

For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agent, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed.

428.5 USE OF VEHICLES

BPD shall enhance mobility and flexibility by using police vehicles such as trained bicycle officers and motorcycle officers, in addition to foot patrols, to maintain peaceful crowd management. Parking Enforcement Officers will only be used for traffic control purposes.

Specialized police vehicles (e.g., police motorcycles, off-road motorcycles, parking enforcement vehicles, mobile command vehicles, etc.) may be used in crowd situations at the discretion of the Incident Commander.

(a) Specialized police vehicles shall not be used to contact demonstrators for the purpose of physically pushing people back or forcibly dispersing them from an area.

(b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.

428.6 DEFINITIONS

Control Hold: Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.).

Counter Demonstration: An assembly of persons in conflict with a different demonstration at the same location.

Crowd Control: Law enforcement response to a pre-planned event or spontaneous event, activity or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd. These strategies include but are not limited to skirmish lines, mobile field force techniques, targeted and mass arrests and the use of force generally.

Crowd Management: Strategies and tactics employed before, during and after a gathering for the purpose of maintaining the event's lawful activities. These strategies include, but are not limited to:

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communication with leaders before and during the event, police presence and event participation, blocking traffic to facilitate a march, and bicycle officers monitoring the crowd.

Demonstration: A public assembly of persons to exhibit thoughts, ideas or opinions.

Incident Commander: A sworn officer, usually a lieutenant or captain, responsible for all personnel assigned to an event.

During the initial stages of a spontaneous event, the Incident Commander will be the highest ranking or senior officer available to take charge, until relieved of responsibilities by a higher ranking officer.

Mobile Field Force (MFF): A statewide tactical concept that utilizes groups of trained officers with standard marked police vehicles and equipment, who have the capability to respond to crowd events that are highly mobile or that break up and quickly reform in other locations.

Non-Permitted Event: Any demonstration, whether spontaneous or planned, wherein organizers have not obtained permits or licenses that are lawfully required under the circumstances.

Operations Commander: A sworn officer, usually a lieutenant or sergeant, responsible for the movement and actions of a platoon, squad, or other identified group of officers at the scene of an event.

Pain Compliance Technique: Any technique designed to inflict pain for the purpose of motivating a person to comply with verbal commands (e.g., buckle nerve, gum nerve, sternum rub).

Passive Resistance: When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way (i.e., a person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.)

Persons who lock arms, use lockdown devices, or physically resist officers in any other way are not considered “passive”.

Permitted Event: Any demonstration or event wherein organizers have obtained all applicable permits or licenses.

Platoon: Any group of officers, usually 36 or more in number, organized into 3 or more squads. Each platoon will have a commander, usually a lieutenant, who is responsible for the actions of the platoon in the field.

Protected First Amendment Activity: Various forms of expression including, but not limited to, speech, assembly, marching, holding signs, street theater, distribution of literature, or displaying banners.

(a) Freedom of speech and assembly are rights protected by the First Amendment of the United States Constitution, and Article 1 Sections 2 & 3 of the California Constitution subject to reasonable time, place and manner regulations, such as, compliance with lawful permit requirements and traffic regulations.

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Riot: Any group of two or more people, acting together, who use force, violence, or the threat of force or violence, to disturb the public peace (Penal Code § 405).

Riot Gear: Police equipment visible to the public and generally associated with crowd control, such as, helmets, batons, flex-cuffs, special uniforms, specialized vehicles, etc.

Spontaneous Event: Any unplanned event that develops, usually as a result of some catalyst, such as sporting events, parties, concerts, court rulings, festivals, major political events, major news events, or any combination thereof.

Squad: A group of sworn officers, usually 12 in number, with an identified squad leader responsible for the actions of the squad.

Squad Leader: A sworn officer, usually a sergeant, responsible for the movement and actions of a squad.

Team: A group of four sworn officers within a squad, inclusive of an identified leader responsible for the actions of the team.

Team Leader: A sworn officer, sometimes a sergeant, responsible for the movement and actions of a team of officers within a squad.

Time, Place or Manner Restrictions: Reasonable restrictions on protected activity imposed by law (e.g., an applicable permit) intended to serve a specific governmental interest (e.g., public safety), with regard to the time, location, or manner in which protected activity is to be conducted.

Unlawful assembly: Two or more persons, assembled together to commit an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner (Penal Code § 407).

The prohibition in Penal Code § 407 against persons in an assembly doing a lawful act in a violent, boisterous or tumultuous manner is limited only to situations where the conduct poses a clear and present danger of imminent violence ((1973) 9 Cal. 3d 612, 623).

428.7 PLANNED EVENTS

(a) At such time as a special event or crowd situation comes to the attention of police department personnel, the Operations Division Captain or Watch Commander shall be notified, and forwarded all information regarding the event.

(b) The Incident Command System (ICS) shall be used for managing all crowd situations. ICS should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.

(c) The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.

1. Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.

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i. Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.

ii. If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.

(d) Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.

1. Initial assessment may include on-duty personnel in the Operations Division and other divisions within the Department.

2. If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies.

(e) Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Captains to secure their participation.

(f) Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.

1. An Operations Plan shall contain sufficient detail to allow an uninvolved party who reads it to understand the nature of the event, department policy involved, planned response and the department resources dedicated to it.

2. The Operations Plan shall include specific guidelines and priorities to consider when making deployment decisions and shall reflect the department's commitment to crowd management.

3. Upon approval by the Operations Captain and signed by the Chief of Police, the original Operations Plan shall be **scanned into the Professional Standards folder (within the Department's internal GDrive)** and copies distributed to all appropriate personnel.

428.8 SPONTANEOUS EVENTS

(a) Sworn officers shall respond to a reported spontaneous crowd situation to assess immediate hazards to public safety.

(b) The ranking sworn officer, or senior officer, shall assume the role and responsibilities of Incident Commander, and take the following immediate actions:

1. Broadcast the type of event, if known, and estimated number of participants.

2. Report known or imminent public safety hazards.

3. Request sufficient on-duty personnel resources to address life-threatening public safety emergencies.

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(c) The on-duty Watch Commander, or if absent or unavailable, the senior Patrol Sergeant, shall respond to the event scene and take the following actions:

1. Assume the role and responsibilities of Incident Commander.
2. Assess the potential risks to public safety.
3. Assess whether or not a static event has the potential to go mobile, either on foot in the form of a march, or in vehicles.
4. Assess the number of officers and type of equipment required to maintain order and their manner of response.
5. Assess the potential need for outside resources:
   i. On-duty personnel from other police agencies.
   ii. Fire Department personnel and resources.
   iii. Media relations personnel.
6. Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.

(d) The Incident Commander should consider the following factors when making decisions regarding the police response:

1. The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
2. The level of disruption to those not involved in, but impacted by the event.
3. The level of vehicular traffic.
4. The number of people involved in the event and their behavior.
5. The personnel and equipment available for the task.

(e) The Incident Commander may use on-duty personnel from other divisions or units to assist in the police response to a spontaneous event.

(f) The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:

1. Assign personnel to monitor the event only.
2. Use personnel to maintain order at the event and/or divert uninvolved, affected traffic away from the area.

(g) If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:

1. Let the group proceed with no police presence.
2. Assign officers to facilitate the mobile event by providing traffic control.
3. Attempt to direct the path of the mobile event by denying access to certain roadways.

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4. Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.

5. Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.

(h) There is no required order of response; the Incident Commander shall be responsible for continually assessing the event and adjusting the response strategies and tactics accordingly. Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.

(i) The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished to another officer who officially assumes the responsibility.

1. Any change of command shall be broadcast on the radio frequency used to manage the police response.

428.9 GENERAL EVENT PROCEDURES

(a) Employees dispatched or pre-assigned to a crowd situation shall be in a department-approved uniform appropriate for their assignment.

1. Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.

(b) Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment, (i.e., helmet, chemical agent mask, etc.).

(c) Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander. The Incident Commander shall be responsible for assuring that there is an inventory of less-lethal munitions, CS gas, and/or smoke prior to deployment, including any outside agencies assisting BPD. Absent exigent circumstances, such less-lethal munitions, CS gas and smoke shall not be deployed prior to determination of an accurate inventory.

(d) The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.

1. Information communicated in an operational briefing shall include, at minimum:

(a) The nature of the event.

(b) The mission and operational goal(s) of the department.

(c) The chain of command managing the event.

(d) The individual's assignment and any special equipment he/she may require to accomplish it.

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(e) When possible, the identity and appearance of all undercover personnel involved in the police response.

- Undercover personnel should be present at operational briefings for planned events.

(e) Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.

(f) Verbal requests or commands should be used before and when advancing on a crowd.

1. Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step back!" or "Move onto the sidewalk!")

(g) Employees in a crowd situation shall conduct themselves in a professional and courteous manner, answering questions when appropriate.

(h) When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating the law.

1. Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.

(i) Visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.

1. Activities that should be documented via visual recording device include, but are not limited to:

i. Criminal activity (misdemeanor or felony);

ii. Violation of a Permit condition, City Ordinance, or traffic violation.

iii. Use of force by officers.

iv. Arrests by officers.

v. Any person who, by words or action, is inciting violence.

vi. Dispersal orders issued by police.

(j) Employees shall adhere to information release and media liaison protocols set forth in the Records Maintenance and Release policy and the Media Relations policy, respectively.

1. The Incident Commander shall ensure legitimate "credentialed" members of the media are provided access to areas available to them by law.

2. A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be treated like any other citizen with regard to event area access.

(k) In any first amendment assembly, if feasible the Field Commander should ensure that medical resources are available. An objectively reasonable effort should be made to extract individuals that appear to be in distress. Medical assistance should be promptly

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provided, if properly trained personnel are present, or requested, for injured persons, when it is reasonably safe to do so.

428.10 DISPERSAL ORDERS

(a) The Incident Commander at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.

(b) Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:

1. "I am () () with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at () to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal projectiles, baton strikes, or use of tear gas, which may pose a risk of serious injury. The following routes of dispersal are available: () You have () to leave the area."

(c) Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.

(d) The Incident Commander, or his/her designee, shall issue a dispersal order:

1. As close to the crowd as practical;
2. In a manner clearly audible to persons in the crowd;
   i. Use sound amplification systems when necessary;
   ii. When practical, shall record the dispersal order to establish that the orders were audible to the crowd.
   iii. When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.
3. In more than one language if possible, depending on the needs of the crowd.

(e) Additional dispersal orders may be given following a reasonable period of time to allow for crowd dispersal. Ongoing dispersal orders should be avoided.

(f) If after a dispersal order is given, a crowd is discovered in a different location, the new location should be evaluated to determine if it is an ongoing unlawful assembly.

428.11 MASS ARRESTS

(a) When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:

1. Resource Availability: Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.

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2. In-Field Arrest Processing: Equipment and logistics should be available to facilitate in-field processing of mass arrests.
3. Transportation: In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.
4. Booking/Jail Capacity: The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of persons not released on citation.
5. Documentation: Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.

428.12 MUTUAL AID

(a) An official request for mutual aid resources shall adhere to procedures set forth the Mutual Aid Policy.

1. Emergency requests for immediate assistance may be made directly to local agencies.

(b) The Chief of Police or his/her designee shall contact the liaison from the Alameda County Sheriff's Department to coordinate a plan for mutual aid resources and response.

1. This plan should include the number of officers potentially needed, any special equipment requested, and an expected response time if called out.
2. Absent exigent circumstances, responding mutual aid personnel shall be briefed prior to deployment and should be given clear and specific objectives.

(c) In preparation for mutual aid forces, the Incident Commander shall ensure that liaison officers from BPD are assigned to work with the outside agency to assist with response routes into the staging area, parking vehicles, checking in with the staging area supervisor, communications and response to event location.

(d) MFF organization should be employed when integrating mutual aid personnel into local crowd event response, or when responding to another jurisdiction as a mutual aid unit.

1. Personnel should be formed into squads or teams that are easily integrated into squads and platoons.

(e) When responding to another jurisdiction as a mutual aid unit, personnel will have with them enough vehicles and equipment to allow the deployed team or squad to patrol a designated area, use less-than-lethal munitions or authorized chemical agents, if necessary, and have enough food and water to last for a reasonable operational period until relieved.

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428.13 MEDIA ACCESS

If officers close the immediate area surrounding any emergency field command post or any other command post, or establish a police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged in a protected activity pursuant to the First Amendment, officers shall comply with the requirements of Penal Code § 409.7 relating to media access (i.e., access to recently closed areas) (Penal Code § 409.7).

428.14 POST-EVENT

Once a normal work schedule has resumed, the Incident Commander shall ensure that an After Action Report is prepared within 72 hours after the resumption of the Incident Commander's normal work schedule. Should an extension be necessary in order to properly and fully complete the report, such a request may be made to the Chief of Police.

(a) An After Action Report shall document arrests, injuries, property damage, personnel costs, inventories of less lethal munitions, CS gas and smoke, and an overall critique of the police preparation and response.

(b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.

(c) The Operations Division Captain or the authorized designee should ensure that a summary ofo each deployment of kinetic energy projectiles or chemical agents for crowd control purposes is prepared and published on the department website within 60 days of ach incident. The time frame may be extended for another 30 days where just cause is demonstrated, but no longer than 90 days from the time of the incident. The summary shall be limited to the information known to the Department at the time of the report and include the information required in Penal Code 13652.1.

428.15 TRAINING

When possible, training in crowd management and crowd control shall be incorporated into general departmental in-service training.

When possible prior to a major pre-planned event, updated training should be provided to all assigned officers.

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Intelligence Procedures for First Amendment Activities

429.1 PURPOSE

The purpose of this policy is to provide guidance regarding intelligence gathering procedures and maintenance of intelligence files. Additionally this policy addresses the investigation of individuals and groups involved in First Amendment protected activities, and expressly limits such investigations to situations where a criminal predicate exists.

429.2 CONSTITUTIONAL RESTRICTION TO CRIMINAL ACTIVITY

The United States and California Constitutions provide people with the right of privacy, free expression and free association for any lawful purpose.

The California Constitution expressly provides that “privacy” is an inalienable right. The First Amendment of the US constitution prohibits the government from making a law establishing a religion or prohibiting the free exercise of religion, abridging freedom of speech or of the press, or preventing people from peaceable assembly (e.g., marches and picketing).

While there are certain categories of speech that are not protected (i.e., fighting words, defamation, etc.), these exceptions are limited and have been narrowly construed.

Under these constitutional restrictions, intelligence gathering by the Police Department is only permitted to investigate criminal activity. Intelligence gathering should not include political, religious, or social views or activities of individuals or groups, unless such views or activities directly relate to criminal conduct.

429.3 POLICY

It is the policy of the Berkeley Police Department to ensure that the First Amendment rights guaranteed by the United States Constitution are protected for all individuals and groups, including the press, and to permit police involvement in the exercise of those rights only to the extent necessary to provide for the legitimate needs of law enforcement in investigating criminal activity.

The Berkeley Police Department will obtain, maintain and use information from legal, reliable sources to meet the needs of the Department and the City of Berkeley in carrying out its efforts to protect the public and suppress criminal activity. When the group or individual being investigated is involved in constitutionally protected First Amendment activity, the Department will ensure that there is reasonable suspicion that a criminal predicate exists.

Officers involved in planning for or responding to any protest or event may utilize open source material and are encouraged to contact the individuals or groups organizing the public event in order to facilitate traffic control, crowd management, or other safety measures concerning the event. These measures would not be considered an investigation as defined by this policy.

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The Berkeley Police Department recognizes its critical task in balancing the need for law enforcement in its efforts to protect the broader society, versus the need to safeguard individual rights guaranteed by a democratic process. At times, law enforcement may need to resort to the use of undercover operations, surveillance, and the use of informants to protect the public from groups espousing violence and/or wanton destruction of property.

429.4 FEDERAL AND STATE GUIDELINES

The guidelines of this policy are based largely on the Californian Attorney General's Criminal Intelligence Guidelines and Title 28 Code of Federal Regulations, Part 23 (28 CFR 23). To the extent of this policy is more restrictive than the Attorney General's guidelines or 28 CFR 23, this policy must be adhered to.

429.5 DEFINITIONS

Criminal Predicate: The standard by which the determination as to whether information may be used to create an intelligence file is made. 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 policy, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount to a misdemeanor or felony.

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 may be involved in definable criminal conduct and/or activity that supports, encourages or otherwise aids definable criminal conduct.

Open Source: Any source of news or information that could normally be accessed by any member of the public. Examples include the television news, newspapers, speeches at any public gathering or event, the Internet, the public in the form of casual conversations and information brought forward during routine contacts, the radio, billboards, and flyers. Open source information does not include meetings, such as planning meetings or closed-door meetings, where First Amendment protected activities are involved, unless the officers are in uniform and have been invited or are otherwise in a place they have a lawful right to be.

Informant: Non-law enforcement, non-City employees who are specifically gathering information on behalf,and at the request of the Berkeley Police Department.

Videotaping: For the purposes of this policy, the videotaping (whether surreptitious or in plain sight) of individuals or groups involved in First Amendment related activities.

429.6 INTELLIGENCE GATHERING

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429.6.1 OPEN SOURCES

Open source information can be accessed at any time by any member of the Department without reporting requirements, unless otherwise required outside of this policy. Accessing open source information does not constitute an investigation as defined by this policy. However, files on groups or organizations containing open source material shall not be created and maintained, absent a criminal predicate.

Open source information should be validated in compliance with the California Attorney General's Criminal Intelligence Guidelines and 28 CFR 23.

429.6.2 PLAINCLOTHES OFFICERS

Where the activity is First Amendment related, plainclothes officers may only be used where there is a reasonable suspicion of criminal activity arising to acts of violence, destruction of property, or a threat to public safety. Plainclothes officers may be utilized within crowds in public places involved in First Amendment related activities, but only in order to determine the best response for Police to safely address traffic-related issues because they would potentially be in danger even in uniform. In this situation, the plainclothes officers would not be gathering any specific information about the group or individuals, unless criminal activity occurred, just general information such as direction of travel, crowd size estimates and destination.

(a) Plainclothes officers shall not be utilized at meetings, such as planning meetings or closed-door meetings where First Amendment related activities are involved, except as noted above.

(b) The use of plainclothes officers at planning-meetings, or closed-door meetings where First Amendment related activities are involved shall require prior approval of the Chief of Police.

(c) Plainclothes officers shall not, in any circumstance:

1. Attend meetings or engage in other activities for the purpose of obtaining legally-privileged information, such as confidential sources of reporters, attorney-client communications, or physician-patient communications;
2. Assume a leadership position or intentionally cause dissension within an organization;
3. Initiate, propose or suggest, encourage, or incite criminal acts or plans to commit criminal acts;
4. Use unlawful techniques to obtain information; or
5. Participate in acts of violence or unlawful acts.

429.6.3 INFORMANTS

Informants may be utilized in First Amendment related activities where there is reasonable suspicion of criminal activity arising to acts of violence, destruction of property, or a threat to public safety.

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(a) Informants shall not be utilized at meetings, such as planning meetings or closed-door meetings where First Amendment related activities are involved, except as noted above.

(b) Use of informants where First Amendment related activities are involved would require prior approval of the Chief of Police and reasonable suspicion of a criminal predicate.

(c) Information from informants should be validated in compliance with the California Attorney General's Criminal Intelligence Guidelines and Title 28 Code of Federal Regulations, Part 23 (28 CFR 23).

(d) Informants shall be directed not to:

1. Assume a leadership position or intentionally cause dissension within an organization;
2. Initiate, propose or suggest, encourage, or incite criminal acts or plans to commit criminal acts;
3. Use unlawful techniques-to obtain information;
4. Participate in acts of violence or unlawful acts; or
5. Attend meetings or engage in other activities for the purpose of obtaining legally-privileged information, such as confidential sources of reporters, attorney-client communications or physician-patient communications.

429.6.4 VIDEOTAPING

Videotaping is a useful tool with which to gather evidence in criminal cases and non-criminal civil complaints against the City. It is often difficult to ascertain whether criminal activity is going to break out during a protest, march, or during other protected First Amendment related activities. Additionally, due to the contentious nature of many of these events, there is often City liability involved, or the potential for allegations of police misconduct. Videotaping these events serves to protect both the City and the various constituents involved in these events. As such the Berkeley Police Department will routinely videotape protests, marches and other acts of protected First Amendment related activities that occur in public places.

(a) In the event that no criminal predicate exists, no discernable civil liability can be discovered, and no personnel complaint is received, the tapes, if they are maintained, will only be maintained as a training tool. Tape that is not used for training shall be destroyed within 90 days of the incident, unless such tape is requested to be preserved as part of a personnel complaint, civil or criminal investigation or case.

(b) Whenever possible, the videotaping will occur in a manner-that minimizes interference with people lawfully participating in First Amendment activity. Individuals shall not be singled out for videotaping or photographing because of their religious or political views.

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429.7 DEMONSTRATIONS

The Police Department will not investigate or gather intelligence of a planned demonstration from non-open sources, unless there is reasonable suspicion that the demonstration will result in criminal activity rising to acts of violence, destruction of property or a threat to public safety. The anticipation of acts of non-violent civil disobedience alone, without an accompanying threat to public safety, shall not be a basis to investigate or gather intelligence of a planned demonstration, other than from open sources for purposes such as estimating the time, size and route of the demonstration.

429.8 INTELLIGENCE FILES

The creation of intelligence files when investigating individuals and groups involved in First Amendment protected activities where a criminal predicate, exists shall meet the below criteria.

(a) An intelligence file will consist of analyzed data from sources ranging from "open source" to "confidential" (such as informants and classified reports). The only limits Title 28 CFR 23 places on data that may be analyzed are:

1. It must be legally obtained
2. It may not include information about political, religious or social views, associations or activities unless such information is related to definable criminal conduct or activity and the subject of the information is reasonably suspected of involvement in that conduct or activity.
3. It is within the California Attorney General Guidelines.

(b) Once data has been lawfully collected, it goes through several steps that will terminate in one of three results:

1. Destruction of the data because there is no criminal predicate and no reasonable likelihood of developing a criminal predicate;
2. Determination that, although no criminal predicate then exists or no person or group has yet been linked to the predicate, there is a reasonable likelihood that – within a reasonable time (the Department of Justice uses one year) evidence of the predicate or identity of the person or group will be available; or
3. Retention of the data based on a criminal predicate.

(c) An intelligence file shall not be opened for reasonable suspicion of non-violent civil disobedience that is only a misdemeanor and does not pose a threat to public safety.

429.8.1 INFORMATION ACCESS AND DISSEMINATION

Information Access and Dissemination: Those personnel authorized to access and disseminate criminal intelligence file information shall ensure that prior to disseminating or allowing access to criminal intelligence file information that the requestor has:

(a) The Right to Know: Requester has the right to obtain intelligence information because of his or her status (e.g., a sworn member of a law enforcement agency) or pursuant to a court order, statute or case law, and

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(b) The Need to Know: Requester has an articulated need to obtain specific intelligence information in order to execute official law enforcement responsibilities or because the court order, statute or case law establishes such a need to know.

Access should never be granted when a requester has satisfied only one of these criteria.

429.9 AUTHORIZATION

When possible, in all cases involving an investigation into individuals or groups exercising Constitutionally protected First Amendment activities, approval will be obtained from the Chief of Police, or in his/her absence a division captain, prior to the initiation of an investigation. An approval period will last for 90 days. Any investigation that continues for more than 90 days must receive approvals from the Chief of Police at every 90-day interval.

(a) If it is impractical to obtain prior approval, the Chief of Police shall be notified in a timely manner. Investigations shall only be initiated, where there is reasonable suspicion of planned, on-going, or prior criminal activity.

(b) The Chief of Police will notify the City Manager of all investigations that are covered by this policy.

429.9 AUDIT AND REPORTING

On an annual basis, the Chief of Police, or his/her designee, shall review the Department's files, records and documents to determine whether the Department is in compliance with these regulations. The Chief of Police shall prepare a confidential summary report to the City Manager regarding all investigations conducted by the Police Department pursuant to this policy.

The Chief of Police, or his/her designee, shall prepare a statistical report annually for the Police Review Commission that will include the following information:

(a) The number of investigations authorized during the prior year;

(b) The number of authorizations sought but denied;

(c) The number of times that undercover officers were used;

(d) The number of unlawful activities investigated;

(e) Arrest and violation information for completed investigations; and

(f) The number of requests for information from outside agencies for information relating to investigations conducted pursuant to this policy.

429.10 OUTSIDE AGENCIES

The Berkeley Police Department will only cooperate with outside agencies consistent with this policy, the California Attorney General's Criminal Intelligence Guidelines and Title 28 Code of Federal Regulations, Part 23. Officers will follow this policy at all times when engaged in cooperative efforts with another agency.

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Civil Disputes

430.1 PURPOSE AND SCOPE

This policy provides members of the Berkeley Police Department with guidance for addressing conflicts between persons when no criminal investigation or enforcement action is warranted (e.g., civil matters), with the goal of minimizing any potential for violence or criminal acts.

The Domestic Violence Policy will address specific legal mandates related to domestic violence court orders. References in this policy to “court orders” apply to any order of a court that does not require arrest or enforcement by the terms of the order or by California law.

430.2 POLICY

The Berkeley Police Department recognizes that a law enforcement presence at a civil dispute can play an important role in the peace and safety of the community. Subject to available resources, members of this department will assist at the scene of civil disputes with the primary goal of safeguarding persons and property, preventing criminal activity and maintaining the peace. When handling civil disputes, members will remain impartial, maintain a calm presence, give consideration to all sides and refrain from giving legal or inappropriate advice.

430.3 GENERAL CONSIDERATIONS

When appropriate, members handling a civil dispute should encourage the involved parties to seek the assistance of resolution services or take the matter to the civil courts. Members must not become personally involved in disputes and shall at all times remain impartial.

While not intended to be an exhaustive list, members should give considerations to the following when handling civil disputes:

(a) Civil disputes tend to be confrontational and members should be alert that they can escalate to violence very quickly. De-escalation techniques should be used when appropriate.

(b) Members should not dismiss alleged or observed criminal violations as a civil matter and should initiate the appropriate investigation and report when criminal activity is apparent.

(c) Members shall not provide legal advice, however, when appropriate, members should inform the parties when they are at risk of violating criminal laws.

(d) Members are reminded that they shall not enter a residence or other non-public location without legal authority including valid consent.

(e) Members should not take an unreasonable amount of time assisting in these matters and generally should contact a supervisor if it appears that peacekeeping efforts longer than 30 minutes are warranted.

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430.4 COURT ORDERS

Disputes involving court orders can be complex. Where no mandate exists for an officer to make an arrest for a violation of a court order, the matter should be addressed by documenting any apparent court order violation in a report. If there appears to be a more immediate need for enforcement action, the investigating officer should consult a supervisor prior to making any arrest.

If a person appears to be violating the terms of a court order but is disputing the validity of the order or its applicability, the investigating officer should document the following:

(a) The person's knowledge of the court order or whether proof of service exists.

(b) Any specific reason or rationale the involved person offers for not complying with the terms of the order.

A copy of the court order should be attached to the report when available. The report should be forwarded to the appropriate prosecutor. The report should also be forwarded to the court issuing the order with a notice that the report was also forwarded to the prosecutor for review.

430.4.1 STANDBY REQUESTS

Officer responding to a call for standby assistance to retrieve property should meet the person requesting assistance at a neutral location to discuss the process. The person should be advised that items that are disputed will not be allowed to be removed. The member may advise the person to seek private legal advice as to the distribution of disputed property.

Members should accompany the person to the location of the property. Members should ask if the other party will allow removal of the property or whether the other party would remove the property.

If the other party is uncooperative, the person requesting standby assistance should be instructed to seek private legal advice and obtain a court order to obtain the items. Officers should not order the other party to allow entry or the removal of any items. If there is a restraining or similar order against the person requesting standby assistance, that person should be asked to leave the scene or they may be subject to arrest for violation of the order.

If the other party is not present at the location, the member will not allow entry into the location or the removal of property from the location.

430.5 VEHICLES AND PERSONAL PROPERTY

Officers may be faced with disputes regarding possession or ownership of vehicles or other personal property. Officers may review documents provided by parties or available databases (e.g., vehicle registration), but should be aware that legal possession of vehicles or personal property can be complex. Generally, officers should not take any enforcement action unless a crime is apparent. The people and the vehicle or personal property involved should be identified and the incident documented.

430.6 REAL PROPERTY

Disputes over possession or occupancy of real property (e.g., land, homes, apartments) should generally be handled through a person seeking a court order.

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Medical Aid and Response

431.1 PURPOSE AND SCOPE

This policy recognizes that members often encounter persons in need of medical aid and establishes a law enforcement response to such situations.

431.2 POLICY

It is the policy of the Berkeley Police Department that all officers and other designated members be trained to the level required by law to provide emergency medical aid and to facilitate an emergency medical response.

431.3 FIRST RESPONDING MEMBER RESPONSIBILITIES

Whenever practicable, members should take appropriate steps to provide initial medical aid (e.g., first aid, CPR, use of an automated external defibrillator (AED)) in accordance with their training and current certification levels. This should be done for those in need of immediate care and only when the member can safely do so.

Prior to initiating medical aid, the member should contact the Communications Center and request response by Emergency Medical Services (EMS) as the member deems appropriate.

Members should follow universal precautions when providing medical aid, such as wearing gloves and avoiding contact with bodily fluids, consistent with the Communicable Diseases Policy. Members should use a barrier or bag device to perform rescue breathing.

When requesting EMS, the member should provide the Communications Center with information for relay to EMS personnel in order to enable an appropriate response, including:

(a) The location where EMS is needed.

(b) The nature of the incident.

(c) Any known scene hazards.

(d) Information on the person in need of EMS, such as:

1. Signs and symptoms as observed by the member.
2. Changes in apparent condition.
3. Number of patients, sex, and age, if known.
4. Whether the person is conscious, breathing, and alert, or is believed to have consumed drugs or alcohol.
5. Whether the person is showing signs or symptoms of excited delirium or other agitated chaotic behavior.

Members should stabilize the scene whenever practicable while awaiting the arrival of EMS.

Members should not direct EMS personnel whether to transport the person for treatment.

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431.4 TRANSPORTING ILL AND INJURED PERSONS

Except in extraordinary cases where alternatives are not reasonably available, members should not transport persons who are unconscious, who have serious injuries or who may be seriously ill. EMS personnel should be called to handle patient transportation.

Officers should search any person who is in custody before releasing that person to EMS for transport.

An officer should accompany any person in custody during transport in an ambulance when requested by EMS personnel, when it reasonably appears necessary to provide security, when it is necessary for investigative purposes or when so directed by a supervisor.

Members should not provide emergency escort for medical transport or civilian vehicles.

431.5 PERSONS REFUSING EMS CARE

If a person who is not in custody refuses EMS care or refuses to be transported to a medical facility, an officer shall not force that person to receive care or be transported. However, members may assist EMS personnel when EMS personnel determine the person lacks mental capacity to understand the consequences of refusing medical care or to make an informed decision and the lack of immediate medical attention may result in serious bodily injury or the death of the person.

In cases where mental illness may be a factor, the officer should consider proceeding with a 72-hour treatment and evaluation commitment (5150 commitment) process in accordance with the Mental Illness Commitments Policy.

If an officer believes that a person who is in custody requires EMS care and the person refuses, he/she should encourage the person to receive medical treatment. The officer may also consider contacting a family member to help persuade the person to agree to treatment or who may be able to authorize treatment for the person.

If the person who is in custody still refuses, the officer will require the person to be transported to the nearest medical facility. In such cases, the officer should consult with a supervisor prior to the transport.

Members shall not sign refusal-for-treatment forms or forms accepting financial responsibility for treatment.

431.6 MEDICAL ATTENTION RELATED TO USE OF FORCE

Specific guidelines for medical attention for injuries sustained from a use of force may be found in the Use of Force, Handcuffing and Restraints, Control Devices and Techniques, and Conducted Energy Device policies.

431.7 AUTOMATED EXTERNAL DEFIBRILLATOR (AED) USE

A member may use an AED only after receiving appropriate training from an approved public safety first aid and CPR course (22 CCR 100014; 22 CCR 100017; 22 CCR 100018).

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431.7.1 AED REPORTING
Any member using an AED will complete an incident report detailing its use.

431.7.2 AED TRAINING AND MAINTENANCE
The Personnel and Training Sergeant should ensure appropriate training and refresher training is provided to members authorized to use an AED. A list of authorized members and training records shall be made available for inspection by the local EMS agency (LEMSA) or EMS authority upon request (22 CCR 100021; 22 CCR 100022; 22 CCR 100029).

431.8 OPIOID OVERDOSE MEDICATION
See the Use of Narcan (Naloxone) Policy.

431.9 SICK OR INJURED ARRESTEE
If an arrestee appears ill or injured, or claims illness or injury, he/she should be medically cleared prior to booking. If the officer has reason to believe the arrestee is feigning injury or illness, the officer should contact a supervisor, who will determine whether medical clearance will be obtained prior to booking.

If the jail or detention facility refuses to accept custody of an arrestee based on medical screening, the officer should note the name of the facility person refusing to accept custody and the reason for refusal, and should notify a supervisor to determine the appropriate action.

Arrestees who appear to have a serious medical issue should be transported by ambulance. Officers shall not transport an arrestee to a hospital without a supervisor’s approval.

Nothing in this section should delay an officer from requesting EMS when an arrestee reasonably appears to be exhibiting symptoms that appear to be life threatening, including breathing problems or an altered level of consciousness, or is claiming an illness or injury that reasonably warrants an EMS response in accordance with the officer’s training.

431.10 FIRST AID TRAINING
The Personnel and Training Sergeant should ensure officers receive initial first aid training within one year of employment and refresher training every two years thereafter (22 CCR 100016; 22 CCR 100022).

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Suspicious Activity Reporting

432.1 PURPOSE AND SCOPE

This policy provides guidelines for reporting and investigating suspicious and criminal activity related to criminal conduct and potential acts of terrorism.

432.1.1 DEFINITIONS

Definitions related to this policy include:

Involved party - An individual who has been observed engaging in suspicious activity, as defined in this policy, when no definitive criminal activity can be identified, thus precluding the person's identification as a suspect.

Situational Awareness Group (SAG) – A group of trained officers within the Berkeley Police Department who maintain working relationships with surrounding allied agencies and courts in order to maximize the sharing of criminal intelligence. The mission of SAG is to support criminal investigations and enhance officer safety within the Berkeley Police Department. SAG will gather, analyze, retain and disseminate criminal intelligence to aid patrol and investigative personnel, see the Situational Awareness Group policy for further.

Suspicious activity - Any reported or observed activity that a member reasonably believes may have a nexus to any criminal act or attempted criminal act, or to foreign or domestic terrorism. Actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability should not be considered as factors that create suspicion (although these factors may be used as specific suspect descriptions). Examples of suspicious activity are included at the end of this policy.

Suspicious Activity Report (SAR) - An incident report used to document suspicious activity.

Terrorism Liaison Officer (TLO) - An officer who has received training in the identification, handling and reporting of potential terrorism related incidents.

Terrorism Liaison Officer Coordinator (TLOC) – A Situational Awareness Group (SAG) Sergeant who has received training in the identification, handling and reporting of potential terrorism related incidents and also acts as a liaison between the TLOs and Command Staff.

432.2 POLICY

The Berkeley Police Department recognizes the need to protect the public from criminal conduct and acts of terrorism and shall lawfully collect, maintain and disseminate information regarding suspicious activities, while safeguarding civil liberties and privacy protections.

432.3 LIMITATIONS

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 while maintaining strict compliance with existing federal, state and Department guidelines regarding

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criminal intelligence systems as defined in (28 Code of Feral 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.

(a) A SAG member 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 SAG member 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.

432.4 SITUATIONAL AWARENESS GROUP LIEUTENANT RESPONSIBILITIES

The Situational Awareness Group (SAG) Lieutenant and authorized designees will manage SAR activities. Authorized designees should include supervisors who are responsible for department participation in criminal intelligence systems as outlined in the Criminal Organizations Policy.

The responsibilities of the SAG Lieutenant include, but are not limited to:

(a) Remaining familiar with those databases available to the Department that would facilitate the purpose of this policy.

(b) Maintaining adequate training in the area of intelligence gathering to ensure no information is being maintained that would violate the law or civil rights of any individual.

(c) Ensuring a process is available that would allow members to report relevant information. The process should be designed to promote efficient and quick reporting, and should not be cumbersome, duplicative or complicated.

(d) Ensuring that members are made aware of the purpose and value of documenting information regarding suspicious activity, as well as the databases and other information resources that are available to the Department.

(e) Ensuring that SAR information is appropriately disseminated to members in accordance with their job responsibilities.

(f) Coordinating investigative follow-up, if appropriate.

(g) Coordinating with any appropriate agency or fusion center.

(h) Ensuring that, as resources are available, the Department conducts outreach that is designed to encourage members of the community to report suspicious activity and that outlines what they should look for and how they should report it (e.g., website, public service announcements).

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(i) Reviewing of proposed SARs, and approving/rejecting as appropriate.

(j) Forwarding all SARs to the Chief of Police and City Manager for review.

(k) Ensuring that a written log is maintained and an annual report is prepared by the TLOC.

432.5 SUPERVISOR RESPONSIBILITIES

(a) Determining if any further law enforcement response is needed

(b) Consulting with a TLO, if available, to determine if immediate notifications to the Chief of Police, and/or the City Manager or his/her designee is required.

(c) Providing information in written form to the TLO for consideration of SAR submittal.

432.6 TLO AND TLOC RESPONSIBILITIES

(a) TLOs will review proposed SARs from officers, and supervisors, and forward them to the TLO Coordinator (TLOC) for further review. If the reports meet sufficient criteria for submission as a SAR, the TLOC, or their designee will submit it to the Situational Awareness Group Lieutenant.

(b) The TLOC shall maintain a written log of all SARs submitted to the Northern California Regional Intelligence Center (NCRIC). The log will be submitted to City Council in the annual MOU Compendium Report.

The responsibilities of the Employee include, but are not limited to:

All personnel are reminded that Constitutional rights will be honored at all times and nothing in this policy diminishes Constitutional protections. Any BPD employee receiving any information regarding suspicious activity potentially related to terrorism shall:

(a) Notify their direct supervisor.

(b) Notify a department Terrorism Liaison Officer (TLO).

(c) Document the incident as described in this policy.

432.7 THE RESPONSIBILITIES OF THE NCRIC

It is the responsibility 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 security and submit such information to the Federal Bureau of Investigations-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 protect the information and information shall be recorded and maintained in strict compliance with existing federal and state guidelines.

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

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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.

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.

432.8 REPORTING AND INVESTIGATION

Any department member receiving information regarding suspicious activity should take any necessary immediate and appropriate action, including a request for tactical response or immediate notification of specialized entities, when applicable. Any non-sworn member who receives such information should ensure that it is passed on to an officer in a timely manner.

If the suspicious activity is not directly related to a reportable crime, the suspicious activity should be documented in an Incident Report or Case Report adn include information about involved parties and the circumstances of the incident. The report number should be included in the SAR as a cross reference.

432.9 FORWARDING INFORMATION

(a) All SARs should be routed via the Chain of Command to the SAG Lieutenant.

(b) The SAG Lieutenant will review the SAR and, if approved, forward it via the Operations Division Captain to the Chief of Police and the City Manager.

(c) If the Chief of Police and City Manager agree that a NCRIC review is warranted, it will be the responsibility of the SAG Lieutenant, or their designee, to forward he SAR, in a timely manner, to NCRIC.

(d) All SARs will be submitted through the www.ncric.org website. When a SAR involves a criminal act or attempted criminal act, a BPD case report shall be submitted identifying the suspected criminal behavior and referencing the systems and personnel notified of the SAR.

432.10 EXAMPLES OF SAR REPORTING
DEFINED CRIMINAL ACTIVITY AND POTENTIAL TERRORISM NEXUS ACTIVITY

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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.

POTENTIAL CRIMINAL OR NON-CRIMINAL ACTIVITY REQUIRING ADDITIONAL FACT INFORMATION DURING INVESTIGATION

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.
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, or security-related equipment (e.g. perimeter fencing, security cameras).

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Observation/ Surveillance	Demonstrate unusual or prolonged interest in facilities, buildings, or infrastructure beyond mere casual (e.g. tourists) or professional (e.g. engineers) interest and in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person. Examples include observation through binoculars, taking notes, attempting to mark off or measure distances, etc.
Materials/ Acquisition/ Storage	Acquisition and/or storage of unusual quantities of materials such as cell phones, pagers, radio control toy servos or controllers; fuel, chemicals, or toxic materials; and timers or other triggering devices in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person.
Acquisition of Expertise	Attempts to obtain or conduct training or otherwise obtain knowledge or skills in security concepts, military weapons or tactics, or other unusual capabilities in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person.
Weapons Collection or Discovery	Collection or discovery of unusual amounts or types of weapons, including explosives, chemicals, and other destructive materials, or evidence, detonations or other residue, wounds, or chemical burns, that would arouse suspicion of terrorism or other criminality in a reasonable person.

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Sector Specific Incident	Actions associated with a characteristic of unique concern to specific sectors (e.g. the public health sector), with regard to their personnel, facilities, systems, or functions in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person.

Note: These activities are not inherently criminal behaviors and may include constitutionally protected activities that must not be documented in an ISE-SAR that contains PII unless there are articulable facts or circumstances that clearly support the determination that the behavior observed is not innocent, but rather reasonably indicative of pre-operational planning associated with terrorism. Race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity must not be considered as factors creating suspicion (but attributes may be documented in specific suspect descriptions for identification purposes). The activities listed as "Potential Criminal or Non-Criminal Activity" are not inherently criminal behaviors and are potentially constitutionally protected; thus, additional facts or circumstances must be articulated in the incident.

432.11 EXAMPLES OF BEHAVIOR WHICH CANNOT BE REPORTED AS SAR

Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs.

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.

*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.

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Situational Awareness Group

433.1 PURPOSE AND SCOPE

The purpose of this Policy is to set forth procedures regarding the collection, analysis, retention, dissemination and disposition of criminal intelligence by the Berkeley Police Department Situational Awareness Group (SAG).

Criminal intelligence shall be handled in a manner that ensures the legality and integrity of the process and safeguards the constitutional rights of individuals, groups, associations, and other legal entities.

This policy also describes the purpose and structure of SAG.

433.2 DEFINITIONS

The following terms pertaining to this policy are defined:

Criminal Intelligence: Information compiled, analyzed and/or disseminated in an effort to anticipate, prevent, or monitor criminal and/or terrorism related activity.

Criminal Intelligence System: Any record system that receives, stores, exchanges or disseminates information that has been evaluated and determined to be relevant to the identification of a criminal organization or enterprise, its members or affiliates. This does not include temporary information files.

Strategic Intelligence: Information concerning existing patterns or emerging trends of criminal activity designed to assist in criminal apprehension and crime control strategies, for both long and short-term investigative goals.

Gang: An ongoing association, organization, or group of three or more persons who have a common interest and/or activity characterized by the commission of or the involvement in a pattern of criminal or delinquent conduct.

Gang Intelligence: Information gathered, analyzed or disseminated of potential and validated gang members and their organizations.

Tactical Intelligence: Information regarding specific criminal events that can be used immediately by officers to further a criminal investigation, plan tactical operations and provide for officer safety.

Suspected Criminals: Persons whose conduct and actions would lead a reasonable and prudent law enforcement officer, based on personal knowledge or information from a reliable source, to believe that the person is probably engaged, or planning to engage, in criminal activity.

Known Criminal Offender: Person who has been arrested for a criminal offense. A Person whose criminal conduct has been verified through personal knowledge of a member of the Department, or through a reliable information source.

Reasonable Suspicion of Criminal Activity: “Reasonable suspicion” is present when sufficient facts are established to give a trained law enforcement officer a particularized and objective basis

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to believe that there is a reasonable possibility that an individual or organization is involved in a definable criminal enterprise or activity.

Criminal Intelligence File: Criminal intelligence information that has been collected, processed and retained in an informational file or database, and that may be shared within the law enforcement community.

Processing: When a Situational Awareness Group (SAG) officer establishes, maintains or updates a criminal intelligence file or database to ensure accuracy, security and proper dissemination of criminal intelligence.

Analysis: When a SAG officer obtains, researches and interprets criminal information from various sources to identify, disrupt, arrest and prosecute habitual offenders.

Dissemination: The product of analysis can be disseminated in verbal or written form. A SAG officer exchanges criminal intelligence to other bureaus and details within the Department, along with other allied agencies that have a need to know, in an effort to work collaboratively towards a common crime suppression goal.

433.3 POLICY

It is the policy of the Berkeley Police Department to lawfully and appropriately collect, analyze, retain, and disseminate criminal intelligence for the purpose of carrying out efforts to protect the public and suppress criminal activities.

All Department personnel shall adhere to guidelines established in this policy to ensure the security, confidentiality, proper maintenance and dissemination of criminal intelligence.

SAG has primary responsibility for the processing and handling of criminal intelligence.

433.4 GROUP PURPOSE

SAG will provide support to all functions of the Berkeley Police Department and maintain working relationships with surrounding allied agencies and courts in order to maximize the sharing of criminal intelligence. The mission of SAG is to support criminal investigations and enhance officer safety within the Berkeley Police Department. SAG will gather, analyze, retain and disseminate criminal intelligence to aid patrol and investigative personnel.

433.5 GROUP STRUCTURE

The Situational Awareness Group (SAG) is comprised of three groups:

(a) the Terrorism Liaison Officers (TLO) Group,

(b) the Gang Information Group (GIG), and

(c) Criminal Intelligence Group (TSG)

SAG is under the command of the Operations Division Captain. The Operations Division Captain will designate an Operations Division Lieutenant to provide functional command of the SAG, along with the additional duty as the NCRIC TLO Coordinator. The Operations Division Captain will also

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designate an Operations Division Sergeant to serve as the SAG Sergeant who will be second in command.

The structure of each SAG group is as follows:

(a) Terrorism Liaison Officers (TLO) Group: TLO Officers or Sergeants will work under the supervision of the SAG Sergeant. TLO Officers have received training in the identification, handling and reporting of potential terrorism related incidents. TLO's will be available as a resource for Suspicious Activity Reports related incidents.

(b) Gang Information Group (GIG): GIG Officers or Sergeants will work under the supervision of the SAG Sergeant. Officers or Sergeants assigned to the GIG will have specialized gang knowledge and training with a particular focus in one of the identified gangs in our area. All GIG Officers will gain expertise in gang member investigations through training and on the job experience. GIG Officers will attend local and regional gang task force meetings upon approval of the SAG chain of command.

(c) Criminal Intelligence Group (TSG): TSG Officers or Sergeants will work under the SAG Sergeant. They will have expertise in technology and media that relate to criminal activities. TSG members will assist TLO, GIG, and BPD personnel in the use of and access to technology and media as requested for criminal intelligence or investigation.

Members of SAG will be selected by the Operations Division Captain or his/her designee with final approval made by the Chief of Police. The format for the selection process of SAG Officers is also at the discretion of the Operations Division Captain.

Membership in SAG is an ancillary duty to the officer's regular assignment.

433.6 SAG LIEUTENANT DUTIES

The SAG Lieutenant, or their designee, is responsible for the following:

(a) Ensuring the procedures and processes of the SAG are followed regularly and reviewed at least annually.

(b) Ensuring all SAG personnel maintain current training on Local, State and Federal standards regarding the procedures and processes of dealing with criminal intelligence information.

(c) Administrating and coordinating of criminal intelligence files.

(d) Ensuring the Operations Division Captain is informed of any criminal intelligence or SAG investigation that deals with a threat where the community, city, or any officer is at risk.

433.7 SAG SERGEANT DUTIES

The SAG Sergeant, or their designee, is responsible for the following:

(a) Coordinating and overseeing the entering of criminal intelligence into a file or computerized information file.

(b) Ensuring group personnel attend continuing education pertaining to their group duties.

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(c) Providing periodic training to department personnel regarding areas of expertise within the group.

(d) Maintaining a file of criminal intelligence that comes into the Department. The file shall contain information received from Department sources, allied agencies, and citizens. This file shall be secure and available on a need to know basis to persons requesting the information.

(e) Preparing, upon request and periodically, a monthly report to the SAG Lieutenant regarding the status of active investigations that SAG members are actively investigating or supporting.

433.8 TLO AND GIG PERSONNEL DUTIES

The TLO and GIG personnel are responsible for the following:

(a) Collecting, processing, analysis, and dissemination of criminal intelligence concerning activities within the City of Berkeley.

(b) Reviewing of police reports, including but not limited to those of the Berkeley Police Department, to glean information for analysis and maintain necessary notes or documentation for later processing, analysis and dissemination.

(c) The collection, processing, analysis, entering and dissemination of information by SAG personnel shall be done in compliance with all guidelines set forth by 28 Code of Federal Regulations Part 23, and the First Amendment Assemblies Policy.

(d) Proactively assisting with investigations upon explicit request from the handling officer, Detective Bureau, Special Enforcement Unit, or other department personnel. All such requests will be reported to the SAG chain of command.

433.9 CRIMINAL INTELLIGENCE HANDLING

The Department shall maintain criminal intelligence concerning an individual or organization only if there is reasonable suspicion that the individual or organization is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity. The existence of reasonable suspicion will be based on specific, articulable facts that will be documented in the criminal intelligence file. Criminal intelligence files shall be maintained by the SAG Lieutenant or his/her designee. Criminal intelligence files as described in this policy are separate from Confidential Reliable Informant files maintained by the Special Investigations Bureau as described in the Informant Policy.

The SAG shall review all information received to determine the accuracy of the information and ensure that it relates to criminal conduct or activities that present a potential threat to the community prior to including this information in the criminal intelligence files.

433.10 CRIMINAL INTELLIGENCE FILES

Files include information regarding Individuals who:

(a) are suspected of being or having been involved in the actual or attempted planning, organizing, financing, or commission of criminal acts, or

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(b) are suspected of being or having been involved in criminal activities with known or suspected crime figures

Files include information regarding organizations, businesses, or groups that:

(a) are suspected of being or having been involved in the actual or attempted planning, organizing, or commission of criminal acts, or

(b) are suspected of being or having been illegally operated, controlled, financed, or infiltrated by known or suspected crime figures; or

(c) use illegal activities and/or enterprises as a principal means to obtain resources, support for their existence, or further their organizational goals.

No intelligence data will be gathered, collected, or maintained on religious, political, racial, ethnic, sexual, or any other constitutionally protected status or activity which does not relate to criminal conduct or suspect identification and associations with individuals, which may be of a criminal nature.

433.11 AUTHORIZED CRIMINAL INTELLIGENCE

Criminal intelligence activities performed by the Berkeley Police Department shall include:

(a) The gathering of information from confidential informants, other reliable sources, and sources of unknown reliability.

(b) Analyzing the value, quality, and reliability of information received.

(c) Dissemination of the information to the appropriate Departmental personnel.

(d) Dissemination of the information to allied law enforcement agencies

Information sources must be protected to maintain their reliability, safety, and future usefulness. All policies and procedures set forth in General Order D-4 must be adhered to.

To ensure the protection of innocent persons, it is imperative that the legality and integrity of the Department's intelligence effort be continually monitored for compliance by the Operations Division Captain.

433.12 RETENTION AND PURGING OF CRIMINAL INTELLIGENCE

- Criminal intelligence may be retained for up to five (5) years for adults and two (2) years for juveniles. At that time, criminal intelligence will be purged unless new criminal intelligence has been developed establishing reasonable suspicion that the individual and/or organization continues to be involved in a definable criminal activity or enterprise.
- Criminal intelligence may be entered into temporary criminal intelligence files when there is reasonable suspicion of criminal activity, but that finding is based, in part, upon "unproven" or "unknown" sources, or where the content reliability of the information is "unknown" or "undetermined". All temporary criminal intelligence files shall be specifically designated as such and must be reviewed by SAG personnel every sixty

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(60) days for validity. Temporary criminal intelligence files shall be retained no longer that one (1) year. At that time, a temporary file must be either purged or converted into a permanent criminal intelligence file. All temporary files must be kept distinctly separate from the general criminal intelligence files.

- The SAG Lieutenant shall ensure out-of-date criminal intelligence is purged from the file in accordance with federal and state guidelines.
- Documents within the criminal intelligence files shall be reviewed in an on-going basis to ascertain whether a higher degree or lesser degree of document security is required and to ensure that information is released only when appropriate. Any information received and entered into any criminal intelligence file must have the source and content reliability verified.

433.13 RELEASE OF CRIMINAL INTELLIGENCE INFORMATION

(a) SAG personnel shall organize and analyze criminal intelligence information received, and shall prepare and release criminal intelligence reports to various Departmental units and allied agencies on a need/right to know basis only.

(b) Criminal intelligence may not be released if the disclosure of such information:

(c) Interferes with an active investigation

(d) Constitutes an invasion of privacy

(e) Discloses the identity of a confidential source

(f) Discloses a confidential investigation technique or procedure

(g) Endangers the life or safety of a law enforcement officer

433.14 OUTSIDE AGENCIES

The Berkeley Police Department will only cooperate with outside agencies consistent with this policy, the California Attorney General's Criminal Intelligence Guidelines and Title 28 Code of Federal Regulations, Part 23. Officers will follow this policy at all times when engaged in cooperative efforts with another agency.

433.15 SECURITY PROCEDURES

Criminal Intelligence files shall be secured, or in the event of computer files, shall be password protected. The files and databases will be secured during off-duty hours and when SAG personnel are away from their work station.

(a) Access to Criminal Intelligence Files for the purpose of adding, deleting, or modifying information shall be restricted to:

1. SAG Personnel
2. Other personnel authorized by the Chief of Police

(b) Access to Criminal Intelligence Files for read only access is granted to:

1. Operations Division Captain

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2. Other personnel authorized by the Operations Division Captain

(c) Computer access to Criminal Intelligence Information shall be available only to Department employees who have been trained and have security authorization to access the Criminal Intelligence Files.

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Animal Control

434.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for interacting with animals and responding to calls for service that involve animals.

434.2 POLICY

It is the policy of the Berkeley Police Department to be responsive to the needs of the community regarding animal-related issues. This includes enforcing local, state and federal laws relating to animals and appropriately resolving or referring animal-related problems, as outlined in this policy.

434.3 ANIMAL CONTROL RESPONSIBILITIES

Animal control services are generally the primary responsibility of Animal Control and include:

(a) Animal-related matters during periods when Animal Control is available.

(b) Ongoing or persistent animal nuisance complaints. Such complaints may be scheduled, if reasonable, for handling during periods that Animal Control is available for investigation and resolution.

(c) Follow-up on animal-related calls, such as locating owners of injured animals.

434.4 MEMBER RESPONSIBILITIES

Members who respond to or assist with animal-related calls for service should evaluate the situation to determine the appropriate actions to control the situation.

Members may consider acting when:

(a) There is a threat to public safety.

(b) An animal has bitten someone. Members should take measures to confine the animal and prevent further injury.

(c) An animal is creating a traffic hazard.

(d) An animal is seriously injured.

(e) The owner/handler of an animal has been arrested or is incapacitated. In such circumstances, the member should find appropriate placement for the animal.

1. This is only necessary when the arrestee is expected to be in custody for a time period longer than would reasonably allow him/her to properly care for the animal.

2. With the owner’s consent, locating appropriate placement may require contacting relatives or neighbors to care for the animal.

3. If no person can be found or the owner does not or cannot give consent, the animal should be taken to a designated animal care facility.

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434.5 INJURED ANIMALS

When a member becomes aware of an injured domesticated animal, all reasonable attempts should be made to contact an owner or responsible handler. If an owner or responsible handler cannot be located, the animal should be taken to a veterinarian and notice shall be given to the owner pursuant to the requirements of Penal Code § 597.1.

434.5.1 VETERINARY CARE

The injured animal should be taken to a veterinarian as follows:

(a) During normal business hours, the animal should be taken to an authorized veterinary care clinic.

(b) If after normal business hours, the animal should be taken to the authorized Veterinary Emergency and Critical Care Services Clinic.

(c) An exception to the above exists when the animal is an immediate danger to the community or the owner of the animal is identified and takes responsibility for the injured animal.

Each incident shall be documented and, at minimum, include the name of the reporting party and veterinary hospital and/or person to whom the animal is released.

If Animal Control is not available, the information will be forwarded for follow-up.

434.5.2 INJURED WILDLIFE

Injured wildlife should be referred to the Department of Fish and Wildlife or the Marine Mammal Center as applicable.

434.5.3 RESCUE OF ANIMALS IN VEHICLES

If an animal left unattended in a vehicle appears to be in distress, members may enter the vehicle for the purpose of rescuing the animal. Members should (Penal Code § 597.7(d)):

(a) Make a reasonable effort to locate the owner before entering the vehicle.

(b) Take steps to minimize damage to the vehicle.

(c) Refrain from searching the vehicle or seizing items except as otherwise permitted by law.

(d) Leave notice on or in the vehicle identifying the location where the animal has been taken and the name and Department of the member involved in the rescue.

(e) Make reasonable efforts to contact the owner or secure the vehicle before leaving the scene.

(f) Take the animal to an animal care facility, a place of safekeeping or, if necessary, a veterinary hospital for treatment.

434.6 ANIMAL CRUELTY COMPLAINTS

Laws relating to the cruelty to animals should be enforced, including but not limited to Penal Code § 597 et seq. (cruelty to animals, failure to care for animals).

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(a) An investigation should be conducted on all reports of animal cruelty.

(b) Legal steps should be taken to protect an animal that is in need of immediate care or protection from acts of cruelty.

434.7 ANIMAL BITE REPORTS

Members investigating an animal bite should obtain as much information as possible for follow-up with the appropriate health or animal authorities. Efforts should be made to capture or otherwise have the animal placed under control. Members should attempt to identify and notify the owner of the final disposition of the animal.

If the animal responsible for the bite is located during non-business hours and the animal cannot be secured, the Communications Center shall be requested to contact emergency Animal Care Services (ACS) staff. ACS staff shall be requested to respond to the scene and impound the animal.

434.8 STRAY ANIMALS

If a stray animal has a license or can otherwise be identified, the owner should be contacted, if possible. If the owner is contacted, the animal should be released to the owner and a citation may be issued, if appropriate.

Members shall provide reasonable treatment to animals in their care (e.g., food, water, shelter).

434.9 LOST AND FOUND ANIMAL REPORTS

Police officers have the responsibility to assist ACS by being alert for stray/lost animals. If an animal is found, and the owner cannot be located, the officer shall contact on-duty ACS staff for assistance. If staff is unavailable, the officer shall ensure the animal is taken to the Animal Care Services Shelter.

If responding to the shelter after business hours, the officer shall secure the found animal in one of the lockers of the multi-locker container located near the entrance of the shelter. The officer shall complete an ACS information form indicating the number of the locker the animal was secured in, as well as the details surrounding the discovery of the animal. The officer shall also complete an MDT entry.

434.10 ARRESTED OWNER

When no other alternative disposition is found, animals who were in the possession of an arrestee may be secured at the Animal Care Services Shelter. In these situations, officers shall add the arrestee's contact information and the BPD case number to the ACS information form.

434.11 DANGEROUS ANIMALS

In the event responding members cannot fulfill a request for service because an animal is difficult or dangerous to handle, the Watch Commander will be contacted to determine available resources, including requesting the assistance of animal control services from an allied agency.

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434.12 PUBLIC NUISANCE CALLS RELATING TO ANIMALS

Members should diligently address calls related to nuisance animals (e.g., barking dogs), as such calls may involve significant quality-of-life issues.

434.13 DESTRUCTION OF ANIMALS

When it is necessary to use a firearm to euthanize a badly injured animal or stop an animal that poses an imminent threat to human safety, the Firearms Policy shall be followed. A badly injured animal shall only be euthanized with the approval of a supervisor.

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Bicycle Patrol Unit

437.1 PURPOSE AND SCOPE

The Berkeley Police Department has established the Bicycle Patrol Unit (also referred to as the Bike Force) for the purpose of enhancing patrol efforts in the community. Bicycle patrol has been shown to be an effective way to increase officer visibility in congested areas and their quiet operation can provide a tactical approach to crimes in progress. The purpose of this policy is to provide guidelines for the safe and effective operation of the patrol bicycle.

437.2 POLICY

Patrol bicycles may be used for regular patrol duty, traffic enforcement, parking control, special operations, or special events. The use of the patrol bicycle will emphasize their mobility and visibility to the community.

Bicycles may be deployed to any area at all hours of the day or night, according to Department needs and as staffing levels allow.

Requests for specific deployment of bicycle patrol officers shall be coordinated through the Bicycle Patrol Unit supervisor or the Watch Commander.

437.3 SELECTION OF PERSONNEL

Interested sworn personnel, who are off probation, shall submit a Special Assignment Application to their appropriate Division Captain. A copy will be forwarded to the BPU supervisor. Qualified applicants will then be invited to an oral interview. The oral board will consist of the BPU supervisor and at least one additional person, to be selected by the BPU supervisor. Interested personnel shall be evaluated by the following criteria:

(a) Recognized competence and ability as evidenced by performance.

(b) Special skills or training as it pertains to the assignment.

(c) Good physical condition.

(d) Willingness to perform duties using the bicycle as a mode of transportation.

437.3.1 BICYCLE PATROL UNIT SUPERVISOR

The Bicycle Patrol Unit supervisor will be selected from the rank of sergeant by the Operations Division Captain or his/her designee.

The Bicycle Patrol Unit supervisor shall have responsibility for the following:

(a) Organizing bicycle patrol training.

(b) Inspecting and maintaining inventory of patrol bicycles and program equipment.

(c) Scheduling maintenance and repairs.

(d) Evaluating performance of bicycle officers.

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(e) Coordinating activities with the Operations Division.

(f) Other activities as required to maintain the efficient operation of the Bicycle Patrol Unit.

437.4 TRAINING

Participants in the program must complete an initial in-house Department approved bicycle-training course after acceptance into the program. Thereafter bicycle patrol officers shall attend a POST approved Basic Cyclist Training Course. The initial in-house training shall minimally include the following:

- Bicycle patrol strategies.
- Bicycle safety and accident prevention.
- Operational tactics using bicycles.

437.5 UNIFORMS AND EQUIPMENT

Officers shall wear the department-approved uniform and safety equipment while operating the department bicycle. Safety equipment includes department-approved helmet, riding gloves, protective eyewear and approved footwear.

The bicycle patrol unit uniform consists of the standard short-sleeve uniform shirt or other department-approved shirt with department badge and patches, and department-approved bicycle patrol pants or shorts.

Optional equipment includes a radio head set and microphone, and jackets in colder weather. Turtleneck shirts or sweaters are permitted when worn under the uniform shirt.

Bicycle patrol officers shall carry the same equipment on the bicycle patrol duty belt as they would on a regular patrol assignment.

Officers will be responsible for obtaining the necessary forms, citation books and other department equipment needed while on bicycle patrol.

437.6 CARE AND USE OF PATROL BICYCLES

Officers will be assigned a specially marked and equipped patrol bicycleand attached gear bag.

Bicycles utilized for uniformed bicycle patrol shall be primarily black or white in with a "POLICE" decal affixed to each side of the crossbar or the bike's saddlebag. Every such bicycle shall be equipped with front and rear reflectors front lights and a siren/horn satisfying the requirements of Vehicle Code §2800.1(b).

Bicycles utilized for uniformed bicycle patrol shall be equipped with a rear rack and/or saddle bag(s) sufficient to carry all necessary equipment to handle routine patrol calls including report writing forms, and citations.

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Each bicycle shall be equipped with a steady or flashing blue warning light that is visible from the front, sides, or rear of the bicycle. (Vehicle Code § 21201.3)

Bicycle officers shall conduct an inspection of the bicycle and equipment prior to use to insure proper working order of the equipment. Officers are responsible for the routine care and maintenance of their assigned equipment (e.g., tire pressure, chain lubrication, overall cleaning).

If a needed repair is beyond the ability of the bicycle officer, a repair work order will be completed and forwarded to the program supervisor for repair by an approved technician.

Each bicycle will have scheduled maintenance twice yearly to be performed by a department approved repair shop/technician.

At the end of a bicycle assignment, the bicycle shall be returned clean and ready for the next tour of duty.

Electric patrol bicycle batteries shall be rotated on the assigned charger at the end of each tour of duty. During prolonged periods of non-use, each officer assigned an electric bicycle shall periodically rotate the batteries on the respective charges to increase battery life.

Officers shall not modify the patrol bicycle, remove, modify or add components except with the expressed approval of the bicycle supervisor, or in the event of an emergency.

Vehicle bicycle racks are available should the officer need to transport the patrol bicycle. Due to possible component damage, transportation of the patrol bicycle in a trunk or on a patrol car push-bumper is discouraged.

When feasible bicycles shall be properly secured when not in the officer's immediate presence.

437.7 OFFICER RESPONSIBILITY

Officers must operate the bicycle in compliance with the vehicle code under normal operation. Officers may operate the bicycle without lighting equipment during hours of darkness when such operation reasonably appears necessary for officer safety and tactical considerations. Officers must use caution and care when operating the bicycle without lighting equipment.

Officers are exempt from the rules of the road under the following conditions (Vehicle Code § 21200(b)(1)):

(a) In response to an emergency call.

(b) While engaged in rescue operations.

(c) In the immediate pursuit of an actual or suspected violator of the law.

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Sobering and Detoxification Center

440.1 PURPOSE

This policy provides an overview of, and protocols for client referral to Cherry Hill Detoxification Program.

440.2 POLICY

Cherry Hill Detoxification Program provide additional options for this Department to provide effective service to individuals interested in improving their quality of life, and mitigate alcohol and drug-related problems that adversely effect the community. Employees are encouraged to know this program, their applicable intake processes, and refer eligible persons to them whenever appropriate.

440.3 CHERRY HILL DETOXIFICATION PROGRAM

Cherry Hill Detoxification Program is bifurcated into two programs, a sobering center wherein a client may stay for 24 hours, and a detoxification center where a 3 to 5 day program. The detoxification center is designed to provide detoxification, preventative, educational and therapeutic services to individuals in a monitored residential setting. Clients engaged by Cherry Hill Detox staff are those who are assessed as not requiring medication for the management of withdrawal. It is operated by Horizon Services, Inc., a non-profit community based organization with over 30 years of service to the Bay Area, and a commitment to reducing alcohol and drug related problems in the community. Cherry Hill Detox accepts clients by referral only.

The facilities are located at Alameda County Hospital's Fairmont Campus, 15480 Foohill Blvd., San Leandro. Posted signage will direct officers to the appropriate place once they've entered the Campus grounds.

440.4 CHERRY HILL SOBERING CENTER REFERRAL PROCEDURES

When evaluating whether or not an intoxicated person should be referred to the Sobering Center, it is important to understand who is acceptable. According to protocols established by the Sobering Center, the eligibility requirements for client referral are:

(a) Client must be 18 years of age or older.

(b) Client must not have any obvious reason to be transported to the hospital.

(c) Client must be ambulatory with assistance.

(d) Pre-existing medical and/or health conditions do not preclude the client from triage screening.

(e) Client must be cooperative and consent to referral; no aggressive or combative behavior will be acceptable at the Sobering Center.

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If a person is interested in going to the Sobering Center, meets the referral criteria, and is not otherwise required to be taken into custody or to a hospital, then the handling officer should call the Center (866-866-7496) to:

(a) Confirm there is space available at the Center; and,

(b) Advise the staff of the estimated transportation time to the Center.

It is important to note that though the person may be cooperative and their participation voluntary, they are still considered detained during transportation to the Sobering Center. To that end, a lawful safety-related pat search of the person for weapons should be accomplished on-scene, and appropriate restraint devices (e.g., handcuffs, seat belt, etc) should be employed to ensure safe transportation.

Upon arrival at the Sobering Center, the officer(s) will be asked to stand by as a staff Health Technician or nurse conducts a triage screening of the client for any medical condition that would preclude him/her from entering the facility. The following are among the medical issues being evaluated by Center staff:

(a) Does the client have an acute medical complaint?

(b) Can the client can be awakened and is he/she oriented?

If the Health Technician or nurse identifies a medical issue, the Center will coordinate the client's transfer to a local hospital. Officers will not be asked or expected to take responsibility for the client's medical care.

Once the intake process is completed, the involved officer(s) may leave and return to the City. The Center staff will be responsible for the care of the intoxicated person until sober. If Center staff refuses to accept an intoxicated person for a non-medical reason, then the officer(s) should retain custody of the person and pursue another appropriate disposition.

Sobering Center will rely on referring law enforcement agencies to transport clients to the Center.

440.5 CHERRY HILL DETOXIFICATION PROGRAM REFERRAL PROCEDURES

There may be an occasion where an officer engages an adult alcohol/drug abuser who wants to participate in a detoxification program. If so, the officer may facilitate the person's referral to Cherry Hill Detox. The first step of referral is a call to the program's reception staff (866-866-7496), who will ask triage questions to determine the acceptability of the person to the program:

(a) What substances is the person detoxing from?

(b) Is/was the person an IV drug user?

(c) Does the person have any physical problems that would require medical treatment?

(d) Is the person under the care of a physician or psychiatrist?

(e) Is the person taking prescription medication? If so, what?

(f) If female, is the person pregnant?

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Whenever practical, the person seeking referral should talk directly to the Detox Program staff member conducting the telephone screening. If necessary to facilitate this triage process, the officer may ask the person the above questions as part of their conversation about the referral, and share his/her responses with the staff member. With respect for the person's privacy, specific questions about a person's medical condition(s) should be avoided.

Subsequent to telephone screening, the Detox Program staff member will advise if the person is acceptable for referral. If so, the officer may provide the person transportation to the Detox Program facility. Unlike the Sobering Center, and in order to protect patient confidentiality, the transporting officer(s) will not be required to standby for or participate in the Program's intake process.

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Chapter 5 - Traffic Operations

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Traffic Function and Responsibility

500.1 PURPOSE AND SCOPE

The ultimate goal of traffic law enforcement is to reduce traffic collisions. This may be achieved through the application of such techniques as geographic/temporal assignment of personnel and equipment and the establishment of preventive patrols to deal with specific categories of unlawful driving behavior. Traffic enforcement techniques are based on collision data, enforcement activity records, traffic volume, and traffic conditions. This department provides enforcement efforts toward violations, not only in proportion to the frequency of their occurrence in collision situations, but also in terms of traffic-related needs.

500.2 TRAFFIC OFFICER DEPLOYMENT

Several factors are considered in the development of deployment schedules for officers of the Berkeley Police Department. Information provided by the California Statewide Integrated Traffic Reporting System (SWITRS) is a valuable resource for traffic collision occurrences and therefore officer deployment. Some of the factors for analysis include:

- Location
- Time
- Day
- Violation factors
- Resident requests/concerns

Officers assigned to patrol or traffic enforcement functions may conduct enforcement of collision causing violations during high collision hours and at locations of occurrence. Officers may take directed enforcement action on request, and random enforcement action when appropriate against violators as a matter of routine. Officers shall maintain high visibility while working general enforcement, especially at high collision locations.

Other factors to be considered for deployment are requests from the public, construction zones or special events.

500.3 ENFORCEMENT

Enforcement actions are commensurate with applicable laws and take into account the degree and severity of the violation committed. This department does not establish ticket quotas and the number of arrests or citations issued by any officer shall not be used as the sole criterion for evaluating officer overall performance (Vehicle Code § 41603). The visibility and quality of an officer’s work effort will be commensurate with the philosophy of this policy. Several methods are effective in the reduction of collisions:

500.3.1 WARNINGS

Warnings or other non-punitive enforcement actions may be considered.

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500.3.2 CITATIONS

Citations may be issued when an officer believes it is appropriate. It is essential that officers fully explain the rights and requirements imposed on motorists upon issuance of a citation for a traffic violation. Officers should provide the following information at a minimum:

(a) Explanation of the violation or charge

(b) Court appearance procedure including the optional or mandatory appearance by the motorist

500.3.3 PHYSICAL ARREST

Physical arrest can be made on a number of criminal traffic offenses outlined in the Vehicle Code or Penal Code. These physical arrest cases usually deal with, but are not limited to:

(a) Vehicular manslaughter

(b) Felony and misdemeanor driving under the influence of alcohol/drugs

(c) Felony or misdemeanor hit-and-run

(d) Refusal to sign notice to appear

(e) Any other misdemeanor at the discretion of the officer, such as reckless driving with extenuating circumstances

500.4 SUSPENDED OR REVOKED DRIVERS LICENSES

If an officer contacts a traffic violator for driving on a suspended or revoked license, the officer may issue a traffic citation pursuant to Vehicle Code § 14601.

If a computer check of a traffic violator's license status reveals a suspended or revoked driver license and the traffic violator still has his or her license in possession, the license shall be seized by the officer. The officer shall verbally advise the traffic violator of the suspension or revocation and issue the citation. The officer will be responsible for filling out the Verbal Notice form (DMV form DL-310) and causing that form and license to be forwarded to the Department of Motor Vehicles.

500.5 HIGH-VISIBILITY VESTS

The Department has provided American National Standards Institute (ANSI) Class II high-visibility vests to increase the visibility of department members who may be exposed to hazards presented by passing traffic, maneuvering or operating vehicles, machinery and equipment (23 CFR 655.601; 8 CCR 1598).

Although intended primarily for use while performing traffic related assignments, high-visibility vests should be worn at any time increased visibility would improve the safety or efficiency of the member.

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500.5.1 REQUIRED USE

Except when working in a potentially adversarial or confrontational role, such as during vehicle stops, high-visibility vests should be worn at any time it is anticipated that an employee will be exposed to the hazards of approaching traffic or construction and recovery equipment. Examples of when high-visibility vests should be worn include traffic control duties, collision investigations, lane closures and while at disaster scenes, or anytime high visibility is desirable. When emergency conditions preclude the immediate donning of the vest, officers should retrieve and wear the vest as soon as conditions reasonably permit. Use of the vests shall also be mandatory when directed by a supervisor.

Vests maintained in the investigation units may be used any time a plainclothes officer might benefit from being readily identified as a member of law enforcement.

500.5.2 CARE AND STORAGE OF HIGH-VISIBILITY VESTS

A supply of high-visibility vests will be maintained in the equipment room for replacement of damaged or unserviceable vests. The Personnel and Training Sergeant should be promptly notified whenever the supply of vests in the equipment room needs replenishing.

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Motor Vehicle Collision Investigations

501.1 PURPOSE

The purpose of this policy is to establish procedures and guidelines for the investigation of traffic collisions and traffic related incidents, along with the preparation and handling of related reports.

501.2 POLICY

It is the policy of the Berkeley Police Department that all hit and run collisions with investigative leads and collisions with injuries will be fully investigated to determine the causative factors and responsibility for the collision. Documentation shall conform to State and Department reporting requirements.

501.3 GENERAL

The Department is governed in the classification of motor vehicle collisions by the California Highway Patrol (CHP) Collision Investigation Manual.

Traffic collision investigations shall be conducted with the objective of prosecution of violation(s) that caused the collision. Traffic collision investigative reports should clearly define the violation(s) and contain all information necessary for a successful prosecution.

(a) The completed investigative report may be viewed, or a copy purchased, at the front counter of Records Management, located on the first floor of the Public Safety Building (PSB), after approximately ten business days.

501.4 DUTIES OF THE DRIVER

501.4.1 SR-1 FORM

The California Vehicle Code requires any driver involved in a vehicle collision in California to report the collision (via SR-1 form) to the DMV within 10 days if:

(a) There was property damage of more than $1,000, or

(b) Anyone was injured (no matter how minor) or

(c) Anyone was killed.

Each driver must make a report whether they caused the collision or not and even if the collision occurred on private property. The report is the responsibility of the driver, regardless of whether or not a police report was taken. An insurance agent, attorney or another designated representative may file the report for the driver. The SR-1 form is available at the front counter of the PSB or on the DMV's website for download.

501.4.2 EXCHANGE OF INFORMATION

Vehicle Code § 16025 states, “Every driver involved in the collision shall, unless rendered incapable, exchange with any other driver or property owner involved in the collision and present at the scene, all of the following information:

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(a) Driver's name and current residence address, driver's license number, vehicle identification number, and current residence address of registered owner.

(b) Evidence of financial responsibility, as specified in Section 16020. If the financial responsibility of a person is a form of insurance, then that person shall supply the name and address of the insurance company and the number of the insurance policy."

501.5 NON-INJURY MOTOR VEHICLE COLLISION

(a) Berkeley Police Department Communications Center personnel will dispatch officers to the report of a non-injury collision occurring on a highway or private property only when the collision qualifies with one or more of the following conditions:

1. A driver who may be under the influence of alcohol or drugs.
2. A disturbance of the peace.
3. A "hit and run" (the failure or refusal to provide both drivers license and insurance information to the other party).
4. The vehicle(s) and/or vehicle debris is causing a traffic hazard and traffic control is needed (the reporting party should be advised that while traffic control will be provided, no collision report will be taken).

(b) In the event of a significantly delayed response to a qualifying report of a collision due to lack of available personnel, the reporting party should be so informed.

(c) If the parties in the collision refuse to wait for the officer and no traffic problem or criminal matter exist (e.g., DUI or Hit-Run), the police response may be canceled. The parties should be advised of their responsibility to exchange information.

(d) If an officer is flagged down for a non-injury traffic collision, no collision report will be taken, but the officer may provide an incident number and/or help facilitate an exchange of information, upon request.

(e) A property damage report may be completed at the officer's discretion on a "short form" (CHP Form 555-03, Traffic Collision Report - Property Damage Only). The short form should be handwritten at the scene and a carbon copy of the involved parties' information should be handed out to each party. The narrative portion of the form will not be given to the parties on scene and may therefore be completed at a later time.

1. The short form report cannot be used when there are more than two involved parties.
2. The short form report cannot be used when any City owned vehicle, City owned property or City liability is involved.
3. The completed short form report, including the narrative, may be viewed or obtained (for a fee) by concerned persons at Records Management.

501.6 INJURY MOTOR VEHICLE COLLISION

(a) Every motor vehicle collision which results in injury or death to any person, including those occurring on private property, shall be thoroughly investigated.

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(b) Communications Center personnel receiving a report of an injury collision shall obtain information regarding the location, type and severity of injuries, traffic blockage, and any other information required for immediate emergency vehicle response.

1. An investigating officer shall be immediately assigned. Additional officers may be assigned to assist, as deemed necessary.

(c) Injury is defined as any non-fatal bodily harm received from a motor vehicle collision. Injury includes, but is not limited to:

1. A complaint of pain without visible signs of injury
2. Visible signs of injury such as lacerations, abrasions, swelling or limping
3. Momentary unconsciousness

501.7 COLLISION SCENE MANAGEMENT

(a) The first officer to arrive at the scene of any collision shall manage and attempt to stabilize the scene until relieved by the assigned officer, or other competent authority.

(b) The initial scene management includes, but is not limited to:

1. Determining the number and extent of injuries, if any, and requesting medical support, if needed.
   - i. The officer shall broadcast the injury or non-injury information as soon as possible.
   - ii. If the collision includes the request for an ambulance, it is mandatory that a sergeant respond to the scene.
2. Providing emergency medical aid, when it is safe to do so, until relieved by medical personnel.
3. Determining the need for traffic control and expediting the removal of vehicles, persons, and debris from the roadway when the removal will not interfere with the investigation. The officer should consider:
   - (a) The use of flares, traffic cones and/or barricades.
   - (b) Enlisting assistance from on-lookers to direct or divert traffic, etc.

501.8 COLLISION INVESTIGATION

Once the scene of the collision is stabilized, and unless relieved by a motor officer or other competent authority, the handling officer should take, or delegate, the following steps to ensure a proper investigation is completed:

(a) Identify the drivers and passengers of the vehicles, determine their positions in the vehicles and obtain statements.

1. If a party has been taken to the hospital, the handling officer may continue his/her investigation at the scene and contact the injured party at a later time, with supervisor approval.

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(b) Identify witnesses and obtain statements.

(c) Determine whether the involved parties were wearing seatbelts.

(d) Determine whether the involved parties were in possession of a personal communication device (e.g., cell phone) at the time of the collision.

(e) Identify whether objective signs of drug and/or alcohol or physical impairment are present.

(f) Consider whether the criteria for a Priority Re-Examination is met (DMV Form DS-427).

(g) Determine the point of impact and take any necessary measurements.

(h) Issue a Notice to Appear at the conclusion of the investigation, when appropriate and possible, and when the investigating officer has completed a course or courses of instruction in collision investigation in compliance with Vehicle Code § 40600(a).

(i) Protect the personal property of an involved party from theft or loss (e.g., if they are transported to the hospital).

1. If it is not practical for the property to be delivered to the owner, and/or the owner does not authorize another disposition, the property shall be booked for safekeeping. The property's disposition should be documented in the report.

(j) Issue a report receipt or business card with the incident number to each of the involved parties.

1. The involved parties should be informed that they are responsible for reporting the collision to the DMV on the appropriate form (SR-1) which is available at the front counter of the PSB or on the DMV's website.

501.9 TRAFFIC COLLISION REPORTS / DOCUMENTATION

(a) Traffic collisions which require documentation shall use the following CHP Forms:

1. 555 (Traffic Collision Report and Factual Diagram),
2. 556 (Narrative/Supplemental) and
3. 555 (Injured, witness, passenger).

(b) The narrative report shall include the following information in the sequence listed:

1. FACTS: List known physical facts such as skid marks, vehicle debris, paint transfer, location and types of vehicles, roadway conditions, lane width, location and status of traffic control signals/signs, and a description of injuries to persons or damage to property. List the response location, the method used to get measurements, any mechanical defects found and how they were discovered and verified, and any hazardous materials.

2. STATEMENTS: Verbal statements should be recorded as close to verbatim as possible. Written statements may be signed or unsigned and should be recorded exactly as stated. BPD statement forms should be used for written statements.

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3. OPINIONS AND CONCLUSIONS: The Point of Impact (POI) is a conclusion drawn from facts and statements. The determination of causative factors is an opinion/conclusion of the investigator and is recorded in this section.

4. DISPOSITION: Include the arrest and charge(s) if a person is taken into custody. If a Notice to Appear is issued, include the citation number(s), violation(s) charged, court date and person cited. Record the disposition of vehicles (e.g., released to owner at scene, towed, etc.), and include the tow authority if impounded.

(c) The completed report will be reviewed by the Traffic Analyst who will route copies, as appropriate, to the Statewide Integrated Traffic Records System (SWITRS).

501.10 THE FATAL ACCIDENT INVESTIGATION TEAM (FAIT)

(a) The Fatal Accident Investigative Team (FAIT) is comprised of the following three units:

1. Traffic Unit:

   (a) This unit is comprised of sworn personnel who have received training in basic, intermediate or advanced traffic collision investigations, collision reconstruction and/or tire friction mark analysis.

   (b) FAIT members are volunteers who, when available, will respond to qualifying collisions on a 24-hour basis.

   (c) Officers who wish to be designated as FAIT members should apply in accordance with existing procedures described within the Special and Temporary Duty Assignments policy. It is not necessary for FAIT members to be assigned to the Traffic Bureau.

   (d) This unit is supervised by the Traffic Bureau Motor Sergeant. The sergeant, or his/her designee, will periodically assess all FAIT traffic members to ensure they remain qualified for this assignment.

(b) Investigative Unit:

1. This unit is comprised of the Detective Bureau's Homicide Detail.

2. This unit provides guidance and/or assistance to the Traffic Unit relative to investigative procedures (e.g., interviews, interrogations, search warrants, etc.).

3. This unit has the primary responsibility for conducting any criminal investigation that might arise from the initial incident (e.g., felony hit and run, assault via vehicle, vehicular manslaughter, etc.). This includes ensuring all initial investigative and follow-up reports are completed in a timely manner.

4. This unit is supervised by the Homicide Detail Detective Sergeant, or his/her designee.

(c) Identification Technician/Crime Scene Unit:

1. This unit is comprised of Crime Scene Technicians.

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2. The primary responsibility of this unit is to provide assistance in processing the collision and/or crime scene. This unit also provides assistance in ensuring all critical evidence is photographed, identified and collected.
3. This unit is supervised by the Crime Scene Supervisor, or his/her designee.

(d) The Communications Center shall maintain a call-out list of FAIT members.

1. In the event it is necessary to activate FAIT, on duty FAIT members should be the first who are assigned to respond. The following notifications shall also be made when FAIT is activated:
   i. Traffic Unit Sergeant,
   ii. Homicide Detail Detective Sergeant, and
   iii. Crime Scene Unit Supervisor

(e) The purpose of FAIT is to provide a team of well-trained sworn and non-sworn personnel who work in partnership to ensure the proper investigation and management of the following type of collisions:

1. Fatality involved;
2. Impending fatality involved;
3. Any collision involving a BPD vehicle with serious injuries, impending fatality and/or fatality shall be investigated by CHP, but members of FAIT shall assist as needed; and/or
4. Any collision involving a BPD vehicle with major damage involved.
   (a) The determination of whether to request FAIT to respond is made at the discretion of the Watch Commander or sergeant who responds to the scene of the collision. Based on the circumstances, the Watch Commander or assigned sergeant may also request CHP investigate the collision whereafter, FAIT members shall assist CHP as needed.
   (b) If the collision only involves property/vehicle damage, then it is not necessary to contact the FAIT Investigative Unit (Homicide Detail).

501.11 ARREST PROCEDURES

If an arrest is made as a result of a motor vehicle collision (e.g., DUI, Hit-Run, etc.), in addition to the CHP 555 form, a case report shall also be completed under the same case number as the collision investigation.

(a) The case report shall bear the classification of the offense for which the defendant was arrested.

(b) The investigating officer shall complete the narrative report; ensuring sufficient details are included to support the arrest.

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501.12 HIT AND RUN INVESTIGATIONS

Any driver of a motor vehicle, who becomes involved in a motor vehicle collision, must stop and identify themselves in compliance with Vehicle Code § 20002.

An officer shall investigate all hit and run collisions, whether occurring on public or private property.

(a) However, if it is a misdemeanor hit and run collision and the officer determines there are no investigative leads, no report will be taken, but an incident report number should be provided.

The follow-up investigation for both felony and misdemeanor hit and run cases will be conducted by the originally assigned officer, unless the investigation was handled by a FAIT member who will then be responsible for the follow-up.

501.13 LATE-REPORTED COLLISIONS

Late-reported injury collisions may be reported at any time up to one year from the date of occurrence. However, the ability to conduct a comprehensive investigation may be compromised by the delay in reporting.

(a) A delayed report meeting the above criteria shall have the special conditions box on the CHP 555 form labeled, “Late-Reported”.

(b) The reporting party should be informed that they are responsible for reporting the collision to the DMV on the appropriate form (SR-1) which is available at the front counter of the PSB or on the DMV’s website.

If a non-injury collision is reported in person after both parties and vehicles have left the scene, the reporting party shall be advised that no report will be taken. However, the reporting party should be informed that they are responsible for reporting the collision to the DMV on the appropriate form (SR-1) which is available at the front counter of the PSB or on the DMV’s website.

501.14 COLLISIONS INVOLVING CITY-OWNED VEHICLES

The Communications Center shall dispatch an officer to any report of a collision, with or without injury, which involves City owned vehicles, equipment or property.

(a) Investigation - If the collision involves:

1. Minor injury to another party - CHP should be called to conduct the investigation.
2. Serious injury, impending fatality and/or fatality - CHP shall be called to conduct the investigation. However, FAIT shall be notified and shall assist CHP as needed.
3. No injury or property damage only - A patrol officer may conduct the investigation.
4. No injury with MAJOR property damage involving a POLICE vehicle - FAIT should be notified to conduct the investigation, see the FAIT section of this policy.

(b) Documentation

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1. Collision reports involving City vehicles shall include the City of Berkeley Accident Report and the City Manager's Report form.
2. Collision reports involving police vehicles shall include the Supervisor's Avoidability Report and shall be completed and turned into the Patrol Lieutenant's box prior to the end of the supervisor's shift.
3. The completed report will be reviewed by the Traffic Analyst who will route copies, as appropriate, to the Statewide Integrated Traffic Records System (SWITRS).
4. No collision report needs to be taken if the incident only involves damage to city property, and it is the opinion of a supervisor that there is no need for a collision report (i.e., police auto vs. parked police auto in the PSB parking lot).
5. If the collision occurs outside of the City of Berkeley, the collision shall be reported to the appropriate law enforcement agency having jurisdiction.

501.15 COLLISIONS INVOLVING A SCHOOL BUS

The investigation of traffic collisions involving a school bus, as defined in Vehicle Code § 545, or a school pupil activity bus, as defined in Vehicle Code § 546, or a youth bus, as defined in Vehicle Code § 680, taking place anywhere within the State, are the responsibility of the CHP when the vehicle is:

(a) Transporting any school pupils at or below the 12th grade level to or from a public or private school, or to or from public or private school activities.

(b) Transporting any school pupils at or below the 12th grade level to or from a residential school.

(c) Transporting children at or below the 12th grade level to or from an organized non-school related youth activity and the departing/arrival school is within 25 miles of the activity location.

Traffic collisions involving a school bus, school pupil activity bus, or youth bus, but with no pupils or qualifying children aboard, remain the responsibility of the local law enforcement agency and not the CHP.

501.16 COLLISIONS INVOLVING HAZARDOUS MATERIALS

The Berkeley Fire Department (BFD) is responsible for the scene management of any hazardous or toxic materials spill. Pending the arrival of BFD personnel, police personnel may be required to take emergency action.

The following procedures are recommended to assist in the handling of a hazardous or toxic materials spill, or the immediate potential of a spill:

(a) Report the incident as a possible hazardous materials incident.

(b) Give the exact location.

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(c) Request assistance.

(d) Stay upwind and upgrade.

(e) Isolate the area of non-essential personnel.

(f) Avoid contact with liquid or fumes.

(g) Eliminate ignition sources (i.e., smoking, flares and combustible engines).

(h) Identify materials, when possible, without undue risk of exposure/contact.

(i) Initiate evacuation from downwind first.

1. Select an upwind site for assembly of evacuated persons and report the location of the site to the Communications Center.

501.17 COLLISIONS ON THE EASTSHORE FREEWAY (I-80)

The California Highway Patrol (CHP) has responsibility for investigating traffic collisions originating on the Eastshore Freeway (I-80), including the on and off ramps within the City of Berkeley. However, upon request by the CHP, BPD will render any assistance required, including a complete investigation of a collision and subsequent prosecution of violation(s) causing the collision.

The University Avenue overpass and the Gilman Street underpass are not a part of the Eastshore Freeway (I-80) and jurisdiction remains with the BPD.

501.18 COLLISIONS INVOLVING DISABLED PEDESTRIANS

When an officer investigates a traffic collision involving a pedestrian, they shall write “DP” in CHP form 555’s special conditions box, when the pedestrian does either of the following:

(a) Uses a mobility device, such as a wheelchair, walker, crutches, cane, white cane or other device.

(b) "Self-identifies” as having a disability that impairs mobility.

In the narrative portion of the report, the officer shall describe the mobility device the pedestrian used, or the statement the person made when he/she “self-identified” as being disabled.

This procedure does not require an officer to ask any disability related questions of the pedestrian or to do anything that would violate the American with Disabilities Act (ADA). It does not ask that an officer attempt to determine whether the pedestrian was using the mobility device as the result of a temporary medical condition (such as a broken leg), or as the result of a disability as described in the ADA.

The Traffic Analyst will maintain a file of all collision reports that are identified as involving a disabled pedestrian.

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Vehicle Towing and Release

502.1 PURPOSE AND SCOPE

This policy provides the procedures for towing a vehicle by or at the direction of the Berkeley Police Department. Nothing in this policy shall require the Department to tow a vehicle.

502.2 STORAGE AND IMPOUNDS

The responsibilities of those employees towing, storing or impounding a vehicle are listed below.

502.3 VEHICLE STORAGE REPORT

Department members requesting towing, storage or impound of a vehicle shall complete a storage report form (CHP 180) and accurately record the mileage and a description of property within the vehicle (Vehicle Code § 22850). Any "holds" on the vehicle should be written on the storage report and communicated to the tow truck operator. A copy of the storage report should to be given to the tow truck operator. If the driver or vehicle owner are on scene, the short carbon copy of the storage report should be provided, along with a verbal explanation of the vehicle release process. The original storage report shall be submitted to Records Management as soon as practicable after the vehicle is stored.

502.4 REQUESTING A TOW

The employee ordering a tow shall provide the following information to Dispatch:

(a) The location from where the vehicle will be towed;

(b) The towing authority;

(c) The Color, Year, Make, Body Style, and License plate or VIN (CYMBL) of the vehicle; and

(d) Any "holds" restricting the vehicle's release.

502.5 COMMUNICATION CENTER PROCEDURES

(a) Upon receipt of a tow request, the dispatcher shall promptly telephone the appropriate towing service. The employee ordering the tow shall be advised when the request has been made and shall be advised of the assigned towing service's ETA.

(b) The Communications Center employee ordering the tow shall enter required information into the Communications Center "Tow Log."

(c) Communications Center personnel shall ensure that accurate tow authority and vehicle disposition information is included in the Computer-Aided Dispatch system (CAD) incident event associated with a vehicle tow.

(d) A "non-criminal incident" or "criminal investigation" CAD report type shall be used for incidents involving the tow and storage of a vehicle.

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(e) A "miscellaneous service call" CAD report type shall be used for incidents where the reported vehicle could not be located or was ineligible for tow.

(f) When notified of a completed vehicle tow by a towing contractor, the Communications Center Telecommunications dispatcher will enter the vehicle's description, date of tow, correct tow authority, and accurate custody status (e.g., "Towed/Stored", "Impounded, etc.) into the California Law Enforcement Telecommunications System (CLETS.)

(g) The Telecommunications dispatcher shall obtain Department of Motor Vehicles (DMV) registration information on every vehicle taken into police custody, and will compare the license plate and vehicle identification number (VIN) to the information provided by the towing contractor to ensure accuracy.

(h) The Telecommunications dispatcher shall determine if the vehicle has been reported as stolen to CLETS A Vehicle System.

(i) The Telecommunications dispatcher shall forward the completed "Towed/Stored Vehicle" entry form, DMV registration print-out, and tow contractor towing sheet to the Traffic Bureau prior to the conclusion of their duty shift.

(j) Communication Center personnel shall promptly enter pertinent data from the completed storage report into the Stolen Vehicle System (Vehicle Code § 22651.5(b); Vehicle Code § 22851.3(b); Vehicle Code § 22854.5).

(k) Approved storage reports shall be promptly routed to Records Management.

502.6 TOWS AT SPECIAL EVENTS

If a vehicle is towed in association with a special event or enforcement activity, a single report number may be used to document the event and tow(s).

When several vehicles are towed in association with a special event (i.e., a UC football game), a tow log listing the vehicles' descriptions and locations of tow may be used instead of individual storage reports.

The employee responsible for maintaining a special event tow log shall route the original tow log to Records Management and forward copies of the tow log to the Communications Center and Traffic Bureau.

502.7 "NO TOW" SITUATIONS

(a) Vehicle Operation on Private Property: If the vehicle has been driven onto the owner's private property and the owner is present and has a valid license, the vehicle cannot be towed for a driver's license violation committed by someone other than the owner.

(b) Planned Non-Operation: Unless prior warning of a tow is given, employees shall not direct the seizure of a vehicle parked on a highway, public land, or off-street parking facility for an expired registration violation (ref. Vehicle Code § 22651(o)) if the owner has a valid "Planned Non-Operation" certificate on file at the DMV. Prior warning of a tow may be accomplished via common means of verifiable communication, to include, but not be limited to, issuance of a citation for an expired registration violation.

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502.8 TOWS FOR DRIVERS LICENSE VIOLATIONS

Determination of tow authority for towing a vehicle based on a driver's license status offense shall be based on the particular circumstances of the violation.

(a) Tow authority VC § 22651(p) allows the vehicle to be released to the owner or owner's agent as soon as possible with proof of a valid DL and current registration. This tow authority shall be used when an individual is cited for:

1. VC § 12500(a) Driving without a license (never issued or expired)

(b) Tow authority VC § 14602.6 requires a 30 day impound of the vehicle and the storage fees to be paid prior to its release. This tow authority shall be used when an individual is cited for:

1. Driving with a suspended or revoked license;
2. Driving in violation of license restriction(s) imposed under Vehicle Code §13352 or 23575 and when the vehicle is not equipped with a functioning, certified interlock device.
3. Based on articulable extenuating circumstance(s), a supervisor may authorize the use of Vehicle Code § 22651(p) in situations where Vehicle Code § 14602.6 may be prescribed.

(c) If the only violation is that the operator is an unlicensed driver (Vehicle Code § 12500 (a)) the officer shall make a reasonable attempt to identify the registered owner of the vehicle (Vehicle Code § 2814.2). The officer shall release the vehicle to the registered owner if the person is a licensed driver, or to another licensed driver authorized by the registered owner, provided the vehicle is claimed in a reasonable amount of time. If the vehicle is released, the officer should list in the CAD report or on his/her copy of the notice to appear the name and driver's license number of the person to whom the vehicle is released.

502.9 TOWS FROM TRAFFIC COLLISION SCENES

When a vehicle has been involved in a traffic collision and must be removed from the scene, the officer shall have the driver select a towing company, (such as a "AAA" tow), and shall relay the request for the specified towing company to the dispatcher. When there is no preferred company requested, a "non-preference tow" company will be selected from the rotational list of towing companies in the Communications Center.

If the owner is incapacitated, and their vehicle must be removed from the scene, the officer will need to complete a storage report. The officer should notify the owner of where the vehicle was stored. This can be accomplished by leaving the short carbon copy of the storage report form with their property (if they are transported to the hospital), or by notifiying a friend or family member.

502.10 TOWS FOR INVESTIGATIVE PURPOSES / EVIDENCE

(a) Employees shall tow a vehicle for investigative purpose (i.e., is or contains evidence of a public offense) pursuant to Vehicle Code §22655.5 only with approval of a sergeant or command officer.

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1. If evidence can be legally obtained from a vehicle under investigation without towing it, this shall be the preferred procedure; supervisors should exercise discretion in approving the towing of such vehicles.
2. Whenever a vehicle is towed as evidence, an Evidence Receipt form shall be completed and a copy delivered to the vehicle's owner or agent.

(b) If towed in connection with a crime under investigation, the report number assigned to the tow shall be different from the criminal case number.

(c) The employee or detail/unit responsible for investigative follow-up of the matter related to a tow shall have primary responsibility for the custody of the vehicle stored as evidence or for investigative purposes.

(d) If the vehicle is held in custody in excess of 72 hours, the responsible employee or detail/unit shall consult with the District Attorney's Office regarding the need for continued custody of the vehicle.

(e) If required to be maintained in custody, the responsible employee or detail/unit shall make reasonable efforts to transfer physical custody, or financial responsibility for commercial storage services, of the vehicle to the District Attorney's Office, or relocate the vehicle to a City-controlled storage facility.

(f) The employee or detail/unit responsible for investigative follow-up of the matter related to a tow shall notify the person authorized to receive custody of the stored vehicle (i.e., registered owner, agent of owner, etc.) as soon as practical after the police hold on the vehicle has ended.

(g) The Traffic Bureau shall maintain a log of all vehicles towed for investigative purposes.

1. A designated Traffic Bureau employee will monitor investigations resulting in an impound and take reasonable measures to ensure a vehicle is held in custody no longer than is necessary to accomplish required law enforcement activities.
2. Contents of a vehicle having no evidentiary value may be released to its owner or his/her agent, and shall be listed in a written report.

502.11 TOWS FROM ARREST SCENES

It is the policy of this department to provide reasonable safekeeping of an arrestee's vehicle.Vehicles shall be stored whenever it is needed for the furtherance of the investigation or prosecution of the case, or when the community caretaker doctrine would reasonably suggest that the vehicle should be stored (e.g., traffic hazard, high crime area).

The following are examples of situations where consideration should be given to leaving a vehicle at the scene in lieu of towing the vehicle for Vehicle Code § 22651(h), provided the vehicle can be lawfully parked and left in a reasonably secured and safe condition:

- Traffic related warrant arrest.
- Situations where the vehicle was not used to further the offense for which the driver was arrested.

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- Whenever the licensed owner of the vehicle is present, willing, and able to take control of any vehicle not involved in criminal activity.
- Whenever the vehicle otherwise does not need to be stored and the owner requests that it be left at the scene. In such cases the owner should be informed that the Department will not be responsible for theft or damages.

502.12 TOWS FROM SOBRIETY CHECKPOINTS

Whenever a driver is stopped at a sobriety checkpoint and the only violation is that the operator is an unlicensed driver (Vehicle Code § 12500 (a)), the officer shall make a reasonable attempt to identify the registered owner of the vehicle (Vehicle Code § 2814.2). The officer shall release the vehicle to the registered owner if the person is a licensed driver, or to another licensed driver authorized by the registered owner, provided the vehicle is claimed prior to the conclusion of the checkpoint operation.

If the vehicle is released at the checkpoint in the case of Vehicle Code §12500(a), the officer should note in the CAD report or on his/her copy of the notice to appear the name and driver's license number of the person to whom the vehicle is released.

When a vehicle cannot be released at the checkpoint, it shall be towed (Vehicle Code § 22651(p)). When a vehicle is removed at the checkpoint, it shall be released during the normal business hours of the storage facility to the registered owner or his/her agent upon presentation of a valid driver's license and current vehicle registration.

502.13 DRIVING A NON-CITY VEHICLE

Vehicles which have been towed by or at the direction of the Department should not be driven by police personnel unless it is necessary to move a vehicle a short distance to eliminate a hazard, prevent the obstruction of a fire hydrant or to comply with posted signs.

502.14 NOTIFICATIONS

Within 48 hours, excluding weekends and holidays, of the storage of any such vehicle it shall be the responsibility of the Traffic Bureau to determine the names and addresses of any individuals having an interest in the vehicle through DMV or CLETS computers. By way of the Traffic Bureau, notice shall be sent to all such individuals by first-class mail (Vehicle Code § 22851.3(d); Vehicle Code § 22852(a); Vehicle Code § 14602.6(a)(2)). The notice shall include the following (Vehicle Code § 22852(b)):

(a) The name, address, and telephone number of this Department.

(b) The location of the place of storage and description of the vehicle, which shall include, if available, the name or make, the manufacturer, and the license plate number or VIN.

(c) The authority and purpose for the removal of the vehicle.

(d) A statement that, in order to receive their post-storage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within 10 days of the date appearing on the notice.

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502.15 TOWING SERVICES

The City of Berkeley's current tow contracts provide guidelines for prompt and safe towing services under the Berkeley Police Department's Rotation Tow Program. Towing services will be used in the following situations:

(a) When it is necessary to safeguard a vehicle due to the inability of the owner or operator to take the required action.

(b) When a vehicle is being held as evidence in connection with an investigation.

(c) When it is otherwise necessary to store a motor vehicle. This would include situations involving the recovery of stolen or abandoned vehicles, and the removal of vehicles obstructing traffic in violation of state or local regulations.

502.16 VEHICLE INVENTORY

All property in a stored or impounded vehicle shall be inventoried and listed on the vehicle storage report. This includes the trunk and any compartments or containers, even if closed and/or locked. Members conducting inventory searches should be as thorough and accurate as practical in preparing an itemized inventory. These inventory procedures are for the purpose of protecting an owner's property while in police custody, to provide for the safety of officers, and to protect the Department against fraudulent claims of lost, stolen, or damaged property.

502.17 SECURITY OF VEHICLES AND PROPERTY

Unless it would cause an unreasonable delay in the completion of a vehicle impound/storage or create an issue of officer safety, officers should make reasonable accommodations to permit a driver/owner to retrieve small items of value or personal need (e.g., cash, jewelry, cell phone, prescriptions) that are not considered evidence or contraband.

If a search of a vehicle leaves the vehicle or any property contained therein vulnerable to unauthorized entry, theft, or damage, personnel conducting the search shall take such steps as are reasonably necessary to secure and/or preserve the vehicle or property from such hazards.

502.18 RELEASE OF VEHICLE

The Communication Center will maintain an up-to-date tow log and provide information regarding the impoundment of vehicles and the right of the registered owner to request a storage hearing. Releases for towed vehicles will be made available during regular, non-emergency business hours (Vehicle Code § 14602.6). After normal business hours:

(a) Towed vehicles shall be released after proof of current registration is provided by the owner or the person in control of the vehicle and after all applicable fees are paid (Vehicle Code § 22850.3; Vehicle Code § 22850.5).

(b) Vehicles removed that require payment of parking fines or proof of valid driver’s license (foreign or domestic) shall only be released upon presentation of proof of compliance, proof of payment, completion of affidavit and payment of applicable fees related to the removal (Vehicle Code § 22651 et seq., Vehicle Code § 22652 et seq., Vehicle Code § 22850.3; Vehicle Code § 22850.5).

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(c) A vehicle removed pursuant to Vehicle Code § 14602.6(a) shall be released to the registered owner or his/her agent with proof of current registration, proof of a valid driver's license (foreign or domestic) and applicable fees paid prior to the end of the 30-day impoundment period under any of the following circumstances:

  (a) The vehicle was stolen.

  (b) If the driver reinstates his/her driver's license or acquires a license and provides proof of proper insurance.

  (c) Any other circumstance as set forth in Vehicle Code § 14602.6.

  (d) When there is no remaining community caretaking need to continue impound of the vehicle or the continued impound would not otherwise comply with the Fourth Amendment.

(d) An autonomous vehicle removed under authority of Vehicle Code § 22651(o)(1)(D) shall be released to the registered owner or person in control of the autonomous vehicle if the requirements of Vehicle Code § 22651(o)(3)(B) are met.

(e) A vehicle removed pursuant to an investigation with a "hold" on it, may not be released until the hold has been rescinded.

Personnel whose duties include releasing towed vehicles should consult the Vehicle Code under which the vehicle was towed or impounded for any specific requirements prior to release.

Any sworn employee who suspects that a vehicle was impounded in error should promptly advise a supervisor. On-duty supervisors should approve, when appropriate and without delay, the release of the vehicle without requiring the registered owner or his/her agent to request a hearing, as described in the Vehicle Impound Hearings Policy.

Written authorization received from an owner's agent and a copy of the agent's proof of identity shall be attached to the original vehicle release form and routed to Records management for incorporation into the report file.

502.19 TOW PROGRAM MONITORING

The Traffic Bureau will regularly monitor vehicle tows accomplished pursuant to this policy, as represented in tow reports, to ensure adherence to established policy and procedure.

The Traffic Bureau will be responsible for the periodic review of this policy and related tow program to assess the currency, applicability and effectiveness of related policy and procedure, and any identifiable impacts this Department's tow program has on traffic safety.

502.20 LEGAL GUIDANCE CONCERNING "COMMUNITY CARETAKING"

In 2019, the California Legislature amended Vehicle Code section 22650 to require that any removal of a vehicle must be to achieve a "community caretaking" need. It is no longer sufficient that one of the circumstances set forth in Vehicle Code section 22651 is present. There also must be a justification based on community caretaking, such as the need to ensure the safe flow of traffic or to protect property from theft or vandalism.

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502.20.1 VEHICLE CODE SECTION 22650(B)

A removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.

Reasons for towing that have been found to be community caretaking functions"

- Expired registration (6 months or more)
- Lack of license plates or other evidence of registration
- Inoperable vehicles. Specifically:
  - Vehicles which "lack an engine, transmission, wheels, tires, doors, windshield, or any other part or equipment necessary to operate safely on the highways of this state" VC 22669(d)
  - Vehicles which are "abandoned, wrecked, dismantled, or inoperative" and parked on private or public property, per VC 22660-22668 and BMC 12.98
- Unlicensed driver, the likelihood that the unlicensed driver would return to drive the vehicle home.
  - However impound has been found impermissible (1) when parked in the driver's driveway, (2) when parked legally two houses away from teh driver's home.
  - Continued impoundment is illegal when a licensed driver (even someone other that the owner) is available to take possession
- Vehicle is creating a traffic hazard
  - e.g. impeding traffic or blocking driveway
- Vehicle is creating another safety hazard
  - e.g. broken glass, public nuisance conditions.
- Tow is needed to protect the vehicle from vandalism or theft
  - e.g. if arrestee's vehicle is left on private parking lot, vehicle unattended on road where theft/vandalism is common
  - This generally should not be used as a basis to tow a vehicle which is used as shelter, since it is more regularly occupied in that case, especially at night when vandalism or theft are more likely to take place, thereby deterring such crime. Moreover, towing an unhoused person's vehicle to avoid vandalism or theft would likely have the effect of causing a greater loss to the inhabitant, who may not be able to retrieve their vehicle from impound.

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Tow Hearings

503.1 PURPOSE AND SCOPE

This policy establishes a procedure for the requirement to provide vehicle storage or impound hearings pursuant to Vehicle Code § 22852.

503.2 STORED OR IMPOUND HEARING

When a vehicle is stored or impounded by any member of the Berkeley Police Department, a hearing will be conducted upon the request of the registered or legal owner of the vehicle or his/her agent (Vehicle Code § 22650(a); Vehicle Code § 22852(a)).

The hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The hearing officer must be a person other than the person who directed the storage or impound of the vehicle (Vehicle Code § 22852(c)).

503.3 HEARING PROCEDURES

The vehicle storage hearing is an informal process to evaluate the validity of an order to store or impound a vehicle. The employee who caused the storage or removal of the vehicle does not need to be present for this hearing.

All requests for a hearing on a stored or impounded vehicle shall be submitted in person, in writing or by telephone within 10 days of the date appearing on the notice (Vehicle Code § 22852(b)). The Traffic Bureau Lieutenant, or his/her designee, will generally serve as the hearing officer. The person requesting the hearing may record the hearing at his/her own expense.

The failure of either the registered or legal owner or interested person or his/her agent to request a hearing in a timely manner or to attend a scheduled hearing shall be considered a waiver of and satisfaction of the post-storage hearing requirement (Vehicle Code § 22851.3(e)(2); Vehicle Code § 22852(d)). In addition, if the person requesting the hearing or his/her agent is 30 or more minutes late for their scheduled hearing, the statutory requirement for a hearing will be considered satisfied.

503.4 EVIDENCE

Any relevant evidence may be submitted and reviewed by the hearing officer to determine if reasonable grounds have been established for the storage or impound of the vehicle. The initial burden of proof established by a preponderance of the evidence that the storage/impound was based on probable cause rests with the Department.

After consideration of all information, the hearing officer shall determine the validity of the storage or impound of the vehicle in question and then render a decision. The hearing officer shall also consider any mitigating circumstances attendant to the storage that reasonably would warrant the release of the vehicle or a modification or reduction of the period the vehicle is impounded (Vehicle Code §14602.6(b); Vehicle Code § 14602.8(b)).

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Aside from those mitigating circumstances enumerated in the Vehicle Code, the registered owner's lack of actual knowledge that the driver to whom the vehicle was loaned was not validly licensed may constitute a mitigating circumstance under Vehicle Code § 14602.6(b) or 14602.8(b), warranting release of the vehicle. This mitigating circumstance exception is not limited to situations where the owner made a reasonable inquiry as to the licensed status of the driver before lending the vehicle.

503.5 DECISION

The legislative intent and this department's policy is to prevent unlicensed driving pursuant to Vehicle Code §14602.6. If this purpose is not furthered by the continued impoundment of a vehicle, release is most often appropriate.

(a) If a decision is made that reasonable grounds for storage or impound have been established, the hearing officer shall advise the inquiring party of the decision and that the inquiring party may pursue further civil remedies if desired.

(b) If a decision is made that reasonable grounds for storage or impound have not been established or sufficient mitigating circumstances exist, the vehicle in storage shall be released immediately. Towing and storage fees will be paid at the Department's expense (Vehicle Code § 22852(e)).

503.6 HEARING EXCEPTIONS

The right to a post-storage hearing applies to all tows except:

(a) Vehicles impounded for investigation of a hit-and-run collision pursuant to Vehicle Code § 22655;

(b) Vehicles removed from private property pursuant to Vehicle Code § 22658;

(c) Abandoned or hazardous vehicles removed pursuant to Vehicle Code § 22669 determined to have an estimated value of five hundred dollars ($500.00) or less; and,

(d) Vehicles or vehicle parts removed from private property by authority of a City or County ordinance pursuant to Vehicle Code §§ 22660 to 22668, inclusive, and § 22710.

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Impaired Driving

504.1 PURPOSE AND SCOPE

This policy provides guidance to those department members who play a role in the detection and investigation of driving under the influence (DUI).

504.2 POLICY

The Berkeley Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of California's impaired driving laws.

504.3 INVESTIGATIONS

All officers are expected to enforce DUI laws with due diligence. Vehicle Codes §§ 23152 and 23153 prohibit the operation of a vehicle while under the influence of an intoxicant, which includes alcohol, drugs or a combination of both, without restriction to a particular venue. Therefore a related arrest may be made on public or private property.

The Traffic Bureau Lieutenant, or his/her designee, should develop and maintain, in consultation with the prosecuting attorney, report forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. Any DUI investigation will be documented using these forms. Information documented elsewhere on the form does not need to be duplicated in the report narrative. Information that should be documented includes, at a minimum:

(a) The field sobriety tests (FSTs) administered and the results.

(b) The officer's observations that indicate impairment on the part of the individual, and the officer's health-related inquiries that may help to identify any serious health concerns (e.g., diabetic shock).

(c) Sources of additional information (e.g., reporting party, witnesses) and their observations.

(d) Information about any audio and/or video recording of the individual's driving or subsequent actions.

(e) The location and time frame of the individual's vehicle operation and how this was determined.

(f) Any prior related convictions in California or another jurisdiction.

504.4 FIELD TESTS

Officers should use the standardized FSTs as outlined by the National Highway Traffic Safety Administration (NHTSA) and any approved alternate tests for officers to use when investigating violations of DUI laws.

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504.5 PRELIMINARY ALCOHOL SCREENING

Officers may use a preliminary alcohol screening (PAS) test to assist in establishing reasonable cause to believe a person is DUI. The officer shall advise the person that the PAS test is being requested to assist in determining whether the person is under the influence of alcohol or drugs, or a combination of the two. Unless the person is under the age of 21, he/she shall be advised that the PAS test is voluntary. The officer shall also advise the person that submitting to a PAS test does not satisfy his/her obligation to submit to a chemical test as otherwise required by law (Vehicle Code § 23612).

504.6 PRELIMINARY ALCOHOL SCREENING FOR A PERSON UNDER AGE 21

If an officer lawfully detains a person under 21 years of age who is driving a motor vehicle and the officer has reasonable cause to believe that the person has a blood alcohol content of 0.01 or more, the officer shall request that the person take a PAS test to determine the presence of alcohol in the person, if a PAS test device is immediately available. If a PAS test device is not immediately available, the officer may request the person to submit to chemical testing of his/her blood, breath or urine, conducted pursuant to Vehicle Code § 23612 (Vehicle Code § 13388).

If the person refuses to take or fails to complete the PAS test or other chemical test, or if the result of either test reveals a blood alcohol content of 0.01 or more, the officer shall proceed to serve the person with a notice of order of suspension pursuant to this policy (Vehicle Code § 13388).

504.7 CHEMICAL TESTS

A person implies consent to a chemical test or tests, and to providing the associated chemical sample, under any of the following (Vehicle Code § 23612):

(a) The person is arrested for driving a vehicle while under the influence, pursuant to Vehicle Code § 23152.

(b) The person is under 21 years of age and is arrested by an officer having reasonable cause to believe that the person’s blood alcohol content is 0.05 or more (Vehicle Code § 23140).

(c) The person is under 21 years of age and detained by an officer having reasonable cause to believe that the person was driving a vehicle while having a blood alcohol content of 0.01 or more (Vehicle Code § 23136).

(d) The person was operating a vehicle while under the influence and proximately caused bodily injury to another person (Vehicle Code § 23153).

If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious), the officermay consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

504.8 CHOICE OF TESTS

Officers shall respect a viable choice of chemical test made by an arrestee, as provided for by law (e.g., breath will not be acceptable for suspected narcotics influence).

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A person arrested for DUI has the choice of whether the test is of his/her blood or breath, and the officer shall advise the person that he/she has that choice. If the person arrested either is incapable, or states that he/she is incapable, of completing the chosen test, the person shall submit to the remaining test.

If the person chooses to submit to a breath test and there is reasonable cause to believe that the person is under the influence of a drug or the combined influence of alcohol and any drug, the officer may also request that the person submit to a blood test. If the person is incapable of completing a blood test, the person shall submit to and complete a urine test (Vehicle Code § 23612(a)(2)(C)).

The officer must have reasonable suspicion and give clear indication that a blood or urine test will reveal evidence of the person being under the influence and state in his or her report the facts upon which that belief and clear indication are based. Once the breath test is completed, the officer should read the drug admonition listed in the Admin Per Se DMV form. If the person refuses to provide the additional sample after the breath test is completed this shall be documented as a refusal.

If a DUI driver is involved in a traffic collision in which serious injury was inflicted, such as broken bones, serious bleeding, etc., there should be no question or choice. The DUI driver will be required to submit to a blood test unless he/she is a hemophiliac or a person with a heart condition.

504.9 BREATH SAMPLES

The Traffic Bureau Lieutenant, or his/her designee, should ensure that all devices used for the collection and analysis of breath samples are properly serviced and tested, and that a record of such service and testing is properly maintained. Breath tests may only be administered by a Peace Officer Standards and Training (POST) certified and properly trained technician.

Members obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Traffic Bureau Lieutenant or his/her designee.

When the arrested person chooses a breath test, the handling officer shall advise the person that the breath-testing equipment does not retain a sample, and the person may, if desired, provide a blood or urine specimen, which will be retained to facilitate subsequent verification testing (Vehicle Code § 23614).

The officer should also require the person to submit to a blood test if the officer has a clear indication that a blood test will reveal evidence of any drug or the combined influence of an alcoholic beverage and any drug. Evidence of the officer's belief shall be included in the officer's report (Vehicle Code § 23612(a)(2)(C)).

In cases where this tolerance is exceeded, additional tests of the driver's breath shall be conducted until the results of two analyses fall within the 0.02% BAC variance.

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504.10 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples (Vehicle Code § 23158). The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task.

Officers should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be collected for alternate testing. Unless medical personnel object, two samples should be collected and retained as evidence, so long as only one puncture is required.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability to take a blood test should not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

All DUI blood draws regardless if consent is given, shall obtain an approved search warrant seeking blood for examination.

504.11 URINE SAMPLES

If a urine test will be performed, the arrestee should be promptly transported to the appropriate testing site. The officer shall follow any directions accompanying the urine evidence collection kit.

Urine samples shall be collected and witnessed by an officer of the same sex as the individual giving the sample. The arrestee should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the sample (Vehicle Code § 23158(i)).

If the subject is unable to provide the sample, direct him/her to select either of the two remaining tests (blood or breath). A refusal or failure to comply constitutes a refusal. Fill out the appropriate chemical refusal form.

The sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

504.12 REFUSALS

When an arrestee refuses to provide a viable chemical sample, officers should:

(a) Advise the arrestee of the requirement to provide a sample (Vehicle Code § 23612). The admonition is found on DMV form DS 367 (or DS 367M (for persons under 21 years old). The admonition must be read verbatim, and the subject's response or non-response recorded on the form. If a combination of both drugs and alcohol is suspected, and the person chose a breath test, the Drug Admonition on the second half of the said page shall be read.

(b) Audio- and/or video-record the admonishment when it is practicable.

(c) Document the refusal in the appropriate report.

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504.12.1 STATUTORY NOTIFICATIONS UPON REFUSAL

Upon refusal to submit to a chemical test as required by law, officers shall personally serve the notice of order of suspension upon the arrestee and take possession of any California state-issued license to operate a motor vehicle that is held by that individual (Vehicle Code § 23612(e); Vehicle Code § 23612(f)).

504.13 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses a chemical test when any of the following conditions exist:

(a) A search warrant has been obtained (Penal Code § 1524).

(b) The officer can articulate that exigent circumstances exist. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. Exigency can be established by the existence of special facts such as a lengthy time delay in obtaining a blood sample due to an accident investigation or medical treatment of the person.

504.14 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer should request a supervisor to respond.

The responding supervisor should:

(a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.

(b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes a viable form of testing in a timely manner.

(c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer) and attempt to persuade the individual to submit to such a sample without physical resistance.

    1. This dialogue should be recorded on audio and/or video if practicable.

(d) Ensure that the blood sample is taken in a medically approved manner.

(e) Ensure the forced blood draw is recorded on audio and/or video when practicable.

(f) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances:

    (a) Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.

    (b) In all cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.

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i. In extreme circumstances, officers may utilize the WRAP device pursuant to the parameters set forth in **Policy 302.11 Handcuffing and Restraints**, when other conventional methods of restraint have failed.

ii. Pursuant to **Policy 300 Use of Force**, all incidents of force shall be appropriately reported and documented.

(g) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, officers are expected to use sound judgment and perform as a responding supervisor, as set forth above.

504.15 ARREST AND INVESTIGATION

504.15.1 WARRANTLESS ARREST

In addition to the arrest authority granted to officers pursuant to Penal Code § 836, an officer should make a warrantless arrest of a person that the officer has reasonable cause to believe has been driving under the influence of an alcoholic beverage or any drug, or under the combined influence of the same when (Vehicle Code § 40300.5):

(a) The person is involved in a traffic collision.

(b) The person is observed in or about a vehicle that is obstructing the roadway.

(c) The person will not be apprehended unless immediately arrested.

(d) The person may cause injury to him/herself or damage property unless immediately arrested.

(e) The person may destroy or conceal evidence of a crime unless immediately arrested.

504.15.2 STATUTORY NOTIFICATIONS

Officers requesting that a person submit to chemical testing shall provide the person with the mandatory warning pursuant to Vehicle Code § 23612(a)(1)(D) and Vehicle Code § 23612(a)(4).

504.15.3 OFFICER RESPONSIBILITIES

The officer serving the arrested person with a notice of an order of suspension should immediately (Vehicle Code § 23612):

(a) Forward a copy of the completed notice of suspension or revocation form and any confiscated driver's license to the Traffic Bureau for review and forwarding to the Department of Motor Vehicles (DMV).

(b) Forward, via Records Management, a sworn report to DMV that contains the required information in Vehicle Code § 13380.

(c) Book any chemical sample evidence for processing at the appropriate forensic laboratory.

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504.16 RECORDS MANAGEMENT RESPONSIBILITIES

The Records Supervisor, or his/her designee, will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office.

504.17 ADMINISTRATIVE HEARINGS

The Records Supervisor, or his/her designee, will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to DMV.

Any officer who receives notice of required attendance to an administrative license suspension hearing should promptly notify the prosecuting attorney.

504.18 TRAINING

The Personnel and Training Sergeant, or his/her designee, should ensure that officers participating in the enforcement of DUI laws receive regular training. Training should include, at minimum, current laws on impaired driving, investigative techniques and rules of evidence pertaining to DUI investigations. The Personnel and Training Sergeant should confer with the prosecuting attorney's office and update training topics as needed.

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Traffic Citations

505.1 PURPOSE AND SCOPE

This policy outlines the responsibility for traffic citations and the procedure for the correction and dismissal of traffic citations.

505.2 RESPONSIBILITIES

The Traffic Bureau Lieutenant shall be responsible for the development and design of all Department traffic citations in compliance with state law and the Judicial Council.

The Traffic Bureau Lieutenant shall be responsible for the supply and accounting of all traffic citations issued to employees of this department.

505.3 DISMISSAL OF TRAFFIC CITATIONS

Employees of this department do not have the authority to dismiss a citation once it has been issued. Only the court has the authority to dismiss a citation that has been issued (Vehicle Code § 40500(d)).

Should an officer determine that a traffic citation should be dismissed in the interest of justice or where prosecution is deemed inappropriate the officer may request the court to dismiss the citation.

505.3.1 PROCEDURE

When a traffic citation has been issued, and the issuing officer determines it should be dismissed based on an issuing error or in the interest of justice, the officer shall:

(a) Complete a “Notice of Correction” form,

(b) Check “other” as the reason for the correction and write in, “Request the Court consider dismissing this citation in the interest of justice” or “Request the Court consider dismissing this citation due to a lack of officer recall” or for any other reason,

(c) Distribute the correction notice as indicated on the form,

(d) Submit the correction notice for supervisor approval, and

(e) If approved, mail a copy of the correction notice to the driver.

505.4 CORRECTION OF TRAFFIC CITATIONS

When a traffic citation is issued and in need of correction, the officer issuing the citation shall:

(a) Complete a “Notice of Correction” form,

(b) Check the reason for the correction,

(c) Distribute the correction notice as indicated on the form,

(d) Submit the correction notice for supervisor approval, and

(e) If approved, mail a copy of the correction notice to the driver.

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505.5 DISPOSITION OF TRAFFIC CITATIONS

Before the end of shift, officers shall turn in the original copy of all issued traffic citations to their immediate supervisor for review. Upon approval, supervisors will route the citations to Records Management for filing.

Upon separation from employment with this department, all employees issued traffic citation books shall return any unused citations to the Records Management.

505.6 NOTICE OF PARKING VIOLATION APPEAL PROCEDURE

Notice of parking violation appeals are conducted pursuant to Vehicle Code § 40215.

505.6.1 APPEAL STAGES

Appeals may be pursued sequentially at three different levels (Vehicle Code § 40215; Vehicle Code § 40230):

1. Administrative Review: Administrative reviews are conducted by City of Berkeley staff who will review written/documentary data. Requests for administrative reviews are available online and through Customer Service located at 1947 Center Street. These requests are informal written statements outlining why the notice of parking violation should be dismissed. Copies of documentation relating to the notice of parking violation and the request for dismissal must be mailed to the current mailing address of the processing agency.
2. Administrative Hearing: If the appellant wishes to pursue the matter beyond administrative review, an administrative hearing may be conducted in person or by written application, at the election of the appellant. Independent referees review the existent administrative file, amendments, and/or testimonial material provided by the appellant and may conduct further investigation or follow-up on their own.
3. Superior Court Review: If the appellant wishes to pursue the matter beyond an administrative hearing, a Superior Court review may be presented in person by the appellant after an application for review and designated filing fees have been paid to the Superior Court of California.

505.6.2 TIME REQUIREMENTS

An administrative review or administrative hearing will not be provided if the mandated time limits are not adhered to by the violator.

1. Administrative Review: Requests for an administrative review must be postmarked within 21 calendar days of issuance of the notice of parking violation, or within 14 calendar days of the mailing of the Notice of Delinquent Parking Violation (Vehicle Code § 40215(a)).
2. Administrative Hearing: Requests for administrative hearings must be made no later than 21 calendar days following the notification mailing of the results of the administrative review (Vehicle Code § 40215(b)). An administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, excluding time tolled pursuant to Vehicle Code § 40200 - 40225. The person

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requesting the hearing may request one continuance, not to exceed 21 calendar days (Vehicle Code § 40215).

3. Registered owners of vehicles may transfer responsibility for the violation via timely affidavit of non-liability when the vehicle has been transferred, rented or under certain other circumstances (Vehicle Code § 40209 and Vehicle Code § 40210).

505.6.3 COSTS

1. Administrative Review: There is no cost for an administrative review.
2. Administrative Hearing: Appellants must deposit the full amount due for the citation before receiving an administrative hearing, unless the person is indigent, as defined in Vehicle Code § 40220, and provides satisfactory proof of inability to pay (Vehicle Code § 40215).
3. Superior Court Review: An appeal through Superior Court requires prior payment of filing costs, including applicable court charges and fees. These costs will be reimbursed to the appellant in addition to any previously paid fines if appellant's liability is overruled by the Superior Court.

505.7 JUVENILE CITATIONS

The completion of traffic citations for juveniles may vary slightly from the procedure for adults. The juvenile's age, place of residency, and the type of offense should be considered before issuing the juvenile a citation, see also the Temporary Custody of Juveniles and the Cite and Release Policies.

505.8 STORAGE/ACCESS

The Traffic Bureau Lieutenant, or his/her designee, shall maintain a supply of moving and parking citations in the designated location within the Public Safety Building (PSB). Any officer observing that the supply is low should inform their supervisor who should then contact the Traffic Bureau Lieutenant for additional citations.

505.9 OBTAINING CITATION BOOKS

An officer in need of citation books shall record in the Citation Log Book the following information:

(a) The beginning and ending numbers of the citations issued,

(b) The date of issuance and

(c) The name and badge number of the officer to whom the citation book is issued.

505.10 ACCOUNTING

Alameda County maintains an accounting of all moving citations and fines due/received. The City of Berkeley Parking Citations Center maintains an accounting of all parking citations and fines due/received. This information is accessible through the Traffic Bureau Lieutenant or his/her designee.

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Disabled Vehicles

506.1 PURPOSE AND SCOPE

Vehicle Code § 20018 provides that all law enforcement agencies having responsibility for traffic enforcement may develop and adopt a written policy to provide assistance to motorists in disabled vehicles within their primary jurisdiction.

506.2 OFFICER RESPONSIBILITY

When an on-duty officer observes a disabled vehicle on the roadway, the officer should make a reasonable effort to provide assistance. If that officer is assigned to a call of higher priority, the dispatcher should be advised of the location of the disabled vehicle and the need for assistance. The dispatcher should then assign another available officer to respond for assistance as soon as practical.

506.3 EXTENT OF ASSISTANCE

In most cases, a disabled motorist will require assistance. After arrangements for assistance are made, continued involvement by department personnel will be contingent on the time of day, the location, the availability of departmental resources, and the vulnerability of the disabled motorist.

506.3.1 MECHANICAL REPAIRS

Department personnel shall not make mechanical repairs to a disabled vehicle. The use of push bumpers to relocate vehicles to a position of safety is not considered a mechanical repair.

506.3.2 RELOCATION OF DISABLED VEHICLES

The relocation of disabled vehicles by members of this department should only occur when the conditions reasonably indicate that immediate movement is necessary to reduce a hazard presented by the disabled vehicle.

506.3.3 RELOCATION OF DISABLED MOTORIST

The relocation of a disabled motorist should only occur with the person’s consent and should be suggested when conditions reasonably indicate that immediate movement is necessary to mitigate a potential hazard. The department member may stay with the disabled motorist or transport him/her to a safe area to await pickup.

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72-Hour Parking Violations

507.1 PURPOSE AND SCOPE

This policy provides procedures for the marking, recording and storage of vehicles parked in violation of the Berkeley Municipal Code regulating 72-hour parking violations and abandoned vehicles under the authority of Vehicle Code § 22669.

507.2 RESPONSIBILITIES

Vehicles suspected of being in violation of the City of Berkeley 72-Hour Parking Ordinance or Vehicle Code shall be logged into CAD and assigned to a Parking Enforcement Officer. This does not prohibit a patrol officer from initiating or following up on an investigation of a suspected violation.

507.3 VEHICLE STORAGE

Any vehicle in violation shall be stored by the authorized towing service and a vehicle storage report (CHP 180 form) shall be completed by the officer authorizing the storage of the vehicle.

The storage report form shall be submitted to Records Management, and the small carbon copy shall be submitted to the Communications Center mailbox, immediately following the storage of the vehicle. It shall be the responsibility of the Communications Center to immediately notify the Stolen Vehicle System (SVS) of the Department of Justice in Sacramento (Vehicle Code § 22851.3(b)). Notification may also be made to the National Law Enforcement Telecommunications System (NLETS) (Vehicle Code § 22854.5).

Within 48 hours of the storage of any such vehicle, excluding weekends and holidays, it shall be the responsibility of the Traffic Bureau to determine the names and addresses of any individuals having an interest in the vehicle through DMV or CLETS computers. Notice to all such individuals shall be sent first-class or certified mail pursuant to Vehicle Code § 22851.3(d).

507.4 MARKING THE VEHICLE

Currently there are two methods of marking vehicles;

1. Electronic marking - which leaves no mark on the tires or vehicle; or
2. Chalk marking - which leaves a visible chalk mark on the tire.

Both methods are viable and both methods require a warning tag be placed on the windshield. Additionally photographic evidence should be utilized when practical. Any deviation in markings shall be noted in CAD.

507.5 FOLLOW-UPS

The member handling the initial investigation should conduct a follow up investigation after a period of 72 hours to determine the status of the marked vehicle.

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If the member returns to the location and determines the vehicle is present and there is no indication of significant movement ("significant movement" means a vehicle has been moved from the associated parking location by at least one car length), the member may issue a citation to the vehicle. If a citation is issued, the member may also tow the vehicle pursuant to Vehicle Code § 22651(k).

If the member returns to the location and determines the vehicle has been moved, the member shall ensure the associated CAD event is updated to indicate the outcome of the follow-up investigation.

507.6 ABANDONED VEHICLE

If, by evidence and/or reliable citizen statement, it is determined a vehicle has been abandoned (i.e., is inoperable as defined in Vehicle Code §22669(d) and/or has not been moved in a significant period), the member may forego the initial marking and 72-hour follow-up procedures described above.

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Adult Crossing Guard

508.1 PURPOSE AND SCOPE

The purpose of this policy is to establish policy and procedures for the operation of the Adult Crossing Guard program.

508.2 POLICY

Adult Crossing Guards shall perform authorized traffic control duties at assigned locations to assist elementary school age children in their safe passage across public roadways.

Berkeley Police Department employees will provide necessary support for any citizen serving as an authorized Adult Crossing Guard.

508.3 AUTHORITY AND GENERAL RESPONSIBILITIES

Adult Crossing Guards (hereafter referred to as “Guard”) are non-sworn part-time employees of the City of Berkeley authorized by the Vehicle Code, Municipal Code and Chief of Police to perform traffic control duties at identified school-related locations.

(a) Locations of assignment shall be identified by mutual determination between the Police Department and the Transportation Division of the Public Works Department, subsequent to a need indicated by a traffic engineering survey.

508.3.1 RESPONSIBILITIES

The responsibilities of a Guard include:

(a) Exercise sound judgment in the careful direction of children in their passage across public roadways at identified crossing locations during designated times;

(b) Cooperate with school officials in their effort to enforce school regulations relating to the crossing of public roadways by students; and, serve as a role model and educational resource for children in the area of pedestrian-traffic safety;

(c) Perform other traffic safety duties as directed by the Adult Crossing Guard Coordinator;

(d) Provide for the safe crossing of elementary school age children within marked crosswalks.

A Guard shall not be responsible for the safe passage of any other group, including adults or older children crossing the roadway with elementary school children.

A Guard should not perform traffic control duties beyond the scope of their assignment.

508.4 DUTIES

Guards are commonly expected to perform assigned duties twice a day, once in the morning and once in the afternoon, as scheduled by the Adult Crossing Guard Coordinator.

Guards shall not leave their posts during periods of assignment.

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To facilitate safe passage across a roadway, Guards shall:

(a) Advise children arriving at their control crosswalk to wait on the sidewalk until directed to cross.

(b) Watch for breaks in vehicle traffic flow and use that interval to initiate traffic control action.

(c) Look both ways before leaving the sidewalk, step from the curb into the crosswalk, and hold the "STOP" sign down at his/her side.

1. Guards shall give motorists as much advance warning as is practical regarding their intended traffic control action to provide the opportunity for compliance.

2. Guards shall wait for clear indication that approaching vehicles are slowing in compliance before taking further traffic control action.

(d) Elevate the "STOP" sign, orient it to a position visible to approaching vehicle traffic, and advance to the center of the crosswalk.

1. Guards shall remain in this position until all children have safely crossed the roadway.

2. When all hazardous vehicle traffic has stopped, signal for waiting children to cross.

3. When all children have crossed the roadway, lower the “STOP” sign and return to the sidewalk.

(e) Guards shall discourage children from running across the roadway or riding bicycles within a crosswalk.

(f) Guards shall maintain a friendly, but not affectionate or inappropriate, demeanor towards children under their supervision.

(a) Courteous social exchange must not distract a Guard from their public safety responsibilities set forth in this policy.

508.4.1 REPORTING TRAFFIC VIOLATORS

The guards shall report all motorists who refuse to cooperate with them to the Adult Crossing Guard Coordinator.

508.4.2 REPORTING SUSPICIOUS PEOPLE

Guards shall attempt to obtain a complete description of suspicious persons loitering near a school. Guards shall not approach the suspicious person(s), but shall carefully note the reasons that aroused their suspicion as well as a description of the person and his/her vehicle. If the circumstances warrant such action, the guard shall call the Berkeley Police Department and request the assistance of an officer.

508.4.3 ACCIDENTS AT CROSSINGS

(a) If anyone is injured at a location protected by a Crossing Guard, the Guard shall notify the police at once.

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(b) The Guard shall identify himself/herself as a Crossing Guard, give the location distinctly, and request the services of an officer, and ambulance, if necessary.

(c) Guards shall not attempt to move an injured person or allow him/her to be moved pending the arrival of the ambulance.

(d) Guards shall make certain that every reasonable precaution is taken to protect the injured person from moving traffic.

(e) Guards shall not administer first aid unless they are certified to do so.They shall use all reasonable means at their disposal to keep the injured person warm and comfortable.

(f) If an involved vehicle attempts to leave the scene prior to the arrival of the officer, if possible, the Guard shall write down the vehicle's description and license plate information.

(g) The Guard shall request all witnesses remain at the scene.

1. The Guard should make a reasonable effort to obtain the names and phone numbers of witnesses who cannot remain at the scene.

2. Guards shall not attempt to interview witnesses.

508.4.4 ABSENCE FROM DUTY

Crossing Guards shall notify the Adult Crossing Guard Coordinator as soon as possible if they are unable to report for work (e.g., sickness, emergency, etc.), and in any event no later than 1/2 hour before their duty time.

508.5 ADULT CROSSING GUARD COORDINATOR

The Traffic Bureau Lieutenant, or his/her designee, shall act as the Adult Crossing Guard Coordinator.

508.5.1 ADULT CROSSING GUARD COORDINATOR RESPONSIBILITIES

The Adult Crossing Guard Coordinator is responsible for:

(a) The recruitment, hiring, training, field supervision, and coordination of termination of Adult Crossing Guards;

(b) Establishing work assignment locations and duty hours.

1. If a Guard is unable to report for duty, the Adult Crossing Guard Coordinator will contact an alternate from an availability list.

2. If no alternate Guard is available, the vacant post will not be staffed.

(c) The investigation of allegations of substandard performance and/or misconduct by Adult Crossing Guards.

1. As "at will" part-time employees, Adult Crossing Guards are not subject to the complaint investigation and disciplinary process.

508.6 RECRUITMENT AND SELECTION

The Adult Crossing Guard Coordinator shall facilitate the recruitment and selection of Adult Crossing Guards for the Police Department. Selection criteria should include, but not be limited to:

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(a) Exhibition of knowledge and experience that would demonstrate the capability for satisfactory job performance;

(b) Be of good personal character, supported by personal and/or professional references;

(c) Possess physical abilities (e.g., good vision, hearing and reflexes) required to safely and effectively perform expected duties; and,

(d) Exhibit dependability; be a person who can be relied upon for prompt and consistent attendance to the assignment, and have the ability to provide efficient service.

508.7 TRAFFIC SURVEY

When necessary, the Adult Crossing Guard Coordinator, in conjunction with the City Traffic Engineer, will conduct a traffic survey to determine the need for student crossing protection at the identified location(s) proximal to a local public school.

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Chapter 6 - Investigation Operations

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Investigation and Prosecution

600.1 PURPOSE AND SCOPE

The purpose of this policy is to set guidelines and requirements pertaining to the handling and disposition of criminal investigations.

600.2 POLICY

It is the policy of the Berkeley Police Department to investigate crimes thoroughly and with due diligence, and to evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor.

600.3 INITIAL INVESTIGATION

600.3.1 OFFICER RESPONSIBILITIES

An officer responsible for an initial investigation shall complete no less than the following:

(a) Make a preliminary determination of whether a crime has been committed by completing, at a minimum:

  (a) An initial statement from any victims, witnesses or complainants.

  (b) A cursory examination for evidence.

(b) If information indicates a crime has occurred, the officer shall:

  (a) Preserve the scene and any evidence as required to complete the initial and follow-up investigation.

  (b) Determine if additional investigative resources (e.g., investigators or scene processing) are necessary and request assistance as required.

  (c) If assistance is warranted, or if the incident is not routine, notify a supervisor or the Watch Commander.

  (d) Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.

  (e) Collect any evidence.

  (f) Take any appropriate law enforcement action.

  (g) When applicable, enter stolen or recovered items into the appropriate database.

  (h) Complete and submit the appropriate reports and documentation.

(c) If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available, and advise the victim or complainant of this information.

600.3.2 NON-SWORN MEMBER RESPONSIBILITIES

A non-sworn member assigned to any preliminary investigation is responsible for all investigative steps, except making any attempt to locate, contact or interview a suspect face-to-face or take

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any enforcement action. Should an initial investigation indicate that those steps are required, the assistance of an officer shall be requested.

600.4 REPORT WRITING

600.4.1 FORMAT

SUMMARY: Provide a brief summary of the incident, including the corpus of the crime and final status of the case.

INVESTIGATION: Provide a chronological description of the activities and statements of all officers and involved parties; this should incorporate elements such as scene, entry, prowl, statements as applicable to the investigation.

(a) A recorded statement from a suspect, victim and/or witness, shall be summarized in the interviewing officer’s narrative of the police report. If the recorded statement is audible, no further written statement form should be requested or required, absent unique and unusual circumstances.

DISPOSITION: Provide any details that relate to the disposition of the investigation, property and detainees. Any necessary follow-up should also be documented.

600.4.2 SUBMITTAL

When the investigating officer believes that the preliminary investigation is complete, it shall be submitted to a patrol sergeant for review. The officer shall indicate in the report whether the case should be closed, suspended, or reassigned to the Detective Bureau for follow-up. Continued responsibility for the case remains with the assigned officer until the sergeant's review has been completed. If the sergeant agrees that the preliminary investigation is complete, and concurs with the officer's recommendation for disposition, the case will be approved and submitted into AEGIS.If following the review, the sergeant does not feel that the investigation is complete or the recommendation appropriate, the report shall be returned to the assigned officer for completion and re-submission.

Follow-up investigation responsibility for the following types of cases rests solely with the Operations Division:

(a) Auto burglary, theft from auto cases, and malicious damage to vehicles.

(b) Misdemeanor assault/battery cases (not sex related).

(c) Misdemeanor weapon brandishing cases.

(d) Felony and misdemeanor hit and run cases.

(e) Initial and secondary follow-up on adult missing person cases.

(f) Initial follow-up on juvenile missing/runaway cases.

(g) Re-contact for cases where the officer was unable to initially contact the victim/reporting party, or otherwise finish a "complete preliminary investigation."

Officers are encouraged to conduct follow-up investigations whenever possible.

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To prevent duplication of effort, officers should first contact their supervisor and the appropriate Detective Bureau Detail before extensive follow-up work is done.

600.5 CUSTODIAL INTERROGATION REQUIREMENTS

Suspects who are in custody and subjected to an interrogation shall be given the *Miranda* warning, unless an exception applies. Interview or interrogation of a juvenile shall be in accordance with the Temporary Custody of Juveniles Policy.

600.5.1 AUDIO/VIDEO RECORDINGS

Any custodial interrogation of an individual who is suspected of having committed any violent felony offense should be recorded (audio or video with audio as available) in its entirety.

Consideration should also be given to recording a custodial interrogation, or any investigative interview, for any other offense when it is reasonable to believe it would be appropriate and beneficial to the investigation and is otherwise allowed by law.

No recording of a custodial interrogation should be destroyed or altered without written authorization from the prosecuting attorney and the Detective Bureau supervisor. Copies of recorded interrogations or interviews may be made in the same or a different format as the original recording, provided the copies are true, accurate and complete and are made only for authorized and legitimate law enforcement purposes.

Recordings should not take the place of a thorough report and investigative interviews. Written statements from suspects should continue to be obtained when applicable.

600.5.2 MANDATORY RECORDING OF ADULTS

Any custodial interrogation of an adult who is suspected of having committed any murder shall be recorded in its entirety. The recording should be video with audio if reasonably feasible (Penal Code § 859.5).

This recording is not mandatory when (Penal Code § 859.5):

(a) Recording is not feasible because of exigent circumstances that are later documented in a report.

(b) The suspect refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.

(c) The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.

(d) The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.

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(e) The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an officer, the individual being interrogated or another individual. Such circumstances shall be documented in a report.

(f) A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.

(g) The questions are part of a routine processing or booking, and are not an interrogation.

(h) The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

The Department shall maintain an original or an exact copy of the recording until a conviction relating to the interrogation is final and all appeals are exhausted or prosecution is barred by law (Penal Code § 859.5).

600.6 DISCONTINUATION OF INVESTIGATIONS

The investigation of a criminal case or efforts to seek prosecution should only be discontinued if one of the following applies:

(a) All reasonable investigative efforts have been exhausted, no reasonable belief that the person who committed the crime can be identified, and the incident has been documented appropriately.

(b) The perpetrator of a misdemeanor has been identified and a warning is the most appropriate disposition.

1. In these cases, the investigator shall document that the person was warned and why prosecution was not sought.
2. Warnings shall not be given for felony offenses or other offenses identified in this policy or by law that require an arrest or submission of a case to a prosecutor.

(c) The case has been submitted to the appropriate prosecutor but no charges have been filed. Further investigation is not reasonable nor has the prosecutor requested further investigation.

(d) The case has been submitted to the appropriate prosecutor, charges have been filed, and further investigation is not reasonable, warranted, or requested, and there is no need to take the suspect into custody.

(e) Suspects have been arrested, there are no other suspects, and further investigation is either not warranted, or requested.

(f) Investigation has proven that a crime was not committed (see the Sexual Assault Investigations Policy for special considerations in these cases).

The Domestic Violence, Child Abuse Sexual Assault Investigations, and Senior and Disability Victimization policies may also require an arrest or submittal of a case to a prosecutor.

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600.7 COMPUTERS AND DIGITAL EVIDENCE

The collection, preservation, transportation and storage of computers, cell phones and other digital devices may require specialized handling to preserve the value of the related evidence. If it is anticipated that computers or similar equipment will be seized, officers trained in computer forensics should assist with seizing computers and related evidence. If an officer trained in computer forensics is unavailable, officers should take reasonable steps to prepare for such seizure and use the resources that are available.

600.8 INVESTIGATIVE USE OF SOCIAL MEDIA AND INTERNET SOURCES

Use of social media and any other Internet source to access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the Internet should only be accessed by members while on-duty and for purposes related to the mission of this department. If a member encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the member should note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as practicable. The member, or others who have been assigned to do so, should attempt to replicate the finding when on-duty and using department equipment.

Information obtained via the Internet should not be archived or stored in any manner other than department-established record keeping systems (see the Records Maintenance and Release and the Criminal Organizations policies).

600.8.1 ACCESS RESTRICTIONS

Information that can be accessed from any department computer, without the need of an account, password, email address, alias or other identifier (unrestricted websites), may be accessed and used for legitimate investigative purposes without supervisory approval.

Accessing information from any Internet source that requires the use or creation of an account, password, email address, alias or other identifier, or the use of nongovernment IP addresses, requires supervisor approval prior to access. The supervisor will review the justification for accessing the information and consult with legal counsel as necessary to identify any policy or legal restrictions. Any such access and the supervisor approval shall be documented in the related investigative report.

Accessing information that requires the use of a third party's account or online identifier requires supervisor approval and the consent of the third party. The consent must be voluntary and shall be documented in the related investigative report.

Information gathered from any Internet source should be evaluated for its validity, authenticity, accuracy and reliability. Corroborative evidence should be sought and documented in the related investigative report.

Any information collected in furtherance of an investigation through an Internet source should be documented in the related report. Documentation should include the source of information and the dates and times that the information was gathered.

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600.8.2 INTERCEPTING ELECTRONIC COMMUNICATION

Intercepting social media communications in real time may be subject to federal and state wiretap laws. Officers should seek legal counsel before any such interception.

600.9 CELLULAR COMMUNICATIONS INTERCEPTION TECHNOLOGY

The Investigation Division Captain is responsible for ensuring the following for cellular communications interception technology operations (Government Code § 53166):

(a) Security procedures are developed to protect information gathered through the use of the technology.

(b) A usage and privacy policy is developed that includes:

1. The purposes for which using cellular communications interception technology and collecting information is authorized.
2. Identification by job title or other designation of employees who are authorized to use or access information collected through the use of cellular communications interception technology.
3. Training requirements necessary for those authorized employees.
4. A description of how the Department will monitor the use of its cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws.
5. Process and time period system audits.
6. Identification of the existence of any memorandum of understanding or other agreement with any other local agency or other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.
7. The purpose of, process for and restrictions on the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
8. The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.

Members shall only use approved devices and usage shall be in compliance with department security procedures, the department's usage and privacy procedures and all applicable laws.

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Asset Forfeiture

602.1 PURPOSE AND SCOPE

This policy describes the authority and procedure for the seizure, forfeiture and liquidation of property associated with designated offenses.

602.1.1 DEFINITIONS

Definitions related to this policy include:

Forfeiture - The process by which legal ownership of an asset is transferred to a government or other authority.

Forfeiture council - Comprised of the Alameda County Asset Forfeiture District Attorney and staff.

Forfeiture reviewer -The department member assigned by the Chief of Police who is responsible for reviewing all forfeiture cases; for securing and maintaining seized assets; and for acting as the liaison between the Department and the assigned attorney. This includes any time the Berkeley Police Department seizes property for forfeiture or when the Berkeley Police Department is acting as the fiscal agent pursuant to a multi-agency agreement.

Property subject to forfeiture - The following may be subject to forfeiture:

(a) Property related to a narcotics offense, which includes (Heath and Safety Code § 11470; Health and Safety Code § 11470.1):

1. Property (not including real property or vehicles) used, or intended for use, as a container for controlled substances, materials to manufacture controlled substances, etc.
2. Interest in a vehicle (car, boat, airplane, other vehicle) used to facilitate the manufacture, possession for sale or sale of specified quantities of controlled substances.
3. Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, proceeds traceable to an exchange, etc.
4. Real property when the owner is convicted of violating Health and Safety Code § 11366, Health and Safety Code § 11366.5 or Health and Safety Code § 11366.6 (drug houses) when the property was not used as a family residence or for other lawful purposes, or property owned by two or more persons, one of whom had no knowledge of its unlawful use.
5. The expenses of seizing, eradicating, destroying or taking remedial action with respect to any controlled substance or its precursors upon conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors.

(b) Property related to criminal profiteering (may include gang crimes), to include (Penal Code § 186.2; Penal Code § 186.3):

1. Any property interest, whether tangible or intangible, acquired through a pattern of criminal profiteering activity.

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2. All proceeds acquired through a pattern of criminal profiteering activity, including all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity.

Seizure - The act of law enforcement officials taking property, cash or assets that have been used in connection with or acquired by specified illegal activities.

602.2 POLICY

The Berkeley Police Department recognizes that appropriately applied forfeiture laws are helpful to enforce the law, deter crime and reduce the economic incentive of crime. However, the potential for revenue should never compromise the effective investigation of criminal offenses, officer safety or any person's due process rights.

It is the policy of the Berkeley Police Department that all members, including those assigned to internal or external law enforcement task force operations, shall comply with all state and federal laws pertaining to forfeiture.

602.3 ASSET SEIZURE

602.3.1 PROPERTY SUBJECT TO SEIZURE

The following may be seized upon review and approval of a supervisor and in coordination with the forfeiture reviewer:

(a) Property subject to forfeiture authorized for seizure under the authority of a search warrant or court order.

(b) Property subject to forfeiture not authorized for seizure under the authority of a search warrant or court order when any of the following apply (Health and Safety Code § 11471; Health and Safety Code § 11488):

1. The property subject to forfeiture is legally seized incident to an arrest.
2. There is probable cause to believe that the property was used or is intended to be used in a violation of the Uniform Controlled Substances Act and the seizing officer can articulate a nexus between the property and the controlled substance offense that would lead to the item being property subject for forfeiture.

602.3.2 PROPERTY NOT SUBJECT TO SEIZURE

The following property should not be seized for forfeiture:

(a) Cash and property that does not meet the forfeiture counsel's current minimum forfeiture thresholds should not be seized.

(b) Real property is not subject to seizure, absent exigent circumstances, without a court order (Health and Safety Code § 11471).

(c) A vehicle which may be lawfully driven on the highway if there is a community property interest in the vehicle by a person other than the suspect and the vehicle is the sole vehicle available to the suspect's immediate family (Health and Safety Code § 11470).

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(d) Vehicles, boats or airplanes owned by an “innocent owner,” such as a common carrier with no knowledge of the suspected offense (Health and Safety Code § 11490).

(e) Any property when the associated activity involves the possession of marijuana or related paraphernalia that is permissible under the Control, Regulate and Tax Adult Use of Marijuana Act (Health and Safety Code § 11362.1).

602.4 PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS

When property or cash subject to this policy is seized, the officer making the seizure should ensure compliance with the following:

(a) Complete applicable seizure forms and present the appropriate copy to the person from whom the property is seized. If cash or property is seized from more than one person, a separate copy must be provided to each person, specifying the items seized. When property is seized and no one claims an interest in the property, the officer must leave the copy in the place where the property was found, if it is reasonable to do so.

(b) Complete and submit a report and original seizure forms within 24 hours of the seizure, if practicable.

(c) Forward the original seizure forms and related reports to the forfeiture reviewer within two days of seizure.

The officer will book seized property as evidence with the notation in the comment section of the property form, “Seized Subject to Forfeiture.” Property seized subject to forfeiture should be booked on a separate property form. No other evidence from the case should be booked on this form.

Photographs should be taken of items seized, particularly cash, jewelry and other valuable items.

Officers who suspect property may be subject to seizure but are not able to seize the property (e.g., the property is located elsewhere, the whereabouts of the property is unknown, it is real estate, bank accounts, non-tangible assets) should document and forward the information in the appropriate report to the forfeiture reviewer.

602.5 MAINTAINING SEIZED PROPERTY

The Property and Evidence Unit Supervisor is responsible for ensuring compliance with the following:

(a) All property, under his/her control, received for forfeiture is reasonably secured and properly stored to prevent waste and preserve its condition.

602.6 FORFEITURE REVIEWER

The Chief of Police will appoint an officer as the forfeiture reviewer. Prior to assuming duties, or as soon as practicable thereafter, the forfeiture reviewer should attend a department-approved course on asset forfeiture.

The responsibilities of the forfeiture reviewer include:

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(a) All property received for forfeiture is reasonably secured and properly stored to prevent waste and preserve its condition.

(b) All property received for forfeiture is checked to determine if the property has been stolen.

(c) Property received for forfeiture is not used unless the forfeiture action has been completed.

(d) Remaining familiar with forfeiture laws, particularly Health and Safety Code § 11469 et seq. and Penal Code § 186.2 et seq. and the forfeiture policies of the forfeiture counsel.

(e) Serving as the liaison between the Department and the forfeiture counsel and ensuring prompt legal review of all seizures.

(f) Making reasonable efforts to obtain annual training that includes best practices in pursuing, seizing and tracking forfeitures.

(g) Ensuring that property seized under state law is not referred or otherwise transferred to a federal agency seeking the property for federal forfeiture as prohibited by Health and Safety Code § 11471.2.

(h) Ensuring that responsibilities, including the designation of a fiscal agent, are clearly established whenever multiple agencies are cooperating in a forfeiture case.

(i) Ensuring that seizure forms are available and appropriate for department use. These should include a receipt form and disclaimer of property form (if applicable) that provide relevant guidance to officers. The forms should be available in languages appropriate for the region and should contain spaces for:

1. Names and contact information for all relevant persons and law enforcement officers involved.

2. Information as to how ownership or other property interests may have been determined (e.g., verbal claims of ownership, titles, public records).

3. A space for the signature of the person from whom cash or property is being seized.

4. A tear-off portion or copy, which should be given to the person from whom cash or property is being seized, that includes the legal authority for the seizure, information regarding the process to contest the seizure and a detailed description of the items seized.

(j) Ensuring that officers who may be involved in asset forfeiture receive training in the proper use of the seizure forms and the forfeiture process. The training should be developed in consultation with the appropriate legal counsel and may be accomplished through traditional classroom education, electronic media, Daily Training Bulletins (DTBs) or Department Directives. The training should cover this policy and address any relevant statutory changes and court decisions.

(k) Reviewing each asset forfeiture case to ensure that:

1. Written documentation of the seizure and the items seized is in the case file.

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2. Maintain up to date case files on open and closed asset forfeiture cases.
3. Notices received from forfeiture counsel regarding the progression of a particular asset forfeiture case are appropriately routed.
4. Case status changes are notified through the chain of command and relevant city officials.
5. Current minimum forfeiture thresholds are communicated appropriately to officers.
6. This policy and any related policies are periodically reviewed and updated to reflect current federal and state statutes and case law.

(l) Ensuring that a written plan that enables the Chief of Police to address any extended absence of the forfeiture reviewer, thereby ensuring that contact information for other law enforcement officers and attorneys who may assist in these matters is available.

(m) Ensuring that the process of selling or adding forfeited property to the department's regular inventory is in accordance with all applicable laws and consistent with the department's use and disposition of similar property.

(n) Keeping a manual that details the statutory grounds for forfeitures and department procedures related to asset forfeiture, including procedures for prompt notice to interest holders, the expeditious release of seized property, where appropriate, and the prompt resolution of claims of innocent ownership (Heath and Safety Code § 11469).

(o) Notifying the California Franchise Tax Board when there is reasonable cause to believe that the value of seized property exceeds $5,000.00 (Health and Safety Code § 11471.5).

Forfeiture proceeds should be maintained in a separate fund or account subject to appropriate accounting control, with regular reviews or audits of all deposits and expenditures.

Forfeiture reporting and expenditures should be completed in the manner prescribed by the law and City financial directives (Health and Safety Code § 11495).

602.7 DISPOSITION OF FORFEITED PROPERTY

Forfeited funds distributed under Health and Safety Code § 11489 et seq. shall only be used for purposes allowed by law, but in no case shall a peace officer's employment or salary depend upon the level of seizures or forfeitures he/she achieves (Heath and Safety Code § 11469).

The Department may request a court order so that certain uncontaminated science equipment is relinquished to a school or school district for science classroom education in lieu of destruction (Health and Safety Code § 11473; Health and Safety Code § 11473.5).

602.7.1 RECEIVING EQUITABLE SHARES

When participating in a joint investigation with a federal agency, the Berkeley Police Department shall not receive an equitable share from the federal agency of all or a portion of the forfeiture proceeds absent either a required conviction under Health and Safety Code § 11471.2 or the

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flight, death or willful failure to appear of the defendant. This does not apply to forfeited cash or negotiable instruments of $40,000 or more.

602.8 CLAIM INVESTIGATIONS

An investigation shall be made as to any claimant of a vehicle, boat or airplane whose right, title, interest or lien is on the record in the Department of Motor Vehicles or in an appropriate federal agency. If investigation reveals that any person, other than the registered owner, is the legal owner, and that ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, boat or airplane, notice shall be made to the legal owner at his/her address appearing on the records of the Department of Motor Vehicles or the appropriate federal agency (Health and Safety Code § 11488.4).

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Informants

603.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the use of informants.

603.1.1 DEFINITIONS

Definitions related to this policy include:

Informant - A person who covertly interacts with other individuals or suspects at the direction of, request of, or by agreement with, the Berkeley Police Department for law enforcement purposes. This also includes a person agreeing to supply information to the Berkeley Police Department for a benefit (e.g., a quid pro quo in the form of a reduced criminal penalty, money).

Source of Information - An informant differs from a "source of information" in that the latter is not under the specific direction of a single officer and does not become a party to the actual investigation (e.g., a business firm furnishing information from its records, or a concerned citizen relaying information about an event they have witnessed).

603.2 POLICY

The Berkeley Police Department recognizes the value of informants to law enforcement efforts and will strive to protect the integrity of the informant process. It is the policy of this department that all funds related to informant payments will be routinely audited and that payments to informants will be made according to the criteria outlined in this policy.

603.3 USE OF INFORMANTS

603.3.1 INITIAL APPROVAL

Before using an individual as an informant, an officer must receive approval from his/her supervisor. The officer shall compile sufficient information through a background investigation and experience with the informant in order to determine the suitability of the individual, including age, maturity and risk of physical harm, as well as any indicators of his/her reliability and credibility.

Members of this department should not guarantee absolute safety or confidentiality to an informant.

603.3.2 JUVENILE INFORMANTS

Except for the enforcement of laws related to the commercial sale of alcohol, marijuana or tobacco products, a juvenile shall not be used as an informant.

It is the policy of this department that juveniles not be used as informants under any circumstances. A juvenile may become a "source of information" as defined above, but under no circumstances are they to be compensated for their information, or function as an undercover police operative.

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603.3.3 INFORMANT AGREEMENTS

All informants are required to sign and abide by the provisions of the designated department informant agreement. The officer using the informant shall discuss each of the provisions of the agreement with the informant. The agreement shall be signed by the officer, the informant and a witness.

603.4 INFORMANT INTEGRITY

To maintain the integrity of the informant process, the following must be adhered to:

(a) The identity of an informant acting in a confidential capacity shall not be withheld from the Chief of Police, Investigations Division Captain, Detective Bureau Lieutenant or their authorized designee(s).

1. Identities of informants acting in a confidential capacity shall otherwise be kept confidential.

(b) Criminal activity by informants shall not be condoned.

(c) Informants shall be told they are not acting as police officers, employees or agents of the Berkeley Police Department, and that they shall not represent themselves as such.

(d) The relationship between department members and informants shall always be ethical and professional.

1. Members shall not become intimately involved with an informant.
2. Social contact shall be avoided unless it is necessary to conduct an official investigation, and only with prior approval of the Detective Bureau Lieutenant.
3. Members shall neither solicit nor accept gratuities or engage in any private business transaction with an informant.

(e) Whenever practical, two officers should be present at all contacts with informants.

(f) In all instances when department funds are paid to informants, a voucher shall be completed, itemizing the expenses.

(g) Since the decision rests with the appropriate prosecutor, officers shall not promise that the informant will receive any form of leniency or immunity from criminal prosecution.

603.4.1 UNRELIABLE INFORMANTS

The reliability of any informant should be considered before engaging him/her in any way in a covert or other investigative process. Members who become aware that an informant may be unreliable will notify the supervisor, who will initiate a review to determine reliability. Until a determination has been made by a supervisor, the informant should not be used by any member. The supervisor shall document the decision and conditions in file notes and mark the file “unreliable” when appropriate.

Considerations for determining whether an informant is unreliable include, but are not limited to, the following:

(a) The informant has provided untruthful or unreliable information in the past.

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(b) The informant behaves in a way that may endanger the safety of an officer.

(c) The informant reveals to suspects the identity of an officer or the existence of an investigation.

(d) The informant appears to be using his/her affiliation with this department to further criminal objectives.

(e) The informant creates officer-safety issues by providing information to multiple law enforcement agencies simultaneously, without prior notification and approval of each agency.

(f) The informant engages in any other behavior that could jeopardize the safety of officers or the integrity of a criminal investigation.

(g) The informant commits criminal acts subsequent to entering into an informant agreement.

603.5 INFORMANT FILES

Informant files shall be utilized as a source of background information about the informant, to enable review and evaluation of information provided by the informant, and to minimize incidents that could be used to question the integrity of department members or the reliability of the informant.

Informant files shall be maintained in a secure area within the Detective Bureau. The Detective Bureau Lieutenant or his/her designee shall be responsible for maintaining informant files. Access to the informant files shall be restricted to the Chief of Police, Investigations Division Captain and the Detective Bureau Lieutenant or their authorized designee(s).

603.5.1 FILE SYSTEM PROCEDURE

A file shall be maintained on each informant and shall be coded with an assigned informant control number. An informant history that includes the following information shall be prepared for each file:

(a) Name and aliases

(b) Date of birth

(c) Physical description: sex, race, height, weight, hair color, eye color, scars, tattoos or other distinguishing features

(d) Photograph

(e) Current home address and telephone numbers

(f) Current employers, positions, addresses and telephone numbers

(g) Vehicles owned and registration information

(h) Places frequented

(i) Briefs of information provided by the informant and his/her subsequent reliability

1. If an informant is determined to be unreliable, the informant's file is to be marked "unreliable" and notations included detailing the issues that caused this classification.

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(j) Name of the officer initiating use of the informant

(k) Signed informant agreement

(l) Update on active or inactive status of informant

603.6 INFORMANT PAYMENTS

The amount of funds to be paid to any informant will be evaluated against the following criteria:

- The extent of the informant's personal involvement in the case
- The significance, value or effect on crime
- The value of assets seized
- The quantity of the drugs or other contraband seized
- The informant’s previous criminal activity
- The level of risk taken by the informant

603.6.1 PAYMENT PROCESS

Payments to an informant should be in cash using the Detective Bureau’s expense funds. A payment voucher shall be filled out and signed by the informant, a detective and a witness for each payment.

Payments exceeding $500.00 require a signature from the Investigations Division Captain on a separate memorandum form.

Approved payments to an informant should be in cash using the following process:

(a) The officer delivering the payment shall complete a payment voucher which shall include the following information:

1. A list of evidence and/or information obtained
2. The informant's assigned number
3. Berkeley Police Department case number and/or in-house case number
4. Payment amount
5. Date

(b) The payment voucher shall be signed by the informant.

(c) The payment voucher shall be kept in the informant's file.

603.6.2 AUDIT OF PAYMENTS

The Professional Standards Division Captain or his/her authorized designee shall be responsible for compliance with any audit requirements associated with grant provisions and applicable state and federal law.

At least once every six months, the Professional Standards Division Captain or his/her authorized designee should conduct an audit of all informant funds for the purpose of accountability and

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security of the funds. The funds and related documents (e.g., vouchers, receipts and logs) will assist with the audit process.

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Eyewitness Identification

604.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this department employ eyewitness identification techniques (Penal Code § 859.7).

604.1.1 DEFINITIONS

Definitions related to the policy include:

Eyewitness identification process - Any in-field show-up, live lineup or photographic identification.

In-field show-up - A live presentation of a single or multiple individuals to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

Live lineup - A live presentation of individuals, usually conducted in a formal setting, (i.e. a lineup room at a jail) to a witness for the purpose of identifying or eliminating an individual as the suspect.

Photographic lineup - Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as the suspect.

604.2 POLICY

The Berkeley Police Department will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

604.3 INTERPRETIVE SERVICES

Members should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the investigating member should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

604.4 EYEWITNESS IDENTIFICATION

Members are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case.

Members should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.

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- Other witnesses have identified or failed to identify the individual as the suspect.

In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

The eyewitness identification procedure should be audio and video recorded and the recording should be retained according to current evidence procedures. When it is not feasible to make a recording with both audio and visual representations, an audio recording should be made (Penal Code § 859.7).

604.5 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS

When practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case should the member presenting a lineup to a witness know which photograph or person in the lineup is being viewed by the witness (Penal Code § 859.7). Techniques to achieve this include randomly numbering photographs, shuffling folders, or using a computer program to order the persons in the lineup.

Individuals in the lineup should reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup (Penal Code § 859.7).

The member presenting the lineup should do so sequentially (i.e., show the witness one person at a time) and not simultaneously. The witness should view all persons in the lineup.

A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating member should contact the appropriate prosecuting attorney before proceeding.

604.5.1 LINEUP ADMONITION

Prior to the lineup, members shall admonish the victim or witness using the appropriate admonition from the Alameda County Double Blind Sequential Lineup Identification Form.

604.5.2 LINEUP PROCEDURES

Members shall conduct the lineup as follows:

(a) Assemble the suspect photo/suspect and at least five filler photos/persons. If there are multiple suspects, assemble a photo/live lineup with different filler photos/persons for each suspect.

(b) Numerically assign each photo/person and document the order.

(c) Confirm that the victim or witness understands the nature of the sequential procedure.

(d) Present each photo/person to the victim or witness separately in a previously determined and random order.

(e) Have the victim or witness initial each photo after viewing it (for photo lineup only).

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(f) Remove the photo or person from view before presenting the next photo or person.

(g) Record all results in writing, including the victim or witnesses own words. This documentation should include positive, tentative and non-identifications.

1. In cases of positive or tentative identifications, ask the victim or witness why the photo or person selected is/may be the suspect. Obtain a qualitative description if the person is not certain of their identification, i.e. similar chin or eyes etc.

(h) Ask the victim or witness to sign and date the results.

(i) Document the lineup procedure to include identification information and the source of all photos/persons used; names of all persons present at the lineup; and date and time of the lineup.

(j) If more than one victim or witness is to view the same lineup, ensure they are physically separated from one another during the lineup process so there is no communication with one another.

(k) If more than one victim or witness is to view the same lineup, ensure you change the order of photos or persons presented between each viewing. This will prevent any possibility of victims or witnesses telling each other which number was picked. Document this step.

(l) Instruct victims or witnesses to avoid discussing the details of the incident or the lineup with other victims or witnesses.

Whenever possible, a photo/live lineup should be audio or video recorded.

604.5.3 OTHER SAFEGUARDS

Witnesses should be asked for suspect descriptions as close in time to the incident as possible and before conducting an eyewitness identification. No information concerning a suspect should be given prior to obtaining a statement from the witness describing how certain he/she is of the identification or non-identification. Members should not say anything to a witness that that may validate or invalidate an eyewitness' identification. In photographic lineups, writings or information concerning any previous arrest of a suspect shall not be visible to the witness (Penal Code § 859.7).

604.6 IN-FIELD SHOW-UPS

Field identifications, also known as in-field show-ups may be helpful in certain cases.

When determining whether to initiate an in-field show-up, the member should:

(a) Obtain a complete description of the suspect from the witness.

(b) Assess whether a witness should be included in a field identification process by considering:

1. The length of time the witness observed the suspect.
2. The distance between the witness and the suspect.
3. Whether the witness could view the suspect's face.

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4. The quality of the lighting when the suspect was observed by the witness.
5. Whether there were distracting noises or activity during the observation.
6. Any other circumstances affecting the witness's opportunity to observe the suspect.
7. The length of time that has elapsed since the witness observed the suspect.

(c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.

(d) When feasible, members should bring the witness to the location of the subject of the show- up, rather than bring the subject of the show-up to the witness.

(e) The person who is the subject of the show-up should not be shown to the same witness more than once.

(f) In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.

(g) The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.

604.6.1 ADMONITION

Prior to the in-field show up, members shall provide the victim or witness with the following "In Field Show-Up Admonition":

"In a few minutes I am going to show you a person who may or may not be responsible for the crime. The fact that this person is detained or handcuffed should not influence your judgment. The person may or may not be wearing the same clothes at this time. You are not obligated to make an identification. If you see the person involved, let me know, and explain why you have identified this person. Do you understand?"

604.7 DOCUMENTATION

A description of the eyewitness process and the results of any eyewitness identification should be documented in the case report.

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. The original photographic lineup should be booked as evidence.

604.7.1 DOCUMENTATION RELATED TO RECORDINGS

The handling member shall document the reason that a video recording or any other recording of an identification was not obtained (Penal Code § 859.7).

604.7.2 DOCUMENTATION RELATED TO BLIND ADMINISTRATION

If a presentation of a lineup is not conducted using blind administration, the handling member shall document the reason (Penal Code § 859.7).

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Brady Material Disclosure

605.1 PURPOSE AND SCOPE

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called "*Brady* information") to a prosecuting attorney.

605.1.1 DEFINITIONS

Definitions related to this policy include:

***Brady* information** - Information known or possessed by the Berkeley Police Department that is both favorable and material to the current prosecution or defense of a criminal defendant.

605.2 POLICY

The Berkeley Police Department will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense. The Department will identify and disclose to the prosecution potentially exculpatory information, as provided in this policy.

605.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Officers must include in their investigative reports adequate investigative information and reference to all material evidence and facts that are reasonably believed to be either incriminating or exculpatory to any individual in the case. If an officer learns of potentially incriminating or exculpatory information any time after submission of a case, the officer or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable. Supplemental reports shall be promptly processed and transmitted to the prosecutor's office.

If information is believed to be privileged or confidential (e.g., confidential informant or protected personnel files), the officer should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed.

Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an officer is unsure whether evidence or facts are material, the officer should address the issue with a supervisor. The supervisor should communicate this new information to the appropriate prosecutor.

605.4 DISCLOSURE OF PERSONNEL INFORMATION

Whenever it is determined that *Brady* information is located in the personnel file of a member of this department who is a material witness in a criminal case, the following procedure shall apply:

(a) Any member who is the subject of such a motion shall be notified in writing that a motion has been filed by the defense.

(b) An Internal Affairs Sergeant, as the custodian of confidential employee personnel records, shall accompany all relevant files during any in camera inspection and

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address any issues or questions raised by the court in determining whether any information contained in the files is both material and favorable to the criminal defendant.

(c) If the court determines that there is relevant *Brady* information contained in the files, only that information ordered released by the judge will be copied and released to the parties filing the motion.

1. Prior to the release of any information pursuant to this process, the Internal Affairs Sergeant should request a protective order from the court limiting the use of such information to the involved case and requiring the return of all copies upon completion of the case.

605.5 INVESTIGATING BRADY ISSUES

If the Department receives information from any source that a member may have issues of credibility, dishonesty or has been engaged in an act of moral turpitude or criminal conduct, the information shall be investigated and processed in accordance with the Personnel Complaints Policy.

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Warrant Service

606.1 PURPOSE AND SCOPE

This policy establishes guidelines for the planning and serving of arrest and search warrants by members of this department. It is understood that this policy cannot address every variable or circumstance that can arise in the service of a search or arrest warrant, as these tasks can involve rapidly evolving and unique circumstances.

This policy is intended to be used in conjunction with the Operations Planning and Deconfliction Policy, which has additional guidance on planning and serving high-risk warrants.

This policy is not intended to address the service of search warrants on locations or property already secured or routine field warrant arrests by patrol officers.

606.2 POLICY

It is the policy of the Berkeley Police Department to balance the safety needs of the public, the safety of department members, privacy interests and other relevant factors when making decisions related to the service of search and arrest warrants. The Sanctity of Life, as described in the Use of Force policy, is a guiding principle.

606.3 SEARCH WARRANTS

Officers should receive authorization from a supervisor before preparing a search warrant application. Once authorization is received, the officer will prepare the affidavit and search warrant and submit the documents to a supervisor for review and approval.

No-knock warrants shall not be prepared, authorized, or executed by Berkeley Police Officers.

606.4 WARRANT PREPARATION

An officer who prepares a warrant should ensure the documentation in support of the warrant contains as applicable:

(a) Probable cause to support the search or arrest, including relevant dates and times to demonstrate timeliness and facts to support any request for nighttime warrant execution.

(b) A clear explanation of the affiant's training, experience and relevant education.

(c) Adequately supported opinions, when relevant, that are not left to unsubstantiated conclusions.

(d) A nexus between the place to be searched and the persons or items central to the investigation. The facts supporting this nexus should be clear and current. For example, the affidavit shall explain why there is probable cause to believe that a particular person is currently residing at a particular location or that the items sought are present at a particular location.

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(e) Full disclosure of known or suspected residents at the involved location and any indication of separate living spaces at the involved location. For example, it should be disclosed that several people may be renting bedrooms at a single location, even if the exact location of the rooms is not known.

(f) A specific description of the location to be searched, including photographs of the location, if reasonably available.

(g) A sufficient description of the items to be seized.

(h) Full disclosure of any known exculpatory information relevant to the warrant application (refer to the Brady Material Disclosure Policy).

606.5 RISK ASSESSMENT

When a search or arrest warrant service is planned for a residence or locations or subjects that present elevated risk, the supervisor will complete the Risk Assessment Worksheet and submit it, along with the Operation Plan, to the Chain of Command for review and classification of risk (see the Operations Planning and Deconfliction Policy).

If the warrant is not classified as high risk, the supervisor should weigh the risk of entry into a residence to make an arrest against other alternatives, such as arresting or detaining the person outside the residence where circumstances may pose a lower risk.

If the warrant is classified as high risk, the supervisor should contact the Bureau Lieutenant or Division Captain to arrange a consultation with the Special Response Team (SRT) Commander.

606.6 HIGH-RISK WARRANT SERVICE

The SRT Commander, or his/her designee shall review warrants that are categorized as high risk and shall confer with the Operations Division Captain to determine the manner in which the warrant will be served, including the number of officers deployed. Only the Chief of Police, or his/her designee, may authorize the use of SRT.

606.7 WARRANT SERVICE PROCEDURES

The member responsible for directing the service should ensure the following as applicable:

(a) Prior to making entry into a location, officers shall allow occupants a reasonable amount of time to come to the door given the totality of the circumstances.

(b) When practicable and when doing so does not cause unreasonable risk, video or photographic documentation is made of the condition of the location prior to execution of a search warrant. The images should include the surrounding area and persons present.

(c) The warrant service is audio- and video-recorded when practicable and reasonable to do so.

(d) Evidence is handled and collected only by those members who are designated to do so. All other members involved in the service of the warrant should alert one of the

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designated members to the presence of potential evidence and not touch or disturb the items.

(e) Searches are conducted in a thorough, organized and systematic manner. Focus should be on leaving nothing undiscovered, within the limit and scope sanctioned by the warrant, without causing unnecessary damage to the location or property.

(f) Persons who are detained as part of the warrant service are handled appropriately under the circumstances.

(g) Reasonable care provisions are made for children and dependent adults (see the Child and Dependent Adult Safety Policy).

(h) A Search Warrant Receipt is made containing a list of all items seized and a copy provided to the person in charge of the premises if present or otherwise left in a conspicuous place.

(i) A copy of the search warrant is left at the location.

(j) The condition of the property is documented with video recording or photographs after the search.

(k) Any damage incurred as a result of the search, such as a breached door, is photographed and documented.

(l) Written information is provided explaining how to submit a claim with the City of Berkeley regarding any damage.

606.8 DETENTIONS DURING WARRANT SERVICE

Officers must be sensitive to the safety risks of all persons involved with the service of a warrant. Depending on circumstances and facts present, it may be appropriate to control movements of any or all persons present at a warrant service, including those who may not be the subject of a warrant or suspected in the case. However, officers must be mindful that only reasonable force may be used and weapons should be displayed no longer than the officer reasonably believes is necessary (see the Use of Force Policy).

When it is determined that in an individual detained at the scene of a warrant service is not subject to the scope of the warrant and that no reasonable suspicion or safety concerns exists, the person should be released from the detention.

Officers should, when and to the extent reasonable, accommodate the privacy and personal needs of people who have been detained.

606.9 ACTIONS AFTER WARRANT SERVICE

The supervisor shall ensure that all affidavits, warrants, receipts and returns, regardless of any associated cases, are filed with the issuing judge or magistrate as soon as reasonably possible, but in any event no later than any date specified on the warrant.

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606.10 OUTSIDE AGENCIES AND CROSS-JURISDICTIONAL WARRANTS

The Watch Commander will ensure that cooperative efforts with other agencies in the service of warrants conform to existing mutual aid agreements or other memorandums of understanding and will work cooperatively to mitigate risks including, but not limited to, the following:

- Identity of team members
- Roles and responsibilities
- Familiarity with equipment
- Rules of engagement
- Asset forfeiture procedures

Any outside agency requesting assistance in the service of a warrant within this jurisdiction should be referred to the Watch Commander. The Watch Commander should review the warrant, including the warrant location, and should discuss the service with the appropriate supervisor from the other agency. The Watch Commander should ensure that members of the Berkeley Police Department are utilized appropriately. Any concerns regarding the requested use of Berkeley Police Department members should be brought to the attention of the Division Captain. The actual service of the warrant will remain the responsibility of the agency requesting assistance.

If officers intend to serve a warrant outside Berkeley Police Department jurisdiction, the case officer should provide reasonable advance notice to the applicable agency, request assistance as needed and work cooperatively on operational planning and the mitigation of risks detailed in this policy.

Officers will remain subject to the policies of the Berkeley Police Department when assisting outside agencies or serving a warrant outside Berkeley Police Department jurisdiction.

606.11 MEDIA ACCESS

No advance information regarding warrant service operations shall be released without the approval of the Chief of Police. Any media inquiries or press release after the fact shall be handled in accordance with the Media Relations Policy.

606.12 WARRANT DETAIL

The Warrant Detail shall be responsible for the service coordination of adult arrest warrants.

Planned service of arrest warrants should be prioritized by the type of warrant (original, bench, traffic) and severity of offense (felony, misdemeanor, infraction).

(a) Notwithstanding standard considerations, service of arrest warrants involving potentially dangerous offenders should be given priority.

606.13 THE AUTOMATED WARRANT SYSTEM (AWS)

Arrest warrants issued by the Alameda County Superior Court and assigned to the Berkeley Police Department shall be processed into AWS by the Support Services Bureau.

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Arrest warrants will not be entered into AWS unless they contain all of the following information:

1. Date and time received;
2. Date of issuance by the Court;
3. Nature of document (i.e., offense);
4. Source of document (i.e., original or bench warrant);
5. Court docket/warrant number;
6. Amount of bail; and,
7. Whether or not endorsed for night service.

606.14 JAIL AND COMMUNICATION CENTER RESPONSIBILITIES

The Communication Center shall be responsible for warrant confirmation liaison with, and communication of teletype abstracts to, outside agencies serving local arrest warrants.

Jail staff shall be responsible for the update of computer records (i.e., AWS, CLETS) regarding the service of arrest warrants and related custodial status of the subject person who is booked into the Jail.

Jail and Communication Center personnel shall forward all records that relate to the service of arrest warrants to the Warrant Detail.

606.15 DUE DILIGENCE

The Warrant Detail shall have administrative due diligence responsibility regarding the service of adult arrest warrants assigned to, or requested of, this department.

(a) When the subject of a local arrest warrant lives in a jurisdiction other than Berkeley, the Warrant Detail may communicate the warrant information to and request service assistance from the involved outside agency.

(b) When notified of warrant service activity, the Warrant Detail shall update AWS or, if it's an outside agency warrant, communicate the service activity to the responsible agency.

(c) As necessary, the Warrant Detail shall assist the Youth Services Detail in managing administrative due diligence activity regarding the service of juvenile arrest warrants.

606.16 COURTESY NOTICE

The Warrant Detail shall send a courtesy notice regarding the issuance of an arrest warrant assigned for service by this department to the address indicated on the warrant. The Warrant Detail should research for a current or accurate address for the subject of an arrest warrant.

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606.17 TRAINING

The Personnel and Training Sergeant should ensure officers receive periodic training on this policy and associated topics, such as legal issues, warrant preparation, warrant service and reporting requirements.

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Operations Planning and Deconfliction

607.1 PURPOSE AND SCOPE

This policy provides guidelines for planning, deconfliction and execution of high-risk operations.

Additional guidance on planning and serving high-risk warrants is provided in the Warrant Service Policy.

607.1.1 DEFINITIONS

Definitions related to this policy include:

High-risk operations - Operations, including service of search and arrest warrants and sting operations, that are likely to present higher risks than are commonly faced by officers on a daily basis, including suspected fortified locations, reasonable risk of violence or confrontation with multiple persons, or reason to suspect that persons anticipate the operation.

Case officer - The officer in charge of the operation's intelligence, planning and execution.

607.2 POLICY

It is the policy of the Berkeley Police Department to properly plan and carry out high-risk operations, including participation in a regional deconfliction system, in order to provide coordination, enhance the safety of members and the public, decrease the risk of compromising investigations and prevent duplicating efforts.

607.3 RISK ASSESSMENT

607.3.1 RISK ASSESSMENT FORM PREPARATION

Officers assigned as operational leads for any operation that may qualify as a high-risk operation shall complete a risk assessment form.

When preparing the form, the officer should query all relevant and reasonably available intelligence resources for information about the subject of investigation, others who may be present and the involved location. These sources may include regional intelligence and criminal justice databases, target deconfliction systems, firearm records, commercial databases and property records. Where appropriate, the officer should also submit information to these resources.

The officer should gather available information that includes, but is not limited to:

(a) Photographs, including aerial photographs, if available, of the involved location, neighboring yards and obstacles.

(b) Maps of the location.

(c) Diagrams of any property and the interior of any buildings that are involved.

(d) Historical information about the subject of investigation (e.g., history of weapon possession or use, known mental illness, known drug use, threats against police, gang affiliation, criminal history).

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(e) Historical information about others who may be present at the location (e.g., other criminals, innocent third parties, dependent adults, children, animals).

(f) Obstacles associated with the location (e.g., fortification, booby traps, reinforced doors/windows, surveillance measures, number and type of buildings, geographic and perimeter barriers, the number and types of weapons likely to be present, information that suggests the presence of explosives, chemicals or other hazardous materials, the potential for multiple dwellings or living spaces, availability of keys/door combinations).

(g) Other environmental factors (e.g., nearby venues such as schools and day care centers, proximity of adjacent homes or other occupied buildings, anticipated pedestrian and vehicle traffic at the time of service).

(h) Other available options that may minimize the risk to officers and others (e.g., making an off-site arrest or detention of the subject of investigation).

607.3.1 RISK ASSESSMENT REVIEW

The case officer will present the risk assessment form and other relevant documents (such as copies of search warrants and affidavits and arrest warrants) to their supervisor.

The supervisor and case officer shall confer and determine the level of risk. Supervisors should take reasonable actions if there is a change in circumstances that elevates the risks associated with the operation.

607.3.3 HIGH-RISK OPERATIONS

If the case officer, after consultation with the involved supervisor, determines that the operation is high risk, he/she should contact the Division Captain to arrange a consultation with the Special Response Team (SRT) commander. Together, they should:

(a) Determine what resources will be needed at the location, and contact and/or place on standby any of the following appropriate and available resources:

  (a) The Special Response Team (SRT)_

  (b) Additional personnel

  (c) Outside agency assistance

  (d) Special equipment

  (e) Medical personnel

  (f) Persons trained in negotiation

  (g) Additional surveillance

  (h) Canines

  (i) Property and Evidence Unit or analytical personnel to assist with cataloguing seizures

  (j) Forensic specialists

  (k) Specialized mapping for larger or complex locations

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(b) Contact the appropriate department members or other agencies as warranted to begin preparation.

(c) Ensure that all legal documents such as search warrants are complete and have any modifications reasonably necessary to support the operation.

(d) Coordinate the actual operation.

607.4 DECONFLICTION

Deconfliction systems are designed to identify persons and locations associated with investigations or law enforcement operations and alert participating agencies when others are planning or conducting operations in close proximity or time or are investigating the same individuals, groups or locations.

The case officer should consider entering the subject of investigation and operations information into an applicable deconfliction system to determine if there is reported conflicting activity.

If any conflict is discovered, the supervisor will contact the involved jurisdiction and resolve the potential conflict before proceeding.

607.5 OPERATIONS PLAN

The case officer should ensure that a written operations plan is developed for the operation.

The plan should address such issues as:

(a) Operation goals, objectives and strategies.

(b) Operation location and people:

1. The subject of investigation (e.g., history of weapon possession/use, known mental illness issues, known drug use, threats against police, gang affiliation, criminal history)

2. The location (e.g., fortification, booby traps, reinforced doors/windows, surveillance cameras and/or lookouts, number/type of buildings, geographic and perimeter barriers, the number and types of weapons likely to be present, information that suggests the presence of explosives, chemicals or other hazardous materials, the potential for multiple dwellings or living spaces, availability of keys/door combinations), including aerial photos, if available, and maps of neighboring yards and obstacles, diagrams and other visual aids

3. Other environmental factors (e.g., nearby venues such as schools and day care centers, proximity of adjacent homes or other occupied buildings, anticipated pedestrian and vehicle traffic at the time of service)

4. Identification of other people who may be present in or around the operation, such as other criminal suspects, innocent third parties and children

(c) Information from the risk assessment form by attaching a completed copy in the operational plan.

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1. The volume or complexity of the information may indicate that the plan includes a synopsis of the information contained on the risk assessment form to ensure clarity and highlighting of critical information.

(d) Identification of all communications channels and call-signs.

(e) Use of force issues.

(f) Contingencies for handling medical emergencies (e.g., services available at the location, closest hospital, closest trauma center).

(g) Plans for detaining people who are not under arrest.

(h) Contingencies for handling children, dependent adults, animals and other people who might be at the location in accordance with the Child Abuse, Adult Abuse, Child and Dependent Adult Safety and Animal Control policies.

(i) Communications plan

607.5.1 OPERATIONS PLAN RETENTION

Since the operations plan contains intelligence information and descriptions of law enforcement tactics, it shall not be filed with the report. The operations plan shall be stored separately and retained in accordance with the established records retention schedule.

607.6 OPERATIONS BRIEFING

A briefing should be held prior to the commencement of any high-risk operation to allow all participants to understand the operation, see and identify each other, identify roles and responsibilities and ask questions or seek clarification as needed.

(a) The briefing should include a verbal review of plan elements, using visual aids, to enhance the participants' understanding of the operations plan.

(b) All participants should be provided a copy of the operations plan.

(c) The case officer shall ensure that all participants are visually identifiable as law enforcement officers.

1. Exceptions may be made by the case officer for officers who are conducting surveillance or working under cover. However, those members exempt from visual identification should be able to transition to a visible law enforcement indicator at the time of enforcement actions, such as entries or arrests, if necessary.

(d) The briefing should include details of the communications plan.

1. It is the responsibility of the case officer to ensure that the Communications Center is notified of the time and location of the operation, and to provide a copy of the operation plan prior to officers arriving at the location.

2. If the radio channel needs to be monitored by the Communications Center, the dispatcher assigned to monitor the operation should attend the briefing, if practicable, but at a minimum should receive a copy of the operation plan.

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3. The briefing should include a communications check to ensure that all participants are able to communicate with the available equipment on the designated radio channel.

607.7 SRT PARTICIPATION

If the Watch Commander and SRT Commander determine that SRT participation is appropriate and receive approval from the Chief of Police, the case officer and an SRT supervisor shall work together to develop a written plan. The SRT supervisor shall assume operational control until all persons at the scene are appropriately detained and it is safe to begin a search. When this occurs, the SRT supervisor shall transfer control of the scene to the handling supervisor. This transfer should be communicated to the officers present.

607.8 MEDIA ACCESS

No advance information regarding planned operations shall be released without the approval of the Chief of Police. Any media inquiries or press release after the fact shall be handled in accordance with the Media Relations Policy.

607.9 OPERATIONS DEBRIEFING

High-risk operations should be debriefed as soon as reasonably practicable. The debriefing should include as many participants as possible. This debrief may be separate from any SRT debriefing.

607.10 TRAINING

The Personnel and Training Sergeant should ensure officers and SRT members who participate in operations subject to this policy should receive periodic training including, but not limited to, topics such as legal issues, deconfliction practices, operations planning concepts and reporting requirements.

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Detective Bureau

608.1 PURPOSE

The purpose of this policy is to establish the investigative responsibilities of the Detective Bureau.

608.2 POLICY

It is the policy of the Berkeley Police Department that the Detective Bureau is responsible for follow#up investigations, with the exception of cases that are the responsibility of the Patrol Bureau.

608.3 STRUCTURE

The Detective Bureau is administered by a Lieutenant who is directly responsible to the Captain of the Investigations Division. The Detective Bureau is composed of the following Units/Details

(a) Homicide Detail
    1. One Sergeant
    2. Two Detectives

(b) Robbery Detail
    1. One Sergeant
    2. Two Detectives

(c) Special Victims Unit
    1. One Sergeant
    2. Two Sex Crimes Detectives
    3. One Domestic Violence Detective

(d) Youth Services Detail
    1. One Sergeant
    2. Three Detectives
    3. One School Resource Officer

(e) Property Crimes Detail
    1. One Sergeant
    2. Two Burglary Detectives
    3. Two Fraud Detectives
    4. One Auto Burglary/Stolen Auto Theft Detective

(f) Crime Analysis Unit
    1. One Detective
    2. One Crime Analyst

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The sergeant in charge of each unit or detail is a working investigator. In addition to the regularly assigned detectives, patrol officers can be assigned to the Detective Bureau to assist in investigations, as needed.

608.4 INVESTIGATION RESPONSIBILITIES

Each unit/detail/officer is responsible for the specific types of investigations listed below. An "*" indicates a detective sergeant shall be notified at the start of the initial investigation whether during on or off duty hours. If unable to locate a detective sergeant, the Detective Bureau Lieutenant shall be notified.

608.4.1 HOMICIDE DETAIL

(a) Homicides*

(b) Officer involved shootings*

(c) Escapes and jail breaking*

(d) Dead body found, suspicious circumstances*

(e) Dead body found, during fire/arson investigation*

(f) Death of a child due to actual or suspected child abuse* (YSD will assist on the investigation but the Homicide Detail will be the primary investigative unit)

(g) Dead body found, suicide or attempted suicide

(h) Dead body found, medical/natural causes

(i) Adult missing persons (after second follow#up by assigned officer)

(j) Felony assaults and brandishing cases

(k) Disturbing the peace (except those involving domestic disputes)

(l) Disturbing phone calls (involving threat of injury or death)

(m) Physical elder abuse

(n) Hate Crimes/Incidents

608.4.2 ROBBERY DETAIL

(a) Robbery (only notify the sergeant if the robbery is linked to a spree or there is an in-custody arrest)

(b) Bank robbery*

(c) Kidnapping (no sexual involvement)*

(d) Carjacking*

(e) Grand theft via gun

(f) Bribery

(g) Extortion

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(h) Gun sales

(i) Till tap

(j) Weapons possession (concealed, illegal or suspicious)

608.4.3 SEX CRIMES DETAIL

(a) Sexual abuse in cases wherein the victim is 14 years of age or older (cases with younger victims will be investigated by the Youth Services Detail)

(b) Kidnapping (with sexual involvement)*

(c) Stranger rape*

(d) Rape

(e) Sexual battery

(f) Indecent exposure

(g) Prowler/peeper (with sexual elements)

(h) Disturbing phone calls (except those involving bomb threats or threats of physical injury)

(i) Megan’s law notifications

(j) Sex offenders

608.4.4 DOMESTIC VIOLENCE DETECTIVE

(a) Misdemeanor and felony domestic violence

(b) Violation of DV related restraining orders

608.4.5 YOUTH SERVICES DETAIL

(a) Sexual abuse in cases wherein the victim is under 14 years old (14 years of age or older will be investigated by the Sex Crimes Detail)

(b) Child abuse (emotional, sexual, physical etc.)

(c) Child endangerment or abandonment

(d) Familial abduction

608.4.6 SCHOOL RESOURCE OFFICER

(a) Crimes and non-criminal incidents occurring on school campus (see Youth Services policy)

608.4.7 PROPERTY CRIMES DETAIL

(a) Burglary

(b) Bombings, bomb threats and explosions*

(c) Arson (follow#up on in-custody cases and damage exceeding $950)

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(d) Purse/Wallet thefts (follow-up on in custody cases or loss exceeding $950)

(e) Stolen property (follow#up on in-custody cases)

(f) Prowlers (with no sexual elements)

(g) Thefts (follow#up on in-custody cases or loss exceeding $950)

(h) Pawn shop buy/sell operations (meet State requirement to license establishments)

608.4.8 FRAUD DETAIL

(a) Fraud

(b) Forgery with viable leads

(c) Embezzlement with viable leads

(d) Counterfeit checks with viable leads

(e) Credit card violation with viable leads

(f) Scams via phone calls, internet ads, etc.

(g) Financial elder abuse

(h) Counterfeiting (liaison to federal investigators only)

608.4.9 AUTO THEFT DETECTIVE

(a) Vehicle theft and recovery (including joyriding)

(b) Malicious damage to a vehicle (coordination of series only)

(c) Auto burglaries (coordination of series only)

(d) Thefts from auto (coordination of series only)

608.4.10 ADMINISTRATIVE NARCOTICS OFFICER

(a) Loan sharking

(b) Labor racketeering

(c) Corruption/bribery

(d) Illegal sale and distribution of liquor, tobacco, and controlled substances

(e) Illegal gambling operations

608.5 FOLLOW UPS

Patrol shall have primary responsibility for follow up investigation on the following cases:

(a) Auto burglary, theft from auto cases, and malicious damage to vehicles

(b) Misdemeanor assault/battery cases (not sex related)

(c) Misdemeanor weapon brandishing cases

(d) Felony and misdemeanor hit and run cases

(e) Initial and secondary follow#up on adult missing person cases

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(f) Initial follow#up on juvenile missing/runaway cases

608.6 PRIMARY RESPONSIBILITY

Officers shall respond whenever prompt action is necessary and, if needed, conduct a preliminary investigation, but the Detective Bureau is primarily responsible for the investigation of the following cases:

(a) Homicide

Under most circumstances, the initial investigation at the scene and the preparation of the crime report shall be solely a Detective Bureau assignment. Once responding officers determine a homicide has occurred (or the victim is likely to expire) and no medical aid is needed for others, the scene should be "FROZEN" and on#call Homicide personnel shall be notified.

(b) Bank robbery

The initial investigation at the scene and the preparation of the crime report shall be solely a Detective Bureau assignment. However, this shall not relieve the first officer arriving on the scene of the responsibility for obtaining immediately and transmitting to the Communications Center information essential to promptly apprehend the offender. During non-business hours, attempts should be made to contact Robbery Detail personnel at home. If Robbery Detail personnel are unable to respond, the Operations Division will complete the investigation.

608.7 CASE MANAGEMENT

Copies of investigation reports will be electronically routed to the Detective Bureau and, upon receipt by the detective sergeants, shall be distributed to the appropriately for follow-up and disposition.

(a) Cases involving serious crimes against persons should be assigned for follow#up contact and investigation.

(b) Cases involving crimes against property that have no evident productive leads (usually assigned a "suspend" status by the Operations Division) will remain in the "suspended status" following review and will be filed.

(c) Cases involving crimes against property that have potentially productive leads should be assigned for investigation.

(d) Cases received in which deficiencies are noted shall be returned for correction to the sergeant(s) having supervisory responsibility over the officer.

608.8 OUTSIDE AGENCIES

Requests from outside agencies for the investigations of local residents in connection with a felony shall be assigned to the Detail who would be assigned to such an offense if committed in Berkeley

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Stolen Vehicle Investigations

609.1 PURPOSE AND SCOPE

The purpose of this policy is to explain procedures for completing stolen vehicle investigations.

609.2 POLICY

This department is governed in the acceptance and investigation of stolen vehicle reports by Sections 10500, 10851 and 10855 of the California Vehicle Code and the applicable section of 487 of the California Penal Code.

609.3 VEHICLE DEFINITION

As defined by Section 670 of the California Vehicle Code, a "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

609.4 INITIAL PROCEDURES - COMMUNICATION CENTER

Communications Center personnel shall ensure that all information necessary to the investigation of stolen vehicle reports is appropriately entered into the Computer Aided Dispatching (CAD) database. Communications Center personnel shall check the tow log within the time period that the alleged offense occurred, to ensure that a recently towed vehicle does not become reported as stolen.

609.5 REPORTING PARTIES AND VICTIMS

The victim of the auto theft is always the registered owner. However, another person may be a secondary victim of theft if they were borrowing the car and left their own personal property in the car when it was stolen.

For example: A car is owned by “X” and is then borrowed by “Y”. “Y” parks the car, leaves her purse behind, and the vehicle containing the purse is stolen. The victim of the auto theft is “X” and the victim of the property theft is “Y”. In this circumstance, the officer should add “Y’s” contact information in the notes section of the Stolen Vehicle System (SVS) entry, so when the vehicle is recovered, “Y” can be contacted to come get her purse (if it’s still there).

609.6 CONTACTING THE VICTIM AND/OR REPORTING PARTY

609.6.1 CONFIRM IDENTIFICATION

In order to confirm the identity of the reporting party and/or victim, the handling officer shall take stolen vehicle reports in-person. Any exceptions to an in-person report must be approved by the officer's supervisor and the reason(s) why the report was not taken in-person shall be documented in the report.

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(a) The assigned officer shall take steps to verify the identification of the reporting party, such as requesting driver's license information, especially in cases taken by telephone and/or reported by an individual other than the registered owner.

609.6.2 STATEMENTS

A written or BWC recorded statement is required when:

(a) Any aspect of the investigation is suspicious;

(b) If someone else is reporting the crime on behalf of the victim;

(c) An employee is reporting the crime on behalf of a business; and/or

(d) There is a known suspect or suspect seen.

609.6.3 CONTACT INFORMATION AND THE OWNER'S AGENT

Officers shall obtain and document as much contact information as possible from the victim and/or reporting party, including cell, home and work phone numbers and an email address. The Department's goal is to provide the victim a reasonable opportunity to recover their vehicle prior to it being towed.

Officers should also ascertain if the victim would like to pre-designate an "owner's agent" to pick up their car upon recovery if they are unavailable at the time of recovery and prior to the car being towed.

Officers should advise the victim that in order for their agent to obtain a Vehicle Release Authorization from BPD, they must have the following:

(a) A valid driver's license or valid temporary driver's license,

(b) A signed letter from the owner authorizing the release of the vehicle to the agent and

(c) A clear photocopy of the owner's license wherein the owner's signature matches the signed letter.

If the victim decides to designate an agent, the officer shall document the agent's contact information in the police report and in the "miscellaneous" field of the SVS entry form.

609.6.4 EXPLAINING THE VEHICLE RECOVERY PROCESS

The officer should explain what will happen in the event the car is found in the City of Berkeley. This explanation should include:

(a) The owner or the owner's agent will be contacted by Communications Center staff by telephone at the time the vehicle is located. They will have a short time frame in which they can retrieve their vehicle from the officer at the scene of the recovery.

(b) If the owner or the owner's agent do not respond to the scene of the recovery immediately, the car will be towed and stored for safekeeping. The owner or owner's agent will be responsible for all fees incurred by the car being towed and/or stored.

(c) If the owner's vehicle is towed and stored, a Vehicle Release Authorization will need to be obtained from the Department prior to going to the storage facility holding their vehicle. All outstanding fees and fines owed to the City of Berkeley must be paid prior

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to the issuance of a Vehicle Release Authorization. The City of Berkeley will waive Vehicle Release Authorization fees for stolen vehicles.

609.6.5 ENTERING THE VEHICLE INTO SVS

The assigned officer shall, without delay, notify the Communications Center of the stolen vehicle and provide all information necessary for the completion of the Stolen Vehicle System (SVS) entry form as soon as he/she is reasonably certain that the vehicle has been stolen.

Prior to submitting the report, the handling officer shall confirm that necessary SVS entries, cancellations, or clearances have been made. This shall include a verification of all information, including classification and accuracy of the license and VIN numbers. This should be documented in the report, i.e., “I later ran an SVS check and confirmed that the vehicle’s information was entered by Telecom”.

In addition to normal "Caution Codes" which may be used for SVS entries (e.g., "Hold for Prints," "Armed and Dangerous") there are forty-two character spaces are available in the "Miscellaneous" entry field. Additional information is extremely useful and should be included whenever possible.

609.6.6 MISPLACED AUTOS

If a local stolen auto is determined to have been misplaced and not stolen after having been entered in SVS, it shall be the responsibility of the recovering officer to notify the Communications Center of the vehicle's "misplaced" status. Upon such notification, Communications Center personnel shall cancel, rather than clear, the vehicle from SVS. If the initial report does not explain the change of status from "stolen" to "misplaced," the officer shall prepare a supplemental report which explains the change.

609.6.7 ATTEMPTED THEFT ONLY OR RECOVERY PRIOR TO SVS ENTRY

If a stolen vehicle is recovered prior to being entered in SVS, the assigned officer shall inform the Communications Center. Upon notification, Communications Center personnel shall enter the vehicle in SVS and immediately clear the entry so as to comply with the requirement that all stolen vehicles be reported to the Department of Justice for statistical purposes.

(a) If the vehicle is discovered to be "towed/stored" by another agency at the time the SVS entry is attempted, the assigned officer shall contact the agency, determine the circumstances leading to the recovery, and include that information in the initial report.

(b) Attempted vehicle thefts shall also be entered into SVS and immediately removed, in accordance with Department of Justice reporting requirements.

609.6.8 COMMUNICATIONS CENTER RESPONSIBILITY

Upon receipt of the stolen vehicle information, the Communications Center operator shall:

(a) Check the vehicle in SVS and, if no entry is found:

(b) Complete a vehicle or license entry/recovery form.

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(c) Enter the vehicle in SVS and, if requested add the owner's agent information in the miscellaneous field with the prefix "OA" (owner's agent) prior to inserting their contact information.

(d) Route copies of the SVS printout to the following:

1. Records Management for filing with the original case;
2. The Auto Theft Detail;
3. The Communications Center supervisor(s) shall review the SVS entry forms for accuracy and ensure that any errors are corrected.

609.7 LOCAL RECOVERY OF LOCALLY STOLEN VEHICLES

(a) Police Personnel:

1. It shall be the responsibility of the officer handling the recovery to request confirmation of the stolen status before taking any action and to ensure that the vehicle is properly cleared from SVS. The officer handling the recovery shall arrange for a latent fingerprint examination of the vehicle.
2. The officer handling the recovery of the stolen vehicle shall notify the Communications Center of the condition of the vehicle, number of suspects in custody (if any), whether license plates are missing, and the location of the recovery.

(b) Communications Center personnel:

1. It shall be the responsibility of Communication Center personnel to immediately notify the owner of the recovery of their vehicle. In the event Communications Center staff are unable to reach the victim prior to the recovered vehicle being towed, they shall also attempt to contact the designated owner's agent if one is listed in the "miscellaneous" section of the SVS entry.
2. Notification to the owner shall include
   i. The condition of the vehicle (if known)
   ii. The process for obtaining a Vehicle Release Authorization form, and
   iii. The fact that towing and storage fees are the responsibility of the registered owner.
3. In all cases, the method of notification and the name of the individual to whom notification was given shall be written on the "Hard Copy." If no answer is received or no message is left, attempts to contact the owner shall be continued during the shift, and, if necessary, forwarded to oncoming shifts to continue the effort to contact the owner.
4. In the event Communications Center personnel are unable to reach the owner of a recovered vehicle to make the necessary notification, an officer shall be assigned to make attempt contact with the owner or leave a note at their address if they reside in the City of Berkeley.

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5. Communications Center personnel shall clear the vehicle in SVS, remove the related local Stolen Auto form from the "HOT BOX," stamp the form as "CLEARED," initial the form and route it to the Auto Theft Detail with a copy of the SVS printout. Owner notification information shall be noted at the bottom of the form.
6. An additional copy of the SVS printout shall be routed to Records Management for attachment to the original case.
7. Communications Center personnel shall enter stolen/missing license plate information in SVS in cases where recovered vehicles are missing plates.

609.8 LOCAL RECOVERY OF OUTSIDE STOLEN VEHICLES

(a) Police Personnel:

1. It shall be the responsibility of the officer handling the recovery of an outside stolen vehicle to request confirmation of the stolen status before taking any action, and to arrange for towing of the vehicle and a latent fingerprint examination as previously noted.
2. The assigned officer shall notify the Communications Center of the recovered vehicle, providing the vehicle condition, towing service name, number of license plates, whether a suspect has been arrested, and the location of the recovery.
3. The assigned officer shall attempt to obtain a copy of the outside agency's original 10851 VC report and forward it to Records Management for attachment to the case report.

(b) Communications Center Personell:

1. Complete the Vehicle Locate form,
2. Send a locate notice to the outside agency and
3. Attach the locate transaction and the vehicle registration print-out to the locate form in the spaces provided. Communications Center personnel shall date and initial the form, making four copies to be routed as follows:
   - i. The original form to the Auto Theft Detail.
   - ii. One copy to Records Management for attachment to the original report.
   - iii. One copy to the officer handling the recovery.
   - iv. One copy to the Communications Center supervisor(s) for review to ensure that the vehicle has been cleared and the victim has been notified.

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609.9 OUTSIDE RECOVERY OF LOCALLY STOLEN VEHICLE

Upon receipt of a teletype from another agency advising of that agency's recovery of a vehicle stolen in Berkeley, the Communications Center shall:

(a) Ascertain that the vehicle has been properly cleared in SVS. If this has not been done, the same procedures outlined for the recovery of local stolen vehicles shall be followed.

(b) Remove the local stolen auto form from the "HOT BOX" and make all cancellations and notifications called for in the form.

1. Route the original copy to the Auto Theft Detail for attachment to the original report.
2. Route the duplicate copy to Records Management.
3. Route the triplicate copy to the assigned officer.
4. Route the fourth copy to the designated Communications Center supervisor(s) for final review.

(c) Notify the owner.

Vehicles stolen locally and recovered in other jurisdictions, are generally not examined for latent fingerprints by the recovering agency.

609.10 VICTIM RECOVERY OF STOLEN VEHICLE

609.10.1 STOLEN FROM BERKELEY

When a victim has recovered their locally stolen vehicle in an outside jurisdiction and has returned the vehicle to Berkeley without making a recovery reportto the agency with jurisdiction for the recovery location, an officer shall be assigned to handle the recovery report.

(a) The recovery investigation and SVS clearance shall be handled as a recovery of a local stolen vehicle.

(b) The narrative shall contain information supplied by the victim regarding the time, location, circumstances of the recovery and vehicle condition.

The victim shall be requested to make the recovered vehicle available to the handling officer because he/she must verify the vehicle is the one reported stolen prior to completing the recovery. Such reports may not be taken over the phone.

609.10.2 STOLEN OUTSIDE OF BERKELEY

When a victim has recovered their stolen vehicle which was previously reported as stolen to an outside agency, and returns the vehicle to Berkeley without making a recovery report to the agency with jurisdiction for the recovery location, an officer shall be assigned to handle the recovery report.

(a) The recovery investigation and SVS clearance shall be handled as a local recovery of an outside stolen vehicle.

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(b) The narrative shall contain information supplied by the victim regarding the time, location, circumstances of the recovery and vehicle condition.

(c) If requested, a copy of the report shall be forwarded to the agency with jurisdiction for the recovery location by the Auto Theft Detail.

609.11 RECOVERED VEHICLES - GENERALLY

When a stolen vehicle is found, the investigating officer shall request the SVS entry be confirmed and complete the Auto Theft form. The report shall provide details of the following aspects of the investigation:

(a) A detailed description of the method of starting/operating the vehicle ("hot-wire," ignition punch, etc.).

(b) A detailed description of damage, stripping of parts, or other vehicle conditions.

(c) The vehicle shall be searched for items of evidentiary value, and any evidence seized handled and held in the manner set forth in Property and Evidence policy.

609.12 EMBEZZLED VEHICLES

Section 10855 of the Vehicle Code governs those situations "whenever any person who has leased or rented a vehicle wilfully and intentionally fails to return the vehicle to its owner within five days after the lease or rental agreement has expired, that person shall be presumed to have embezzled the vehicle."

The assigned officer, prior to taking a report of an embezzled auto, shall confirm the victim vehicle was leased or rented, not merely "loaned." They shall also confirm that the victim or victim business has taken the following steps:

(a) Checked with the renter by phone to see why the vehicle has not been returned.

(b) Checked the lot and other company lots for the overdue vehicle.

(c) Sent a registered or certified letter to the residence of the renter demanding the return of the vehicle following the expiration of the lease or rental agreement.

1. The assigned officers shall obtain copies of the registered/certified letter.

(d) Made contact at the address of the renter, if local, and ascertained if the vehicle or renter is present.

(e) Confirmed with other employees that an extension was not given via phone or other means.

If the victim confirms that the steps above have been taken and the five day time limit has passed, then a report shall be taken.

609.13 VEHICLES RENTED FRAUDULENTLY

Whenever it has been determined that a person has rented a vehicle fraudulently (i.e., via stolen credit card), the vehicle may be reported stolen immediately because in such circumstances the five day waiting period does not apply. The vehicle should be entered into SVS as "STOLEN."

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(a) "Embezzled Vehicle" shall be entered into the "MIS" section of the form by designated Communications Center personnel and the Auto Theft Detail shall be notified.

(b) Provisions of this section do not apply to vehicles loaned between private parties that are not returned because these vehicles are not rented or leased.

As part of a completed preliminary investigation, the assigned officer shall be responsible to ensure copies of the rental agreement/contract, registered/certified letter and service card, along with any other pertinent documentation and information, are routed to Records Management for attachment to the case report.

609.14 SUSPICIOUS CIRCUMSTANCES / NON-RETURN OF "LOANED" VEHICLE

There has been a significant increase in the number of cases made to law enforcement agencies involving citizens attempting to report as "stolen" vehicles they have voluntarily released or "loaned" to another when that individual fails to return it by a specified date or time. Such "loaned" vehicles include those "rented" between individuals, oftentimes for money or drugs.

According to the Alameda County District Attorney's Office, incidents involving vehicles which are voluntarily released or "loaned" to another generally do not fall within the provisions of Section 10851 VC since this statute defines a mandatory element of this offense to be the actual taking without the consent of the owner.

These cases are often difficult to classify. Depending upon the circumstances, they could fall within the provisions of a variety of criminal and/or civil statutes.

In addition to basic stolen vehicle investigatory steps, the assigned officer shall

(a) Obtain identifying information and/or a description of the person to whom the vehicle was loaned.

(b) Determine the date, time and location where the "loan" or "release" of vehicle took place.

(c) Determine if there was a specific time limit agreed upon for the "loan".

(d) Define the relationship between victim and suspect (i.e., relative, acquaintance, stranger)

609.14.1 CLASSIFICATION AND ENTRY INTO SVS

The assigned officer shall classify the investigation as a "suspicious circumstance" and forward the case to the Auto Theft Detail for follow up.

(a) An SVS entry shall not be made until a minimum of 14 calendar days has expired from the specific date the vehicle was due to be returned and the District Attorney has reviewed the case.

1. The District Attorney, in reviewing the case, will determine the appropriate criminal classification, if any, warranted by the totality of the circumstances. This information will be documented on the investigative report closing or suspending the case. In those cases where the District Attorney's Office does not believe the matter to be criminal, no SVS entry shall be made.

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Stolen Vehicle Investigations

The Auto Theft Detail shall maintain records of auto thefts and embezzled vehicles as required by the Department of Justice Information System (CJIS) Manual.

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Conduct of Licensed Alcohol Establishments

610.1 PURPOSE AND SCOPE

The purpose of this policy is to establish the policy and procedure covering the conduct of leased liquor establishments.

610.2 POLICY

It shall be the policy of the Department to monitor the issuance of liquor licenses and forward investigative reports of violations and/or incidents which occur in alcohol licensed establishments to the Department of Alcoholic Beverage Control (ABC) for follow up.

610.3 DEFINITIONS

For the purpose of this policy, an underage minor refers to an individual who is under the age of 21. An alcohol-licensed establishment is any business that is authorized by ABC to sell alcoholic beverages. ABC has the exclusive power, in accordance with laws enacted, to license and regulate the manufacture, importation and sale of alcoholic beverages in this state. It also has the power for good cause to deny, suspend or revoke any specific alcoholic beverage license.

610.4 PROCEDURES

Records Management will be responsible for routing copies of all reports involving liquor license violations to ABC.

Officers shall complete a written report concerning any of the following situations involving an alcohol-licensed establishment:

(a) His/her witnessing the sale or service of an alcoholic beverage to any obviously intoxicated person.

(b) His/her witnessing, or the obtaining of information through investigation, observations regarding the sale or service of an alcoholic beverage to a person under the age of 21.

(c) The arrest of any person for any crime inside or adjacent to the establishment.

(d) The knowledge of a legally actionable or undesirable circumstance or condition inside or adjacent to the establishment provided there is a nexus between the circumstance and the establishment.

If the incident involved (a) or (b) above, the officer shall take the following action:

1. Seize the alcoholic beverage sold or served and, if it can be identified, seize the container from which it was poured.
2. Identify the person who furnished the alcoholic beverage. If the incident was witnessed by the officer, a citation should be issued to this individual for violations of the applicable Business and Professions Code (B&P).
3. In the case of the service or sale of an alcoholic beverage to someone under the age of 21, identify the individual who was furnished the alcoholic beverage. Where

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appropriate, a citation should be issued to the underage minor for possession of an alcoholic beverage (B&P §25662) or consumption of that beverage (B&P § 25658(b)).

4. During an ABC operation, in order to ensure that the case can be successfully prosecuted, the officer will take the underage minor back to the location where he or she purchased the alcoholic beverage for a visual confrontation between the seller and the underage minor to show the seller the person to whom he or she sold the alcoholic beverage. The officer should photograph the underage minor, the employee who furnished the alcohol, and the alcoholic beverage together and forward it to ABC with the police report.
5. In the situation where the owner of an alcohol licensed establishment claims that the individual under 21 years of age utilized false identification, the officer should make the appropriate search of the individual to ascertain if the underage minor is in possession of false identification. If this identification is located, it should be seized and booked into evidence under the case. If the identification is fraudulent, a citation should be issued to the individual for a violation B&P §25661.

If a case number has been assigned as a direct result of an incident, the report should be prepared under the same case number. If no case number has been assigned, a case shall be originated covering all relevant circumstances.

Records Management shall forward all police reports involving an alcohol-licensed establishment to ABC's Oakland office. The reports should also be forwarded to the City of Berkeley Code Investigations Unit, Planning Department and the Office of Economic Development.

The question of subsequent action, if any, to be taken against the alcohol licensee or his or her employee, should be resolved through contact by a member of the Community Services Bureau with the appropriate licensing agencies and the local office of the District Attorney.

610.5 RETAIL LIQUOR LICENSES

The Zoning Adjustments Board (ZAB) will handle all requests for retail alcohol licenses except for one-day liquor licenses. Upon receipt of an application for a liquor license, the ZAB will notify the Chief of Police for appropriate comments. The Community Services Bureau will coordinate the processing of the application and investigation to determine if there are concerns that the Police Department should address.

CSB personnel will notify the respective supervisors of the Operations Division for input on the proposed new alcohol establishment. CSB will prepare a response for the Chief’s signature to be submitted for review by the Zoning Adjustment Board.

610.6 ONE-DAY LIQUOR LICENSES

610.6.1 INITIAL RECEIPT

Upon receipt of a request for a one-day liquor license, the Detective Bureau Lieutenant or designee receiving it will explain to the applicant that:

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(a) ABC will issue the license based on recommendations from the Berkeley Police Department.

(b) The Detective Bureau Lieutenant will conduct background and file checks on the organization, person(s) in charge and proposed location of the event.

(c) Successful applicants will be charged a $25 administrative fee, which is in addition to any fees charged by ABC.

(d) Successful applicants will be provided with a letter of recommendation to the ABC to issue a one-day license.

(e) Applications submitted for one-day liquor licenses take approximately ten business days to issue the letter of recommendation.

Personnel working at the Front Counter of Records Management will have forms available so that any employee of the Berkeley Police Department can record all of the required information and forward it to the Detective Bureau Lieutenant without any unnecessary delay.

610.6.2 DETECTIVE BUREAU LIEUTENANT RESPONSIBILITIES

After explaining the information listed above to the applicant, the Detective Bureau Lieutenant will do the following:

(a) Conduct file checks on the person(s), organization(s) and proposed location(s) to determine suitability for issuance of a one-day permit.

(b) Notify the respective supervisors of the Community Services Bureau and the Operations Division to allow for input from all of relevant sources.

(c) Make the final decision on the approval of the application, and if approved, forward the application to the Operations Division Assistant.

610.6.3 FINAL APPROVAL

Upon receipt of the approval letter, the Operations Division Assistant will obtain a signature from the Chief, place the letter in the Will Call box in Records Management and route a copy to the Detective Bureau Lieutenant.

When the applicant comes in for the letter, Records Management Front Counter personnel will provide the letter to the applicant and collect the administrative fee in accordance with this procedure. A copy of the receipt will be forwarded to the Detective Bureau Lieutenant.

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Chapter 7 - Equipment

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Department Owned and Personal Property

700.1 PURPOSE AND SCOPE

Department employees are expected to properly care for department property assigned or entrusted to them. Employees may also suffer occasional loss or damage to personal or department property while performing their assigned duty. Certain procedures are required depending on the loss and ownership of the item.

700.2 CARE OF DEPARTMENTAL PROPERTY

Employees shall be responsible for the safekeeping, serviceable condition, proper care, use and replacement of department property assigned or entrusted to them. An employee's intentional or negligent abuse or misuse of department property may lead to discipline including, but not limited to the cost of repair or replacement.

(a) Employees shall promptly report through their chain of command, any loss, damage to, or unserviceable condition of any department issued property or equipment assigned for their use. Photographs of the damage/condition, if applicable, should be taken and the item kept for inspection, unless directed otherwise by a supervisor.

(b) The use of damaged or unserviceable department property should be discontinued as soon as practical and replaced with comparable Department property as soon as available and following notice to a supervisor.

(c) Except when otherwise directed by competent authority or required by exigent circumstances, department property shall only be used by those to whom it was assigned. Use should be limited to official purposes and in the capacity for which it was designed.

(d) Department property shall not be thrown away, sold, traded, donated, destroyed, or otherwise disposed of without proper authority.

(e) In the event that any Department property becomes damaged or unserviceable, no employee shall attempt to repair the property without prior approval of a supervisor.

700.3 FILING CLAIMS FOR PERSONAL PROPERTY

Claims for reimbursement for damage or loss of personal property must be made in a written report and submitted to the employee's immediate supervisor.

The supervisor shall direct a memo to the Uniform Committee, via the Professional Standards Bureau's Audit and Inspection Sergeant, which shall include photographs (if taken) along with the results of his/her investigation and whether the employee followed proper procedures. The supervisor's report shall address whether reasonable care was taken to prevent the loss or damage.

Upon review by the Uniform Committee and a finding that no misconduct or negligence was involved, repair or replacement may be approved by the Chief of Police who will then forward the claim to the Administrative and Fiscal Services Manager.

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The Department will not replace or repair luxurious or overly expensive items (jewelry, exotic equipment, etc.) that are not reasonably required as a part of work.

700.3.1 REPORTING REQUIREMENT
A verbal report shall be made to the employee's immediate supervisor as soon as circumstances permit.

A written report shall be submitted before the employee goes off duty or within the time frame directed by the supervisor to whom the verbal report is made.

700.4 LOSS OR DAMAGE OF PROPERTY OF ANOTHER

Officers and other employees intentionally or unintentionally may cause damage to the real or personal property of another while performing their duties. Any employee who damages or causes to be damaged any real or personal property of another while performing any law enforcement functions, regardless of jurisdiction, shall report it as provided below.

(a) A verbal report shall be made to the employee's immediate supervisor as soon as circumstances permit.

(b) A written report shall be submitted before the employee goes off duty or within the time frame directed by the supervisor to whom the verbal report is made.

(c) If possible, photographs should be taken.

700.4.1 DAMAGE BY PERSON OF ANOTHER AGENCY
If employees of another jurisdiction cause damage to real or personal property belonging to the City, it shall be the responsibility of the employee present or the employee responsible for the property to make a verbal report to his/her immediate supervisor as soon as circumstances permit. The employee shall submit a written report before going off duty or as otherwise directed by the supervisor.

These written reports, accompanied by the supervisor's written report and any available photographs, shall promptly be forwarded to the appropriate Division Captain.

700.5 RESTITUTION

Whenever possible, restitution should be sought through the Courts if the person responsible is arrested and prosecuted, or by direct payment to the employee if the person is willing or able to accept liability.

(a) The employee who suffered the loss/damage shall include a statement in the criminal investigation report regarding the damage and a request for restitution to the District Attorney from the responsible. Include a reference to connecting police case(s), if any.

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Personal Communication Devices

701.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued or funded by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

This policy generically refers to all such devices as Personal Communication Devices (PCDs) but is intended to include all mobile telephones, personal digital assistants (PDAs), wireless capable tablets and similar wireless two-way communications and/or portable Internet access devices. PCD use includes, but is not limited to, placing and receiving calls, text messaging, blogging and microblogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

701.2 POLICY

The Berkeley Police Department allows members to utilize department-issued or funded PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. Any department-issued PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy.

The inappropriate use of a PCD while on-duty may impair officer safety. Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or after duty hours for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under applicable public records laws.

Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory personnel.

701.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to any communication accessed, transmitted, received or reviewed on any PCD issued or funded by the Department/Office and shall have no expectation of privacy in their location should the device be equipped with location detection capabilities (see the Information Technology Use Policy for additional guidance).

701.3.1 CALIFORNIA ELECTRONIC COMMUNICATIONS PRIVACY ACT (CALECPA)

No member is authorized to be the sole possessor of a department-issued PCD. Department-issued PCDs can be retrieved, reassigned, accessed or used by any member as directed by a supervisor without notice. Member use of a department-issued PCD and use of a personal PCD at work or for work-related business constitutes specific consent for access for department purposes. Prior to conducting an administrative search of a PCD, supervisors should consult legal counsel to ensure access is consistent with CalECPA (Penal Code § 1546; Penal Code § 1546.1).

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701.4 DEPARTMENT-ISSUED PCD

Depending on a member's assignment and the needs of the position, the Department may, at its discretion, issue or fund a PCD. Department-issued or funded PCDs are provided as a convenience to facilitate on-duty performance only. Such devices and the associated telephone number shall remain the sole property of the Department and may be subject to inspection or monitoring (including all related records and content) at any time without notice and without cause.

701.5 PERSONALLY OWNED PCD

Members may carry a personally owned PCD while on-duty, subject to the following conditions and limitations:

(a) Permission to carry a personally owned PCD may be revoked if it is used contrary to provisions of this policy.

(b) The Department accepts no responsibility for loss of or damage to a personally owned PCD.

(c) The PCD and any associated services shall be purchased, used and maintained solely at the member's expense.

(d) The device shall not be utilized to record or disclose any business-related information, including photographs, video or the recording or transmittal of any information or material obtained or made accessible as a result of employment with the Department, without the express authorization of the Chief of Police or the authorized designee.

(e) All work-related documents, emails, photographs, recordings or other public records created or received on a member's personally owned PCD should be transferred to the Berkeley Police Department and deleted from the member's PCD as soon as reasonably practicable but no later than the end of the member's shift.

Except with prior express authorization from their supervisor, members are not obligated or required to carry, access, monitor or respond to electronic communications using a personally owned PCD while off-duty. If a member is in an authorized status that allows for appropriate compensation consistent with policy or existing memorandum of understanding or collective bargaining agreements, or if the member has prior express authorization from his/her supervisor, the member may engage in business-related communications. Should members engage in such approved off-duty communications or work, members entitled to compensation shall promptly document the time worked and communicate the information to their supervisors to ensure appropriate compensation. Members who independently document off-duty department-related business activities in any manner shall promptly provide the Department with a copy of such records to ensure accurate record keeping.

701.6 USE OF PCD

The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:

(a) Members may use a PCD to communicate with other personnel in situations where the use of radio communications is either impracticable or not feasible. PCDs should

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not be used as a substitute for, as a way to avoid, or in lieu of regular radio communications.

(b) Members are prohibited from taking pictures, audio or video recordings or making copies of any such picture or recording media unless it is directly related to official department business. Disclosure of any such information to any third party through any means, without the express authorization of the Chief of Police or the authorized designee, may result in discipline.

(c) Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

701.7 SUPERVISOR RESPONSIBILITIES

The responsibilities of supervisors include, but are not limited to:

(a) Ensuring that members under their command are provided appropriate training on the use of PCDs consistent with this policy.

(b) Monitoring, to the extent practicable, department-issued PCD use in the workplace and taking prompt corrective action if a member is observed or reported to be improperly using a department-issued PCD.

1. An investigation into improper conduct should be promptly initiated when circumstances warrant.
2. Before conducting any administrative search of a member's personally owned device, supervisors should consult with the Chief of Police or the authorized designee.

701.8 USE WHILE DRIVING

The use of a PCD while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Officers operating emergency vehicles should restrict the use of these devices to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to use the PCD.

Members who are operating department vehicles that are not authorized emergency vehicles shall not use a PCD while driving unless the device is specifically designed and configured to allow hands-free use. In an emergency, a wireless phone may be used to place an emergency call to the Department or other emergency services agency (Vehicle Code § 23123; Vehicle Code § 23123.5). Hands-free use should be restricted to business-related calls or calls of an urgent nature.

701.9 OFFICIAL USE

Members are reminded that PCDs are not secure devices and conversations may be intercepted or overheard. Caution should be exercised while utilizing PCDs to ensure that sensitive information is not inadvertently transmitted.

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Vehicle Maintenance

702.1 PURPOSE AND SCOPE

Employees are responsible for assisting in maintaining department vehicles so that they are properly equipped, properly maintained, properly refueled and present a clean appearance.

702.2 DEFECTIVE VEHICLES

When a department vehicle becomes inoperative or in need of a repair that affects the safety of the vehicle, that vehicle shall be removed from service for repair. Proper documentation shall be promptly completed by the employee who first becomes aware of the defective condition, describing the correction needed.

702.2.1 DAMAGE OR POOR PERFORMANCE

Vehicles that may have been damaged, or perform poorly should be removed from service for inspections and repairs as soon as practicable.

702.2.2 SEVERE USE

Vehicles operated under severe-use conditions, which include operations for which the vehicle is not designed or that exceed the manufacturer's parameters, should be removed from service and subjected to a safety inspection as soon as practicable. Such conditions may include rough roadway or off-road driving, hard or extended braking, pursuits or prolonged high-speed operation.

702.2.3 REMOVAL OF WEAPONS

All firearms, weapons and control devices shall be removed from the vehicle and properly secured in the department prior to the vehicle being released for maintenance, service or repair.

702.3 VEHICLE EQUIPMENT

Certain items shall be maintained in all department vehicles for emergency purposes and to perform routine duties.

702.3.1 PATROL VEHICLES

Officers shall inspect the patrol vehicle at the beginning of the shift and ensure that the following equipment, at a minimum, is present in the vehicle:

- 1 trauma kit
- 1 fire extinguisher
- 10 emergency road flares
- 1 roll of crime scene barricade tape

702.4 VEHICLE REFUELING

Absent emergency conditions or supervisor approval, officers driving patrol vehicles shall not place a vehicle in service that has less than one-quarter tank of fuel. Vehicles shall only be refueled at the authorized location.

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702.5 WASHING OF VEHICLES

All units shall be kept clean at all times and weather conditions permitting, shall be washed as necessary to enhance their appearance.

Officers on patrol shall obtain clearance from the dispatcher before responding to the car wash.

Employees using a vehicle shall remove any trash or debris at the end of their shift. Confidential material should be placed in a designated receptacle provided for the shredding of this matter.

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Vehicle Use

703.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a system of accountability to ensure department vehicles are used appropriately. This policy provides guidelines for on- and off-duty use of department vehicles and shall not be construed to create or imply any contractual obligation by the City of Berkeley to provide assigned take-home vehicles.

703.2 POLICY

The Berkeley Police Department provides vehicles for department-related business and may assign patrol and unmarked vehicles based on a determination of operational efficiency, economic impact to the Department, requirements for tactical deployments and other considerations.

703.3 USE OF VEHICLES

703.3.1 INSPECTIONS

Members shall be responsible for inspecting the interior and exterior of any assigned vehicle before taking the vehicle into service and at the conclusion of their shifts. Any previously unreported damage, mechanical problems, unauthorized contents or other problems with the vehicle shall be promptly reported to a supervisor and documented as appropriate.

The interior of any vehicle that has been used to transport any person other than a member of this department should be inspected prior to placing another person in the vehicle and again after the person is removed. This is to ensure that unauthorized or personal items have not been left in the vehicle.

When transporting any suspect, prisoner or arrestee, the transporting member shall search all areas of the vehicle that are accessible by the person before and after that person is transported.

703.3.2 SECURITY AND UNATTENDED VEHICLES

Unattended vehicles should be locked and secured at all times. No key should be left in the vehicle except when it is necessary that the vehicle be left running (e.g., continued activation of emergency lights, equipment charging). Officers who exit a vehicle rapidly in an emergency situation or to engage in a foot pursuit must carefully balance the need to exit the vehicle quickly with the need to secure the vehicle.

Members shall ensure all weapons are secured while the vehicle is unattended.

703.3.3 MDT

Members assigned to vehicles equipped with a Mobile Data Terminal (MDT) shall log onto the MDT with the required information. If the vehicle is not equipped with a working MDT, the member shall notify the Communications Center. Use of the MDT is governed by the Mobile Data Terminal Use Policy.

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703.3.4 VEHICLE LOCATION SYSTEM

Patrol and other vehicles, at the discretion of the Chief of Police, may be equipped with a system designed to track the vehicle's location. While the system may provide vehicle location and other information, members are not relieved of their responsibility to use required communication practices to report their location and status.

Members shall not make any unauthorized modifications to the system.

Access to historical data will require Division Captain approval.

All data captured by the system shall be retained in accordance with the established records retention schedule.

703.3.5 KEYS

Members shall not duplicate keys. The loss of a key shall be promptly reported to a supervisor.

Keys to Operations Division vehicles shall be maintained in the Equipment Room. Employees shall return vehicle keys to the Equipment Room upon the conclusion of the vehicle's use or end of their duty shift.

Keys to a City vehicle not assigned to the Operations Division will be maintained within the Bureau/ Unit/Detail to which the vehicle is assigned. To facilitate authorized after hours use of City vehicles not assigned to the Operations Division, keys shall be maintained in a known and accessible location.

The Fleet Manager shall be responsible for the maintenance of an accessible storage location for spare keys to City vehicles assigned to this Department. Employees who remove spare vehicle keys from the established storage location shall record their removal and return on the provided equipment management log. Employees shall return spare vehicle keys to the established storage location prior to the end of their duty shift.

703.3.6 AUTHORIZED PASSENGERS

Members operating department vehicles should not permit persons other than City personnel or persons required to be conveyed in the performance of duty, or as otherwise authorized, to ride as passengers in the vehicle, except as stated in the Ride-Along Policy.

703.3.7 OTHER USE OF VEHICLES

Members utilizing a vehicle for any purpose other than their normally assigned duties or normal vehicle assignment (e.g., transportation to training, community event) should notify a supervisor.

This subsection does not apply to those who are assigned to vehicle transportation duties to and from the maintenance yard or carwash.

703.3.8 ALCOHOL

Members who have consumed alcohol are prohibited from operating any department vehicle unless it is required by the duty assignment (e.g.,undercover work). Regardless of assignment, members may not violate state law regarding vehicle operation while intoxicated.

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703.3.9 PARKING
Except when responding to an emergency or when urgent department-related business requires otherwise, members driving department vehicles should obey all parking regulations at all times.

When parking at the Public Safety Building, department vehicles should be parked in assigned stalls. Members should not park privately owned vehicles in stalls assigned to department vehicles or in other areas of the parking lot that are not so designated unless authorized by a supervisor.

703.3.10 ACCESSORIES AND/OR MODIFICATIONS
There shall be no modifications, additions or removal of any equipment or accessories without written permission from the Fleet Manager.

703.3.11 NON-SWORN MEMBER USE
Non-sworn members using marked emergency vehicles shall ensure that all weapons have been removed. Non-sworn members shall prominently display the "out of service" placards at all times. Non-sworn members shall not operate the emergency lights or siren of any vehicle unless expressly authorized by a supervisor.

703.4 INDIVIDUAL MEMBER ASSIGNMENT TO VEHICLES
Department vehicles may be assigned to individual members at the discretion of the Chief of Police. Vehicles may be assigned for on-duty and/or take-home use. Assigned vehicles may be changed at any time. Permission to take home a vehicle may be withdrawn at any time.

The assignment of vehicles may be suspended when the member is unable to perform his/her regular assignment.

703.4.1 ON-DUTY USE
Vehicle assignments shall be based on the nature of the member’s duties, job description and essential functions, and employment or appointment status. Vehicles may be reassigned or utilized by other department members at the discretion of the Chief of Police or the authorized designee.

703.4.2 UNSCHEDULED TAKE-HOME USE
Circumstances may arise where department vehicles must be used by members to commute to and from a work assignment. Members may take home department vehicles only with prior approval of a supervisor and shall meet the following criteria:

(a) The circumstances are unplanned and were created by the needs of the department.

(b) Other reasonable transportation options are not available.

(c) Vehicles will be locked when not attended.

(d) All firearms, weapons and control devices will be removed from the interior of the vehicle and properly secured in the residence when the vehicle is not attended.

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703.4.3 ASSIGNED VEHICLES

Assignment of take-home vehicles shall be based on the nature of the member's duties, job description and essential functions, and shall comply with City of Berkeley Administrative Regulation 7.1.

Members are cautioned that under federal and local tax rules, personal use of a City vehicle may create an income tax liability for the member. Questions regarding tax rules should be directed to the member's tax adviser.

703.4.4 ENFORCEMENT ACTIONS

When driving a take-home vehicle to and from work outside of the jurisdiction of the Berkeley Police Department or while off-duty, an officer shall not initiate enforcement actions except in those circumstances where a potential threat to life or serious property damage exists (see the Off-Duty Law Enforcement Actions and Law Enforcement Authority policies).

Officers may render public assistance when it is deemed prudent (e.g., to a stranded motorist).

Officers driving take-home vehicles shall be armed, appropriately attired and carry their department-issued identification. Officers should also ensure that department radio communication capabilities are maintained to the extent feasible.

703.4.5 MAINTENANCE

Members are responsible for the cleanliness (exterior and interior) and overall maintenance of their assigned vehicles. Failure to adhere to these requirements may result in discipline and loss of vehicle assignment. The following should be performed as outlined below:

(a) Members shall make daily inspections of their assigned vehicles for service/ maintenance requirements and damage.

(b) It is the Fleet Manager's responsibility to ensure that department vehicles are maintained according to the established service and maintenance schedule.

(c) All scheduled vehicle maintenance and car washes shall be performed as necessary at a facility approved by the Fleet Manager.

(d) Members shall complete "Defective Condition" forms when a vehicle needs service. The Fleet Manager shall review the forms to monitor the status and repair needs of the fleet, see also the Vehicle Maintenance Policy.

(e) All weapons shall be removed from any vehicle left for maintenance.

703.5 UNMARKED VEHICLES

Vehicles are assigned to various divisions and their use is restricted to the respective division and the assigned member, unless otherwise approved by a divisionCaptain. Any member operating an unmarked vehicle shall record vehicle usage on the sign-out log maintained in the division for that purpose.

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703.6 SPECIALTY VEHICLES

Only trained and authorized employees shall operate specialized-use fleet vehicles (e.g., Mobile Command Vehicle, Rescue Vehicle, etc.). However, the Rescue Vehicle may be used by any officer in an emergency situation (e.g., officer down rescue, active shooter, etc.).

703.7 DAMAGE, ABUSE AND MISUSE

When any department vehicle is involved in a traffic collision or otherwise incurs damage, the involved member shall promptly notify a supervisor. Any traffic collision report shall be filed with the agency having jurisdiction (see the Traffic Collision Reporting Policy).

Damage to any department vehicle that was not caused by a traffic collision shall be immediately reported during the shift in which the damage was discovered, documented in writing and forwarded to the Fleet Manager and a supervisor. An administrative investigation should be initiated to determine if there has been any vehicle abuse or misuse.

703.8 TOLL ROAD USAGE

Law enforcement vehicles are not routinely exempted from incurring toll road charges.

To avoid unnecessary toll road charges, all members operating department vehicles on a toll road shall adhere to the following:

(a) Members operating department vehicles for any reason other than in response to an emergency shall pay the appropriate toll charge or utilize the appropriate toll way transponder. Members may submit a request for reimbursement from the City for any toll fees incurred in the course of official business.

(b) Members passing through a toll plaza or booth during a response to an emergency shall notify, in writing, the appropriate Division Captain within five working days explaining the circumstances.

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Cash Handling, Security and Management

704.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure department members handle cash appropriately in the performance of their duties.

This policy does not address cash-handling issues specific to the Property and Evidence and Informants policies.

704.2 POLICY

It is the policy of the Berkeley Police Department to properly handle and document cash transactions and to maintain accurate records of cash transactions in order to protect the integrity of department operations and ensure the public trust.

704.3 PETTY CASH FUNDS

The Chief of Police shall designate the Records Supervisor as the fund manager. The fund manager is responsible for maintaining and managing the petty cash fund.

Each petty cash fund requires the creation and maintenance of an accurate and current transaction ledger and the filing of invoices, receipts, cash transfer forms and expense reports by the fund manager.

704.4 PETTY CASH TRANSACTIONS

The fund manager shall document all transactions on the ledger and any other appropriate forms. Each person participating in the transaction shall sign or otherwise validate the ledger, attesting to the accuracy of the entry. Transactions should include the filing of an appropriate receipt, invoice or cash transfer form. Transactions that are not documented by a receipt, invoice or cash transfer form require an expense report.

704.5 PETTY CASH AUDITS

The fund manager shall perform an audit no less than once every six months. This audit requires that the fund manager and at least one command staff member, selected by the Chief of Police, review the transaction ledger and verify the accuracy of the accounting. The fund manager and the participating member shall sign or otherwise validate the ledger attesting to the accuracy of all documentation and fund accounting. A discrepancy in the audit requires documentation by those performing the audit and an immediate reporting of the discrepancy to the Chief of Police.

Transference of fund management to another member shall require a separate petty cash audit and involve a command staff member.

A separate audit of each petty cash fund should be completed on a random date, approximately once each year by the Chief of Police or the City.

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704.6 ROUTINE CASH HANDLING

Those who handle cash as part of their property or Special Investigations Bureau supervisor duties shall discharge those duties in accordance with the Property and Evidence and Informants policies.

Members who routinely accept payment for department services shall discharge those duties in accordance with the procedures established for those tasks.

704.7 OTHER CASH HANDLING

Members of the Department who, within the course of their duties, are in possession of cash that is not their property or that is outside their defined cash-handling responsibilities shall, as soon as practicable, verify the amount, summon another member to verify their accounting, and process the cash for safekeeping or as evidence or found property, in accordance with the Property and Evidence Policy.

Cash in excess of $1,000 requires immediate notification of a supervisor, special handling, verification and accounting by the supervisor. Each member involved in this process shall complete an appropriate report or record entry.

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Personal Protective Equipment

705.1 PURPOSE AND SCOPE

This policy identifies the different types of personal protective equipment (PPE) provided by the Department as well the requirements and guidelines for the use of PPE.

This policy does not address ballistic vests or protection from communicable disease, as those issues are addressed in the Body Armor and Communicable Diseases policies.

705.1.1 DEFINITIONS

Definitions related to this policy include:

Personal Protective Equipment (PPE) - Equipment that protects a person from serious workplace injuries or illnesses resulting from contact with chemical, radiological, physical, electrical, mechanical or other workplace hazards.

Respiratory PPE - Any device that is worn by the user to protect from exposure to atmospheres where there is smoke, low levels of oxygen, high levels of carbon monoxide, or the presence of toxic gases or other respiratory hazards. For purposes of this policy, respiratory PPE does not include particulate-filtering masks such as N95 or N100 masks.

705.2 POLICY

The Berkeley Police Department endeavors to protect members by supplying certain PPE to members as provided in this policy.

705.3 OFFICER RESPONSIBILITIES

Members are required to use PPE as provided in this policy and pursuant to their training.

Members are responsible for proper maintenance and storage of issued PPE. PPE should be stored in an appropriate location so that it is available when needed.

Any member who identifies hazards in the workplace is encouraged to utilize the procedures in the Safety Committee Policy to recommend new or improved PPE or additional needs for PPE.

705.4 HEARING PROTECTION

Approved hearing protection shall be used by members during firearms training. Hearing protection shall meet or exceed the requirements provided in 8 CCR 5098. Members who make arrests or manage crowds should be provided hearing protection.

705.5 EYE PROTECTION

Approved eye protection, including side protection, shall be used by members during firearms training. Eye protection for members who wear prescription lenses shall incorporate the prescription (e.g., eye protection that can be worn over prescription lenses). Members shall ensure their eye protection does not interfere with the fit of their hearing protection.

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The Personnel and Training Sergeant shall ensure eye protection meets or exceeds the requirements provided in 8 CCR 3382.

705.6 HEAD AND BODY PROTECTION

Members who make arrests or manage crowds should be provided ballistic head protection with an attachable face shield, as well as padded body protection consisting of chest, arm, leg and groin protection.

705.7 RESPIRATORY PROTECTION

The Professional Standards Division Captain is responsible for ensuring a respiratory protection plan is developed and maintained by a trained and qualified member. The plan shall include procedures for (8 CCR 5144):

(a) Selecting appropriate respiratory PPE based on hazards and risks associated with functions or positions.

(b) Fit testing, including identification of members or contractors qualified to conduct fit testing.

(c) Medical evaluations.

(d) PPE inventory control.

(e) PPE issuance and replacement.

(f) Cleaning, disinfecting, storing, inspecting, repairing, discarding and otherwise maintaining respiratory PPE, including schedules for these activities.

(g) Regularly reviewing the PPE plan.

(h) Remaining current with applicable National Institute for Occupational Safety and Health (NIOSH), American National Standards Institute (ANSI), Occupational Safety and Health Administration (OSHA), Environmental Protective Agency (EPA) and state PPE standards and guidelines.

705.7.1 GAS MASK

Full-face air-purifying respirators, commonly referred to as gas masks, may be fitted with mechanical pre-filters or combination cartridge/filter assemblies for use in areas where gases, vapors, dusts, fumes or mists are present. Members must identify and use the correct cartridge based on the circumstances (8 CCR 5144).

A scene commander may order the use of gas masks in situations where tear gas has or will be used or where a vegetation fire is burning. Gas masks shall not be used if there is a potential for an oxygen-deficient atmosphere.

Members shall ensure their gas mask filters are replaced whenever:

(a) They smell, taste or are irritated by a contaminant.

(b) They experience difficulty breathing due to filter loading.

(c) The cartridges or filters become wet.

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(d) The expiration date on the cartridges or canisters has been reached.

705.7.2 GAS MASK SAFETY GLASSES
If a member wears eye glasses, they may obtain a prescription eyeglass insert for their gas mask at no charge. Contact lenses may be worn with the gas mask, but if the member prefers to wear glasses, they should contact the Personnel and Training Bureau, obtain a Prescription Safety Glasses Authorization form, and follow the directions on the form.

705.7.3 GAS MASK FIT TESTING
No member shall be issued a gas mask until a proper fit testing has been completed by a designated member or contractor (8 CCR 5144).

After initial testing, fit testing for gas masks shall be repeated (8 CCR 5144):

(a) At least once every 12 months.

(b) Whenever there are changes in the type of facepiece used.

(c) Whenever there are significant physical changes in the user (e.g., obvious change in body weight, scarring of the face seal area, dental changes, cosmetic surgery or any other condition that may affect the fit of the facepiece seal).

All gas mask fit testing shall be conducted in negative-pressure mode.

705.7.4 GAS MASK (RESPIRATORY) MEDICAL EVALUATION QUESTIONNAIRE
No member shall be issued a gas mask that forms a complete seal around the face until (8 CCR 5144):

(a) The member has completed a medical evaluation that includes a medical evaluation questionnaire.

(b) A physician or other licensed health care professional has reviewed the questionnaire.

(c) The member has completed any physical examination recommended by the reviewing physician or health care professional.

705.8 RECORDS
The Personnel and Training Sergeant is responsible for maintaining records of all:

(a) PPE training.

(b) Initial fit testing for respiratory protection equipment.

(c) Annual fit testing.

(d) Respirator medical evaluation questionnaires and any subsequent physical examination results.

1. These records shall be maintained in a separate confidential medical file.

The records shall be maintained in accordance with the department records retention schedule and 8 CCR 5144.

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705.9 TRAINING

Members should be trained in the respiratory and other hazards to which they may be potentially exposed during routine and emergency situations.

All members shall be trained in the proper use and maintenance of PPE issued to them, including when the use is appropriate; how to put on, remove and adjust PPE; how to care for the PPE; and the limitations (8 CCR 3380).

Members issued respiratory PPE shall attend annual training on the proper use of respiratory protection devices (8 CCR 5144).

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Emergency Response Vehicle

706.1 PURPOSE AND SCOPE

The purpose of this policy is to provide direction for the usage, training and storage of the Berkeley Police Department Emergency Response Vehicle.

706.2 USE OF EMERGENCY RESPONSE VEHICLE

The Emergency Response Vehicle shall be used as an armored vehicle resource, with the goal of safely resolving incidents where there exists an objective risk to the safety of civilians and/or officers from a person or persons who may be considered armed and dangerous.

The use of the Emergency Response Vehicle will be authorized by the Special Response Team (SRT) Commander or Team Leader unless exigent circumstances exist. If the Emergency Response Vehicle is needed during an in-progress emergency, use of the vehicle may be authorized by the Watch Commander, or, in their absence, a Patrol Sergeant. The Emergency Response Vehicle will only be utilized with supervisory approval, for purposes including, but not limited to, incidents involving potentially armed subjects, Special Response Team callouts, high-risk search warrants, officer or civilian rescues, or authorized training.

The Emergency Response Vehicle shall not be deployed during non-violent demonstrations, including for crowd control and crowd management, absent specific articulable objective facts demonstrating a risk of injury or death to police officers and/or the public. The Emergency Response Vehicle may be staged at pre-designated locations, away from protest sites, to allow for timely response. The vehicle may be used in cases of a declared unlawful assembly, and after a lawful dispersal order, where persons are engaged in criminal behavior that presents an objective risk of injury or death.

The Emergency Response Vehicle may be used for static displays at community events, for engagement and educational purposes.

The SRT Commander will maintain a vehicle usage log which may be provided to the City Council on an annual basis, or as requested.

706.3 EMERGENCY RESPONSE VEHICLE OPERATION TRAINING

Periodic briefings and training will be conducted on the operation and deployment of the Emergency Response Vehicle. All Special Response Team members will receive formal training prior to deployment of the Emergency Response Vehicle. A valid class "C" California driver's license is required to drive the Emergency Response Vehicle. Supervisors shall submit Training Time Credit Record forms to document that staff members have received training.

706.4 EMERGENCY RESPONSE VEHICLE DEPLOYMENT CONSIDERATIONS

Staff has the discretion to deploy the Emergency Response Vehicle in those circumstances where there is an objective risk of injury or death to civilians and/or officers, and use of the vehicle may

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reduce or mitigate said risks by facilitating safe police management of the critical situation and rescue of injured or endangered persons.

When considering deployment of the Emergency Response Vehicle, the authorizing Commander or Supervisor should:

(a) Assess the situation and based on the objective facts, determine that the discretionary use of the Emergency Response Vehicle may contribute to the safe resolution of a critical incident where there is a risk of injury or death to civilians or officers.

(b) Whenever practical, create an operational plan for deployment of the vehicle consistent with this policy, current law and the department's Use of Force Policy.

(c) The vehicle may be used to locate and contain a threat by providing cover for officers, facilitating a rescue of an injured or endangered persons, 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.

(d) When selecting a rescue team, the supervisor should consider experienced personnel, such as current or former Special Response Team Members, Hostage Negotiators and officers who have received Crisis Intervention Training (CIT). In addition, the rescue team should include a Medic or TEMS officer (Tactical Emergency Medical Support), rescue carriers, cover officers and officers equipped with less lethal force equipment. Fire and ambulance personnel should be ready to accept injured persons at the end point of the rescue.

706.5 EMERGENCY AND NON-EMERGENCY REQUESTS OF THE RESPONSE VEHICLE BY OUTSIDE AGENCIES

In the event of an emergency request for the Emergency Response Vehicle, the Watch Commander, or in his/her absence, a patrol sergeant, may approve the request for the Emergency Response Vehicle to assist outside agencies for emergency purposes. If time allows, at least two on-duty Special Response Team officers shall deploy with the Emergency Response Vehicle to assist outside agency requests but one is acceptable. This may include additional officers who have received training in advanced first aid. The request for BPD response with the Emergency Response Vehicle by outside agencies, for purposes other than emergencies, shall be authorized by the Special Response Team Commander or Operations Division Captain.

The Emergency Response Vehicle will be deployed in accordance with Berkeley Police Department policies. All Berkeley Police Department personnel will follow Berkeley Police Department policies when assisting outside agencies. The Emergency Response Vehicle will remain in the possession and control of Berkeley Police Department personnel and will not be loaned to other agencies.

706.6 EMERGENCY RESPONSE VEHICLE STORAGE

The Emergency Response Vehicle will be stored primarily at the Berkeley Police Department.

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706.7 EMERGENCY RESPONSE VEHICLE MAINTENANCE

Maintenance of the Emergency Response Vehicle is the responsibility of the Department Fleet Manager. The Fleet Manager should coordinate with the Logistics Team Leader when scheduling vehicle maintenance or repairs.

Officers from the Special Response Team will routinely check the Emergency Response Vehicle and its equipment, including but not limited to, ensuring the battery is charged, the trickle charger is attached, the engine will turn over, and that the vehicle is in general working order. When reasonable, the vehicle should be fueled after each use. The City of Berkeley Corporation Yard will perform repairs on the vehicle and keep a preventative maintenance schedule.

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Long Range Acoustical Device (LRAD)

707.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines and procedures related to the proper use and deployment of a Long Range Acoustical Device (LRAD).

707.2 POLICY

It is the policy of the Berkeley Police Department that a Long Range Acoustical Device (LRAD) be used with live or recorded voice messages to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communication are ineffective or inoperable to unequivocally communicate messages from Police, Fire or other City Departments and safely resolve uncertain situations where communicating with the public is paramount. LRAD 100X and 450XL are not designed to be used as a weapon. Members of the Berkeley Police Department shall not use either LRAD system as a weapon.

707.3 DEFINITIONS

The Berkeley Police Department has two LRAD systems:

(a) The LRAD 100X system, which is a portable device and can be carried by one person, and

(b) The LRAD 450XL system, which is a portable device and can be mounted to a vehicle.

LRAD systems have the capability to provide highly effective long range communication. The systems broadcast clear messages or voice commands. The systems can help to de-escalate situations and safely modify dangerous and criminal behavior through clear, unambiguous direction and communication.

LRAD systems are able to broadcast instructions and messages with greater clarity and distance than traditional loudspeakers or public address systems. The systems can effectively broadcast messages through wind, crowd, engine and background noise. LRAD broadcasts can be clearly heard by people inside vehicles and buildings. The LRAD's clear communication leads to a safer environment during critical incidents and enhances the safety of the community, criminal subjects, and public safety personnel.

707.4 USE OF THE LRAD

Law enforcement agencies may use the LRAD to:

1. Communicate lifesaving information to residents during disasters
2. Communicate to large crowds during parades, festivals, concerts and sporting events
3. Establish safety zones and humanely enforce perimeters
4. Control traffic congestion
5. Conduct Special Response Team operations

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6. Broadcast a dispersal order
7. Communicate during hostage and barricaded subject situations
8. Serve high risk search warrants
9. Communicate to protesters
10. Communicate to persons threatening suicide who are in an inaccessible location
11. Conduct search and rescue operations

707.5 APPROVAL

An LRAD may only be deployed with the approval of the Watch Commander or Incident Commander. However, if a rapidly evolving situation places the public or law enforcement in danger or where serious property damage is probable, trained personnel are permitted to deploy the LRAD prior to approval. The scene supervisor shall ensure that the Watch Commander or Incident Commander is notified as soon as practical.

707.6 MAINTENANCE

The Logistics Element of the Special Response Team will store and maintain the LRAD systems.

707.7 TRAINING

LRAD systems may only be deployed by personnel who have been properly trained in its use and procedures. The Personnel and Training Bureau shall ensure a list of officers trained to deploy the LRAD is maintained.

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Robot Cameras

708.1 PURPOSE AND SCOPE

Robot Cameras may be deployed during tactical operations to locate, identify, and potentially mitigate risks to responding personnel and civilians. Robot Cameras may be deployed to help law enforcement and other first responders view potentially dangerous environments before entering them. Robot Cameras provide a live stream images, which may include valuable safety and identification information about individuals or groups in the vicinity of the camera.

708.2 AUTHORIZED AND PROHIBITED USES

The Berkeley Police Department maintains a Robot Camera, the use of which is subject to the discretion of the Incident Commander and/or the Special Response Team (SRT) tactical commander. Robot Cameras are authorized to be used for the following law enforcement purposes:

(a) Assisting with dynamic entry/ high-risk entry operations;

(b) Assessing and clearing low visibility areas during a tactical operation;

(c) Assisting with hostage rescue operations;

(d) Assisting with search-and-rescue operations;

(e) Assisting with other law-enforcement and first-responder uses not prohibited by law.

Robot Cameras shall not be used for personal, non-law-enforcement purposes.

The Berkeley Police Department Bomb Squad (Hazardous Device Technicians)owns and maintains a Robot with three cameras affixed to the unit, which only provideslive video images. This robot does not record or store data. This robot may be used in hazardous and potentially life-threatening environments. This robot shall not be used for personal, non-law-enforcement purposes.

708.3 DATA COLLECTION

Robot-cameras capture images and audio. The data is not recorded or stored.

708.4 DATA ACCESS

The video images are live streamed only and are not recorded. Access to live streamed video shall be limited to officers involved in the particular tactical operation, members of the Berkeley Police Department Special Response Team and BPD Command Staff members. See also section 8 regarding Third-Party Data-Sharing.

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708.5 DATA PROTECTION

The footage is live streamedonly and is secured via encryption when traveling from the device to the reader. No data is stored.

708.6 DATA RETENTION

The equipment does not record, and therefore data shall not be retained.

708.7 PUBLIC ACCESS

The public does not have access to the livevideo stream provided by robot cameras during tactical operations.

708.8 THIRD-PARTY DATA-SHARING

Video images are live streamed and not recorded. For joint law enforcement operations, sworn peace officers from other law enforcement agencies may be provided access to viewing live streaming images from the Robot Cameras. Other third parties shall not be provided access to the Berkeley Police Department Robot Cameras.

708.9 TRAINING

Training for the operation of the Robot Cameras shall be provided by Berkeley Police Department personnel.

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Military Equipment

709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The Berkeley City Council.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

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709.2 POLICY

It is the policy of the Berkeley Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment. Consistent with Section 7071(a)(1)(E), uses of military equipment for purposes, in a manner, or by a person not authorized in this policy are prohibited. For the purposes of this provision, "uses" does not include activities such as those associated with maintenance, transportation, or training.

709.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

(a) Acting as liaison to the governing body for matters related to the requirements of this policy.

(b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.

(c) Conducting an inventory of all military equipment at least annually.

(d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Berkeley Police Department (Government Code § 7071).

(e) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).

709.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM Single Launcher
- Milkor LTL Multi-Launcher
- FN 303 Launcher & FN Pava Impact Projectile
- Oleoresin Capsicum Spray
- Chlorobenzylidene Malononitrile and Oleoresin capsicum
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/Sound Diversionary Device
- Long Range Acoustic Device
- Mobile Command Vehicle

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- Barret Model 99

709.4.1 BERKELEY POLICE DEPARTMENT'S INVENTORY
Rifles and Associated Ammunitions

Rifle:

M4 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Colt M-4 patterned rifle, which fires the.223 Remington cartridge

Quantity: The Berkeley Department currently owns and maintains 96 rifles

Capabilities: The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

Lifespan: Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Manufacturer's Description: This specially designed law enforcement weapon system features many of the combat proven advantages of the military Colt M4. With the 4-position buttstock fully retracted, the Colt Law Enforcement Carbine is less than 32inch length and weighs only 6.9 lb - ideal for tactical deployment and traditional patrol.

PURPOSE and AUTHORIZED USE:

Purpose: The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. An officer considering the use of this firearm in a non-preplanned incident should consider the factors set forth in the Risk Assessment section of Policy 607, Operations, Planning, and Deconfliction.

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FISCAL IMPACT:

Initial Cost: Exact costs unknown. Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between $1,000 and $1,200 a piece, current rifles cost between $1,400 and $1,600. It should be expected that these prices will fluctuate and likely increase over time.

Annual cost: Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

Training costs: Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between $25 to $500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Maintenance costs: Vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between $3 and $30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between $150 and $300 per rifle.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Remington 700 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Remington 700 rifle, which fires the.308 caliber ammunition.

Quantity: The Berkeley Department currently owns and maintains 6 rifles

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Capabilities: The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

Lifespan: The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

Manufacturer's Description: The Model 700 SPS Tactical is a highly maneuverable member of the family. It's built for tack-driving accuracy with a 20" heavy-contour tactical-style barrel and dual-point pillar bedding in its black synthetic stock. Hogue® overmoldings on the stock facilitate sure handling, and it has a semi-beavertail fore-end for added stability off a rest.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. An officer considering the use of this firearm in a non-preplanned incident should consider the factors set forth in the Risk Assessment section of Policy 607, Operations, Planning, and Deconfliction.

FISCAL IMPACT:

Initial Cost: The initial cost to purchase this rifle with its associated components is approximately $10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

Annual cost: If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately $20-dollars or $1 dollar per round.

Maintenance costs: Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

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There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force, Policy 354-Precision Rifle. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Barret Model 99 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle

Quantity: The Berkeley Department currently owns and maintains 1 rifle.

Capabilities: This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

Lifespan: This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

Manufacturer's Description: The Model 99 brings new levels of long-range precision shooting. Known as much for its dependability as its versatility, the Model 99 has unfailing accuracy you can rely on.

PURPOSE and AUTHORIZED USE:

Purpose: The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. An officer considering the use of this firearm in a non-

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preplanned incident should consider the factors set forth in the Risk Assessment section of Policy 607, Operations, Planning, and Deconfliction.

FISCAL IMPACT:

Initial Cost: The Barrett Model 99 50-caliber rifle has a retail cost of approximately $12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

Annual cost: The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately $6 dollars per bullet; $60 for a box of 10 and $600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

RIFLE AMMUNITION:

.223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. (Use in the Colt M4 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type:.223 Remington ammunition: 55 grain FMJ (full metal jacket)

.223 Remington ammunition 62 grain soft point for duty purposes

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Quantity: Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

Capabilities: The.223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Product Description:

.223 Remington ammunition: 55 grain FMJ (full metal jacket)

The full metal jacket ammunition features a 55 grain weight and includes 200 rounds. The caliber is.223 Rem, and the ammunition is made in the USA.

.223 Remington ammunition 62 grain soft point

Federal TRU 223 ammo is custom made ammunition for the Urban Law Enforcement Officer in mind. It features a lead core Hi Shock Soft Point bullet which offers great stopping power and excellent penetration, a non corrosive primer and brand new never fired brass casing and nickel plated brass primer. This LE Tactical ammo can be reloaded up to 5 times for those shooters that reload their 223 ammo. Federal LE 223 Remington has a muzzle velocity of 3050 feet per second and a muzzle energy of 1281 ft lbs. This 223 Federal ammo is new production packaged in 20 round boxes and 200 rounds per case. Federal TRU ammunition is engineered using Mil-Quality specifications. Each Federal TRU cartridge is made using select mil-quality low flash powders that do not disrupt an officer's night vision. The TRU case and web are built using thicker brass, adding the extra strength needed for the high powered rifle. TRU primers are crimped for added holding ability. This virtually eliminates backed out primers that can lock-up your weapon. With TRU ammunition, potentially disastrous situations are greatly reduced. TRU bullets are specifically engineered ranging from fragmenting designs for tactical entry to deeper penetrating bullets for patrol.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of incapacitating an individual from a distance and providing greater accuracy at a distance. This ammunition is used in the M4 rifle.

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Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for.223 Remington range from $0.50 to $0.75 a round for training ammunition (55 grain) and $1.25 to $1.50 a round for duty ammunition (62 grain).

Annual cost: The annual cost of the equipment is minimal, and is dependent on the amount of training.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Hornady.308-caliber ammunition (for the Remington 700 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Hornady.308-caliber ammunition

Quantity: The Berkeley Department currently possess approximately 1800 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of incapacitating an individual or disabling an object in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation. This ammunition is specifically designed for accuracy at distances of 500 yards.

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Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Manufacturer's Description: Millions of successful hunts have proven the accuracy and deadly effect of the famous Hornady® InterLock,® SST,® InterBond® and CX™ bullets we load into Hornady® Custom™ rifle ammunition.

Every round of Hornady® Custom™ ammunition is hand inspected before packaging to ensure the highest levels of quality control. At Hornady,® we manufacture Custom™ ammunition to give shooters and hunters the advantage of handloaded accuracy in a factory load.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of incapacitating an individual from a distance of 500 yards and providing greater accuracy at a distance. This ammunition is used in the Remington 700 rifle.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately $1 dollars per bullet; $20 for a box of 20, plus shipping and handling. We currently possess 1800 rounds of BMG ammunition, $1800.

Annual cost: The annual cost of the equipment is minimal, and is dependent on the amount of training.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

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Summit Ammunition.50-caliber BNG rounds of ammunition (for the Barrett Model 99)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Summit Ammunition.50-caliber BNG rounds of ammunition

Quantity: The Berkeley Department currently possess approximately 100 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Manufacturer's Description: This is 50 Cal. BMG Summit Ammunition 700gr. M-2 Armor Piercing Ammo. Summit Ammunition has been manufacturing 50 Cal. BMG for over 10 years and they manufacture a premium quality product. They are a fully licensed and insured manufacturer. This ammo is loaded with NEW Winchester brass, New USGI powder and Pulled Lake City M-2 AP bullets.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately $6 per bullet; $60 for a box of 10, and $600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

Annual cost: The annual cost of the equipment is minimal.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

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Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

ROBOTS:

ReconRobotics Recon Scout XT (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: ReconRobotics Recon Scout XT

Quantity: The Berkeley Police Department currently owns and maintains 2.

Capabilities: The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

Lifespan: Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

Manufacturer's Description: The Recon Scout XT is just eight inches long and weighs just 1.3 lbs., making it extremely easy to carry and throw. Moreover, deploying the Recon Scout XT takes just 5 seconds, and using it requires no special training. Simply pull the activation pin and throw the device through a doorway or over a wall, or drop it down a vertical shaft using a tether. Using a single joystick on the operator control unit (OCU), a tactical team leader or warfighter can then direct the device to move through the environment and send back real-time video. Equipped with an infrared optical system that automatically turns on when the ambient light is low, the Recon Scout XT can transmit video up to 100 feet indoors and 300 feet outdoors, day or night. The Recon Scout XT may also be specified in any of three transmitting frequencies, allowing police and military personnel to operate up to three robots in the same environment at the same time.

PURPOSE and AUTHORIZED USE:

Purpose: The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent

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encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

Authorized Uses: The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

FISCAL IMPACT:

Initial Cost: The initial cost for the Recon Scout XT robot was about $12,500 per unit (2010 cost).

Annual cost: There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

Training costs: The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

Maintenance costs: There are no annual or storage costs.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 708 Robot Cameras.

TRAINING:

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel who have familiarized themselves with the product manual, operations, procedures, and demonstrated competency in the product through hands on training, these trainings are often referred to as a train-the trainer training. The cost of training is staff time.

Andros Remotec HD-1 Hazardous Duty Robot (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Andros Remotec HD-1 Hazardous Duty Robot

Quantity: The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

Capabilities: Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it

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is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

(a) A spike to break glass and access vehicles or homes with potential explosive devices inside

(b) An X-ray mount in order to remotely X-ray suspected explosive devices.

(c) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance

(d) A hook with cutting blades that are used to cut backpack straps, ropes, etc.

(e) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.

(f) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

Lifespan: The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

Manufacturer's Description: The Remotec ANDROS fleet of hazardous duty unmanned vehicles is the preferred choice of first responders worldwide. The robust, mission-proven design of the ANDROS line keeps danger at a distance with:

- Simultaneous tool mounts for rapid response during dynamic missions (i.e. suits changing needs as the mission unfolds)
- A versatile array of two-way audio, video, advanced sensors, tools and controllers
- Easy maintainability for minimal downtime

Made in the USA and backed by world-class training and post-sale support, it's no wonder there are over 1,000 ANDROS robots deployed around the globe.

PURPOSE and AUTHORIZED USE:

Purpose: The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

Authorized Uses: Used to examine and possible destroy hazardous materials such as an explosive device.

FISCAL IMPACT:

Initial Cost: Procured in 2008 for $214,496 including on-site training through a UASI Grant. (64,292-N.S.)

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Annual cost: There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

Training costs: Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

Maintenance costs: Remotec offers occasional maintenance and upkeep workshops free of charge.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 708 Robot Cameras.

TRAINING:

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. All Berkeley Police Bomb Technicians are required to attend a federally mandated training that lasts approximately six weeks.

Less Lethal Launchers:

Penn Arms 40mm Single Launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Penn Arms 40mm Single Launcher

Quantity: The Berkeley Department currently owns and maintains 20.

Capabilities: The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: A 40mm compact single-shot break-open frame launcher with a rifled barrel and folding stock. Features include: Double-action trigger, trigger lock push button and hammer lock safeties.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles

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allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: Use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost $815.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost $3 to $30.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

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Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

Milkor LTL Multi-launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Milkor LTL Multi-launcher

Quantity: The Berkeley Police Department currently owns and maintains 2.

Capabilities: The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

Manufacturer's Description: Developed with our partner company, Abrams Airborne Manufacturing, The 40mm Multi-Shot Less-Lethal Tactical Launcher (LTL) was manufactured with the needs of the modern tactical team at the forefront. The launcher is capable of firing a wide variety of 40mm LTL ammo.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before

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such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: Use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost $3950.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

FN 303 and FN Pava Impact Projectile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: FN 303 and FN Pava Impact Projectile

Quantity: The Berkeley Department currently owns and maintains 8 FN 303 less lethal launchers.

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Capabilities: The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: The FN 303® Less Lethal Launcher is constructed from durable lightweight polymer with comfortable ergonomics and an easy to operate safety. The FN 303® Launcher is equipped with both flip-up iron sights and an integrated MIL-STD-1913 top mounting rail for optical or electronic sights or other accessories. The lightweight polymer magazine holds 15 projectiles and offers a clear rear cover to allow the operator to instantly verify both the payload type and the number of projectiles remaining.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: Use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

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FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost $800.00 each.

Annual cost: Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost $30 per kit.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

Light/sound Diversionary Devices:

CTS 7290 Diversionary Device (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: CTS 7290 Diversionary Device

Quantity: The Berkeley Department currently owns and maintains 50.

Capabilities: When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

Lifespan: The lifespan of the CTS 7290 Diversionary Device is 5 years.

Manufacturer's Description: The CTS 7290 is the standard for diversionary flash-bang devices. The 7290 produces a 165-180 db and 6-8 million candela of light output. The patented design of

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the 7290, incorporates a porting system that eliminates movement of the body at detonation even if the top or bottom of the device should be in contact with a hard surface. In addition, internal adjustments have greatly reduced smoke output.

Flash Bangs are used by special tactical units during hostage rescue and high-risk warrants. It is an ATF-controlled Class-C explosive device that emits a bright light and thunderous noise to distract potentially dangerous individuals.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

Authorized Uses: The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

FISCAL IMPACT:

Initial Cost: Diversionary Devices cost approximately $45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

Annual cost: See below training cost.

Training costs: Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

Maintenance costs: The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 353 Diversionary Devices.

TRAINING:

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices.

Long Range Acoustic Device

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The Long-Range Acoustic Device (LRAD)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: The Long Range Acoustic Device (LRAD)

Quantity: The Berkeley Department currently owns and maintains possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

Capabilities: Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

Lifespan: The lifespan for both LRADs is 25 years.

Manufacturer's Description: LRAD 100x In addition to being 20 – 30 decibels louder than bullhorns and vehicle-based P.A. systems, the LRAD 100X is also up to 6X louder and much more intelligible than other hailing devices of comparable size and weight. Live or recorded broadcasts from the portable LRAD 100X easily overcome engines, sirens and noisy crowds to ensure every message is heard and understood. The LRAD warning tone safely alerts attention to the voice messages that follow, establishes large standoff zones, and is the safer crowd control alternative to non-lethal and kinetic measures.

LRAD 450XL- The LRAD 450XL utilizes technology developed and patented* by Genasys Inc. to provide the audio output of larger acoustic hailers almost twice its size and weight, while delivering the same outstanding vocal clarity inherent in all LRAD systems. The LRAD 450XL broadcasts powerful warning tones to command attention to the highly intelligible voice messages that follow, enabling operators to change behavior and enhance response capabilities with safe, scalable escalation of force. Lightweight and designed for use on tripods or mounted on vessels, vehicles, and Remote Weapon Stations (RWS), the LRAD 450XL is a highly effective, long range communication system in use around the world for public safety, law enforcement, maritime and defense applications.

PURPOSE and AUTHORIZED USE:

Purpose: The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events

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- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

Authorized Uses: The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

FISCAL IMPACT:

Initial Cost: The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was $49,999.

Annual cost: BPD has not incurred any additional cost to date for this equipment.

Training costs: Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

Maintenance costs: There are no maintenance or storage costs for this equipment.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 707 Long Range Acoustic Device.

TRAINING:

Training is conducted by members of the Berkeley Police Department who have extensively reviewed the product manual, become knowledgeable and familiar in the operations and procedures of the LRAD. All trainers have proven demonstrated proficiency and competency in the product through hands on training, these trainings are often referred to as a train-the trainer training.

Mobile Command Vehicle

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Mobile Command Vehicle (MCV)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: MCV is a 2003 Freightliner MT55

Quantity: The Berkeley Department currently owns and maintains 1 MCV, a 2003 Freightliner MT 55.

Capabilities: The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

Lifespan: This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

Manufacturer's Description: The 22' Freightliner MT55 P1200 is the biggest stepvan option for your delivery fleet, offering maximum capacity, accessibility and maneuverability. Built with a powerful Cummins 6.7L 200HP Diesel Motor, this route truck has folding lower shelves to optimize your cargo space and rear sonar for safety.

PURPOSE and AUTHORIZED USE:

Purpose: This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4th of July, critical incidents or natural disasters.

Authorized Uses: This vehicle is used as a mobile command post for large scaled events.

FISCAL IMPACT:

Initial Cost: The initial cost of the MCV (2003 Freightliner MT55) was $230,800.

Annual cost: There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

Training costs: Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

Maintenance costs: There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 811 Mobile Command Vehicle.

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TRAINING: Training is conducted by members of the Berkeley Police Department who have extensively reviewed the product manual, become knowledgeable and familiar in the operations of the 2003 Freightliner MT 55. All trainers have proven demonstrated proficiency and competency in the product through hands on training, these trainings are often referred to as a train-the trainer training. All operators have had behind the wheel practical training, wherein the operator drives various routes through the City of Berkeley with a trainer during training.

Chlorobenzylidene Malononitrile and Oleoresin Capsicum

Chlorobenzylidene Malononitrile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Chlorobenzylidene malononitrile (CS)

Quantity: The Berkeley Department currently owns and maintains Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Capabilities: CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

Lifespan: CS and OC canisters expire in approximately 5 years.

Manufacturer's Description: Unable to locate from the manufacturer, provided by the subject matter experts. Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily

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temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Use must comply with local, state, federal laws, and BPD Special Order 2020-0007 (Policy 1107).

FISCAL IMPACT:

Initial Cost: The cost for CS canisters ranges from $20.00 to $39.00 per unit.

Annual cost: See below cost of training.

Training costs: When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

Oleoresin Capsicum (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Oleoresin capsicum (OC)

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Inventory for OC canisters:

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Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

Capabilities: A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

Lifespan: CS and OC canisters expire in approximately 5 years.

Manufacturer's Description: Unable to locate from the manufacturer, provided by BPD subject matter experts. Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Use must comply with local, state, federal laws, and BPD Special Order 2020-0007 (Policy 1107).

FISCAL IMPACT:

Initial Cost: The cost for OC canisters ranges from $36.00 to $44.00 per unit.

Annual cost: See below cost of training.

Training costs: When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

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Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

Oleoresin Capsicum Spray (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Oleoresin capsicum (OC) spray

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Qty 23- First Defense MK-9 OC spray (13 ounces)

Capabilities: The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

Lifespan: Aerosol products eventually lose pressure over time. The lifespan the MK-9 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

Manufacturer's Description: The MK9 features an easy to use trigger handle, is intended for use in crowd management and will deliver 14 short bursts of OC at an effective range of 18-20 ft. This 1.3/% MC OC aerosol product utilizes a stream delivery method providing a target-specific, strong concentrated stream for greater standoff.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

FISCAL IMPACT:

Initial Cost: The MK-9 OC spray costs approx. $60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply

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or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

Annual cost: See below cost of training.

Training costs: Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

LEGAL AND PROCEDURAL RULES:

Use must comply with local, state, federal laws, and BPD Special Order 2020-0007 (Policy 1107).

TRAINING:

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

709.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

(a) Requesting military equipment made available pursuant to 10 USC § 2576a.

(b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.

(d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.

(e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.

(f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.

(g) Acquiring military equipment through any means not provided above.

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709.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

709.6.1 TEMPORARY USE IN EXIGENT CIRCUMSTANCES

The Berkeley Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the acquisition requirements in BMC 2.100.040, however the Department must take the following actions:

(a) Provide written notice of the acquisitions or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state, or federal law

(b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and received approval, as applicable from the City Council pursuant to BMC 2.100.040

(c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

709.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

709.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

709.9 MILITARY EQUIPMENT QUESTIONS

Any member of the public may direct their questions regarding this policy and ordinance to a Sergeant in the Professional Standards Bureau at 510-981-5734 or 510-981-5974. Questions may also be directed to police@cityofberkeley.info. Questions will be answered in a timely manner by a member of the Berkeley Police Department.

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709.9.1 MILITARY EQUIPMENT COMPLAINTS
Any member of the public may direct their complaints regarding this policy and any of the military equipment to Internal Affairs Bureau at 510-981-5706.

709.10 ASSOCIATED EQUIPMENT USE POLICIES

The below links will direct to the respective use policies:

300-Use of Force

303-Control Devices and Techniques

349-Tactical Rifle Operator Program

353-Flash/Sound Diversionary Devices

354-Precision Rifle Operator Program

428-First Amendment Assembly

607-Operations, Planning, and Deconfliction

707-Long Range Acoustical Device (LRAD)

708-Robot Cameras

811-Mobile Communications Vehicle (MCV)

709.11 COMPLIANCE

The Department's Audit and Inspection Sergeant will ensure that the Department members comply with this policy. The Audit and Inspection Sergeant will conduct an annual audit with the assistance from members of the Professional Standards Bureau. Any violations will be referred to the Internal Affairs Bureau and handled in accordance with General Order P-26 (Personnel Complaint Procedures). All instances of non-compliance will be reported to the City Council via the annual military equipment report.

The Police Accountability Board shall review and make recommendations to the City Council, with the same procedures and requirements of the Police equipment and Community Safety Ordinance, as described in Berkeley Municipal Code section 2.100.040.

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Chapter 8 - Support Services

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Crime Analysis

800.1 PURPOSE AND SCOPE

Crime analysis should provide currently useful information to aid operational personnel in meeting their tactical crime control and prevention objectives by identifying and analyzing methods of operation of individual criminals, providing crime pattern recognition, and providing analysis of data from field interrogations and arrests. Crime analysis can be useful to the Department's long range planning efforts by providing estimates of future crime trends and assisting in the identification of enforcement priorities.

800.2 DATA SOURCES

Crime analysis data is extracted from many sources including, but not limited to:

- Crime reports
- Field Interview cards
- Parole and Probation records
- Computer Aided Dispatch data
- Statewide Integrated Traffic Reporting System (SWITRS)

800.3 CRIME ANALYSIS FACTORS

The following minimum criteria should be used in collecting data for Crime Analysis:

- Frequency by type of crime
- Geographic factors
- Temporal factors
- Victim and target descriptors
- Suspect descriptors
- Suspect vehicle descriptors
- Modus operandi factors
- Physical evidence information

800.4 CRIME ANALYSIS DISSEMINATION

For a crime analysis system to function effectively, information should be disseminated to the appropriate units or persons on a timely basis. Information that is relevant to the operational and tactical plans of specific line units should be sent directly to them. Information relevant to the development of the Department's strategic plans should be provided to the appropriate staff units. When information pertains to tactical and strategic plans, it should be provided to all affected units.

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The Communications Center

801.1 PURPOSE AND SCOPE

This policy establishes guidelines for the basic functions of the Communications Center. It addresses the immediate information needs of the Department in the course of its normal daily activities and during emergencies.

801.2 POLICY

It is the policy of the Berkeley Police Department to provide 24-hour telephone service to the public for information and for routine or emergency assistance. The Department provides two-way radio capability providing continuous communication between the Communications Center and department members in the field.

801.3 THE COMMUNICATIONS CENTER SECURITY

The communications function is vital and central to all emergency service operations. The safety and security of the Communications Center, its members and its equipment must be a high priority.

Access to the Communications Center shall be limited to the Communications Center members, the Watch Commander, command staff and department members with a specific business-related purpose.

801.4 RESPONSIBILITIES

801.4.1 COMMUNICATIONS CENTER MANAGER

The Chief of Police shall appoint and delegate certain responsibilities to a Communications Center Manager. The Communications Center Manager is directly responsible to the Support Services Division Captain or his/her designee.

The responsibilities of the Communications Center Manager include, but are not limited to:

(a) Overseeing the efficient and effective operation of the Communications Center in coordination with the Supervising Public Safety Dispatchers (SPSD)..

(b) Overseeing the scheduling and maintenance of dispatcher time records.

(c) Supervising, training and evaluating supervising dispatchers.

(d) Overseeing the supervision, training and evaluation of dispatchers.

(e) Ensuring the radio and telephone recording system is operational.

1. Recordings shall be maintained in accordance with the established records retention schedule and as required by law.

(f) Processing requests for copies of the Communications Center information for release.

(g) Maintaining the Communications Center database systems.

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(h) Maintaining and updating the Communications Center procedures manual and the Communications Center training manual.

1. Developing procedures for specific types of crime reports and calls as necessary.

2. Ensuring dispatcher compliance with established policies and procedures.

(i) Handling internal and external inquiries regarding services provided and accepting personnel complaints in accordance with the Personnel Complaints Policy.

(j) Maintaining a current contact list of City personnel to be notified in the event of a utility service emergency.

801.4.2 ADDITIONAL PROCEDURES

The Communications Center Manager shall establish procedures for:

(a) Recording all telephone and radio communications and playback issues.

(b) Storage and retention of recordings.

(c) Security of audio recordings (e.g., passwords, limited access, authorized reviewers, preservation of recordings past normal retention standards).

(d) Availability of current information for dispatchers (e.g., Watch Commander contact, rosters, member tracking methods, member contact, maps, emergency providers, tactical dispatch plans).

(e) Assignment of field members and safety check intervals.

(f) The transfer of calls, with injuries and no response needed, to the Alameda County Regional Emergency Communications Center (ACRECC) for pre-arrival instructions per the Emergency Medical Dispatch (EMD) instructions.

(g) Procurement of external services (e.g., fire suppression, ambulances, aircraft, tow trucks).

(h) Protection of essential equipment (e.g., surge protectors, gaseous fire suppression systems, uninterruptible power systems, generators).

(i) Protection of radio transmission lines, antennas and power sources for the Communications Center (e.g., security cameras, fences).

(j) Handling misdirected, silent and hang-up calls.

(k) Handling private security alarms, if applicable.

(l) Radio interoperability issues.

801.4.3 SUPERVISING PUBLIC SAFETY DISPATCHERS

Supervising Public Safety Dispatchers report directly to the Communications Center Manager. The responsibilities of the supervising dispatcher include but are not limited to:

(a) The efficient and effective operation of the Communications Center in coordination with the Communications Center Manager and the other Supervising Public Safety Dispatchers (SPSD).

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(b) Scheduling and maintaining dispatcher time records.

(c) Supervising, training and evaluating dispatchers.

(d) Handling internal and external inquiries regarding services provided and accepting personnel complaints in accordance with the Personnel Complaints Policy.

(e) Ensuring the radio and telephone recording system is operational.

(f) Completing projects and assignments as delegated by the Communications Center Manager to accomplishthe above responsibilities.

801.4.4 DISPATCHERS

Dispatchers report directly to a Supervising Public Safety Dispatcher. Dispatchers shall be patient, professional and respectful in carrying out their responsibilities. The responsibilities of the dispatcher include, but are not limited to:

(a) Receiving and handling all incoming and transmitted communications, including:

1. Emergency 9-1-1 lines.
2. Business telephone lines.
3. Telecommunications Device for the Deaf (TDD)/Text Telephone (TTY) equipment.
4. Radio communications with department members in the field and support resources (e.g., fire department, emergency medical services (EMS), allied agency law enforcement units).
5. Other electronic sources of information (e.g., text messages, digital photographs, video).

(b) Documenting the field activities of department members and support resources (e.g., fire department, EMS, allied agency law enforcement units).

(c) Inquiry and entry of information through the Communications Center, department and other law enforcement database systems (CLETS, DMV, NCIC).

(d) Maintaining the current status of members in the field, their locations and the nature of calls for service.

(e) Notifying the Watch Commander or field supervisor of emergency activity, including, but not limited to:

1. Vehicle pursuits.
2. Foot pursuits.
3. Assignment of emergency response.

801.5 CALL HANDLING

This Department provides members of the public with access to the 9-1-1 system for a single emergency telephone number.

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When a call for services is received, the dispatcher will reasonably and quickly attempt to determine whether the call is an emergency or non-emergency, and shall obtain the basic information from the caller by using the "5 W's" format:

- Where (location)?
- What (nature of incident)?
- When (time of occurrence)?
- Weapons (first responder/citizen safety hazards)?
- Who (description of involved subjects)?

If the dispatcher determines that the caller has a hearing and/or speech impairment or disability, he/she shall immediately initiate a connection with the individual via available TDD/TTY equipment or Telephone Relay Service (TRS), as mandated by the Americans with Disabilities Act (ADA).

If the dispatcher determines that the caller is a limited English proficiency (LEP) individual, the dispatcher should quickly determine whether sufficient information can be obtained to initiate an appropriate response. If language assistance is still needed, the language is known and a language-appropriate authorized interpreter is available in the Communications Center, the dispatcher should immediately connect the LEP caller to the authorized interpreter.

If no authorized interpreter is available or the dispatcher is unable to identify the caller’s language, the dispatcher will contact the contracted telephonic interpretation service and establish a three-party call connecting the dispatcher, the LEP individual and the interpreter.

Dispatchers should be courteous, patient and respectful at all times.

801.5.1 EMERGENCY CALLS

A call is considered an emergency when there is an immediate or potential threat to life or serious property damage, and the timely arrival of public safety assistance is of the utmost importance. A person reporting an emergency should not be placed on hold until the dispatcher has obtained all necessary information to ensure the safety of the responding department members and affected individuals.

Emergency calls should be dispatched immediately. The Watch Commander shall be notified of pending emergency calls for service when department members are unavailable for dispatch.

801.5.2 NON-EMERGENCY CALLS

A call is considered a non-emergency call when there is no immediate or potential threat to life or property. A person reporting a non-emergency may be placed on hold, if necessary, to allow the dispatcher to handle a higher priority or emergency call.

The reporting person should be advised if there will be a delay in the dispatcher returning to the telephone line or when there will be a delay in the response for service.

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801.6 RADIO COMMUNICATIONS

The police radio system is for official use only, to be used by dispatchers to communicate with department members in the field. All transmissions shall be professional and made in a calm, businesslike manner, using proper language and correct procedures. Such transmissions shall include, but are not limited to:

(a) Members acknowledging the dispatcher with their radio identification call signs and current location.

(b) Dispatchers acknowledging and responding promptly to all radio transmissions.

(c) Members keeping the dispatcher advised of their status and location.

(d) Member and dispatcher acknowledgements shall be concise and without further comment unless additional information is needed.

The Communications Center Manageror Supervising Public Safety Dispatcher shall be notified of radio procedure violations or other causes for complaint. All complaints and violations will be investigated and reported to the complainant's supervisor and processed through the chain of command.

801.6.1 FEDERAL COMMUNICATIONS COMMISSION COMPLIANCE

Berkeley Police Department radio operations shall be conducted in accordance with Federal Communications Commission (FCC) procedures and requirements.

801.6.2 RADIO IDENTIFICATION

Radio call signs are assigned to department members based on factors such as duty assignment, uniformed patrol assignment and/or member identification number. Members should use their call signs when initiating communication with the dispatcher. The use of the call sign allows for a brief pause so that the dispatcher can acknowledge the appropriate department member.

801.7 DOCUMENTATION

It shall be the responsibility of the Communications Center to document all relevant information on calls for service or self-initiated activity. Dispatchers shall attempt to elicit and document as much information as possible to enhance the safety of the member and assist in anticipating conditions that may be encountered at the scene. Desirable information would include, at a minimum:

- Name and address of the reporting person, if possible.
- Type of incident reported.
- Involvement of weapons, drugs and/or alcohol.
- Location of incident reported.
- Identification of members assigned as primary and backup.
- Time of dispatch.
- Disposition or status of reported incident.

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801.8 CONFIDENTIALITY

Information that becomes available through the Communications Center may be confidential or sensitive in nature. All members of the Communications Center shall treat information that becomes known to them as confidential and release that information in accordance with the Protected Information Policy.

Automated data, such as Department of Motor Vehicle records, warrants, criminal history information, records of internal police files or medical information, shall only be made available to authorized law enforcement personnel. Prior to transmitting confidential information via the radio, an admonishment shall be made that confidential information is about to be broadcast.

801.9 TRAINING AND CERTIFICATION

Dispatchers shall receive training consistent with minimum standards established by POST (Penal Code § 13510).

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Property and Evidence

802.1 PURPOSE

This policy describes the Departmental guidelines for the care and handling of property and evidence.

802.2 POLICY

Berkeley Police Department employees shall exercise the utmost care with property and evidence in their custody and control.

The professional management of evidence and property in the custody of the Berkeley Police Department is essential to the successful prosecution of criminal cases, a decreased level of civil liability on the part of the Department and its members, the maintenance of a high level of public trust, and the delivery of quality service to the community.

802.3 HOURS OF OPERATION

The business hours of the Property Room are Monday through Friday, from 0800 to 1200 hours and from 1400 – 1700 hours, excluding holidays. Property releases are made between 1430 and 1630 hrs. Should the need exist, additional appointments for the release of property may be made with the Property Officer or Property Clerk

802.4 PROPERTY OFFICER AND PROPERTY CLERK ASSIGNMENTS

The Property Officer shall be a Community Service Officer Supervisor assigned to the Property Room. The Property Clerk shall be a Community Service Officer assigned to the Property Room and shall support Property Room operations. The Property Officer and Property Clerk shall maintain files listing the current location and status of all property in the custody of this Department including drugs, weapons, and drug property. The Property Officer and the Property Clerk shall be responsible for the safe, secure and orderly operation of the Property Unit and shall comply with this policy and all laws relating to the care and disposition of property. A Police Aide or Reserve Officer may assist in the Property Room. At all times the Aide must be under the supervision of the Property Officer or the Property Clerk.

802.5 TEMPORARY STORAGE LOCATIONS

The Property Room is equipped with seven temporary storage units, into which employees shall book evidence or other property.

1. The individual lockers located in the Bag & Tag Room are used for the temporary storage of property and evidence. Should all lockers be in use, property shall be placed in the Bulk Storage Room.
2. The Drug Drop Safe, located in the Bag & Tag Room, is used solely for the temporary storage of narcotic or drug evidence.

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3. The High Value Drop Safe, located in the Bag & Tag Room, is used for the temporary storage of money, handguns, jewelry, or items of high value or a sensitive nature.
4. The refrigerator, located in the Bag & Tag Room, is used for the temporary storage of evidence requiring refrigeration or freezing such as blood/urine samples or SAFE kits.
5. The Bulk Storage Room is used for the storage of items of evidence or property that are too large for the temporary lockers (such as bicycles), or when all individual lockers are in use.
6. The Drug Storage Container (in the south parking lot) is used for the temporary storage of drugs (e.g. marijuana plants), which are too large or otherwise unsuitable for the Drug Drop Safe.
7. The Hazmat Storage Container (located on Second St.) is used for the temporary and long term storage of flammable and toxic items such as lighters and spray paint.

None of the Property Room storage areas are to be used for the storage of vehicles, discarded office furniture or equipment, or papers marked for destruction. Vehicles, including mopeds, shall be towed to a local garage in accordance with existing tow procedures.

802.6 LONG-TERM STORAGE LOCATIONS

The long-term storage of all evidence shall be in the Property Room, the Drug Storage Room, the Bulk Storage Room, the Drug Storage Container, the Hazmat Storage Container, and/or any other areas as approved by the Support Services Division Captain.

802.7 SECURITY OF THE PROPERTY STORAGE AREAS

Property storage areas shall be secured at all times.

One set of Property Room keys (including key fob) shall be issued to each of the following employees:

1. The Property Officer;
2. The Property Clerk;
3. The Support Services Bureau Lieutenant;
4. The Support Services Division Captain;

A fifth set of keys and a key fob shall be located in the Patrol Lieutenants Office in a combination lock box. The Property Officer, Property Clerk, Support Services Captain and Support Services Lieutenant shall have the combination to this lock box. In the event entry must be made into the Property Room and the above four listed people are not available to respond to the PSB, the Support Services Captain or Lieutenant will be contacted and he/she will provide the combination to a command officer or their designee. The combination to this box will only be given out if the above four listed people are not available to respond to the PSB. The Support Services Division Captain shall be responsible for changing the combination to the lock box every time it is used.

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802.8 ACCESS TO LONG-TERM STORAGE LOCATIONS

Only authorized personnel are allowed in the interior of any Property Room. In the event an employee, other than Property Room personnel, needs to enter a long-term property storage area, the employee shall be escorted at all times within the property storage area by the Property Officer, Property Clerk, or the individual key holder who provided access to the employee.

In the event an employee, other than Property Room personnel, needs to enter a drug storage area, the employee shall be escorted at all times within the drug storage area by the Property Officer, Property Clerk, or the individual code holder who provided access to the employee.

802.9 EMERGENCY AFTER HOURS ACCESS TO LONG-TERM STORAGE LOCATIONS

If it is necessary for an employee to enter any of the secured storage areas, and all Property Room personnel are off duty, the employee making entry shall send an email detailing the date, time, reason for entry, and identity of the individuals making entry to the Support Services Division Captain, Support Services Bureau Lieutenant, and the Property Officer and receive a reply before entry. If a response isn't received in a reasonable amount of time then a call should be placed to the Captain. The Property Officer shall maintain a record of these notifications. The Property Officer shall maintain a manual sign-in log for individuals entering the Property Room, Drug Storage Container or Drug Storage Room.

802.10 PROPERTY TYPES

Property which comes into the possession of the Department is usually one of five basic types:

(a) Evidence: Property, which is or may be related to a crime, and which, by its nature, may implicate or clear a person of a criminal charge.

(b) Recovered Property: Property which was illegally taken from its owner and subsequently recovered by this Department. For purposes of disposition, recovered property shall be treated as evidence and given the appropriate type at the time of booking.

(c) Found Property: Non-evidentiary property which is determined to be lost or abandoned and is not known or suspected to be connected with any criminal offense. The property will be held for a period not to exceed 90 days.

(d) Property Held for Safekeeping*: Non-evidentiary property that is placed in the custody of this agency for temporary protection on behalf of the owner and for a period not to exceed sixty (60) days. (Civil Code section 2080.10) This shall include:

1. Marijuana (legally possessed) which cannot be accepted into the Berkeley Jail as property but which the owner may obtain later by visiting the Property Room during normal business hours.

2. Prisoner Property which is too large to be stored in the Berkeley Jail's storage area, but which the owner may obtain later by visiting the Property Room during normal business hours.

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802.11 PROPERTY BOOKING PROCEDURES

Employees coming into possession of property during the course of their duties shall

(a) Exercise proper care in the handling of the property

(b) Take all necessary steps to ensure the property does not become lost or unnecessarily damaged

(c) Complete a numbered police report which details the circumstances by which the property came into the Department's possession and contains a description of each item of property.

(d) Complete an AEGIS Property entry for each booked item.

(e) Attach a Property Label to each envelope, bag or item.

(f) Confirm the case number on the Property Label corresponds with the correct case report. Place a red evidence label on each piece of evidence.The label shall be affixed across the seal of the envelope or bag containing the evidence, in a manner that would cause the label to become damaged should the seal be tampered with. Employees shall initial and date the red evidence label, making certain this action does not obscure any necessary information on the face of the envelope or bag.

(g) Segregate items booked for safekeeping or as found property from items of criminal evidence in order to facilitate the timely disposition of such property.

(h) Place all property in one of the designated Property Room temporary storage locations, or with Property Room Personnel, prior to going off duty:

  (a) The temporary storage of any item of property or evidence in desks, lockers, mailboxes or other Departmental facilities, not specifically authorized for that purpose is strictly prohibited.

  (b) If property is to be used as part of an on-going investigation, the property shall be booked in and later checked out of the property room.

  (c) Prisoner property shall not be left in the Bag & Tag Room lockers or Bulk Storage Room without an attached Property Label.

(i) In the event of a depletion of labels, write all of the pertinent information on a piece of paper and attach it to the property.

(j) When possible, place small items in the modified locker with the mailbox slot.

(k) Place items too large for lockers, such as a bicycle in the Bulk Storage Room.

(l) Secure lockers by closing the locker door.

(m) Book narcotics pursuant to procedures described later in this policy.

802.12 LIQUID, BEVERAGE AND PERISHABLES PROCEDURES

Containers of liquids or beverages are not to be stored except in situations where the preservation of the entire liquid in its original state is critical to the prosecution. In most instances, a sample may be placed in a small glass vial, and the vial attached to the original container.

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Perishable items are not to be deposited for storage in the Property Room. These items may be photographed if appropriate and the item(s) returned to the owner or destroyed.

802.13 SHARP OR BLADED ITEMS PROCEDURES

When packaging sharp or bladed items such as knives, ice picks, etc., employees shall ensure that the sharp point of the item, or the blade of the item, is neither protruding nor exposed, by wrapping the blade with masking tape, or otherwise securely covering the point and/or blade of the item.

802.14 CURRENCY, HIGH VALUE AND FIREARMS PROCEDURES

All currency, high value items and firearms (including pellet guns) shall booked as follows:

(a) Each item shall be properly labeled.

(b) Each item should be placed into the High Value Drop Safe.

(c) All items shall be logged in on the clipboard adjacent to the High Value Drop Safe.

(d) Large items that will not fit in the safe should be placed in a locker and a note should be made on the clipboard log indicating the item's location.

802.14.1 CURRENCY

When booking currency the following procedures shall be followed:

(a) All currency shall be counted by the booking officer.

(b) If the amount is more than $50, the count shall be witnessed by another employee.

(c) To prevent fraud, all currency should be inspected by the booking officer, and if available, a counterfeit detection pen should be utilized.

(d) A clear BPD money bag shall be obtained and filled out using a non-smearing pen, such as a "Sharpie" marker. All bags bear a unique control number, and this number should be listed in the corresponding police report.

(e) Ensure the correct amount of the currency is entered in the AEGIS property entry. A currency denomination breakdown must be included in the "description" field.

(f) All currency shall be separated from other property in a case (e.g. Book currency separately from the wallet in which it was found.)

(g) When booking counterfeit or foreign currency, enter "0.00" in the "value" field of the AEGIS entry. (Counterfeit money should be booked into the regular lockers within the Bag and Tag Room, not into the High Value Drop Safe".

802.14.2 FIREARMS

When booking firearms the following procedures shall be followed:

(a) The firearm shall be unloaded.

(b) A yellow "rendered safe" sticker should be affixed to the outside of the gun box. Alternatively, the word "UNLOADED" may be written on the outside of the gun box.

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(c) Any ammunition shall be booked separately from the firearm.

(d) The firearm shall be entered in to the Department of Justice Automated Firearm System (AFS).

(e) A copy of the AFS entry shall be attached to the firearm prior to booking into the Property Room.

(f) All shotguns and rifles shall be booked into large lockers of the Bag and Tag Room. If the weapon is too large to fit in these lockers or if these lockers are already in use, the weapon shall be properly labeled and placed in the Spare Shotgun Locker in the Equipment Room (Public Safety Building Room 1145). Whenever an officer places a weapon in the Spare Shotgun Locker, the officer shall send an email to the Property Officer and the Property Clerk to notify them of the weapon's location.

802.15 FINANCE DEPARTMENT

A safe belonging to the Finance Department of the City of Berkeley will be housed in the Berkeley Police Department Property Room. This safe will contain payroll documents, cash, and vouchers that can be used in the case of an emergency. Property Room personnel will escort Finance staff in and out of the Property Room if access is needed. Keys and combinations for this safe will remain with the Finance Department.

802.16 URINE AND BLOOD SAMPLE PROCEDURES

Urine or blood samples will be stored in the BPD Property Room as follows:

(a) Urine sample jars and envelopes shall be kept in the jail.

(b) Blood sample envelopes shall be kept in the Bag & Tag Room.

(c) An AEGIS entry shall be created.

(d) For any sample that needs to be tested, the officer must indicate what should be tested on the back of the envelope.

(e) Sealed urine sample envelopes and/or blood sample envelopes should be placed in the refrigerator in the Bag & Tag Room.

(f) The Property Officerwill remove any sample envelopes and store them in the Property Room. The Property Officer will update the AEGIS system and print out a Property Receipt and Property Tag.

(g) A courier, from the currently contracted lab, will obtain any urine/blood samples from the Property Officer or Property Clerk and transport for testing.

802.17 BICYCLE AND VEHICLE PROCEDURES

Bicycles or parts thereof shall be deposited in the Bulk Storage Room with an attached Property Label.

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802.18 EXPLOSIVE, FLAMMABLE OR TOXIC SUBSTANCES

No flammable, explosive or toxic materials shall be stored in the Property Room, they must be booked into the Hazmat Storage Container.

Under no circumstances shall highly explosive, flammable, or toxic substances be stored in any portion of the Public Safety Building, or any Property Storage Area. BFD may be consulted to determine the proper storage location.

(a) Explosive materials shall only be moved, stored and destroyed only under the direct supervision of a BPD Explosive Ordnance Technician.

802.19 NARCOTIC AND DRUG DEPOSITING PROCEDURES

Employees taking possession of drug evidence and found drugs shall adhere to the following procedures:

1. Weigh the quantity of drugs on the scale provided.If this is inappropriate, such as a seizure of pills, tablets, or individual dosage units such as LSD, count the exact quantity of pills, tablets, or individual dosage units that are collected.
2. Choose an appropriate size clear evidence pouch (for marijuana - use a plain paper bag or envelope).
3. Place the drugs and a business card or note with the employee's name, badge number, and case number inside the clear evidence pouch (or plain paper bag/envelope for marijuana).
4. Heat seal the clear evidence pouch (for marijuana – fold the paper bag or envelope).
5. Choose an appropriate size Property/Evidence Envelope.If an envelope is not pre-printed, attach an adhesive Property Label.
6. Fill out the Property Label and “Chain of Custody.”, i.e., if the drugs were seized from a suspect, write the suspect’s name in the “Received from” box on the envelope or label.
7. Place the clear evidence pouch (or, for marijuana, paper bag/envelope) inside the evidence envelope.
8. Close the envelope using the metal clasp.
9. Place a red evidence label sticker across the seal, in a manner that would cause the label to become torn/broken should the seal be tampered with. Employees shall initial and date the evidence tape, making certain this action does not obscure any necessary information on the face of the envelope or bag.
10. Complete a full and accurate AEGIS entry, listing the exact weight and/or exact quantity as accurately as could be reasonably expected.
11. Deposit the Property/Evidence Envelope into the Drug Drop Safe.

Narcotics related paraphernalia shall be booked separately (exceptions might include paraphernalia or syringes, properly packaged, which contain usable quantities of narcotics).

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The Property Officer shall, through the AEGIS Computer System, maintain a record listing the location, disposition, or destruction of narcotic and drug evidence in the custody of this Department.All narcotics evidence shall be inspected by the Property Officer or Property Clerk to guard against tampering.

802.19.1 LARGE QUANTITY

The following procedures shall be used when the drug evidence, or found property, is too large to be placed in any Drug Drop Safe or Locker:

(a) Use the same basic format, as previously listed, and modify as necessary. Make use of larger manila evidence envelopes and larger clear evidence pouches, as necessary. Should even these prove to be too small, standard “grocery” sized paper bags, found in the Property Room, should be used.

(b) A business card or note with the employee's name, badge number, and case number shall be included in each large container used.

(c) If the evidence envelope or grocery bag used does not have a pre-printed chain of custody box on it, attach one of the white printed adhesive chain of custody labels to it.

(d) Seal the opening of any paper bag with red colored “evidence” tape and staple or secure, as necessary. Initial and date the evidence tape.

(e) Place the item(s) in the Drug Storage Container

802.20 PROHIBITED ITEMS IN THE DRUG DROP SAFE

Only the actual drugs, perhaps with its original packaging, should be placed into the Drug Drop Safe. Any packaging included should not obscure the drugs from sight.

1. Needles, mirrors, razor blades, “kits,” in general, and any other “non#drug” item or tool, shall not be placed in the Drug Drop Safe.
2. Smoking pipes and syringes should not be placed in the Drug Drop Safe unless they contain a usable quantity of drugs and it is impractical to separate them or were used in a crime or suspicious circumstance. An example of this would be a syringe suspected to being used in an assault with a deadly weapon case. In such cases, syringes should be packaged in plastic safety tubes provided.

802.21 SYRINGE MANAGEMENT

Employees needing to book syringes for evidence or analysis shall follow the following procedures:

1. Exercise due caution in this task.If there is a plastic shield over the needle, employees should remember that this is not puncture-proof.
2. Package the syringe and needle in a puncture-proof container such as a metal/fiber mailing tube or hard plastic containers.The manner of packaging a syringe must be described and written explicitly on the container in which the syringe is sent.

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All other syringes taken into possession shall be placed into the red “Sharps” container to be destroyed.If the syringe is taken for evidentiary purposes alone, it may be photographed along with the appropriate case number, and then placed in the “Sharps” container to be destroyed. The Property Officer or Property Clerk will dispose of the syringes at the City of Berkeley Public Health Clinic located at 830 University Avenue.

802.22 PROCEDURES FOR PROCESSING BOOKED PROPERTY

The Property Officer or the Property Clerk shall check the Pass Through Lockers, High Value Safe, Bag & Tag Room refrigerator, and Bulk Storage Room each business day, retrieve the items from temporary storage, index them into AEGIS, barcode each package/bag/container, attach a Property Receipt, and store them in an appropriate area of the Property Room.

The Property Officer or the Property Clerk shall query AEGIS each business day to confirm that all property or evidence entered into AEGIS has been located and accounted for by the Property Officer or the Property Clerk. If the Property Officer or the Property Clerk locates a Computer Property System entry and cannot locate the actual evidence, or if they find a piece of evidence without a corresponding AEGIS entry, he/she shall take immediate action to resolve the inconsistency. Such action may include but is not limited to contacting the involved employee to determine the circumstances of the incident, contacting the employee’s supervisor for further assistance, or other action taken with the intent to rectify the situation, and provide feedback to the involved employee in order to avoid future mistakes.

The Property Officer or Property Clerk shall check the Drug Drop Safe each business day, retrieve the items from temporary storage, confirm and update the corresponding record in AEGIS, barcode each package, bag, container, or item, and store them in an appropriate area of the Property Room.

The Property Officer or Property Clerk shall query AEGIS each business day to confirm that all drug property or evidence entered into AEGIS has been located and accounted for by the Property Officer. If the Drug Property Officer locates a Computer Property System entry and cannot locate the actual evidence, he/she shall take action to resolve the inconsistency. If the Drug Property Officer finds a piece of drug property or evidence without a corresponding entry in AEGIS, the Property Officer shall take action to resolve the inconsistency. Such action may include but is not limited to: contacting the involved employee to determine the circumstances of the incident, contacting the employee’s supervisor for further assistance, or other action taken with the intent to rectify the situation, and provide feedback to the involved employee in order to avoid future mistakes.

802.23 PROCEDURES FOR PROCESSING CURRENCY

Property Room personnel shall place all currency in the security safe in the Property Room. Only the Property Officer, Property Clerk and the Support Services Lieutenant shall have the

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combination to the security safe. The combination shall be changed immediately following the rotation of an individual from any of these assignments.

With the exception of currency that must be retained in its original state, currency in the Property Room should not be allowed to accumulate over $5,000. The Property Officer shall periodically deposit currency in the Berkeley Police Department Property Room Fund, Asset Forfeiture Account, or BPD State Asset Forfeiture Account. The deposit shall be witnessed and verified by the Property Clerk or another departmental employee designated by the Support Services Lieutenant, and a receipt obtained. The Support Services Lieutenant and Captain shall be notified each time money is moved to a financial institution of the City's choosing.

All currency placed into the security safe shall be in sealed Berkeley Police Department Money Bags. Currency to be deposited shall remain sealed until removed from the security safe for deposit. The seals can then be broken only by the Property Officer and witness. The Property Officer and witness shall perform a concurrent count of each package to verify the contents and amount prior to deposit.

(a) Any discrepancy between the amount on the property tag and the count prior to deposit shall be reported immediately to the Support Services Captain for follow-up investigation and resolution.

(b) The Watch Commander or in his/her absence the Duty Command Officer shall also be notified. The Watch Commander or Duty Command Officer will notify the Chief of Police, the City Manager, the Director of Finance and the City Auditor.

802.24 WITHDRAWAL AND RETURN OF PROPERTY

(a) When an investigation requires that an item be temporarily removed from the Property Room, the assigned employee shall contact the Property Officer or Property Clerk via email with a cc to their respective supervisor. The Property Officer or Property Clerk will check out the item to the employee and immediately update AEGIS records to indicate that the item(s) is in the temporary custody of the assigned employee. A chain of custody form shall be initiated by the Property Officer or Property Clerk, and attached to the item.

(b) Property may be temporarily withdrawn from the Property Room for identification, laboratory examination, and court.

(c) Property shall be withdrawn on the date it is actually needed for identification, examination, or court. In special situations, the Property Officer should be contacted and arrangements made for the property to be available during early#morning hours or weekends, etc. Immediately following the withdrawal of an item of property, the Property Officer will update the Automated Property System on the status change of the item(s) including initiating a "Chain of Custody" record in the Automated Property System. Evidence leaving the Property Room shall have a Chain of Custody form attached.

(d) No employee may place property in and then remove it from the Bulk Storage Room, unless to return the property to the owner.In that event, the employee shall complete

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a Property Receiptand, if applicable, forward the information to the Communications Center so the APS entry may be updated.

(e) Items shall be securely bagged, wrapped, tied, taped or placed in a suitable container for transport to the forensic laboratory or storage.

(f) When property is temporarily released from the Property Room, the item's change in status shall be immediately recorded in AEGIS by the Property Officer or Property Clerk releasing the item(s). A "Chain of Custody" form will be attached to the item and signed by the individual to whom the property is released. The Property Officer or Property Clerk will initiate a "Chain of Custody" entry in AEGIS for each item released. When the property is returned, the "Chain of Custody" form attached to the property will be retained with the item(s) of property. The Property Officer or Property Clerk will update the status of the item in AEGIS upon its return to the Property Room. The Property Officer or Property Clerk will also update the "chain of custody" record in AEGIS file.

(g) The assigned employee shall be responsible for the proper maintenance of the chain of custody record and security of the item(s). At times the item is not actually needed, it shall be returned to the Property Room.

(h) When stored property, including legally possessed marijuana, is returned to the owner by the Property Officer or Property Clerk, a property receipt will be obtained. The property receipt will be forwarded to the Records Bureau for imaging with the case. The Property Officer or Property Clerk will immediately update AEGIS to reflect the release of the property.

(i) If a piece of returned property has never been entered into AEGIS, the employee completing the property receipt should route it directly to the Records Bureau with the notation "Not in AEGIS."

(j) When indexed property is placed in evidence (and retained by the court) at trial, it is the responsibility of the employee submitting the evidence to the court to obtain a property receipt from the Court Clerk. This receipt ("Property Receipt/Court Property Receipt") shall be routed to the Property Officer. The Property Officer or the Property Clerk shall make the necessary updates in AEGIS and forward it to the Records Bureau for attachment/imaging to the numbered report.

(k) No item of property shall be released without a signature receipt from the person receiving the property. If the property is being released for identification, investigation, laboratory examination, or court, a Chain of Custody Form shall be attached to the property and signed by the officer/employee to whom the property is released.

802.25 DISPOSAL OF PROPERTY

Property shall be disposed of by either:

(a) Return of the property to its owner or finder;

(b) Sales of the property at auction;

(c) Conversion of the property to agency or other public use; or

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(d) Destruction of the property.

(e) Property with no monetary or evidential value shall not be allowed to accumulate.

(f) Evidence on suspended misdemeanor investigations may be disposed of after one year with the approval of the assigned employee's supervisor.

(g) Evidence in felony investigations may be disposed of with the approval of the assigned Detective Bureau supervisor. In deciding what evidence may be disposed of, the major consideration should be the value of the items in a criminal prosecution. Some items held in evidence have little or no value in court. If it will serve a useful prosecution purpose, photographs of the evidence may be requested prior to its disposal.

(h) In every instance where property in Departmental custody has been returned to its owner or finder, sold at auction, destroyed, or converted to agency or public use, the Property Officer, Property Clerk or Property Officer shall immediately update the AEGIS System. An appropriate comment may also be added to indicate the manner in which the item was disposed

802.26 RETURN OF PROPERTY OWNER

The policy of this Department shall be that every item of found property, recovered property, or evidence is to be returned to the owner except in the following situations:

(a) Where there is a Court Order to destroy.

(b) Where there is written permission from the owner to destroy.

(c) Where the law provides for the destruction or other disposition of the item.

(d) Where all investigative measures have been taken but the owner cannot be identified or located.

(e) Where the owner is contacted by telephone and gives the employee permission to dispose of the property. In such instances, the employee must file a written report with the numbered case, setting forth all the circumstances of the contact. A copy of this report must be routed to the Property Officer or Property Clerk.

When property is to be returned to the owner, the Property Officer or Property Clerk shall forward the Property Receipt to the Records Bureau. If the property has a serial number and has been entered into the Automated Property System of the Department of Justice, the Property Officer or Property Clerk shall notify the officer who authorized the release and that officer shall be responsible for insuring that item is removed from the Automated Property System or Automated Firearms System of the Department of Justice. If the authorization for release came from a court order, the Property Officer or Property Clerk will request the item be removed from the appropriate Department of Justice automated system.

In all cases, property shall be released only after the owner has provided satisfactory proof of ownership, presented proper personal identification, and signed a Property Receipt.

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802.27 FOUND PROPERTY TURNED IN AT THE FRONT COUNTER

When found property is brought to the Front Counter by a community member during business hours, Front Counter Professional Staff shall proceed as follows:

(a) Complete a Found Property form to the best of your ability. The form should document the name of the community member, a description of the property, the location where it was found, and the circumstances surrounding its discovery. If the community member is hesitant in disclosing their personal information, try explaining the importance of a possible link to a crime and subsequent needed follow up. If they are still hesitant, do not insist and write “Declined” or “Refused” on the appropriate line. This will demonstrate to the officer that an attempt was made to obtain the information and it was not an oversight on your part.

(b) Do not search backpacks or large bags. Professional Staff is not trained in handling the potential dangers sometimes hidden in bags. Items which need to be searched should be directed to a Community Service Officer (CSO) at the Jail Bail window during business hours.

(c) Itemize the found property on the form. If cash or valuables are turned in, it is recommended that either the community member turning in the property or a co-worker confirm the form is accurate by signing the form as a witness.

(d) Contact the Communication Center to obtain a case number and have an officer assigned to the call. The case number may be given to the community member reporting the found property.

(e) Place the property and the Found Property form in the blue locker next to the break room in the Records Bureau. The code for the locker will be the same code used to enter the PSB parking lot.

(f) The dispatched officer will retrieve the found property and handle it per normal protocol.

(g) If the property is oversized and will not fit in the locker or needs to be searched, bring the completed Found Property form and the property to a CSO at the Jail Bail window.

(h) After normal business hours, the Communication Center will direct the community member with the found property to a CSO at the Jail Bail window.

802.28 FOUND PROPERTY TURNED IN AT THE JAIL BAIL WINDOW

CSOs will adhere to the same procedures as Professional Staff, with the following exceptions:

(a) Booking prisoners and assisting officers will take precedence to collecting found property.

(b) Backpacks and large bags may be searched.

(c) The found property will be stored in the secure Jail Bail window office, which will also be the location for the officer to pick up the property.

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802.29 RETURN OF FOUND PROPERTY TO FINDER

(a) Berkeley Municipal Code Section 2.64.110 provides that all found property or found money coming into the possession of any member of the Police Department shall remain in the custody of the Department for at least 90 days. Methods of disposing of such property (with the exception of returning found and unclaimed property to the finder) are set forth in the ordinance.

(b) California law distinguishes between a police employee finding an article or money in the course of his/her employment and the usual case where the finder has superior title against anyone except the real owner. It is the duty of a police employee to forfeit all claim of title to any article found or surrendered to him/her in the course of employment.

(c) When a citizen reports the finding of money or any article, he/she may request that this Department take custody of the item and stipulate that it be returned at the finder's expense if the rightful owner cannot be located. The citizen shall be advised:

1. If no owner appears and proves ownership of the property within 90 days, the finder may take title to the property if requested within 30 days after expiration of the 90-day period.

2. If the finder makes claim to the property within 30 days after expiration of the 90-day period, the Property Officer or Property Clerk can release the property to the claimant if the value is less than $250.00.

3. If the property value is $250.00 or greater, the Property Officer or Property Clerk shall arrange for a notice of the found property to be published in a local newspaper of general circulation. The notice shall appear in at least one local newspaper for a minimum of one week and costs shall be paid by the finder.

4. If, after seven days following the publishing of the notice, no owner appears and proves ownership, title to the property shall vest in the finder. The finder may claim the property upon presentation of valid (picture) identification, and reimbursement to the Police Department for the publication of the notice described in (c) above.

(d) The Property Officer or Property Clerk shall be responsible for insuring that all necessary cancellations are made in Departmental files whenever property is released under this Order. These cancellations are usually restricted to firearms entries in AFS.

(e) It is not mandatory that citizens turn in found property to this Department; however, the procedure set forth above should be complied with to protect the finder from being in violation of Penal Code Section 485. This Section states that a finder is guilty of theft unless he/she makes a reasonable effort to find and restore the property to its rightful owner.

(f) Should the finder wish to retain the property and proceed to gain title as set forth in this Order, a numbered report shall be prepared, a complete description of the property obtained, and the description checked against all appropriate files and systems (Local, State, etc.) in an attempt to locate the owner.

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802.30 PUBLIC AUCTION OF PROPERTY

State law provides for the sale of unclaimed property which cannot be returned, and which is not required to be destroyed. Once each year, or more often if necessary, the Property Officer or Property Clerk shall arrange for unclaimed property to be sold at public auction.

Unclaimed firearms and other weapons shall not be sold at auction. They shall be destroyed as provided by law.

802.31 DESTRUCTION OF STOLEN OR EMBEZZLED PROPERTY

Where the Property Officer or Property Clerk has identified items of property for destruction, the Property Officer or Property Clerk shall request approval for destruction of the item from the Police Department Bureau responsible for the criminal investigation involving the item.

(a) The Bureau Lieutenant or his/her designee shall determine if there are pending court actions regarding the item, whether the item should be returned to its owner, or whether the item is suitable for destruction.

(b) If the owner can be located, the Bureau Lieutenant or his/her designee shall notify the owner that the item is available for recovery within 30 days from the Police Department Property Room. The Bureau shall in turn notify the Property Officer or Property Clerk that the owner is notified, and that the property shall be held for the owner.

(c) If no owner can be located, the Bureau shall so notify the Property Officer or Property Clerk, and confirm that the item is suitable for destruction.

If there is a dispute as to the ownership of a piece of stolen property, all parties shall be advised to apply to the court of jurisdiction for a determination of ownership.

802.32 DESTRUCTION OF FIREARMS AND WEAPONS

Firearms and weapons defined as “nuisances” by the California Penal Code are subject to disposal. By June 30th of each year, the Property Officer shall apply for a court order authorizing the destruction of “nuisance” weapons. The application shall list the weapons to be destroyed by make, model, caliber, and serial number.

The California Penal Code defines “Destructive Devices” and "machine guns" and states that those which were unlawfully possessed, must be surrendered to the California Department of Justice unless a certificate signed by a Judge or District Attorney is filed with the Department of Justice. The certificate must state that the preservation of such destructive devices or machine guns is necessary to serve the ends of justice.

(a) Destruction of firearms and weapons shall be accomplished in such a manner so as to render the weapons absolutely useless. The destruction process shall occur at a commercial location arranged by the Property Officer and shall be witnessed by the Property Officer and Support Services Division Captain or his/her designee. A Sworn Supervisor may substitute for the Support Service Division Captain.

(b) The Property Officer or Property Clerk shall update information regarding all serialized weapons from the appropriate computer system(s) immediately following such

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destruction. The Property Officer/Property Clerk will update AEGIS immediately following any destruction of property or drugs.

(c) The Property Officer shall maintain information on all property that has been destroyed and shall forward that information to the Records Bureau for placement in the applicable record storage system.

802.33 CONVERSION OF PROPERTY TO AGENCY OR PUBLIC USE

Civil Code Section 2080.4 and Penal Code Section 1411 provide that, if a City or county has enacted an enabling ordinance, certain unclaimed property held in the custody of the agency may be retained for agency or other public use, rather than being sold or destroyed. The California Penal Code provides the authority for acquisition of firearms for agency use.

(a) Requests for acquisition for Departmental or other public use of unclaimed property held by this Department shall be made in memo format and forwarded to the Support Services Bureau Lieutenant. All requests shall include complete justification for acquiring the property and copies of all relevant agency documents describing how the requested property came into possession of the Department.

(b) After a request has been approved by the Support Services Bureau Lieutenant, additional documents shall be obtained as described below when the property to be acquired is a firearm:

1. A Certificate of Weapon Retention obtained from and signed by a Judge or District Attorney; and,

2. A letter, describing the make, model, caliber, and serial number of the firearm, prepared for the signature of the Chief of Police, to the California Department of Justice.

(c) Notwithstanding an order from the court to the contrary, money which is in the possession of the property section and which cannot be lawfully returned to its owner (after consultation with the appropriate prosecuting attorney), shall, at the direction of the Chief of Police, be transferred from the BPD Property Fund to the City General Fund. (Ref. Penal Code Sections 335a and 1418, and Health and Safety Code Sections 11488, etc.)

(d) No property so acquired shall be used for personal or non-governmental purposes.

802.34 STORAGE OF SEIZED DRUG-RELATED FUNDS

Unless otherwise ordered by the District Attorney or Alameda County Superior Court, all seized drug-related funds shall be kept in the custody of the Police Department pursuant to Berkeley Municipal Code section 2.64.090, which requires a record be made thereof. Seized drug-related funds shall be kept a minimum of one year and ninety days from the date of seizure of the funds.

(a) “Drug-related funds” means all moneys, negotiable instruments, or securities described in California Health and Safety Code section 11470 (f).

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(b) “Seized drug-related funds,” means any drug#related funds seized by the Police Department pursuant to Division 10, Chapter 8 (commencing with Section 11470) of the Health and Safety Code.

802.35 DISPOSITION OF UNCLAIMED SEIZED DRUG-RELATED FUNDS

If the District Attorney or Attorney General institutes forfeiture proceedings for seized drug-related funds, the funds shall be disposed of in accordance with Division 10, Chapter 8 (commencing with Section 11470) of the Health and Safety Code.

Non-withstanding Berkeley Municipal Code section 2.64.110, if forfeiture proceedings are not instituted and if seized drug-related funds are not ordered to be disposed by a court, the Police Department shall comply with any notice to withhold issued with respect to the funds by the Franchise Tax Board. If no notice to withhold has been issued with respect to the funds by the Franchise Tax Board, the funds shall be disposed of in accordance with the terms of this section.

No sooner than one year from the date of seizure of drug-related funds, the Property Officer shall send a certified letter to the last known address of the individual whose funds were seized. The Property Officer shall simultaneously publish a notice once a week for three successive weeks in a newspaper of general circulation in Alameda County.

(a) Both the letter and the notice shall include the following:

1. The case number of any criminal proceedings related to the funds;
2. The Police Report number related to the funds;
3. The date and place of seizure; and
4. The amount of funds held by the Police Department.

(b) Both the letter and the notice shall direct the individual to apply for a court date for release of the funds and shall specify the date by which the person must apply.

1. The date shall be no sooner than ninety (90) days after the certified letter is deposited in the mail. The letter and notice shall further state that if such a court order is not obtained, the funds shall become the property of the City.

If court proceedings are not instituted and served on the City on or before the date specified in the notice and letter, the funds shall be transferred to the Police Department's asset forfeiture account.

802.36 INSPECTIONS OF EVIDENCE / PROPERTY STORAGE AREAS

A scheduled inspection of the Property Room will be made at least once every six months. The Support Services Division Captain or his/her designee shall conduct these inspections to determine that:

1. The respective Property Room storage facilities are being maintained in a clean and orderly fashion,
2. The provisions of this policy are being followed,
3. Property is being protected from damage or deterioration,

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4. Property accountability procedures are being maintained, and
5. Property having no further evidentiary value is being disposed of in accordance with the law and departmental policy.

The Support Services Division Captain or his/her designees shall include the nature and results of these inspections in his/her monthly management report to the Chief of Police.

Unannounced inspections of the Property Room will be conducted annually as directed by the Chief of Police. These spot inspections shall be conducted to determine that the Property Rooms are being maintained in a clean and orderly fashion, that the policies are being followed, that property accountability and security procedures are in compliance, that all property is being sent to the main Property Rooms as soon as possible, and that the main Property Rooms received the necessary paper work to dispose of evidence/property no longer having evidentiary value. A random comparison of the records with physical property should consume most of the time allocated to the spot inspections. The Operations Division and Support Services Division Captains or their designees shall include the nature and results of these inspections in his/her report to the Chief of Police.

802.37 AUDITS

In December 2000, an automated property system was instituted. In order to ensure the credibility of this automated property system, a series of regular audits will be instituted. The following audits will be performed:

(a) Monthly Audits: At least once each month, the Property Officer or Property Clerk will conduct a random audit of 25 items of property from various locations within the drug and property rooms. This monthly audit will examine the records for these items and confirm the status and location of each of these items is correct. The Property Officer will additionally conduct a “Cash” audit of the Property Room and determine the amount of cash currently stored within the Property Room. Once each month, the Property Officer or Property Clerk will check the “Chain of Custody” disposition records in AEGIS, or a manual log. When an article has been out of the Property Room for two weeks or more, the Property Officer will contact the employee that checked out the item of property and determine its status. Items out for more than two weeks shall have an explanation placed in AEGIS. The results of each of these audits shall be reported to the respective Division Captains.

(b) Bi-Annual Audits: The Professional Standards Bureau Audit and Inspections Sergeant will be responsible for conducting audits of all of the Property Rooms at least twice a year. The Property Officer and Property Clerk will use portable barcode scanners to audit 100 pieces of property in their respective Property Rooms. The audit will check for the correct locations and status of each item. This audit will also check at least 5 different property locations and two drug evidence locations and confirm that those locations contain all the individual pieces of property that the AEGIS has assigned to those locations and ensure that there has been no tampering of the evidence. The results of each of these audits shall be reported to the Chief of Police, via the Professional Standards Division chain of command. The results will also be shared with the Captain and Lieutenant of the Support Services Division.

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Whenever a new Property Officer is appointed, outgoing and incoming personnel shall conduct a joint inventory. The purpose of the inventory is to ensure the continuity of custody and not require the accounting of every single item of property. The inventory should be sufficient to ensure the integrity of the system and the accountability of the property. The person assuming custody of the property should ensure that all records are current and any discrepancies are recorded and reported to the Support Services Division Captain prior to the assumption of property accountability by the newly appointed custodian.

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Records Management

803.1 PURPOSE AND SCOPE

This policy establishes the guidelines for the operational functions of the Berkeley Police Department Records Management. The policy addresses department file access and internal requests for case reports.

803.2 POLICY

It is the policy of the Berkeley Police Department to maintain department records securely, professionally, and efficiently.

803.3 RESPONSIBILITIES

803.3.1 RECORDS SUPERVISOR

The Chief of Police shall appoint and delegate certain responsibilities to a Records Supervisor. The Records Supervisor shall be directly responsible to the Support Services Lieutenant or his/her designee.

The responsibilities of the Records Supervisor include but are not limited to:

(a) Overseeing the efficient and effective operation of the Records Management.

(b) Scheduling and maintaining Records Management time records.

(c) Supervising, training, and evaluating Records Management staff.

(d) Ensuring compliance with established policies and procedures.

(e) Supervising the access, use, and release of protected information (see the Protected Information Policy).

(f) Establishing security and access protocols for case reports designated as sensitive, where additional restrictions to access have been implemented. Sensitive reports may include, but are not limited to:

1. Homicides.
2. Cases involving department members or public officials.
3. Any case where restricted access is prudent.

803.3.2 RECORDS MANAGEMENT

The responsibilities of the Records Management include but are not limited to:

(a) Maintaining a records management system for case reports.

1. The records management system should include a process for numbering, identifying, tracking, and retrieving case reports.

(b) Entering case report information into the records management system.

1. Modification of case reports shall only be made when authorized by a supervisor.

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(c) Providing members of the Department with access to case reports when needed for investigation or court proceedings.

(d) Maintaining compliance with federal, state, and local regulations regarding reporting requirements of crime statistics. This includes reporting statistical data to the California Department of Justice (DOJ) for:

1. All officer-involved shootings and incidents involving use of force resulting in serious bodily injury (Government Code § 12525.2).
2. Suspected hate crimes (Penal Code § 13023).
3. Complaints of racial bias against officers (Penal Code § 13012; Penal Code § 13020).
4. Civilian complaints made against officers (Penal Code § 832.5; Penal Code § 13012).
5. Stop data required by Government Code § 12525.5 and 11 CCR 999.226.
   (a) The reported information must not contain personally identifiable information of the person stopped or other information exempt from disclosure pursuant to Government Code § 12525.5 (11 CCR 999.228).

(e) Maintaining compliance with federal, state, and local regulations regarding criminal history reports and auditing.

(f) Identifying missing case reports and notifying the responsible member's supervisor.

(g) Updating the Automated Firearms System to reflect any firearms relinquished to the Department and the subsequent disposition to the DOJ pursuant to Penal Code § 34010 (Penal Code § 29810).

(h) Entering into the Automated Firearms System information about each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, surrendered in relation to a private party firearms transaction or registration, relinquished pursuant to a court order, or under observation, within seven calendar days of the precipitating event (Penal Code § 11108.2).

(i) Maintaining compliance with the state and DOJ reporting requirements regarding the number of transfers of individuals to immigration authorities and offenses that allowed for the transfers (Government Code § 7284.6(c)(2)).

803.3.3 RECORDS MANAGEMENT PROCEDURES

The Records Supervisor should establish procedures that address:

(a) Identifying by name persons in reports.

(b) Classifying reports by type of incident or crime.

(c) Tracking reports through the approval process.

(d) Assigning alpha-numerical records to all arrest records.

(e) Managing a warrant and wanted persons file.

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803.4 DETERMINATION OF FACTUAL INNOCENCE

In any case where a person has been arrested by officers of the Berkeley Police Department and no accusatory pleading has been filed, the person arrested may petition the Department to destroy the related arrest records. Petitions should be forwarded to the Support Services Lieutenant. The Support Services Lieutenant should promptly contact the prosecuting attorney and request a written opinion as to whether the petitioner is factually innocent of the charges (Penal Code § 851.8). Factual innocence means the accused person did not commit the crime.

Upon receipt of a written opinion from the prosecuting attorney affirming factual innocence, the Records Supervisor should forward the petition to the Detective Bureau Lieutenant and the City Attorney for review. After such review and consultation with the City Attorney, the Detective Bureau Lieutenant and the Records Supervisor shall decide whether a finding of factual innocence is appropriate.

Upon determination that a finding of factual innocence is appropriate, the Records Supervisor shall ensure that the arrest record and petition are sealed for later destruction and the required notifications are made to the California DOJ and other law enforcement agencies (Penal Code § 851.8).

The Records Supervisor should respond to a petition with the Department's decision within 45 days of receipt. Responses should include only the decision of the Department, not an explanation of the analysis leading to the decision.

803.5 ARREST WITHOUT FILING OF ACCUSATORY PLEADING

(a) The Operations Division Captain should ensure a process is in place for when an individual is arrested and released and no accusatory pleading is filed so that the following occurs (Penal Code § 849.5; Penal Code § 851.6):

1. The individual is issued a certificate describing the action as a detention.

(b) The Support Services Division Captain should ensure the following occurs:

1. All references to an arrest are deleted from the arrest records of the Department and the record reflects only a detention.
2. The California DOJ is notified.

803.6 FILE ACCESS AND SECURITY

The security of files in the Records Management must be a high priority and shall be maintained as mandated by state or federal law. All case reports including but not limited to initial, supplemental, follow-up, evidence, and any other reports related to a police department case, including field interview (FI) cards, criminal history records, and publicly accessible logs, shall be maintained in a secure area within the Records Management, accessible only by authorized members of the Records Management. Access to case reports or files when Records Management staff is not available may be obtained through the Watch Commander.

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The Records Management will also maintain a secure file for case reports deemed by the Chief of Police as sensitive or otherwise requiring extraordinary access restrictions.

803.7 CONFIDENTIALITY

Records Management staff has access to information that may be confidential or sensitive in nature. Records Management staff shall not access, view, or distribute, or allow anyone else to access, view, or distribute any record, file, or report, whether in hard copy or electronic file format, or any other confidential, protected, or sensitive information except in accordance with the Records Maintenance and Release and Protected Information policies and the Records Management procedure manual.

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Records Maintenance and Release

804.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of department records. Protected information is separately covered in the Protected Information Policy.

804.2 POLICY

The Berkeley Police Department is committed to providing public access to records in a manner that is consistent with the California Public Records Act (Government Code § 6250 et seq.).

It shall be the policy of the Berkeley Police Department to release copies of public records, unless release would endanger a private person or law enforcement personnel, harm a law enforcement investigation, constitute an unwarranted invasion of privacy, or is prohibited by law.

804.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Support Services Bureau Captain shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to:

(a) Managing the records management system for the Department, including the retention, archiving, release, and destruction of department public records.

(b) Maintaining and updating the department records retention schedule including:

1. Identifying the minimum length of time the Department must keep records.
2. Identifying the department division responsible for the original record.

(c) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.

(d) Establishing rules regarding the processing of subpoenas for the production of records.

(e) Ensuring a current schedule of fees for public records as allowed by law is available (Government Code § 6253).

(f) Determining how the department's website may be used to post public records in accordance with Government Code § 6253.

(g) Ensuring that all department current standards, policies, practices, operating procedures, and education and training materials are posted on the department website in accordance with Penal Code § 13650.

(h) Ensuring that public records posted on the Department website meet the requirements of Government Code § 6253.10 including but not limited to posting in an open format where a record may be retrieved, downloaded, indexed, and searched by a commonly used internet search application.

(i) Ensuring that a list and description, when applicable, of enterprise systems (as defined by Government Code § 6270.5) is publicly available upon request and posted in a prominent location on the Department's website.

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804.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

Any department member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

804.4.1 REQUESTS FOR RECORDS

Any member of the public, including the media and elected officials, may access public records of this department, during regular business hours by submitting a request that reasonably describes each record sought and paying any associated fees (Government Code § 6253).

The processing of requests for any record is subject to the following (Government Code § 6253):

(a) The Department is not required to create records that do not exist.

(b) Victims of an incident or their authorized representative shall not be required to show proof of legal presence in the United States to obtain department records or information. If identification is required, a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship or current Matricula Consular card is acceptable (Government Code § 6254.30).

(c) Either the requested record or the reason for non-disclosure will be provided no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Custodian of Records or the authorized designee. If an extension is authorized, the Department shall provide the requester written notice that includes the reason for the extension and the anticipated date of the response.

1. When the request does not reasonably describe the records sought, the Custodian of Records shall assist the requester in making the request focused and effective in a way to identify the records or information that would be responsive to the request including providing assistance for overcoming any practical basis for denying access to the records or information. The Custodian of Records shall also assist in describing the information technology and physical location in which the record exists (Government Code § 6253.1).

2. If the record requested is available on the department website, the requester may be directed to the location on the website where the record is posted. If the requester is unable to access or reproduce the record, a copy of the record shall be promptly provided.

(d) Upon request, a record shall be provided in an electronic format utilized by the Department. Records shall not be provided only in electronic format unless specifically requested (Government Code § 6253.9).

(e) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.

1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/

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video release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.

(f) If a record request is denied in whole or part, the requester shall be provided a written response that includes the statutory exemption for withholding the record or facts that the public interest served by nondisclosure outweighs the interest served by disclosure (Government Code § 6255). The written response shall also include the names, titles or positions of each person responsible for the denial.

(a) The requestor may appeal the denial to the Custodian of Records.

804.5 RECORDS FOR RELEASE

The following public information shall be released subsequent to administrative review of the Custodian of Records, unless release would endanger the safety of a person involved in an investigation, or endanger the successful completion of the investigation or a related investigation:

(a) Arrest information for arrests made within six months of the date of the public information request (GC §6254(f)(1)):

1. The arrestee's name, occupation, date of birth, and physical description, including gender, height, weight, and color of eyes and hair;
2. The date, time and location of arrest, and the date and time of booking;
3. The factual circumstances surrounding the arrest, the amount of bail set, the location where the individual is currently being held, or the time and manner of release; and,
4. All charges the individual is being held upon, including any outstanding warrants from other jurisdictions, and parole or probation holds.

(b) Complaints and requests for assistance made within six months of the date of the public information request (GC §6254(f)(2)):

1. Factual circumstances surrounding the crime or incident, and a general description of any injuries, property or weapons involved.
2. The time, substance, and location of all complaints or requests for assistance received by this department, and time and nature of response thereto, including, to the extent the information is recorded, the time, date and location of occurrence, and the time and date of the report.
3. The victim's name, age and address, unless his/her name and address are not be disclosed pursuant to other provisions of this policy.

(c) Information required to be released to misdemeanor or felony crime victims, their agents, and insurers (GC §6254(f)):

1. Names and addresses of persons involved in the incident;
2. Names and addresses of witnesses (other than confidential informants) to the incident;
3. The description of any property involved;

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4. The date, time and location of the incident;
5. Statements of parties involved in the incident;
6. Statements of witnesses (other than confidential informants); and,
7. All diagrams.

(d) Release of a complete copy, without redaction, of an identity theft (PC §530.5) police report to the victim of said offense (PC §530.6(a)).

804.6 COMMAND OFFICER RELEASE OF INFORMATION

Supervisory and command personnel may release verbatim excerpts from the General Orders, Training and Information Bulletins, or written policy directives of their particular command, and may quote statutory law which affects this Department and its conduct of public business.

Subsequent to the approval of the Chief of Police, the Public Information Officer, his/her designee, and command personnel may respond to criticism of their particular command, of the activities of members of their command, or of the department, except when the criticism has resulted in an Internal Affairs investigation of alleged misconduct.

804.7 RELEASE RESTRICTIONS

Examples of release restrictions include:

(a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any department record, including traffic collision reports, are restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722) (Government Code § 6254.29).

(b) Personnel records, medical records, and similar records that would involve an unwarranted invasion of personal privacy except as allowed by law (Government Code § 6254; Penal Code § 832.7; Penal Code § 832.8; Evidence Code § 1043 et seq.).

1. Peace officer personnel records that are deemed confidential shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order.
2. The identity of any officer subject to any criminal or administrative investigation shall not be released without the consent of the involved officer, prior approval of the Chief of Police, or as required by law.

(c) The name and address of any person detained pursuant to WI 5150, where disclosure would constitute an unwarranted invasion of privacy.

(d) Victim information that may be protected by statutes, including victims of certain crimes who have requested that their identifying information be kept confidential, victims who are minors, and victims of certain offenses (e.g., sex crimes or human trafficking (Penal Code § 293)). Addresses and telephone numbers of a victim or a witness to any

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arrested person or to any person who may be a defendant in a criminal action shall not be disclosed, unless it is required by law (Government Code § 6254; Penal Code § 841.5).

1. Victims of certain offenses (e.g., domestic violence, sexual assault, stalking, human trafficking, elder and dependent adult abuse) or their representatives shall be provided, upon request and without charge, one copy of all incident report face sheets, one copy of all incident reports, or both, pursuant to the requirements and time frames of Family Code § 6228.
2. Victims of sexual assault, upon written request, shall be provided a free copy of the initial crime report regardless of whether the report has been closed. Personal identifying information may be redacted (Penal Code § 680.2(b)).

(e) Video or audio recordings created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident except as provided by Government Code § 6254.4.5.

(f) Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved, or information that would endanger the successful completion of the investigation or a related investigation.

(g) Analysis and conclusions of investigating officers (Evidence Code § 1041; Government Code § 6254).

1. Absent a statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Government Code § 6254(f).

(h) Criminal history information including but not limited to arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code § 13300.

1. All requests from criminal defendants and their authorized representatives (including attorneys) shall be referred to the District Attorney.

(i) Absent a Court Order, certain types of reports involving but not limited to child abuse and molestation (Penal Code § 11167.5), elder and dependent abuse (Welfare and Institutions Code § 15633), juveniles (Welfare and Institutions Code § 827), sex crimes and/or domestic violence.

(j) Incidents or investigations regarding violent or abusive conduct reported by a health care provider(PC 11163.2(b)).

(k) Sealed autopsy and private medical information concerning a murdered child with the exceptions that allow dissemination of those reports to law enforcement agents, prosecutors, defendants, or civil litigants under state and federal discovery laws (Code of Civil Procedure §130).

(l) Traffic collision reports (and related supplemental reports) shall be considered confidential and subject to release only to the California Highway Patrol, Department of Motor Vehicles (DMV), other law enforcement agencies, and those individuals and their authorized representatives set forth in Vehicle Code § 20012.

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(m) Any record created exclusively in anticipation of potential litigation involving this department (Government Code § 6254).

(n) Records relating to the security of the department's electronic technology systems (Government Code § 6254.19).

(o) A record of a complaint, or the investigations, findings, or dispositions of that complaint if the complaint is frivolous, as defined by Code of Civil Procedure § 128.5, or if the complaint is unfounded (Penal Code § 832.7 (b)(9)).

(p) Reports or information received from other agencies.

(q) Any other record not addressed in this policy shall not be subject to release where such record is exempt or prohibited from disclosure pursuant to state or federal law, including but not limited to provisions of the Evidence Code relating to privilege (Government Code § 6254).

(r) Information connected with juvenile court proceedings or the detention or custody of a juvenile. Federal officials may be required to obtain a court order to obtain certain juvenile information (Welfare and Institutions Code § 827.9; Welfare and Institutions Code § 827.95; Welfare and Institutions Code § 831).

(s) Any prospective operation plan and related tactical inventory.

804.7.1 FIRST AMENDMENT EVENTS

Except as required by State and Federal law, no employee of the Berkeley Police Department or any other City of Berkeley employee shall actively broadcast through Twitter, Facebook, Nixle, or other social media, the addresses, legal names, booking photos or other identifying information of people arrested for non-violent offenses by the Berkeley Police Department or other departments acting in mutual aid at First Amendment Events, as defined in Policy 428. The Berkeley Police Department and other City employees may broadcast the fact of arrests having been made, and details of the reasons and circumstances of such arrests, so long as personal identifying information is not included.

Restrictions on broadcasting identifying information about individuals arrested for non-violent violations in conjunction with First Amendment Events shall not limit or diminish the City's obligation to release arrestee information as required by State law, subject to personal safety-based and other limitations. This prohibition does not apply to any suspect or suspects identified as persons wanted for committing a violent crime during any demonstrations or protest.

804.8 SUBPOENAS AND DISCOVERY REQUESTS

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the District Attorney, City Attorney or the courts.

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All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

804.9 RELEASED RECORDS TO BE MARKED

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the department name and to whom the record was released.

Each audio/video recording released should include the department name and to whom the record was released.

804.10 SEALED RECORD ORDERS

Sealed record orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records, or his/her designee, shall seal such records as ordered by the court. Records may include but are not limited to a record of arrest, investigation, detention, or conviction. Once the record is sealed, members shall respond to any inquiry as though the record did not exist (Penal Code § 851.8; Welfare and Institutions Code § 781).

When an arrest record is sealed pursuant to Penal Code § 851.87, Penal Code § 851.90, Penal Code § 851.91, Penal Code § 1000.4, or Penal Code § 1001.9, the Records Supervisor shall ensure that the required notations on local summary criminal history information and police investigative reports are made. Sealed records may be disclosed or used as authorized by Penal Code § 851.92.

804.10.1 SEALED JUVENILE ARREST RECORDS

Upon receiving notice from a probation department to seal juvenile arrest records pursuant to Welfare and Institutions Code § 786.5, the Records Supervisor should ensure that the records are sealed within 60 days of that notice and that the probation department is notified once the records have been sealed (Welfare and Institutions Code § 786.5).

804.11 RELEASE OF AUDIO OR VIDEO RECORDINGS RELATED TO CRITICAL INCIDENTS

Video and audio recordings related to critical incidents shall be released upon a proper public record request and subject to delayed release, redaction, and other release restrictions as provided by law (Government Code § 6254(f)(4)).

For purposes of this section, a video or audio recording relates to a critical incident if it depicts an incident involving the discharge of a firearm at a person by an officer, or depicts an incident in which the use of force by an officer against a person resulted in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) (Government Code § 6254(f)(4)).

The Custodian of Records should work as appropriate with the Chief of Police or the Internal Affairs Bureau supervisor in determining what recordings may qualify for disclosure when a request for a recording is received and if the requested recording is subject to delay from disclosure, redaction, or other release restrictions.

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804.11.1 DELAY OF RELEASE

Disclosure of critical incident recordings during active criminal or administrative investigations may be delayed as follows if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source:

(a) Disclosure may be delayed up to 45 days from the date the Department knew or reasonably should have known about the incident.

(b) Delay of disclosure may continue after the initial 45 days and up to one year if the Department demonstrates that disclosure would substantially interfere with the investigation.

(c) Any delay of disclosure longer than one year must be supported by clear and convincing evidence that disclosure would substantially interfere with the investigation (Government Code § 6254(f)(4)).

804.11.2 NOTICE OF DELAY OF RELEASE

When there is justification to delay disclosure of a recording, the Custodian of Records shall provide written notice to the requester as follows (Government Code § 6254(f)(4)):

(a) During the initial 45 days, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination that disclosure would substantially interfere with the investigation. The notice shall also include the estimated date for the disclosure.

(b) When delay is continued after the initial 45 days, the Custodian of Records shall promptly provide the requester with written notice of the specific basis for the determination that the interest in preventing interference with an active investigation outweighs the public interest in the disclosure, and the estimated date for the disclosure. The Custodian of Records should work with the Chief of Police in reassessing the decision to continue withholding a recording and notify the requester every 30 days.

Recordings withheld shall be disclosed promptly when the specific basis for withholding the recording is resolved.

804.11.3 REDACTION

If the Custodian of Records, in consultation with the Chief of Police or authorized designee, determines that specific portions of the recording may violate the reasonable expectation of privacy of a person depicted in the recording, the Department should use redaction technology to redact portions of recordings made available for release. The redaction should not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording, and the recording should not otherwise be edited or altered (Government Code § 6254(f)(4)).

If any portions of a recording are withheld to protect the reasonable expectation of privacy of a person depicted in the recording, the Custodian of Records shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served (Government Code § 6254(f)(4)).

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804.11.4 RECORDINGS WITHHELD FROM PUBLIC DISCLOSURE

If the reasonable expectation of privacy of a person depicted in the recording cannot adequately be protected through redaction, and that interest outweighs the public interest in disclosure, the Department may withhold the recording from the public, except that the recording, either redacted or unredacted, shall be disclosed promptly, upon request, to any of the following (Government Code § 6254(f)(4)):

(a) The person in the recording whose privacy is to be protected, or his/her authorized representative.

(b) If the person is a minor, the parent or legal guardian of the person whose privacy is to be protected.

(c) If the person whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased person whose privacy is to be protected.

If the Department determines that this disclosure would substantially interfere with an active criminal or administrative investigation, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination and the estimated date of disclosure (Government Code § 6254(f)(4)).

The Department may continue to delay release of the recording from the public for 45 days with extensions as provided in this policy (Government Code § 6254(f)(4)(A)).

804.12 ATTACHMENT

See attachment: 804 Attach June 2022.pdf

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Protected Information

805.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the access, transmission, release and security of protected information by members of the Berkeley Police Department. This policy addresses the protected information that is used in the day-to-day operation of the Department and not the public records information covered in the Records Maintenance and Release Policy.

805.1.1 DEFINITIONS

Definitions related to this policy include:

Protected information - Any information or data that is collected, stored or accessed by members of the Berkeley Police Department and is subject to any access or release restrictions imposed by law, regulation, order or use agreement. This includes all information contained in federal, state or local law enforcement databases that is not accessible to the public.

805.2 POLICY

Members of the Berkeley Police Department will adhere to all applicable laws, orders, regulations, use agreements and training related to the access, use, dissemination and release of protected information.

805.3 RESPONSIBILITIES

The Custodian of Records, or his/her designee, will coordinate the use of protected information.

The responsibilities of this position include, but are not limited to:

(a) Ensuring member compliance with this policy and with requirements applicable to protected information, including requirements for the National Crime Information Center (NCIC) system, National Law Enforcement Telecommunications System (NLETS), Department of Motor Vehicle (DMV) records and California Law Enforcement Telecommunications System (CLETS).

(b) Developing, disseminating and maintaining procedures that adopt or comply with the U.S. Department of Justice's current Criminal Justice Information Services (CJIS) Security Policy.

(c) Developing, disseminating and maintaining any other procedures necessary to comply with any other requirements for the access, use, dissemination, release and security of protected information.

(d) Developing procedures to ensure training and certification requirements are met.

(e) Resolving specific questions that arise regarding authorized recipients of protected information.

(f) Ensuring security practices and procedures are in place to comply with requirements applicable to protected information.

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805.4 ACCESS TO PROTECTED INFORMATION

Protected information shall not be accessed in violation of any law, order, regulation, user agreement, Berkeley Police Department policy or training. Only those members who have completed applicable training and met any applicable requirements, such as a background check, may access protected information, and only when the member has a legitimate work-related reason for such access.

Unauthorized access, including access for other than a legitimate work-related purpose, is prohibited and may subject a member to administrative action pursuant to the Personnel Complaints Policy and/or criminal prosecution.

805.4.1 PENALTIES FOR MISUSE OF RECORDS

It is a misdemeanor to furnish, buy, receive or possess Department of Justice criminal history information without authorization by law (Penal Code § 11143).

Authorized persons or agencies violating state regulations regarding the security of Criminal Offender Record Information (CORI) maintained by the California Department of Justice may lose direct access to CORI (11 CCR 702).

805.5 RELEASE OR DISSEMINATION OF PROTECTED INFORMATION

Protected information may be released only to authorized recipients who have both a right to know and a need to know.

A member who is asked to release protected information that should not be released should refer the requesting person to a supervisor or to the Records Supervisor for information regarding a formal request.

Unless otherwise ordered or when an investigation would be jeopardized, protected information maintained by the Department may generally be shared with authorized persons from other law enforcement agencies who are assisting in the investigation or conducting a related investigation. Any such information should be released through the Records Management to ensure proper documentation of the release (see the Records Maintenance and Release Policy).

805.5.1 REVIEW OF CRIMINAL OFFENDER RECORD

Individuals requesting to review their own California criminal history information shall be referred to the Department of Justice (Penal Code § 11121).

Individuals shall be allowed to review their arrest or conviction record on file with the Department after complying with all legal requirements regarding authority and procedures in Penal Code § 11120 through Penal Code § 11127 (Penal Code § 13321).

805.5.2 TRANSMISSION GUIDELINES

Protected information, such as restricted Criminal Justice Information (CJI), which includes Criminal History Record Information (CHRI), should not be transmitted via unencrypted radio. When circumstances reasonably indicate that the immediate safety of officers, other department members, or the public is at risk, only summary information may be transmitted.

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In cases where the transmission of protected information, such as Personally Identifiable Information, is necessary to accomplish a legitimate law enforcement purpose, and utilization of an encrypted radio channel is infeasible, a MDT or department-issued cellular telephone should be utilized when practicable. If neither are available, unencrypted radio transmissions shall be subject to the following:

- Elements of protected information should be broken up into multiple transmissions, to minimally separate an individual's combined last name and any identifying number associated with the individual, from either first name or first initial.
- Additional information regarding the individual, including date of birth, home address, or physical descriptors, should be relayed in separate transmissions.

Nothing in this policy is intended to prohibit broadcasting warrant information.

805.6 SECURITY OF PROTECTED INFORMATION

The Custodian of Records, or his/her designee, will oversee the security of protected information.

The responsibilities of this position include, but are not limited to:

(a) Developing and maintaining security practices, procedures and training.

(b) Ensuring federal and state compliance with the CJIS Security Policy and the requirements of any state or local criminal history records systems.

(c) Establishing procedures to provide for the preparation, prevention, detection, analysis and containment of security incidents including computer attacks.

(d) Tracking, documenting and reporting all breach of security incidents to the Chief of Police and appropriate authorities.

805.6.1 MEMBER RESPONSIBILITIES

Members accessing or receiving protected information shall ensure the information is not accessed or received by persons who are not authorized to access or receive it. This includes leaving protected information, such as documents or computer databases, accessible to others when it is reasonably foreseeable that unauthorized access may occur (e.g., on an unattended table or desk; in or on an unattended vehicle; in an unlocked desk drawer or file cabinet; on an unattended computer terminal).

805.7 CALIFORNIA RELIGIOUS FREEDOM ACT

Members shall not release personal information from any agency database for the purpose of investigation or enforcement of any program compiling data on individuals based on religious belief, practice, affiliation, national origin or ethnicity (Government Code § 8310.3).

805.8 TRAINING

All members authorized to access or release protected information shall complete a training program that complies with any protected information system requirements and identifies authorized access and use of protected information, as well as its proper handling and dissemination.

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Computers and Digital Evidence

806.1 PURPOSE AND SCOPE

This policy establishes procedures for the seizure and storage of computers, personal communications devices (PCDs) digital cameras, digital recorders and other electronic devices that are capable of storing digital information; and for the preservation and storage of digital evidence. All evidence seized and/or processed pursuant to this policy shall be done so in compliance with clearly established Fourth Amendment and search and seizure provisions.

806.2 SEIZING COMPUTERS AND RELATED EVIDENCE

Computer equipment requires specialized training and handling to preserve its value as evidence. Officers should be aware of the potential to destroy information through careless or improper handling, and utilize the most knowledgeable available resources. When seizing a computer and accessories the following steps should be taken:

(a) Photograph each item, front and back, specifically including cable connections to other items. Look for a phone line or cable to a modem for Internet access.

(b) Do not overlook the possibility of the presence of physical evidence on and around the hardware relevant to the particular investigation such as fingerprints, biological or trace evidence, and/or documents.

(c) If the computer is off, do not turn it on.

(d) If the computer is on, do not shut it down normally and do not click on anything or examine any files.

1. Photograph the screen, if possible, and note any programs or windows that appear to be open and running.
2. Disconnect the power cable from the back of the computer box or if a portable notebook style, disconnect any power cable from the case and remove the battery).

(e) Label each item with case number, evidence sheet number, and item number.

(f) Handle and transport the computer and storage media (e.g., tape, discs, memory cards, flash memory, external drives) with care so that potential evidence is not lost.

(g) Book all computer items in the Property Room. Do not store computers where normal room temperature and humidity is not maintained.

(h) At minimum, officers should document the following in related reports:

1. Where the computer was located and whether or not it was in operation.
2. Who was using it at the time.
3. Who claimed ownership.
4. If it can be determined, how it was being used.

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(i) In most cases when a computer is involved in criminal acts and is in the possession of the suspect, the computer itself, the corresponding power/charging cords, and all storage devices (hard drives, tape drives, and disk drives) should be seized along with all media. Accessories (printers, monitors, mouse, scanner, keyboard, cables, software and manuals) should not be seized unless as a precursor to forfeiture.

806.2.1 BUSINESS OR NETWORKED COMPUTERS

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

806.2.2 FORENSIC EXAMINATION OF COMPUTERS

If an examination of the contents of the computer's hard drive, or floppy disks, compact discs, or any other storage media is required, forward the following items to a computer forensic examiner:

(a) Copy of report(s) involving the computer, including the Evidence/Property sheet.

(b) Copy of a consent to search form signed by the computer owner or the person in possession of the computer, or a copy of a search warrant authorizing the search of the computer hard drive for evidence relating to investigation.

(c) A listing of the items to search for (e.g., photographs, financial records, e-mail, documents).

(d) When necessary, an exact duplicate of the hard drive or disk will be made using a forensic computer and a forensic software program by someone trained in the examination of computer storage devices for evidence.

806.3 SEIZING DIGITAL STORAGE MEDIA

Digital storage media including hard drives, floppy discs, CD's, DVD's, tapes, memory cards, or flash memory devices should be seized and stored in a manner that will protect them from damage.

(a) If the media has a write-protection tab or switch, it should be activated.

(b) In general, do not review, access or open digital files prior to submission. If the information is needed for immediate investigation request the Property Room to copy the contents to an appropriate form of storage media.

(c) Many kinds of storage media can be erased or damaged by magnetic fields. Keep all media away from magnetic devices, electric motors, radio transmitters or other sources of magnetic fields.

(d) Do not leave storage media where they would be subject to excessive heat such as in a parked vehicle on a hot day.

(e) Use plastic cases designed to protect the media, or other protective packaging, to prevent damage.

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806.4 SEIZING PCDS

Personal communication devices such as cell phones, PDAs or other hand-held devices connected to any communication network must be handled with care to preserve evidence that may be on the device including messages, stored data and/or images.

(a) Officers should not attempt to access, review or search the contents of such devices prior to examination by a forensic expert. Unsent messages can be lost, data can be inadvertently deleted and incoming messages can override stored messages.

(b) Do not turn the device on or off. The device should be placed in a faraday bag, to prevent the device from sending or receiving information from its host network.

(c) When seizing the devices, also seize the charging units and keep them plugged in to the chargers until they can be examined. If the batteries go dead all the data may be lost.

806.5 DIGITAL EVIDENCE RECORDED BY OFFICERS

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

806.5.1 COLLECTION OF DIGITAL EVIDENCE

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

806.5.2 SUBMISSION OF DIGITAL MEDIA

The following are required procedures for the submission of digital media used by cameras or other recorders:

(a) The recording media (smart card, compact flash card or any other media) shall be booked into the Property Room as soon as possible for submission into evidence, or

(b) The media on the card shall be uploaded to the Department's Digital Evidence Database or an alternative storage media as soon as possible for submission into evidence.

806.5.3 DOWNLOADING OF DIGITAL FILES

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

806.5.4 PRESERVATION OF DIGITAL EVIDENCE

(a) Digital images that are enhanced to provide a better quality photograph for identification and investigative purposes must only be made from a copy of the original media.

(b) If any enhancement is done to the copy of the original, it shall be noted in the corresponding incident report.

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Computer Voice Stress Examinations

807.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the use of the Computer Voice Stress Analyzer (CVSA) as an investigative tool.

807.2 POLICY

All Berkeley Police Department CVSA examinations shall be conducted in accordance with regulations contained in the California Administrative Code, Business and Professions Code and Government Code.

807.3 THE COMPUTER VOICE STRESS ANALYZER (CVSA)

The CVSA is an excellent aid to law enforcement investigations; however, it should never be considered as a substitute or shortcut to an investigation.

(a) The final result of a CVSA examination will be based, in great measure, upon the thoroughness of the investigation prior to having a subject take the examination.

(b) In criminal investigations, examinations may be conducted upon suspects, victims and witnesses.

807.4 PROCEDURES

Requests may be made to a CVSA examiner verbally or in writing. Requests must be accompanied by sufficient data for evaluation of the subject. The decision to do an examination is based on the nature of the investigation and the characteristics of the person to be examined.

Examinations will only be conducted in criminal cases where criminal prosecution, not civil litigation, is the intended result of the investigation.

807.5 INTERNAL INVESTIGATIONS

In keeping with the California Peace Officers' Bill of Rights, CVSA examinations will not be offered, nor given to sworn members of the Department.

807.6 BACKGROUND INVESTIGATIONS

During the background investigation process, a CVSA examination shall be administered to each police officer candidate. CVSA examinations shall only be administered by specially trained CVSA examiners employed by the Berkeley Police Department. CVSA examinations shall be based on information provided by the applicant and discovered during the background investigation, including the Personal History Statement, Drug Use Questionnaire and Pre-Investigative Questionnaire.

At the conclusion of the examination, the examiner shall prepare a memorandum addressed to the Personnel and Training Sergeant outlining the results. This memorandum shall include whether

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or not deception was indicated, and if so, in what area. Any additional admissions or information developed during the interview shall be documented in the memorandum.

The results of the CVSA examination shall not be the sole determinant of any candidate's suitability for employment with the Berkeley Police Department.

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Emergency Burial Permits

808.1 PURPOSE AND SCOPE

The purpose of this policy is to establish procedures for the issuance of emergency burial permits by the Berkeley Police Department.

808.2 POLICY

While the City of Berkeley Health, Housing, and Community Services (HHCS) Department is responsible for the daily administration and processing of burial permits, sworn supervisors or command rank officers (hereafter, “issuing officers”) shall assist HHCS Department in the issuance of emergency burial permits according to the procedures set forth in this policy.

808.3 CRITERIA FOR ISSUING AN EMERGENCY BURIAL PERMIT

(a) The death occurred within the city of Berkeley.

(b) There is a need for an emergency permit, limited to the following:

1. Religious necessity (i.e., Jewish custom);
2. Natural disaster (i.e., earthquake, etc.); or
3. Extraordinary circumstances requiring out-of-state transportation by the deceased person’s family.

A permit request made urgent due to a statutory time limit (e.g., being beyond the 8-day time limit for burial) or a “long weekend” is not an emergency, and the person making the request shall be referred to the HHCS Department’s Office of Vital Statistics during normal business hours.

808.4 NON - ISSUANCE

A burial permit shall not be issued in the following circumstances:

(a) The applicant does not possess the required documents.

(b) The applicant fails to submit the requisite permit fee.

(c) The location intended to receive scattered cremated remains is not authorized by law or the property owner’s consent (e.g., lakes, rivers, within 500 feet of an ocean or inland waterway shoreline, over public lands without proper approval, etc.).

808.5 HOURS OF ISSUANCE

An emergency burial permit may only be issued by the Police Department on Saturdays, Sundays and holidays, between the hours of 9 a.m. and 4 p.m. A permit will not be issued by department personnel at any other time except on the personal request of the City’s Public Health Officer.

808.6 PROCEDURES

The issuing officer shall receive the following forms from the funeral facility representative:

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(a) An original Certificate of Death;

(b) An Application and Permit for the Disposition of Human Remains (State of California, Department of Public Health, Office of Vital Statistics form VS-9), completed in quadruplicate, and signed/dated by funeral director or authorized representative; and

(c) When applicable, written authorization from a private property owner or governmental agency having jurisdiction over lands upon which cremated remains are to be scattered.

808.7 REVIEW OF DOCUMENTS

808.7.1 CERTIFICATE OF DEATH

The issuing officer shall review the Certificate of Death to ensure:

(a) The death occurred in Berkeley (#106).

(b) The Certificate is signed by either a physician or the Coroner (#115 and 118, and/or 126).

1. The Coroner must sign when the death was caused in whole or in part by an injury, is work-related, is under investigation or during the continued absence of the physician.

2. The physician must have seen the deceased within 20 days of the date of death (Compare #7 with #114B).

(c) If the body is embalmed, the Certificate bears the embalmer's license number (#43) and signature (#42). (If the body is not embalmed, the words “not embalmed” should be written in #42 and a dash in #43.

808.7.2 APPLICATION AND PERMIT FOR DISPOSITION OF HUMAN REMAINS

The issuing officer shall review the Application and Permit for Disposition of Human Remains to ensure:

(a) The information on the form corresponds with that on the Certificate of Death.

(b) The form is signed and dated by the applicant in sections 9A and 9B

(c) The amount of “$12.00” appears in the section 10A.

(d) The current date appears in the section 10B.

(e) The name of the City’s Public Health Officer, (check city website for current MD) is written by the issuing officer, along with his/her initials and badge number, in section 10C.

(f) The form reads “City of Berkeley Health Department, 1947 Center Street” in section 10D.

(g) The location identified for disposition of cremated remains (11C and 16A) is legally authorized to receive said material, in conformance with Health and Safety Code §§7116 and 7117.

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808.8 DISTRIBUTION OF DOCUMENTS / FEE

(a) The issuing officer shall present the first three copies of the completed Application and Permit for Disposition of Human Remains to the funeral facility representative.

(b) The issuing officer shall forward the following items to HHCS Department's Office of Vital Statistics for each burial permit issued:

1. The fourth copy of the Application and Permit for Disposition of Human Remains;
2. The Certificate of Death; and,
3. The fee of $12.00.
    - (a) Checks shall be made payable to the "City of Berkeley".
    - (b) THE ISSUING OFFICER SHALL NOT PREPARE A RECEIPT FOR THE PERMIT FEE. HHCS Department staff is responsible for preparation and mailing of a receipt to the funeral facility.

808.9 BPD LOG

The issuing officer shall complete the "Health Department -Burial Permits" log attached to Burial Permit folder kept at Front Counter.

808.10 QUESTIONS

Questions or issues concerning burial permits that cannot be immediately resolved should be referred to the City of Berkeley's Vital Statistics Office.

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Mobile Command Vehicle (MCV)

811.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a system of accountability to ensure the Department's Mobile Command Vehicle (MCV) is used appropriately. This policy provides guidelines for the acceptable use, and required training of the Department's Mobile Command Vehicle (MCV).

811.2 DESCRIPTION OF CURRENT MOBILE COMMAND VEHICLE

Currently Berkeley Police Department owns a 2003 Freightliner Chassis (custom built). This MCV is equipped with police radios and outfitted to handle several laptops at any given time. The MCV is designed to assist in a catastrophic event which disables the Berkeley Police Department's Communications Center at the Public Safety Building. The MCV offers shelter, and a location to access Police Department computer systems.

811.3 AUTHORIZED USE

The Berkeley Police Department's Mobile Command Vehicle (MCV) is designed to be used as an incident command post in specific circumstances, including critical incidents, missing person searches, natural disasters, large scale events or community events that are taking place. The (MCV) may be used for other events as approved by the Chief of Police or their designee.

811.4 TRAINING

The Mobile Command Vehicle shall only be operated by members who have been properly trained and demonstrated proficiency in the operations of this specific vehicle. Training shall include the safe handling of the MCV, how to setup and take down the MCV for operational use, and demonstrated competence in the safe handling of the MCV on various streets within the City of Berkeley.

The current MCV does not require a specialty drivers' license classification or any endorsements. A valid California driver's license class C is the only DMV requirement required to operate the current MCV.

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Chapter 9 - Custody

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Temporary Custody of Adults

900.1 PURPOSE AND SCOPE

This policy provides guidelines to address the health and safety of adults taken into temporary custody by members of the Berkeley Police Department for processing prior to being released or transferred to a housing or other type of facility.

Temporary custody of juveniles is addressed in the Temporary Custody of Juveniles Policy. Juveniles will not be permitted where adults in custody are being held.

Custodial searches are addressed in the Custodial Searches Policy.

900.2 DEFINITIONS

Definitions related to this policy include:

Jail - The jail proper, pedestrian sally ports, vehicle sally port, and public detainee visiting rooms associated with the Berkeley City Jail.

Jail Supervisor - A supervising Community Services Officer assigned to the Jail.

Jailer - A Community Service Officer or Jail Supervisor assigned to custody management responsibilities within the Jail.

Holding cell/cell - Any locked enclosure for the custody of an adult or any other enclosure that prevents the occupants from being directly visually monitored at all times by a member of the Department.

Safety checks - Direct, visual observation by a member of this department performed at random intervals, within time frames prescribed in this policy, to provide for the health and welfare of adults in temporary custody.

Temporary custody - The time period an adult is in custody at the Berkeley Police Department prior to being released or transported to a housing or other type of facility.

900.3 POLICY

The Berkeley Police Department is committed to keeping adults safe while in temporary custody at the Department. Adults should be in temporary custody only for as long as reasonably necessary for investigation, processing, transfer or release.

900.4 CHAIN OF COMMAND

The Jail is administered by the following chain of command (in descending order): The Chief of Police, Support Services Division Captain, Support Services Bureau Lieutenant, Jail Sergeant, and the Jail Supervisor.

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(a) In the absence of the Support Services Bureau Lieutenant and Jail Sergeant, the Watch Commander and ranking Patrol Sergeant, respectively, will fulfill the corresponding responsibilities in the Jail's chain of command.

900.5 GENERAL CRITERIA AND SUPERVISION

No adult should be in temporary custody for longer than 96 hours, excluding holidays.

900.5.1 INDIVIDUALS WHO SHOULD NOT BE IN TEMPORARY CUSTODY

Individuals who exhibit certain behaviors or conditions should not be in temporary custody at the Berkeley City Jail, but should be transported to the Alameda County Jail, a medical facility, or another type of facility as appropriate. These may include:

(a) Any individual who is unconscious or has been unconscious while being taken into custody or while being transported.

(b) Any individual who has a medical condition that will require medical attention while in temporary custody.

(c) Any individual who is seriously injured.

(d) Individuals who are a suspected suicide risk (see the Mental Illness Commitments Policy).

1. If the officer taking custody of an individual believes that he/she may be a suicide risk, the officer shall ensure continuous direct supervision until evaluation, release, or a transfer to an appropriate facility is completed (15 CCR 1030).

(e) Individuals who are obviously in crisis, as defined in the Crisis Intervention Incidents Policy.

(f) Individuals who are under the influence of alcohol, a controlled substance, or any substance to the degree that may require medical attention, or who have ingested any substance that poses a significant risk to their health, whether or not they appear intoxicated.

(g) Any individual who has exhibited extremely violent or continuously violent behavior including behavior that results in the destruction of property or demonstrates an intent to cause physical harm to him/herself or others (15 CCR 1053; 15 CCR 1055).

(h) Any individual who claims to have, is known to be afflicted with, or displays symptoms of any communicable disease that poses an unreasonable exposure risk (15 CCR 1051). For example, turburculosis (TB), body lice, scabies, or any other disease that could be transmitted to other detainees, jail staff, or others employed in the Public Safety Building.

(i) Any individual with a prosthetic or orthopedic device where removal of the device would be injurious to his/her health or safety.

(j) Any individual who is obviously developmentally disabled (15 CCR 1057). Detainees who are developmentally disabled shall be transported to Santa Rita Jail.

(k) Any individual who appears to be a danger to him/herself or others due to a mental disorder, or who appears gravely disabled (15 CCR 1052).

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(l) Any individual who needs restraint beyond the use of handcuffs or shackles for security reasons (15 CCR 1058).

(m) Any individual obviously suffering from drug or alcohol withdrawal (15 CCR 1213).

(n) Any detainee who was exposed to the primary effect of a Conducted Energy Device (CED) three or more times in the course of his/her apprehension will not be accepted (i.e., pre-booked, booked or detained within) into the Jail. Instead, the detainee shall be sent for a medical evaluation and, if deemed fit for incarceration, shall be transported and booked into an alternative custodial facility.

(o) Any detainee with a permanent physical disability or condition who is unable to transport themselves with, or be transported via, mechanical means (i.e., wheelchair, crutches, etc.) may be directed to another detention facility for incarceration, at the discretion of the on-duty Jail Supervisor.

Officers taking custody of a person who exhibits any of the above conditions should notify a supervisor of the situation. These individuals should not be in temporary custody at the Berkeley City Jail unless they have been evaluated by a qualified medical or mental health professional, as appropriate for the circumstances.

900.6 SUPERVISION IN TEMPORARY CUSTODY

An authorized department member capable of supervising shall be present at all times when an individual is held in temporary custody. The member responsible for supervising should not have other duties that could unreasonably conflict with his/her supervision. Any individual in custody must be able to summon the supervising member if needed. If the person in custody is deaf or hard of hearing or cannot speak, accommodations shall be made to provide this ability (15 CCR 1027).

At least one female department member shall be available when a female adult is in temporary custody. In the event that none is readily available, the female in custody should be transported to another facility or released pursuant to another lawful process (15 CCR 1027).

Absent exigent circumstances, such as a medical emergency or a violent subject, members should not enter the cell of a person of the opposite sex unless a member of the same sex as the person in custody is present (Penal Code § 4021).

No individual in custody shall be permitted to supervise, control or exert any authority over other individuals in custody.

900.7 STAFFING PLAN

The Chief of Police or their designee shall ensure a staffing plan is prepared and maintained, indicating assigned personnel and their duties. The plan should ensure that at least one member who meets the training standards established by the Board of State and Community Corrections (BSCC) for general fire- and life-safety and is trained in fire- and life-safety procedures relating specifically to the facility is on-duty at all times (15 CCR 1028).

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The staffing plan shall be available for biennial review by BSCC staff. The review and recommendations of the BSCC biennial review shall be forwarded to the City, as required by 15 CCR 1027.

900.8 ENTRY RESTRICTIONS

Entry into any location where a person is held in custody should be restricted to:

(a) Authorized members entering for official business purposes.

(b) Emergency medical personnel when necessary.

(c) Any other person authorized by the Jail Supervisor.

When practicable, more than one authorized member should be present for entry into a location where a person is held in custody for security purposes and to witness interactions.

900.9 "FIT FOR INCARCERATION" CLEARANCE

A detainee may only be deemed “Fit for Incarceration” by a medical or mental health professional. Detainees who require such clearance prior to being accepted into the Jail, include, but are not limited to:

(a) A detainee who suffered a major injury or illness prior to arrival at the Jail.

(b) A detainee who was exposed to the primary effect of a Conducted Energy Device (CED) less than three times.

(c) A detainee who was sent for a W&I 5150 evaluation.

900.10 INITIATING TEMPORARY CUSTODY

The jailer booking the detainee into temporary custody should evaluate the person for any apparent chronic illness, disability, vermin infestation, possible communicable disease or any other potential risk to the health or safety of the individual or others. The jailer should specifically ask if the individual is contemplating suicide and evaluate him/her for obvious signs or indications of suicidal intent.

The receiving officer should ask the arresting officer if there is any statement, indication or evidence surrounding the individual's arrest and transportation that would reasonably indicate the individual is at risk for suicide or critical medical care. If there is any suspicion that the individual may be suicidal, he/she shall be transported from the City jail or the appropriate mental health facility.

The jailer should promptly notify the Watch Commander of any conditions that may warrant immediate medical attention or other appropriate action. The Watch Commander shall determine whether the individual will be placed in a cell, immediately released or transported to another jail or facility.

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900.11 MINOR INJURY PRIOR TO BOOKING

(a) If a detainee suffered a minor injury (i.e., treatable by first aid methods) prior to arrival at the Jail, that person may be accepted for booking at the discretion of the on-duty Jail supervisor.

(b) In the event a detainee refuses first aid treatment for a minor injury suffered prior to arrival at the Jail, the booking jailer shall document the extent of the injury and offer to facilitate other medical assistance, as may be appropriate.

900.12 PREGNANT ADULTS

For the purposes of this policy, “pregnant” shall refer to a detainee who is visibly pregnant, or states they are pregnant.

A pregnant detainee who is under the influence of drugs to the extent that their life, or the life of the fetus, could be in danger shall not be accepted in the Jail without having first been examined and cleared for incarceration by a physician. Once cleared for incarceration, the detainee may be booked into the Jail. A detainee who is known to be pregnant should be restrained in accordance with the Handcuffing and Restraints Policy, per Policy 302 and PC 3407.

900.13 SCREENING AND PLACEMENT

The jailer responsible for a detainee in temporary custody shall (15 CCR 1050):

(a) Advise the Jail Supervisor of any significant risks presented by the individual (e.g., suicide risk, health risk, violence).

(b) Evaluate the following issues against the stated risks in (a) to determine the need for placing the individual in a single cell:

1. Consider whether the individual may be at a high risk of being sexually abused based on all available known information (28 CFR 115.141), or whether the person is facing any other identified risk.

2. Provide any individual identified as being at a high risk for sexual or other victimization with heightened protection. This may include (28 CFR 115.113; 28 CFR 115.141):

   i. Continuous, direct sight and sound supervision.

3. Ensure individuals are separated according to severity of the crime (e.g., felony or misdemeanor).

4. Ensure males and females are separated by sight when in cells.

5. Ensure restrained individuals are not placed in cells with unrestrained individuals.

(c) Ensure that those confined under civil process or for civil causes are kept separate from those who are in temporary custody pending criminal charges.

(d) Ensure separation, as appropriate, based on other factors, such as age, criminal sophistication, assaultive/non-assaultive behavior, mental state, disabilities and sexual orientation.

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(e) Ensure detainees who are extremely dirty and refuse to shower subsequent to booking are housed separately.

(f) Ensure persons who suffer from a loss of hearing which does not present an impediment to custody are accepted into the Jail, and housed in a cell which provides for optimum observation by Jail staff.

(g) Ensure a detainee who is temporarily disabled as a result of intoxication, or similar condition, is be accepted into the Jail if he/she is able to respond to verbal or physical stimulation to the satisfaction of the on-duty Jail Supervisor.

(h) Ensure any detainee who was subject to the primary effects of a less-lethal device (not including a Conducted Energy Device) such as a baton round, diversion device, etc. or non-lethal device such as a Rapid Containment Baton (RCB), OC spray, etc. in the course of their apprehension has been evaluated for injury by the arresting officer prior to booking into the Jail. (See section 900.5 and 900.10 regarding detainees who have been exposed to Conducted Energy Devices).

900.14 SERVICE ANIMALS

(a) A service animal is defined as a dog that is trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. The work or tasks performed by a service animal must be directly related to the individual's disability (28 CFR 35.104; Health and Safety Code § 113903).

1. A service animal also includes a miniature horse if the horse is trained to do work or perform tasks for people with disabilities, provided the horse is housebroken, is under the handler’s control, the facility can accommodate the horse’s type, size and weight, and the horse’s presence will not compromise legitimate safety requirements necessary for safe operation of the facility (28 CFR 35.136(i)) (see the Service Animal Policy for further).

(b) Jail staff shall consider a request from a detainee for their service animal to be present with him/her while confined in the Jail. The employee considering the request shall be responsible for making permissible inquiries to determine the status of the alleged service animal and suitability for entry into the Jail.

(c) If the animal doesn’t qualify as a service animal, the detainee may make arrangements for the animal’s care. If this cannot be accomplished in a reasonable amount of time, the animal should be delivered to Animal Control. The detainee shall be notified of their animal’s location.

(d) If the animal qualifies as a service animal, but the animal would jeopardize the safe operation of the jail or would pose a direct threat to the health and safety of others, the animal may be separated from the detainee. The detainee may make arrangements for the animal’s care. If this cannot be accomplished in a reasonable amount of time, the animal should be delivered to Animal Control. The detainee shall be notified of their animal’s location.

(e) If the animal needs to be separated from the detainee, the employee shall ask the detainee if separation from the service animal would constitute or create a medical

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emergency. If the detainee claims the separation will constitute or create a medical emergency, the detainee should be taken to a hospital facility for medical clearance.

(f) If the animal is determined to qualify as a service animal, the detainee must be able to care for (i.e., feed and clean) the animal, or provide an attendant who can come to the Jail to accomplish the same care. The detainee must also agree to ensure the animal's transfer from the Jail no later than four hours prior to the detainee's transfer to court or other facility. If the detainee cannot accomplish these things, the animal will not be allowed into the Jail. The detainee may then make arrangements for the animal's care. If this cannot be accomplished in a reasonable amount of time, the animal should be delivered to Animal Control. The detainee shall be notified of their animal's location.

900.15 CONSULAR NOTIFICATION

Consular notification may be mandatory when certain foreign nationals are arrested. The Support Services Captain will ensure that the U.S. Department of State's list of countries and jurisdictions that require mandatory notification is readily available to department members. There should also be a published list of foreign embassy and consulate telephone and fax numbers, as well as standardized notification forms that can be transmitted and then retained for documentation. Prominently displayed signs informing foreign nationals of their rights related to consular notification should also be posted in areas used for the temporary custody of adults.

Department members assigned to process a foreign national shall:

(a) Inform the individual, without delay, that he/she may have his/her consular officers notified of the arrest or detention and may communicate with them.

1. This notification should be documented.

(b) Determine whether the foreign national's country is on the U.S. Department of State's mandatory notification list.

1. If the country is on the mandatory notification list, then:

(a) Notify the country's nearest embassy or consulate of the arrest or detention by fax or telephone.

(b) Tell the individual that this notification has been made and inform him/her without delay that he/she may communicate with consular officers.

(c) Forward any communication from the individual to his/her consular officers without delay.

(d) Document all notifications to the embassy or consulate and retain the faxed notification and any fax confirmation for the individual's file.

2. If the country is not on the mandatory notification list and the individual requests that his/her consular officers be notified, then:

(a) Notify the country's nearest embassy or consulate of the arrest or detention by fax or telephone.

(b) Forward any communication from the individual to his/her consular officers without delay.

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900.16 SAFETY, HEALTH, AND OTHER PROVISIONS

900.16.1 TEMPORARY CUSTODY LOGS

Any time an individual is in temporary custody at the Berkeley Police Department, the custody shall be promptly and properly documented in a corrections database including:

(a) Identifying information about the individual, including his/her name.

(b) Date and time of arrival at the Department.

(c) Any charges for which the individual is in temporary custody and any case number.

(d) Time of all safety checks (15 CCR 1027; 15 CCR 1027.5).

(e) Any medical and other screening requested and completed.

(f) Any emergency situations or unusual incidents.

(g) Any other information that may be required by other authorities, such as compliance inspectors.

(h) Date and time of release from the Berkeley Police Department.

The Jail Supervisor should sign the Berkeley Jail Detainee Confinement Record (DCR) log to approve the temporary custody and should also sign initial the DCR log when the individual is released from custody or transferred to another facility.

The Jail Supervisor should make periodic checks to ensure all log entries and safety and security checks are made on time.

900.16.2 TEMPORARY CUSTODY REQUIREMENTS

Members monitoring or processing anyone in temporary custody shall ensure:

(a) Safety checks and significant incidents/activities are noted on the corrections database.

(b) Individuals in custody are informed that they will be monitored at all times, except when using the toilet.

1. There shall be no viewing devices, such as peep holes or mirrors, of which the individual is not aware.

2. This does not apply to surreptitious and legally obtained recorded interrogations.

(c) There is reasonable access to toilets and wash basins.

(d) There is reasonable access to a drinking fountain or water.

(e) There are reasonable opportunities to stand and stretch, particularly if handcuffed or otherwise restrained.

(f) There is privacy during attorney visits.

(g) Those in temporary custody are generally permitted to remain in their personal clothing unless it is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody.

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(h) Clean blankets are provided as reasonably necessary to ensure the comfort of an individual.

1. The supervisor should ensure that there is an adequate supply of clean blankets.

(i) Adequate shelter, heat, light and ventilation are provided without compromising security or enabling escape.

(j) Adequate furnishings are available, including suitable chairs or benches.

(k) A Telecommunications Relay Service (TRS) shall be provided to any detainee who expresses a need for it.

900.16.3 MEDICAL CARE

First-aid equipment and basic medical supplies should be available to department members (15 CCR 1220). At least one member who has current certification in basic first aid and CPR should be on-duty at all times.

Should a person in custody be injured or become ill, appropriate medical assistance should be sought. Jail staff or an officer should meet with those providing medical aid at the facility to allow access to the person. Members shall comply with the opinion of medical personnel as to whether an individual in temporary custody should be transported to the hospital. If the person is transported while still in custody, the officer should follow the ambulance to the hospital. If the person is combative and medical personnel request the officer ride in the ambulance to the hospital, the officer shall do so and another officer shall follow the ambulance in a police vehicle.

900.16.4 MEDICATION

(a) Detainees who require medication shall be held in temporary custody unless

1. The detainee's medication is:

(a) For a cardiac-related condition, i.e. nitroglycerin

(b) Administered via injection

(c) A research or experimental drug

2. The detainee requires medication on a regular basis, but does not possess the medication at the time of booking and cannot coordinate the receipt of such medication within a reasonable amount of time post-booking.

3. The detainee requires medication that is too complex to administer

(b) All medication should be in a pill form (not capsule) unless the medication is obtained directly from a hospital or pharmacy by a member of the Police Department. The medication should be properly labeled on a prescription container and should include the following:

(a) The name of the individual for which the drug is prescribed,

(b) The name of medication,

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(c) The dose and instructions for taking the medication,

(d) The prescribing physician and

(e) The expiration date.

(c) All medication shall be identified by one of the following methods:

1. Contacting the prescribing physician,
2. Calling an on duty nurse at an Alameda County Medical Facility or Santa Rita Jail, or
3. Using an online resource such as the Prescriber's Digital Reference (PDR) guide.

(d) Any medication administered to a detainee shall be noted in the jail log.

900.16.5 ORTHOPEDIC OR PROSTHETIC APPLIANCE

Subject to safety and security concerns, individuals shall be permitted to retain an orthopedic or prosthetic appliance. However, if the member supervising the individual has probable cause to believe the possession of the appliance presents a risk of bodily harm to any person or is a risk to the security of the facility, the appliance may be removed from the individual unless its removal would be injurious to his/her health or safety.

Whenever a prosthetic or orthopedic appliance is removed, the Watch Commander shall be promptly apprised of the reason. It shall be promptly returned when it reasonably appears that any risk no longer exists (Penal Code § 2656; 15 CCR 1207).

900.16.6 TELEPHONE CALLS

Immediately upon being booked and, except where physically impossible, no later than three hours after arrest, an individual in custody has the right to make at least three completed calls to an attorney, bail bondsman, and a relative or other person (Penal Code § 851.5). Additional calls may be made as reasonable and necessary (15 CCR 1067). In providing further access to a telephone beyond that required by Penal Code § 851.5, legitimate law enforcement interests such as officer safety, effect on ongoing criminal investigations and logistics should be balanced against the individual's desire for further telephone access.

(a) Telephone calls may be limited to local calls, except that long-distance calls may be made by the individual at his/her own expense.

1. The Department should pay the cost of any long-distance calls related to arranging for the care of a child or dependent adult (see the Child and Dependent Adult Safety Policy).
2. The provisions of Penal Code § 851.5 concerning this issue shall be posted in bold, block type in a conspicuous place within the facility.

(b) The individual should be given sufficient time to contact whomever he/she desires and to make any necessary arrangements, including child or dependent adult care, or transportation upon release.

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1. Telephone calls are not intended to be lengthy conversations. The member assigned to monitor or process the individual may use his/her judgment in determining the duration of the calls.
2. Within three hours of the arrest, the member supervising the individual should inquire whether the individual is a custodial parent with responsibility for a minor child, and notify the individual that he/she may make two additional telephone calls to a relative or other person for the purpose of arranging for the care of minor children (Penal Code § 851.5).

(c) Calls between an individual in temporary custody and his/her attorney shall be deemed confidential and shall not be monitored, eavesdropped upon or recorded (Penal Code § 851.5(b)(1); 15 CCR 1068).

(d) A detainee who is too violent and/or intoxicated to cooperate during the booking process shall be denied phone calls. Once the detainee is cooperative and/or sober, telephone calls shall be provided, if requested.

(e) The jailer facilitating a detainee's telephone calls shall log each call by time and phone number called.

(f) A Telecommunications Relay Service (TRS) shall be provided to any detainee who expresses a need for it.

(g) A detainee who initially refuses to make calls during booking, may be allowed calls at a later time, when reasonably practical.

900.16.7 RELIGIOUS ACCOMMODATION

Subject to available resources, safety and security, the religious beliefs and needs of all detainees in custody should be reasonably accommodated (15 CCR 1072). Requests for religious accommodation should generally be granted unless there is a compelling security or safety reason and denying the request is the least restrictive means available to ensure security or safety. The responsible supervisor should be advised any time a request for religious accommodation is denied.

Those who request to wear headscarves or simple head coverings for religious reasons should generally be accommodated absent unusual circumstances. Head coverings shall be searched before being worn.

Detainees wearing headscarves or other approved coverings shall not be required to remove them while in the presence of or while visible to the opposite sex if they so desire. Religious garments that substantially cover the detainee's head and face may be temporarily removed during the taking of any photographs.

900.16.8 FIREARMS AND OTHER WEAPONS

Firearms (including ammunition) and other weapons and control devices shall not be permitted in secure areas where detainees are in custody or are processed. They shall be properly secured outside of the Jain in a locker or other secure area. An exception may occur only during emergencies, upon approval of a supervisor.

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All perimeter doors to secure areas shall be kept locked at all times, except during routine cleaning, when no detainees in custody are present or in the event of an emergency, such as an evacuation.

For the purpose of this section, “other weapons and control devices” shall include knives, Rapid Containment Batons (RCBs), wooden batons, flashlights, Oleoresin Capsicum (OC) spray and Conducted Energy Devices (possessed by other agencies).

For the purpose of this section, an “emergency” shall include incidents wherein the involved subject(s) may be armed and have the potential to inflict serious injury or death (e.g., a detainee-involved hostage situation).

900.16.9 SECURITY MEASURES -JAIL STAFF

(a) Jail keys assigned to and maintained within the Jail shall not be left unattended.

(b) Cell areas shall be sufficiently illuminated so detainees can be easily observed, and corridor lights shall be on at all times.

(c) When on-duty, Jail staff shall wear portable police radios.

(d) Jail staff shall keep conversation with detainees to a minimum; courteous and respectful conversation intended to facilitate the efficient operation of the Jail is permitted.

(e) Jail staff shall answer intercoms promptly.

(f) No detainee shall be allowed to have any pencils, pens or other markers, except those provided temporarily for completion of required forms or correspondence.

(g) Whenever maintenance or emergency personnel are in the Jail, jailers shall admonish them to maintain control of and account for all equipment and tools in their possession.

(h) A jailer may deny entry to any person carrying an item believed to be, or which may become, a hazard.

900.16.10 SECURITY MEASURES - DETAINEES/ OTHER PERSONS

(a) Non-law enforcement persons entering the Jail shall be subject to a thorough cursory and /or metal detector search of their person and belongings.

(b) Contraband of any kind is prohibited within the Jail. Contraband is considered:

1. Weapons
2. Narcotics
3. Narcotic paraphernalia
4. Wireless communication device
5. Handcuff key

(c) Any person who knowingly brings contraband into, or possesses such contraband while incarcerated in, the Jail will be subject to arrest and criminal prosecution (Penal Code §4573, et. seq.)

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(d) Officers escorting a detainee into the Jail for booking shall maintain effective custody and control over that person until directed into the Jail booking area by the booking jailer.

1. Detainees shall be handcuffed upon entry to the Jail and shall remain so restrained until the escorting officer is otherwise directed by a jailer.
2. The booking officer shall remain with their detainee until the person is secure in a jail cell, or relieved prior to that action by the booking jailer.
3. The responsibility for the care and custody of detainees who have not been booked into the Jail shall remain with the booking officer.
4. The booking officer is relieved of custodial responsibility when the jailer takes physical control of the detainee and communicates he/she no longer requires the officer's assistance.

(e) No detainee shall be allowed outside a cell unless in the immediate and continuous control of two jailers and/or officers.

900.16.11 REPORTING PHYSICAL HARM OR SERIOUS THREAT OF PHYSICAL HARM
In addition to a custody log entry, any incident that results in physical harm or serious threat of physical harm to a member, person in custody or any other person shall be documented as stated in the Use of Force or On-Duty Injuries policies, or other applicable reporting process. A copy of all reports generated regarding the above circumstances shall be submitted as soon as reasonably practicable. The Jail Supervisor will retain a record of these reports for inspection purposes (15 CCR 1044).

900.16.12 DISCIPLINE
Discipline will not be administered to any individual in custody at this facility. Any individual in custody who repeatedly fails to follow directions or facility rules should be transported to the appropriate jail, mental health facility or hospital as soon as practicable. Such conduct shall be documented and reported to the receiving facility (15 CCR 1081).

900.16.13 SMOKING
Smoking is prohibited in the Jail (Berkeley Municipal Code, Chapter 12.70).

900.16.14 BOOKS, NEWSPAPERS, PERIODICALS AND WRITINGS
Jailers will make available a daily newspaper in general circulation, including a non-English language publication, to assure reasonable access to interested inmates (15 CCR 1066(b)). Upon request, Jailers shall notify the on duty Jail or Operations Sergeant to purchase a daily newspaper in the language determined by the detainee.

900.17 USE OF RESTRAINT DEVICES

Detainees in custody may be handcuffed in accordance with the Handcuffing and Restraints Policy. Unless an individual presents a heightened risk, handcuffs should generally be removed when the person is in a cell.

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The use of restraints, other than handcuffs or leg irons, generally shall not be used for individuals in temporary custody at the Berkeley Police Department unless the person presents a heightened risk, and only in compliance with the Handcuffing and Restraints Policy.

The use of handcuffs on a pregnant person should be used in compliance with Policy 302 and PC 3407.

Detainees in restraints shall be kept away from other unrestrained detainees in custody and monitored to protect them from abuse.

900.18 PERSONAL PROPERTY

The personal property of an individual in temporary custody shall be removed, inventoried and processed as provided in the Custodial Searches Policy, unless the individual requests a different disposition. For example, an individual may request property (i.e., cash, car or house keys, medications) be released to another person. A request for the release of property to another person must be made in writing. Release of the property requires the recipient’s signature on the appropriate form.

Upon release of an individual from temporary custody, his/her items of personal property shall be compared with the inventory, and he/she shall sign a receipt for the property's return. If the individual is transferred to another facility or court, the member transporting the individual is required to obtain the receiving person’s signature as notice of receipt. The Department shall maintain a copy of the property receipt.

The Jail Supervisorshall be notified whenever an individual alleges that there is a shortage or discrepancy regarding his/her property. The Jail Supervisor shall attempt to prove or disprove the claim.

900.18.1 PROPERTY PROCEDURE

The Alameda County Sheriff’s Office Prisoner Property Receipt shall be used by Jail staff to document a detailed inventory of detainee property.

The booking officer shall remain present during the booking jailer’s inventory of a detainee’s property, unless relieved by another officer or second jailer.

The booking jailer, a witness employee, and the detainee shall sign the Property Receipt at the completion of the inventory.

900.18.2 REFUSALS

(a) If the detainee refuses to sign the Receipt, the booking jailer shall check the "Refused to Sign" box and place their own initials in the section labeled "Prisoner’s Signature".

(b) The booking jailer shall route the completed and signed Prisoner Property Receipt is as follows:

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(c) In the event of a detainee's refusal to accept a copy of the Property Receipt, the booking officer or assisting jailer shall witness and initial the booking jailer's "Copy Offered/ Refused" notation.

1. If the detainee refuses to accept their copy of the Property Receipt, the booking jailer shall write, "Copy Offered/Refused", in the "Comments" section of the Receipt, and place the copy in the detainee's property bag/envelope.

2. The yellow and pink copies are attached to the envelope/bag containing the detainee's property and the goldenrod copy is attached to the Detainee Confinement Record (DCR).

900.18.3 CURRENCY AND JEWELRY

The booking jailer shall ensure a detainee's currency and jewelry are secured in a plastic heat-sealed bag and labeled with the detainee's "Person File Number" (PFN).

(a) If rings or other jewelry cannot be removed, the booking jailer shall advise the detainee the Department will not be responsible for items not surrendered, and shall note this fact and admonition on the detainee's Property Receipt and Confinement Record.

(b) No alcoholic beverages, perishable food items, or flammable liquids/chemicals shall be brought into the jail or held in Jail property lockers.

(c) Cigarette lighters or similar flammable/chemical items having particular value, or where retention of the item is desired or appropriate, shall be handled and stored pursuant to hazardous article procedures set forth in the Property and Evidence Policy.

(d) Other cigarette lighters and similar flammable items may be discarded.

(e) The booking officer shall be responsible for booking into the Property Room as "safe keeping" a detainee's property which is not maintained in the Jail property storage facility.

900.18.4 EVIDENCE

Property taken as evidence during the booking process shall be inventoried by the investigating officer on an Evidence Report form, a copy of which shall be given to the detainee or placed in the detainee's property bag.

900.18.5 BULK PROPERTY

(a) Oversized "bulk" detainee property shall be stored in the Jail's property storage room, unless its dimension and/or quantity requires more storage space.

In the event detainee property is maintained in a storage facility other than within the Jail, the booking jailer shall issue a "Bulk Property" letter, advise the detainee of the location of his/her property (e.g., in the Property Room), and admonish him/her that the "bulk" property will be deemed "abandoned" and be subject to destruction after 90 days, in accordance with the provisions of the Property and Evidence Policy.

(a) The triplicate "Bulk Property" letter shall be routed as follows:

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(a) Original (white) copy attached to Jail record;

(b) Blue copy issued to the detainee; and,

(c) Pink copy attached to property container/bag.

Jail staff are responsible for the security of detainee property.

(a) Only authorized persons shall enter the Jail's Property Storage Room or Property Lockers.

Unless release of specific personal items is authorized by owner consent or lawful process, a detainee's property should be maintained in or released from the Jail's Property Storage facilities in its entirety.

(a) Owner consent for the release of funds or other items from a detainee's property shall be documented by the detainee's signature or initials on the original copy of the detainee's Property Receipt.

(b) The employee releasing a detainee's property shall:

(a) Obtain satisfactory identification for the person to whom the property was released;

(b) Record the name of the person and the form of identification presented on the Property Receipt;

(c) Sign the Property Receipt affirming property release; and,

(d) Have the recipient sign the Property Receipt affirming receipt of released property.

No one shall use money (i.e., currency or coin) belonging to a detainee for making change.

Once a detainee has been booked into the Jail, no money, gifts, or other property will be accepted for that detainee.

Jail personnel should not accept mail (i.e., letters, packages, etc.) delivered by the US Postal Service for detainees housed in the Jail.

(a) The on-duty Jail supervisor shall be responsible for returning the mail to the Post Office as "undeliverable."

900.18.6 BOOKED PROPERTY

If the Jail's Storage room is full, Jail staff may request the arresting officer book a detainee's property, such as a backpack into the BPD property room for safekeeping. When the officer takes the item, such as a backpack, the officer shall complete an inventory of the backpack on an evidence/property receipt. The inventory should itemize any items of value contained in the backpack, such as a cell phone, camera or jewelry. Other miscellaneous items such as clothing, papers, etc. may be noted but do not need to be counted. Officers shall use their best judgment as to what constitutes a valuable item. The detainee shall sign the inventory to confirm their items are listed. This will help to safeguard against allegations of missing items in the future.

The officer shall give a copy of the receipt to the detainee, or put it with their property staying at the jail. The detainee, once released, can return to the PSB and present the receipt to retrieve their property.

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900.19 HOLDING CELLS

A thorough inspection of a cell shall be conducted before placing an individual into the cell to ensure there are no weapons or contraband and that the cell is clean and sanitary. An inspection shall be conducted when he/she is released. Any damage noted to the cell shall be photographed and documented.

The following requirements shall apply:

(a) The individual shall be searched (see the Custodial Searches Policy), and anything that could create a security or suicide risk, such as contraband, hazardous items, belts, shoes or shoelaces and jackets, shall be removed.

(b) The individual shall have constant auditory access available to department members.

(c) The individual's initial placement into and removal from a locked enclosure shall be logged.

(d) Cell checks by department members shall occur within every 60 minutes (Per Title 15 section 1027.5).

  (a) Cell checks should be at varying times.

  (b) All cell checks shall be logged and the results of the cell check including verification of prisoner count shall be entered into the jail log.

  (c) Cell checks can be completed by looking through the glass window in the cell door to check the welfare of the prisoners. If all of the occupants in the cell cannot be seen through the window of the cell door, the door will have to be opened. Before opening the cell door, assistance from another CSO or officer is required.

  (d) Individuals who are sleeping or apparently sleeping should be awakened unless there are other indication or signs of life.

  (e) Requests or concerns of the individual should be logged.

  (f) Jail staff should accomplish cell reassignment if it will benefit the peace and good order of the jail, and ensure the welfare of the detainee population.

900.19.1 USE OF SOBERING CELL

Inmates who are to be held in the Temporary Holding Facility and who present a threat to their own safety or the safety of others due to their state of intoxication shall be placed in a sobering cell until their condition allows for continued processing.

The following guidelines apply when placing any inmate in a sobering cell (15 CCR 1056):

(a) Placement of an inmate into the cell requires approval of the Jail Supervisor.

(b) A cell log shall be initiated every time an inmate is placed in the cell. The log shall be maintained for the entire time the inmate is housed in the cell.

(c) A safety check consisting of direct visual observation sufficient to assess the inmate's well-being and behavior shall occur no less than twice every 30 minutes. Each safety check shall be documented in the cell log. Supervisors shall check the logs for completeness every two hours and document this action on the cell log.

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(d) If a detainee is not responsive to verbal stimulation, the inspecting jailer shall, with sufficient assistance, enter the cell and physically rouse the detainee by touching or shaking.

(e) A detainee who is not easily roused, cannot respond to simple commands, appears to have difficulty breathing or appears ill, shall be transported to a medical facility for medical examination and clearance for incarceration.

(f) Under no circumstances shall an inmate be held in a sobering cell for more than six hours without being evaluated by qualified medical personnel to ensure that the inmate does not have an urgent medical issue.

(g) A detainee housed in a sobering cell shall be monitored by Jail staff at least twice every thirty minutes, or at a more frequent interval as may be directed by the on-duty Jail supervisor.

(h) A safety cell shall not be used as punishment or as a substituted for requisite medical and/or psychological treatment.

(i) If not completed at the time of entry into the Jail, the detainee's booking process shall be completed at the earliest practical time after that person exhibits physiological indications of sobriety (i.e., an ability to care for him or herself).

900.19.2 USE OF SAFETY CELL

A detainee who becomes extremely violent during booking or while in custody shall be temporarily held in a Safety cell.

The following guidelines apply when placing any inmate in a safety cell:

(a) A detainee who develops or exhibits behavior consistent with a psychological disorder shall be placed in a safety cell until such time as the risk created by said condition is no longer present or the person is transferred to an appropriate medical facility for treatment.

(b) The following notifications shall be made whenever a detainee is placed into a safety cell:

1. Whenever a detainee is placed into a safety cell, the on-duty Jail supervisor or Jail Operations Sergeant shall be advised as soon as practical. If either are absent or unavailable, the Watch Commander, a patrol sergeant, or the senior patrol officer on duty (in order) shall be advised.

(c) A detainees continued retention in a safety cell shall be reviewed every four hours. A medical assessment shall be completed within a maximum of 12 hours in a safety cell. The detainee should be medically cleared for continued retention in a safety cell every 24 hours thereafter.

(d) A detainee maintained in a safety cell shall not be restrained with handcuffs and/or ankle cuffs.

(e) A detainee held in a safety cell shall be allowed to retain clothing sufficient to cover their body, unless said clothing is removed for security or evidentiary reasons.

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1. In the event it is deemed necessary to remove all of a detainee's clothing, the detainee shall be provided with a safety garment (e.g., a paper coverall.)

(f) A detainee housed in a safety cell shall be monitored by Jail staff at least twice every thirty minutes, or at a more frequent interval as may be directed by the on-duty Jail supervisor.

(g) A safety cell shall not be used as punishment or as a substituted for requisite medical and/or psychological treatment.

(h) If not completed at the time of entry into the Jail, the detainee's booking process shall be completed at the earliest practical time after that person's behavior that indicates they are no longer a threat to Jail staff or other detainees.

900.20 SUICIDE ATTEMPT, DEATH, OR SERIOUS INJURY

The Support Services Division Captain shall ensure procedures are in place to address any suicide attempt, death or serious injury of any individual in temporary custody at the Berkeley Police Department.

The death of a detainee in transit the Berkeley Jail or in transit to another agency or facility, who has not been remanded and accepted into the custody of that agency or facility, shall be considered an in-custody death.

900.20.1 SUICIDE ATTEMPT OR SERIOUS INJURY

In the event of a suicide attempt of a detainee or the serious injury to a detainee, procedures shall include the following:

(a) Immediate request for emergency medical assistance if appropriate.

(b) Immediate notification of the Support Services Division Captain, Duty Command Officer, Watch Commander, and the Jail Supervisor

(c) Isolation of suspect/witness detainees if appropriate and as space allows.

900.20.2 DEATH

In the event of the death of a detainee, procedures shall include the following:

(a) Immediate request for emergency medical assistance

(b) Immediate notification of the Support Services Division Captain, Duty Command Officer, Watch Commander, and the Jail Supervisor

(c) Isolation of suspect/witness detainees if appropriate and as space allows

(d) Notification of the spouse, next of kin or other appropriate person.

(e) Notification of the appropriate prosecutor.

(f) Notification of the City Attorney.

(g) Notification of the Alameda County Coroner.

(h) Evidence preservation.

(i) In-custody death reviews (15 CCR 1046)

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(j) Notification to the Attorney General within 10 days of any death in custody including any reasonably known facts concerning the death (Government Code § 12525)

900.21 SOBER RELEASE

(a) No person shall be released from custody in an intoxicated condition.

(b) To be eligible for release from custody, a detainee must be sober to the extent he/she can care for him/herself in public (ref. PC §647(f)).

1. This protocol does not preclude release of an intoxicated adult upon Notice To Appear into the custody of a sober and responsible adult, provided that adult will assume responsibility for the intoxicated adult.

2. This protocol does not preclude release of an intoxicated juvenile into the custody of his/her sober and responsible adult parent or guardian, provided that adult will assume responsibility for the intoxicated juvenile.

(c) When specifically requested by the arresting officer, detainees may be released pursuant to PC §849(b) when sober.

(d) Neither the passage of any set period of time, nor posting of or ability to post bail, shall be factors considered in regard to evaluation of a detainee's sobriety.

900.22 RELEASE AND/OR TRANSFER

When a detainee is released or transferred from custody, the member releasing the individual shall ensure the following:

(a) All proper reports, forms and logs have been completed prior to release.

(b) A check has been made to ensure that the individual is not reported as missing and does not have outstanding warrants.

(c) It has been confirmed that the correct individual is being released or transported.

(d) All property, except evidence, contraband or dangerous weapons, has been returned to, or sent with, the individual.

(e) All pertinent documentation accompanies the individual being transported to another facility (e.g., copies of booking forms, medical records, an itemized list of his/her property, warrant copies).

(f) The detainee is not permitted in any nonpublic areas of the Berkeley Police Department unless escorted by a member of the Department.

(g) Any known threat or danger the individual may pose (e.g., escape risk, suicide potential, medical condition) is documented, and the documentation transported with the individual if he/she is being sent to another facility.

(h) The department member transporting the individual shall ensure such risks are communicated to intake personnel at the other facility.

(i) Generally, persons of the opposite sex, or adults and juveniles, should not be transported in the same vehicle unless they are physically separated by a barrier.

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If segregating individuals is not practicable, officers should be alert to inappropriate physical or verbal contact and take appropriate action as necessary.

(j) Transfers between facilities or other entities, such as a hospital, should be accomplished with a custodial escort of the same sex as the person being transferred to assist with his/her personal needs as reasonable.

900.23 FORM REQUEST FOR PETITION TO SEAL RECORDS

Upon request, a detainee released from custody shall be provided with the appropriate Judicial Council forms to petition the court to have the arrest and related records sealed (Penal Code § 851.910).

The Department shall display the required signage that complies with Penal Code § 851.91 advising an detainee of the right to obtain the Judicial Council forms.

900.24 ASSIGNED ADMINISTRATOR

The Support Services Lieutenant will ensure any reasonably necessary supplemental procedures are in place to address the following issues (15 CCR 1029):

(a) General security

(b) Key control

(c) Sanitation and maintenance

(d) Emergency medical treatment (15 CCR 1200)

(e) Escapes

(f) Evacuation plans

(g) Fire- and life-safety, including a fire suppression pre-plan as required by 15 CCR 1032

(h) Disaster plans

(i) Building and safety code compliance

(j) Civil and other disturbances including hostage situations

(k) Periodic testing of emergency equipment

(l) Emergency suspension of Title 15 regulations and notice to the Board of State and Community Corrections as required in 15 CCR 1012

(m) Inspections and operations reviews

(n) Any other applicable requirements under 15 CCR 1029

Annual review and evaluation of security measures including internal and external security measures, sanitation, safety and maintenance (15 CCR 1280).

These supplemental procedures shall be reviewed and updated no less than every two years and shall be available to all members (15 CCR 1029).

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900.25 TRAINING

Department members shall be trained and familiar with this policy and any supplemental procedures.

Department members responsible for supervising adults in temporary custody shall complete the Corrections Officer Core Course or eight hours of specialized training within six months of assignment. Such training shall include but not be limited to the following (15 CCR 1024):

(a) Applicable minimum jail standards

(b) Jail operations liability

(c) Inmate segregation

(d) Emergency procedures and planning, fire safety, and life safety.

(e) Suicide prevention

Eight hours of refresher training shall be completed once every two years (15 CCR 1024).

The Personnel and Training Sergeant shall maintain records of all such training in the member's training file.

900.26 ACTS OF VIOLENCE, RIOT

In the event of an act of violence (e.g., fight, riot, etc.) in the jail,

(a) Jail staff shall:

i. Immediately notify the Communications Center and request assistance.

ii. Inform the Comm Center of the best way for emergency personnel to enter

(b) The Communications Center shall:

1. Direct emergency response personnel to the Jail door specified by Jail staff.

2. If the Jail door needs to be manually opened, the Police Desk dispatcher shall assign at least one emergency responder to obtain emergency Jail keys from the Communications Center or Patrol Sergeants' Office.

i. The emergency responder assigned to obtain the Jail keys shall be responsible for manually opening the designated Jail Sally door and, unless his/her entrance into the Jail is required by the emergency, maintain a security post at the open portal.

3. Notify, in the following order:

i. The Support Services Lieutenant, or if unavailable,

ii. The Watch Commander, or if unavailable,

iii. The Duty Command Officer, or if unavailable

iv. The Support Services Division Captain

Request the command officer respond to the jail to assume command of the incident until it is resolved or they are relieved.

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If none of the above are available, the ranking Operations Division supervisor or command officer shall assume command until the emergency is resolved or he/she is relieved by a higher authority.

(c) The ranking employee present at the emergency shall assume command of the response until relieved by higher authority.

900.27 ESCAPES

(a) The employee who witnesses or discovers a detainee's escape from custody shall

1. Make an immediate report to the Communication Center.
2. Provide the Comm Center with all available information about the escapee, including, but not limited to,
   i. The person's physical description, reason for detention/arrest, known/suspected risk factors, information regarding persons/vehicles associated with the escape, and direction of flight.

(b) The Communications Center shall

1. Alert all on-duty personnel of the escape
2. Assign a sufficient number of patrol officers to search for the escapee
3. Assign a sufficient number of patrol officers to conduct the preliminary investigation
4. Notify outside agencies

(c) The Patrol sergeant supervising the preliminary investigation shall ensure notifications are made to the following:

1. The Support Services Lieutenant,
2. The Watch Commander or DCO,
3. The Support Services Division Captain,
4. The Homicide Detail Detective Sergeant, or his/her designee; and,
5. The Department Public Information Officer.

(d) The Watch Commander, or in his/her absence, the DCO, shall ensure administrative notification of a detainee escape has been made to the Chief of Police.

(e) If the escape was from the Jail, Jail staff shall remain with, account for, and ensure the custodial security of the remaining detainee population.

900.28 EVACUATIONS

Jail staff shall have primary responsibility for jail evacuations.

Unless prevented by the nature of the event, the on-duty Jail supervisor shall ensure all detainees are evacuated from the Jail.

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(a) Detainees with physical, mental or medical challenges will be assisted from the facility to designated exterior location(s).

(b) The on-duty Jail supervisor will determine and direct the type of “Phase Evacuation” to be accomplished:

(c) Officers responding to assist an evacuation shall have primary responsibility for security of detainees once they have exited the jail.

1. PHASE I Evacuation (NO IMMEDIATE URGENCY): No urgency, but conditions warrant evacuation. Detainees will be handcuffed and/or chained.

2. PHASE II Evacuation (URGENT SITUATION/CONDITION): There is an urgent need to evacuate the facility, without time to accomplish an orderly evacuation. Detainees will NOT be handcuffed/chained, but will be escorted from the building and maintained under guard.

3. PHASE III Evacuation (CATASTROPHE): A major catastrophe has occurred necessitating the immediate evacuation of the facility. Cell doors will be opened, detainees will be released from custody, and all persons will be directed to self-evacuate via the closest accessible facility exit.

In the event of a Phase I or II evacuation, the jailer assigned to computer booking (i.e., CORPUS jailer) will bring all detainee booking packets to the designated assembly area to facilitate detainee accounting.

900.29 DESIGNATED DETAINEE HOLDING AREAS

The on-duty Jail supervisor, or command officer in his/her chain of command, shall designate a holding area where evacuated detainees will be maintained under armed guard.

Circumstances and logistics permitting, the following may be employed as temporary detainee holding areas:

(a) A safe area within the perimeter fence of the south PSB parking lot.

(b) A designated rally point within Civic Center Park.

(c) Placed on a bus or van for transport to a designated rally point or detention facility (e.g., Santa Rita Jail, etc.)

900.30 OTHER EVACUATION PROCEDURES

Consideration shall be given to citation release of detainees held on misdemeanor or infraction offenses.

(a) Unless released from custody pursuant to a Phase III evacuation, detainees in custody for a felony offense shall not be released on a “Notice to Appear” (i.e., an “Own Recognizance” release) without express approval of an Alameda County Superior Court judge.

(b) Should provision of medical care be necessarily delayed, Jail staff should coordinate such medical care at the soonest practical opportunity.

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(c) Jail staff on-duty at the time of an emergency situation that requires an evacuation shall remain at their assigned post until authorized to go off-duty by their Chain of Command.

900.31 DETAINERS/ WARRANT/ PAROLE HOLD

A detainer, warrant, or parole hold (herein after called a “detainer”) received for a detainee being booked into, or held in, the Jail shall be maintained with the detainee’s electronic Consolidated Arrest Report (eCAR).

(a) Detainees shall be informed of all detainers placed after initial booking.

(b) When a detainee is received from the County Jail or another jurisdiction, the employee taking custody of the detainee shall investigate whether there are any detainers pending.

(c) If a detainer is found to exist, the same procedure shall be followed as for detainers placed against any detainees taken into custody by this agency.

(d) If an outside agency makes a verbal request to place a detainer not supported by an arrest warrant upon a person detained by this department, or detainee in custody within the Jail, the employee receiving such request shall obtain from the agency:

1. A written report containing all known facts supporting the detainer; and,
2. Written confirmation of the verbal request via teletype or facsimile that includes detainer-specific information:
   - i. Identification of the agency and the officer placing the detainer.
   - ii. Complete identifying information for the subject of the detainer (i.e., name, alias, date of birth, physical description, address(es), and relevant identifying numbers).
   - iii. Criminal charges.
   - iv. Requesting agency’s case number.
   - v. Name of and contact information for the officer requesting the detainer.
   - vi. If applicable and available, the date and time the requesting agency intends to take custody of the subject of the detainer.

(e) When a detainer is terminated, the employee receiving the termination notice shall immediately note this fact on the detainee’s eCAR.

900.31.1 RELEASE ON DETAINER

(a) Jail staff should not knowingly release a detainee with an active detainer (i.e., warrant), with the exception of civil immigration detainers. Per City Council direction, Jail staff shall not comply with any civil immigration detainer requests from the Immigration and Customs Enforcement Agency (ICE) or its agents.

(b) In regards to all other active detainers Jail staff shall:

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1. Ensure, prior to a detainee's release, that available automated warrant systems are checked for active detainers and parole status.
2. Should extraordinary circumstance require the release of a detainee with an active detainer, release shall be with the approval of the on-duty Jail Operations Sergeant. .

(c) Prior to the transfer or release of a detainee, Jail staff shall accomplish the following procedures:

1. Examine the detainee's identification wristband for any tampering.
2. Verify the information on the identification wristband corresponds with the information on record for the subject to be released.
3. Ensure all booking procedures (e.g., CORPUS booking, fingerprinting, and mug photos) have been completed.
4. Ensure all detainers have been researched and received:
   i. Jail staff shall ensure automated computer systems have been checked for any outstanding arrest warrant detainers (e.g., CLETS, AWS, NCIC, etc.) issued for the detainee, and if discovered, each shall be verified according to established protocol.
   ii. Jail staff shall properly update automated computer systems and Jail booking documents (i.e., eCAR), with copies of booking documents routed according to established protocol.
   iii. Jail staff shall ensure available record systems have been checked to determine the detainee's parole status, and if determined to be active to parole, shall contact the California Department of Corrections and Rehabilitation (CDCR) to request a "parole hold" detainer.
5. If the detainee has been charged with a felony offense, a "parole hold" shall be requested.

900.31.2 DETAINER TRANSPORT

Should it become necessary to transfer a detainee to court or otherwise release a detainee from custody prior to receipt of a parole detainer, Jail staff shall so advise CDCR prior to the detainee's transfer or release.

(a) Obtain the detainee's copy of the Property Receipt and compare it with the original.

(b) Prior to release from custody, ensure the detainee signs the Property Receipt affirming return of his/her personal property.

(c) When a detainee is transferred to another custodial facility, the following procedure shall be followed:

1. Jail staff will provide the transporting officer all confinement-related documentation, including detainers, necessary to accomplish the transfer, as well as the detainee's personal property.

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2. The transportation officer shall sign the Property Receipt to affirm receipt of the detainee's personal property.
3. The transportation officer taking custody of the detainee shall sign in the space provided on the eCAR.
4. The transportation officer shall deliver the detainee, his/her personal property, and custodial documents into the custody of the accepting agency.

(d) In the event of a detainee's release pursuant to his/her acceptance of a Notice to Appear (i.e., citation or Own Recognizance release), Jail staff shall assign a court appearance date.

(e) Regarding outside agency detainers, Jail staff shall contact the outside jurisdiction to request a court appearance date.

(f) Jail staff shall note a detainee's actual release time on the Prisoner Confinement Record.

900.32 BAIL/ BONDS

900.32.1 BAIL AMOUNT

Bail is set by the Superior Court of the County wherein the arrest occurred, or by the issuing judge on the warrant of arrest. Jail staff shall review the bail amount on the eCAR and confirm its accuracy.

900.32.2 ACCEPTING BAIL

(a) Bail shall be accepted by Jail staff in the following forms, with negotiable items made payable to "City of Berkeley"

1. Cash bail shall be documented with a bail register receipt giving total plus any penalty assessment. The employee shall write the denominations in the denomination box of the receipt.

   (a) The Jailer receiving cash equaling or exceeding $10,000.00 shall complete Internal Revenue Service Form 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business).

   (b) The Jailer who completes IRS Form 8300 shall forward the completed form to the Internal Revenue Service by the 15th day following receipt of the cash bail.

   (c) The Jailer who receives cash bail over $10,000.00 shall immediately inform the on-duty Jail supervisor, who shall document the cash receipt in his/her Daily Activity Report.

   (d) Traveler's Check

   (e) Cashier Check

   (f) Money Order

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900.32.3 ACCEPTING BAIL BONDS

Surety/Bail Bonds are accepted as bail for any person in custody or named in a warrant charging a bailable offense, subject to any restriction indicated on said warrant.

Bonds must be presented in person by a bail bond broker, and not by another person through a power-of-attorney.

(a) The bond must accurately exhibit:

1. Date of arrest.
2. The defendants name and PFN.
3. All criminal charges.
4. The type of offense(s) (i.e., “misdemeanor” or “felony”).
5. Relevant CEN and/or warrant number(s).
6. The sum of bail, including penalty, or the maximum amount of the bond, whichever is less. The sum shall not include any cash posted in conjunction with the bond.
7. The name of the court and date of appearance.
8. The signature of at least one “attorney-in-fact”.
9. The seal of a Notary Public.

(b) In the event of the unavailability of automated booking systems, Jail staff will accept a bail bond and shall be responsible for later inclusion of required information normally obtained from computer records.

(c) A bail register receipt shall not be issued for a surety or bail bond, except to cover the amount of any cash posted in conjunction with it.

(d) Bail bond certificates or credit cards issued by some automobile clubs are not acceptable in lieu of one of the approved forms of bail.

(e) Jail staff accepting bail for a detainee with multiple bailable detainers shall administer the bail process with specific regard to the judicial jurisdictions involved; bail shall be calculated, received, and a single receipt issued for each involved jurisdiction.

(f) Multiple warrants/One court: The sum of bail will be documented on one receipt.

(g) Multiple warrants/Multiple courts: The sum of bail for all warrants issued by each court will be calculated and documented on a separate receipt.

(h) Jail staff shall not divide one bond or check between multiple judicial jurisdictions.

900.32.4 BAIL RECEIPTS

Each bail receipt shall contain requisite identifying information and be administered pursuant to established protocol.

(a) Requisite information includes: detainee’s name and PFN; associated CORPUS Event Number(s) (CEN); criminal charge(s); warrant number(s), if applicable; bail amount, including currency denomination details; the court’s name and address; the name and mailing address of the firm or person posting bail;

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1. Monetary instruments, such as cashier checks, shall have the CEN and/or warrant number written on it, and both will be placed in the bail locker.

(b) Receipt routing: white and pink copies of the receipt will be placed in money drop envelope, with currency and/or monetary instrument (e.g., check) attached. Yellow copy goes to the person posting the bail.

(c) Jail staff shall place bail received in the bail register or jail bail drop box.

900.32.5 BAIL FOR OUTSIDE AGENCY WARRANTS

Bail posted for persons arrested for other jurisdictions shall be forwarded to the Warrant Bureau.

(a) A letter of transmittal shall accompany bail which is forwarded to an outside jurisdictions.

(b) The name and mailing address of the firm or person posting bail shall be included when the bail is transmitted to the proper agency.

900.32.6 COMPUTER UPDATE

When bail is posted, Jail staff shall be responsible for immediate update of automated computer systems (i.e., AWS and CORPUS), and/or transmission of teletype to the agency issuing an involved detainer.

900.32.7 RELEASE

The jailer who accepts bail, or who receives an order of release from the Court, is responsible for ensuring that the involved detainee is released from custody, a responsibility that cannot be delegated.

900.32.8 SURETY/ BAIL BOND BROKERS

Jail staff shall accept surety or bail bonds from bond brokers licensed by the Insurance Commissioner of the State of California

(a) Brokers do not need a City of Berkeley business license to post surety or bail bonds, and, as such, shall not be refused service in the conduct of official business.

(b) No bail bond broker, or his/her representative, shall be allowed to talk to a detainee except by specific request of the detainee for a particular broker.

(c) No employee shall recommend a bail bond broker, or communicate with a bail bond broker for a detainee, except when a detainee is a “near relative” as defined in City of Berkeley Administrative Regulation 2.12

(d) Neither bail bond brokers, nor their representatives, shall be permitted to send any papers into the Jail for a detainee to sign, nor will any employee procure or facilitate such signature.

(e) The employee who received said request shall advise the bond broker that signature(s) can be obtained subsequent to posting of bail and detainee release.

(f) In response to specific inquiries, bail bond brokers may be furnished information concerning a subject who has been booked and is in custody. In addition to identifying

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information, the broker may also be provided with the report number, Personal File Number (PFN), and CORPUS Event Number (CEN). No broker or their representative shall be allowed to see the actual eCAR.

(g) Employees shall neither authorize nor permit any solicitation in the Public Safety Building by a bail bond broker or his/her representatives.

900.32.9 OUTSIDE AGENCY -BAIL BOND/SURETY AGENCY BOOKING

Detainees in the custody of other law enforcement agencies or bail bond agents may be booked into and temporarily housed within the Jail.

(a) Outside agencies will be charged a daily maintenance fee for booking, housing and feeding of each detainee.

(b) Prior to receiving an arrestee into the Jail, Jail staff shall verify non-uniformed booking officers are bona fide peace officers, and bail/surety agents possess court documents required by PC §847.5.

(c) Detainees in the custody of a bail bond/surety agent may be held when:

1. Surrendered in lieu of bail or when retaken after escaping bail;
2. Arrested in or transported through Berkeley en-route to another state, or,
3. After having escaped bail in that state and being retaken pursuant to PC §847.5.

(d) The booking jailer shall process the detainee into the Jail in accordance with existing Department regulations, and document the booking as a case numbered report on the Consolidated Arrest Report form.

900.33 VISITATION

Jail staff will facilitate prisoner visitation during established and publicly posted hours.

(a) Prisoners may refuse any visit.

(b) Jail staff shall require prospective visitors to present a valid picture identification card and disclose their relationship to the prisoner prior to the requested visit.

(c) Jail staff shall deny a request for prisoner visitation for a visitor’s failure to comply with this requirement.

(d) A person who is under the influence of alcohol or drugs, or who is belligerent, shall not be allowed to visit prisoners held in the Jail.

(e) For the purpose of this policy, visitation will be categorized as follows:

1. "Non-Contact" Visit: the visitor is restricted to the public side of a visiting room.
2. "Contact" Visit: the visitor is allowed entry to the Jail proper and has a face-to-face interview with the prisoner in an unoccupied cell.

900.33.1 "NON-CONTACT" VISITATION

Only one visitor shall be allowed to occupy the public side of a visiting room at any time, unless otherwise authorized by the on-duty Jail supervisor.

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Detainee visitation by a juvenile may be allowed under the following conditions:

(a) With approval by the Jail Operations Sergeant, or in his/her absence, an on-duty Patrol sergeant, and

(b) The juvenile is in the company of a responsible adult, preferably the juvenile's parent or legal guardian.

The jailer facilitating a "non-contact" detainee visitation shall ensure the public side door of the visiting room is closed and locked before the detainee enters the jail side of the room.

Notwithstanding the procedure regarding bail-related documents, should it be necessary for a detainee to sign or receive any document, such document shall be delivered to them by the jailer, and, if appropriate or necessary, returned to the visitor after signing.

(c) Jail staff shall receive documents presented by persons lawfully authorized to serve process and facilitate the service of said legal process documents directed to a detainee held in the Jail (ref. PC §4013).

(d) Visits are allowed for a minimum of 15 minutes and may be terminated at any time after that as needed by Jail staff.

(e) A detainee may request a visit from a clergy member of their choice or chaplain if they have no preference.

900.33.2 "CONTACT" VISITATION- CIVILIANS AND LAW ENFORCEMETN

(a) Sworn Department personnel will be allowed to visit and interview detainees housed in the Jail when done in connection with their official duties.

(b) Non-sworn Department personnel shall not enter the Jail unless authorized by the Jail Sergeant or command rank officer.

(c) Except as authorized in this policy or by competent authority, no civilian shall be admitted to the Jail.

1. "Competent authority" shall include the on-duty Jail Supervisor, Jail Sergeant, other sergeant, or a command rank officer.

2. In all cases, the civilian visitor must be on official business and under the direct supervision of the authorizing sergeant or command rank officer.

i. Except for in extraordinary circumstances, this supervision responsibility shall not be delegated.

(d) A "contact" visit by civilian/non-law enforcement entities shall not be allowed if the detainee does not provide his/her consent.

(e) Jail staff shall facilitate a request from a law enforcement officer to have a "contact" visit with a detainee in custody in the Jail.

(f) The Jailer facilitating a "contact" visit shall require the civilian or outside agency visitor to complete the Visitors Register, and shall note the type of identification presented.

(g) Jail staff shall allow an interview of a detainee by law enforcement officers at the detainee's cell, in a holding room, or at a location outside of the Jail.

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(h) The removal of detainees from the jail by outside agency law enforcement officers shall only be allowed when:

1. The detainee is being held for the agency in question; or,
2. Approved by a Support Services Lieutenant or Captain.

(i) Once a detainee has been removed from the Jail, responsibility for detainee custody shall transfer from Jail staff to the involved law enforcement personnel.

(j) Jail staff shall note a removal occurred on the involved detainee's Prisoner Confinement Record.

(k) The removal of detainees from the Jail by persons other than law enforcement personnel is prohibited.

(l) No more than one detainee shall be moved to the Jail visiting area at a time.

900.33.3 "CONTACT" VISITATION - ATTORNEYS

Properly certified and identified attorneys shall not be denied the privilege of visiting their client(s) at any time.

(a) A detainee shall be considered a "client" if any of the following apply:

1. An attorney has been appointed to represent the detainee.
2. An attorney from the Public Defender's Office shall be considered an appointed attorney once charges have been filed by the District Attorney's Office.
3. An attorney has been retained to represent the detainee.
4. The attorney has been requested by the detainee, or by a third party acting on behalf of the detainee.
5. An attorney shall be afforded reasonable privacy while interviewing his/her client.

(b) Employees shall remain sufficiently distant to ensure privacy, and shall not eavesdrop on the conversation between an attorney and his/her client.

(c) To be admitted into the jail visiting area, the attorney must present a California Bar Association membership card for the current year, and sufficient other identification so as to allow Jail staff to be reasonably certain of the identity of the person.

(d) A request of an attorney to visit their client(s) shall be acted upon without unreasonable delay.

(e) Attorneys who wish a "contact" visit with an in-custody client, but who lack proper credentials, shall not be admitted into the Jail to meet with a detainee, however, they may be allowed visitation pursuant to the "non-contact" protocols described in this policy.

(f) A detainee's request to confer with or contact an attorney, whether or not the attorney is present at the Jail, shall be acted upon without unreasonable delay.

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900.33.4 ATTORNEYS AND BAIL BONDSMEN

(a) An attorney may visit at the request of the detainee in custody or a relative (Penal Code § 825).

(b) Attorneys and bail bondsmen who need to interview an detainee in custody should do so inside a secure interview room.

(c) The detainee in custody as well as the attorney or bail bondsman should be searched for weapons prior to being admitted to the interview room and at the conclusion of the interview.

(d) Attorneys must produce a current California Bar card as well as other matching appropriate identification. The Attorney's name and the detainee they are visiting, should be entered into the daily log.

(e) Interviews between attorneys and their clients shall not be monitored or recorded (15 CCR 1068).

900.34 CRIMINAL REGISTRATION PROCESS

Jail staff shall facilitate a detainee's criminal registration when required by PC §290 (sexual offense), PC §457.1 (arson offense), or HS §11590 (narcotic offense).

900.35 DETAINEE VOTING

The Department shall make reasonable attempts to assist voting by a detainee in custody in the Jail who is eligible and registered to vote in any local, state, or federal election who requests to cast a ballot on Election Day.

The Jail Operations Sergeant, or if unavailable (in order of responsibility), the Support Services Lieutenant or Operations Division Watch Commander, shall contact the Registrar of Voters for the County in which the detainee is registered to determine the process to be followed for acquisition and submission of a "Vote By Mail" (also known as "Absentee") ballot.

(a) If the detainee states he/she is registered to vote in Alameda County, the supervisor or command officer shall be responsible for the following:

1. Call the Alameda County Registrar of Voters (510-272-6933) to verify the detainee is registered and eligible to vote within the County.

(b) If the detainee is registered and eligible to vote, an employee shall be assigned to:

1. Obtain and provide the detainee an Application For Vote By Mail Ballot form;
2. Deliver the completed and signed ballot application form to, and obtain a Vote By Mail Ballot from, the Registrar of Voters office (1225 Fallon Street, Room #G-1 [Basement], Oakland); and,
3. Ensure the ballot is delivered in a timely manner to the detainee in the Jail.

(c) Jail staff shall make reasonable efforts to facilitate a detainee's receipt and completion of a ballot.

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(d) With due regard to facility security and employee safety, a detainee shall be provided the opportunity to complete a ballot in relative privacy.

(e) The supervisor or command officer responsible for acquisition and delivery of a ballot to a detainee in the Jail shall make a reasonable effort to ensure the completed ballot is delivered to the location prescribed by the Registrar of Voters.

(f) Completed ballots for detainees registered to vote in Alameda County shall be promptly delivered to a local voting location (e.g., City Hall, 2180 Milvia Street, Berkeley.)

900.36 USE OF DETAINEES FOR WORK INSIDE THE JAIL

While a detainee cannot be required to perform any work, a detainee may be requested to assist in maintaining proper sanitary conditions inside the jail.

900.37 CAMERAS AND RECORDING DEVICES, USE OF

Unless used for law enforcement purposes, the use of any electronic device to film, photograph or record within the Jail is prohibited.

900.38 DAILY ACTIVITY REPORT

The on-duty Jail supervisor, or supervisor designee, shall complete a Daily Activity Report.

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Custodial Searches

901.1 PURPOSE AND SCOPE

This policy provides guidance regarding searches of individuals in custody. Such searches are necessary to eliminate the introduction of contraband, intoxicants or weapons into the Berkeley Police Department facility. Such items can pose a serious risk to the safety and security of department members, individuals in custody, contractors and the public.

Nothing in this policy is intended to prohibit the otherwise lawful collection of evidence from an individual in custody.

901.1.1 DEFINITIONS

Definitions related to this policy include:

Custody search - An in-custody search of an individual and of his/her property, shoes and clothing, including pockets, cuffs and folds on the clothing, to remove all weapons, dangerous items and contraband.

Intersex - A person who's sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development (28 CFR 115.5).

Physical body cavity search - A search that includes a visual inspection and may include a physical intrusion into a body cavity. Body cavity means the stomach or rectal cavity of an individual, and the vagina of a female person.

Strip search - A search that requires an individual to remove or rearrange some or all of his/her clothing to permit a visual inspection of the underclothing, breasts, buttocks, anus or outer genitalia. This includes monitoring an individual who is changing clothes, where his/her underclothing, buttocks, genitalia or female breasts are visible.

Transgender - A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth (28 CFR 115.5).

901.2 POLICY

All searches shall be conducted with concern for safety, dignity, courtesy, respect for privacy and hygiene, and in compliance with policy and law to protect the rights of those who are subject to any search.

Searches shall not be used for intimidation, harassment, punishment or retaliation.

901.3 FIELD AND TRANSPORTATION SEARCHES

An officer should conduct a custody search of an individual immediately after his/her arrest, when receiving an individual from the custody of another, and before transporting a person who is in custody in any department vehicle.

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Whenever practicable, a custody search should be conducted by an officer of the same sex as the person being searched. If an officer of the same sex is not reasonably available, a witnessing officer should be present during the search.

901.4 SEARCHES AT POLICE FACILITIES

Custody searches shall be conducted on all individuals in custody, upon entry to the Berkeley Police Department facilities. Except in exigent circumstances, the search should be conducted by a member of the same sex as the individual being searched. If a member of the same sex is not available, a witnessing member must be present during the search.

Custody searches should also be conducted any time an individual in custody enters or re-enters a secure area, or any time it is reasonably believed that a search is necessary to maintain the safety and security of the facility.

901.4.1 PROPERTY

Members shall take reasonable care in handling the property of an individual in custody to avoid discrepancies or losses. Property retained for safekeeping shall be kept in a secure location until the individual is released or transferred.

Some property may not be accepted by a facility or agency that is taking custody of an individual from this department, such as weapons or large items. These items should be retained for safekeeping in accordance with the Property and Evidence Policy.

All property shall be inventoried by objective description (this does not include an estimated value). The individual from whom it was taken shall be required to sign the completed inventory. If the individual's signature cannot be obtained, the inventory shall be witnessed by another department member. The inventory should include the case number, date, time, member's Berkeley Police Department identification number and information regarding how and when the property may be released.

901.4.2 VERIFICATION OF MONEY

All money shall be counted in front of the individual from whom it was received. When possible, the individual shall initial the dollar amount on the inventory. Additionally, all money should be placed in a separate envelope and sealed. Negotiable checks or other instruments and foreign currency should also be sealed in an envelope with the amount indicated but not added to the cash total. All envelopes should clearly indicate the contents on the front. The department member sealing it should place his/her initials across the sealed flap. Should any money be withdrawn or added, the member making such change shall enter the amount below the original entry and initial it. The amount of money in the envelope should always be totaled and written on the outside of the envelope.

901.5 STRIP SEARCHES

Individuals in temporary custody for crimes that involve weapons and/or controlled substances may be strip searched.

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Individuals in temporary custody for crimes that involve weapons and/or controlled substances may be searched. Individuals in temporary custody for crimes other than those involving weapons and/or controlled substances may not be strip searched unless there is reasonable suspicion based upon specific and articulable facts to believe the individual is concealing a weapon or contraband. Factors to be considered in determining reasonable suspicion include, but are not limited to:

(a) The detection of an object during a custody search that may be a weapon or contraband and cannot be safely retrieved without a strip search.

(b) Circumstances of a current arrest that specifically indicate the individual may be concealing a weapon or contraband.

(c) Custody history (e.g., past possession of contraband while in custody, assaults on department members, escape attempts).

(d) The individual's actions or demeanor.

(e) Criminal history (i.e., level of experience in a custody setting).

No transgender or intersex individual shall be searched or examined for the sole purpose of determining the individual's genital status. If the individual's genital status is unknown, it may be determined during conversations with the person, by reviewing medical records, or as a result of a broader medical examination conducted in private by a medical practitioner (28 CFR 115.115).

901.5.1 STRIP SEARCH PROCEDURES

Strip searches at Berkeley Police Department facilities shall be conducted as follows (28 CFR 115.115; Penal Code § 4030):

(a) Written authorization from a sergeant shall be obtained prior to any upgraded strip search.

(b) All members involved with the strip search shall be of the same sex as the individual being searched, unless the search is conducted by a medical practitioner.

(c) All strip searches shall be conducted in a professional manner under sanitary conditions and in a secure area of privacy so that it cannot be observed by those not participating in the search. The search shall not be reproduced through a visual or sound recording.

(d) Whenever possible, a second member of the same sex should also be present during the search, for security and as a witness to the finding of evidence.

(e) Members conducting a strip search shall not touch the breasts, buttocks or genitalia of the individual being searched.

(f) The results of a strip search shall be documented on the Berkeley Jail Detainee Confinement Record. If any contraband is located it shall be documented in a police report by the arrest or witness officer.

(g) No member should view an individual's private underclothing, buttocks, genitalia or female breasts while that individual is showering, performing bodily functions or changing clothes, unless he/she otherwise qualifies for a strip search. However, if

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serious hygiene or health issues make it reasonably necessary to assist the individual with a shower or a change of clothes, a supervisor should be contacted to ensure reasonable steps are taken to obtain the individual's consent and/or otherwise protect his/her privacy and dignity.

(h) If the individual has been arrested for a misdemeanor or infraction offense, the written authorization from the Watch Commander shall include specific and articulable facts and circumstances upon which the reasonable suspicion determination for the search was made.

(i) A copy of the written authorization shall be retained and made available upon request to the individual or the individual's authorized representative. A record of the time, date, place of the search, the name and sex of the person conducting the search, and a statement of the results of the search shall also be retained and made available upon request to the individual or the individual’s authorized representative.

(j) Strip searches involving transgender persons: All searches of the transgender inmate's person will be done by two officers of the gender requested by the transgender inmate. If the inmate does not specify a preference, then the search will be done by officers of the same gender as the transgender inmate's gender presentation (e.g., a female-to-male (FTM) inmate expressing no preference should be searched by a male officer). If gender presentation or identity is not clear to the inmate, the inmate will be searched by one female and one male officer.

(k) If a person refuses to comply with a request for a visual body cavity search, the above “no touching” rule still applies. To require cooperation, the officer may either obtain a search warrant, not perform the search, or transfer the person to a higher security facility (Santa Rita Jail) as an uncooperative prisoner.

901.5.2 SPECIAL CIRCUMSTANCE FIELD STRIP SEARCHES

A strip search may be conducted in the field only with supervisor approval and only in exceptional circumstances, such as when:

(a) There is probable cause to believe that the individual is concealing a weapon or other dangerous item that cannot be recovered by a more limited search.

(b) There is probable cause to believe that the individual is concealing controlled substances or evidence that cannot be recovered by a more limited search, and there is no reasonable alternative to ensure the individual cannot destroy or ingest the substance during transportation.

901.5.3 LOCATIONS FOR SPECIAL CIRCUMSTANCE FIELD STRIP SEARCHS

(a) If the detention takes place in a building, a person may be strip searched in a private room in the building.

(b) If the detention takes place on the street, a person may be strip searched in the type of police vehicle that can ensure complete privacy such as the mobile substation or the prisoner transport van.

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(c) Do not transport said person to the police station solely for the purpose of conducting a strip search when there is no basis for an arrest, unless the person voluntarily consents to the transport in writing.

(d) If a strip search is conducted in the field and the person is then brought to the Jail, e.g. due to the recovery of narcotics, a second strip search should not be conducted at the Jail, unless unusual circumstances are present indicating that the individual may have armed themselves or secreted controlled substances, other than marijuana, underneath his or her clothes after the initial strip search was conducted.

These special-circumstance field strip searches shall only be authorized and conducted under the same restrictions as the strip search procedures in this policy, except that the sergeant authorization does not need to be in writing.

901.6 PHYSICAL BODY CAVITY SEARCH

Physical body cavity searches shall be subject to the following (Penal Code § 4030):

(a) No individual shall be subjected to a physical body cavity search without written approval of the Watch Commander and only upon a search warrant. A copy of any search warrant and the results of the physical body cavity search shall be included with the related reports and made available, upon request, to the individual or authorized representative (except for those portions of the warrant ordered sealed by a court).

(b) Only a physician, nurse practitioner, registered nurse, licensed vocational nurse or Emergency Medical Technician Level II licensed to practice in California may conduct a physical body cavity search.

(c) Except for the physician or licensed medical personnel conducting the search, persons present must be of the same sex as the individual being searched. Only the necessary department members needed to maintain the safety and security of the medical personnel shall be present.

(d) Privacy requirements, including restricted touching of body parts and sanitary condition requirements, are the same as required for a strip search.

(e) All such searches shall be documented, including:

1. The facts that led to the decision to perform a physical body cavity search of the individual.
2. The reasons less intrusive methods of searching were not used or were insufficient.
3. The Watch Commander’s approval.
4. A copy of the search warrant.
5. The time, date and location of the search.
6. The medical personnel present.

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7. The names, sex and roles of any department members present.
8. Any contraband or weapons discovered by the search.

(f) Copies of the written authorization and search warrant shall be retained and shall be provided to the individual who was searched or other authorized representative upon request. A record of the time, date, place of the search, the name and sex of the person conducting the search and a statement of the results of the search shall also be retained and made available upon request to the individual or the individual's authorized representative.

901.7 TRAINING

The Personnel and Training Sergeant shall ensure members have training that includes (28 CFR 115.115):

(a) Conducting searches of cross-gender individuals.

(b) Conducting searches of transgender and intersex individuals.

(c) Conducting searches in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

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Prison Rape Elimination

902.1 PURPOSE AND SCOPE

This policy provides guidance for complying with the Prison Rape Elimination Act of 2003 (PREA) and the implementing regulation that establishes standards (PREA Rule) to prevent, detect and respond to sexual abuse, harassment and retaliation against detainees in the Berkeley Police Department Jail (28 CFR 115.111; 15 CCR 1029).

902.1.1 DEFINITIONS

Definitions related to this policy include:

Detainee - A person who has been arrested for, but not convicted, of a crime.

Prisoner - A person who has been arrested for, and convicted, of a crime.

Intersex - A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development (28 CFR 115.5).

Sexual abuse - Any of the following acts, committed by another detainee, if the detainee does not consent, is coerced into such act by overt or implied threats of violence or is unable to consent or refuse (28 CFR 115.6; 15 CCR 1006):

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
- Contact between the mouth and the penis, vulva or anus
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument
- Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or the buttocks of another person, excluding contact incidental to a physical altercation

Sexual abuse also includes abuse by a staff member, contractor or volunteer as follows, with or without consent of the detainee or resident:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
- Contact between the mouth and the penis, vulva or anus
- Contact between the mouth and any body part where the staff member, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire
- Penetration of the anal or genital opening, however slight, by a hand, finger, object or other instrument, that is unrelated to official duties, or where the staff member, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire
- Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh or the buttocks, that is unrelated to official

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duties, or where the staff member, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire

- Any attempt, threat or request by a staff member, contractor or volunteer to engage in the activities described above
- Any display by a staff member, contractor or volunteer of his/her uncovered genitalia, buttocks or breast in the presence of a detainee, or resident
- Voyeurism by a staff member, contractor or volunteer

Sexual harassment - Repeated and unwelcome sexual advances; requests for sexual favors; verbal comments, gestures or actions of a derogatory or offensive sexual nature by one detainee or resident that are directed toward another; repeated verbal comments or gestures of a sexual nature to a detainee, or resident by a staff member, contractor or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures (28 CFR 115.6; 15 CCR 1006).

Transgender - A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth (28 CFR 115.5).

902.2 POLICY

The Berkeley Police Department has zero tolerance toward all forms of sexual abuse and sexual harassment (28 CFR 115.111). The Department will not tolerate retaliation against any person who reports sexual abuse or sexual harassment or who cooperates with a sexual abuse or sexual harassment investigation.

The Berkeley Police Department will take immediate action to protect detainees who are reasonably believed to be subject to a substantial risk of imminent sexual abuse (28 CFR 115.162; 15 CCR 1029).

902.3 PREA COORDINATOR

The Support Services Lieutenant will develop, implement and oversee department efforts to comply with PREA standards in the Berkeley Police Department Jail (28 CFR 115.111). The PREA Coordinator's responsibilities shall include:

(a) Developing and maintaining procedures to comply with the PREA Rule.

(b) Ensuring that any contract for the confinement of detainees includes the requirement to adopt and comply with applicable PREA standards and the PREA Rule, including the obligation to provide incident-based and aggregated data, as required in 28 CFR 115.187 (28 CFR 115.112).

(c) Developing a staffing plan to provide adequate levels of staffing and video monitoring, where applicable, in order to protect detainees from sexual abuse (28 CFR 115.113; 15 CCR 1029)). This includes documenting deviations and the reasons for deviations from the staffing plan, as well as reviewing the staffing plan a minimum of once per year.

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(d) Developing methods for staff to privately report sexual abuse and sexual harassment of detainees (28 CFR 115.151).

(e) Developing a written plan to coordinate response among staff first responders, medical and mental health practitioners, investigators and department leadership to an incident of sexual abuse (28 CFR 115.165).

(f) Ensuring a protocol is developed for investigating allegations of sexual abuse in the Jail. The protocol shall include (28 CFR 115.121; 28 CFR 115.122):

1. Evidence collection practices that maximize the potential for obtaining usable physical evidence based on the most recent edition of the U.S. Department of Justice's (DOJ) Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations" or a similarly comprehensive and authoritative protocol.

2. A process to ensure a criminal or administrative investigation is completed on all allegations of sexual abuse or sexual harassment.

3. A process to document all referrals to other law enforcement agencies.

4. Access to forensic medical examinations, without financial cost, for all victims of sexual abuse where appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The efforts to provide SAFEs or SANEs shall be documented.

5. In accordance with security needs, provisions to permit, to the extent available, detainee access to victim advocacy services if the detainee is transported for a forensic examination to an outside hospital that offers such services.

(g) Ensuring that detainees with limited English proficiency and/or disabilities have an equal opportunity to understand and benefit from efforts to prevent, detect and respond to sexual abuse and sexual harassment. This includes, as appropriate, access to interpreters and written materials in formats or through methods that provide effective communication to those with disabilities (e.g., limited reading skills, intellectual, hearing or vision disabilities) (28 CFR 115.116).

1. The agency shall not rely on other detainees for assistance except in limited circumstances where an extended delay in obtaining an interpreter could compromise the detainee's safety, the performance of first-response duties under this policy, or the investigation of allegations of sexual abuse, harassment or retaliation.

(h) Publishing on the department's website:

1. Information on how to report sexual abuse and sexual harassment on behalf of a detainee (28 CFR 115.154).

2. A protocol describing the responsibilities of the Department and any other investigating agency that will be responsible for conducting sexual abuse or sexual harassment investigations (28 CFR 115.122).

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(i) Establishing a process that includes the use of a standardized form and set of definitions to ensure accurate, uniform data is collected for every allegation of sexual abuse at facilities under this agency's direct control (28 CFR 115.187; 34 USC § 30303; 15 CCR 1041).

1. The data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence, conducted by DOJ, or any subsequent form developed by DOJ and designated for lockups.

2. The data shall be aggregated at least annually.

(j) Ensuring audits are conducted pursuant to 28 CFR 115.401 through 28 CFR 115.405 for the Jail (28 CFR 115.193).

(k) Ensuring contractors or others who work in the Jail are informed of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment (28 CFR 115.132).

(l) Ensuring that information for uninvolved inmates, family, community members, and other interested third parties to report sexual abuse or sexual harassment is publicly posted at the facility (15 CCR 1029).

902.4 REPORTING SEXUAL ABUSE, HARASSMENT AND RETALIATION

Detainees may make reports to any staff member verbally, in writing, privately or anonymously of any of the following (28 CFR 115.151; 15 CCR 1029):

- Sexual abuse
- Sexual harassment
- Retaliation by other detainees or staff for reporting sexual abuse or sexual harassment
- Staff neglect or violation of responsibilities that may have contributed to sexual abuse or sexual harassment

During intake the Department shall notify all detainees of the zero-tolerance policy regarding sexual abuse and sexual harassment, and of at least one way to report abuse or harassment to a public or private entity that is not part of the Department and that is able to receive and immediately forward detainee reports of sexual abuse and sexual harassment to agency officials. This allows the detainee to remain anonymous (28 CFR 115.132; 28 CFR 115.151).

902.4.1 MEMBER RESPONSIBILITIES

Department members shall accept reports from detainees and third parties and shall promptly document all reports (28 CFR 115.151; 15 CCR 1029).

All members shall report immediately to the Jail Supervisor any knowledge, suspicion or information regarding:

(a) An incident of sexual abuse or sexual harassment that occurs in the Jail.

(b) Retaliation against detainees or the member who reports any such incident.

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(c) Any neglect or violation of responsibilities on the part of any department member that may have contributed to an incident or retaliation (28 CFR 115.161).

No member shall reveal any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment and investigation decisions.

902.4.2 SUPPORT SERVICES LIEUTENANT RESPONSIBILITIES

The Support Services Lieutenant shall report to the department's designated investigators all allegations of sexual abuse, harassment, retaliation, neglect or violations leading to sexual abuse, harassment or retaliation. This includes third-party and anonymous reports (28 CFR 115.161).

If the alleged victim is under the age of 18 or considered a vulnerable adult, the Support Services Lieutenant shall also report the allegation as required under mandatory reporting laws and department policy.

Upon receiving an allegation that a detainee was sexually abused while confined at another facility, the Support Services Lieutenant shall notify the head of the facility or the appropriate office of the agency where the alleged abuse occurred. The notification shall be made as soon as possible but no later than 72 hours after receiving the allegation. The Support Services Lieutenant shall document such notification (28 CFR 115.163).

If an alleged detainee victim is transferred from the BPD Jail to another jail, a prison or medical facility, the Department shall, as permitted by law, inform the receiving facility of the incident and the detainee's potential need for medical or social services, unless the detainee requests otherwise (28 CFR 115.165).

902.5 INVESTIGATIONS

The Department shall promptly, thoroughly and objectively investigate all allegations, including third-party and anonymous reports, of sexual abuse or sexual harassment. Only investigators who have received department-approved special training shall conduct sexual abuse investigations (28 CFR 115.171).

902.5.1 FIRST RESPONDERS

The first officer to respond to a report of sexual abuse or sexual assault shall (28 CFR 115.164):

(a) Separate the parties.

(b) Establish a crime scene to preserve and protect any evidence. Identify and secure witnesses until steps can be taken to collect any evidence.

(c) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.

(d) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.

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If the first responder is not an officer the responder shall request that the alleged victim not take any actions that could destroy physical evidence and should then notify a law enforcement staff member (28 CFR 115.164).

902.5.2 INVESTIGATOR RESPONSIBILITIES

Investigators shall (28 CFR 115.171):

(a) Gather and preserve direct and circumstantial evidence, including any available physical and biological evidence and any available electronic monitoring data.

(b) Interview alleged victims, suspects and witnesses.

(c) Review any prior complaints and reports of sexual abuse involving the suspect.

(d) Conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) Assess the credibility of the alleged victim, suspect or witness on an individual basis and not by the person's status as a detainee or a member of the Berkeley Police Department.

(f) Document in written reports a description of physical, testimonial, documentary and other evidence, the reasoning behind any credibility assessments, and investigative facts and findings.

(g) Refer allegations of conduct that may be criminal to the District Attorney for possible prosecution, including any time there is probable cause to believe a detainee sexually abused another detainee in the Jail (28 CFR 115.178).

(h) Cooperate with outside investigators and remain informed about the progress of any outside investigation.

902.5.3 ADMINISTRATIVE INVESTIGATIONS

Administrative investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse. The departure of the alleged abuser or victim from the employment or control of this department shall not be used as a basis for terminating an investigation (28 CFR 115.171).

902.5.4 SEXUAL ASSAULT AND SEXUAL ABUSE VICTIMS

No detainee who alleges sexual abuse shall be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation (28 CFR 115.171(e)).

Detainee victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment. Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident (28 CFR 115.182).

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902.5.5 CONCLUSIONS AND FINDINGS

All completed investigations shall be forwarded to the Chief of Police, or if the allegations may reasonably involve the Chief of Police, to the City Manager. The Chief of Police or City Manager shall review the investigation and determine whether any allegations of sexual abuse or sexual harassment have been substantiated by a preponderance of the evidence (28 CFR 115.172).

All personnel shall be subject to disciplinary sanctions up to and including termination for violating this policy. Termination shall be the presumptive disciplinary sanction for department members who have engaged in sexual abuse. All discipline shall be commensurate with the nature and circumstances of the acts committed, the member's disciplinary history and the sanctions imposed for comparable offenses by other members with similar histories (28 CFR 115.176).

All terminations for violations of this policy, or resignations by members who would have been terminated if not for their resignation, shall be criminally investigated unless the activity was clearly not criminal and reported to any relevant licensing body (28 CFR 115.176).

Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with detainees and reported to any relevant licensing bodies (28 CFR 115.177). The Chief of Police shall take appropriate remedial measures and consider whether to prohibit further contact with detainees by a contractor or volunteer.

902.6 RETALIATION PROHIBITED

All detainees and members who report sexual abuse or sexual harassment or who cooperate with sexual abuse or sexual harassment investigations shall be protected from retaliation (28 CFR 115.167). If any other individual who cooperates with an investigation expresses a fear of retaliation, appropriate measures shall be taken to protect that individual.

The Support Services Lieutenant or the authorized designee shall employ multiple protection measures, such as housing changes or transfers for detainee victims or abusers, removal of alleged abusers from contact with victims, and emotional support services for detainees or members who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

The Support Services Lieutenant or the authorized designee shall identify a staff member to monitor the conduct and treatment of detainees or members who have reported sexual abuse and of detainees who were reported to have suffered sexual abuse. The staff member shall act promptly to remedy any such retaliation. In the case of detainees, such monitoring shall also include periodic status checks.

902.7 REVIEWS AND AUDITS

902.7.1 INCIDENT REVIEWS

An incident review shall be conducted at the conclusion of every sexual abuse investigation, unless the allegation has been determined to be unfounded. The review should occur within 30 days

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of the conclusion of the investigation. The review team shall include upper-level management officials and seek input from line supervisors and investigators (28 CFR 115.186).

The review shall (28 CFR 115.186):

(a) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect or respond to sexual abuse.

(b) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender or intersex identification, status or perceived status; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.

(c) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse.

(d) Assess the adequacy of staffing levels in that area during different shifts.

(e) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.

The review team shall prepare a report of its findings, including any determinations made pursuant to this section and any recommendations for improvement. The report shall be submitted to the Chief of Police and the PREA Coordinator. The Chief of Police or the authorized designee shall implement the recommendations for improvement or shall document the reasons for not doing so (28 CFR 115.186).

902.7.2 DATA REVIEWS

The facility shall conduct an annual review of collected and aggregated incident-based sexual abuse data. The review should include, as needed, data from incident-based documents, including reports, investigation files and sexual abuse incident reviews (28 CFR 115.187).

The purpose of these reviews is to assess and improve the effectiveness of sexual abuse prevention, detection and response policies, practices and training. An annual report shall be prepared that includes (28 CFR 115.188):

(a) Identification of any potential problem areas.

(b) Identification of any corrective actions taken.

(c) Recommendations for any additional corrective actions.

(d) A comparison of the current year's data and corrective actions with those from prior years.

(e) An assessment of the Department's progress in addressing sexual abuse.

The report shall be approved by the Chief of Police and made readily available to the public through the department website or, if it does not have one, through other means. Material may be redacted from the reports when publication would present a clear and specific threat to the safety and security of the Jail. However, the nature of the redacted material shall be indicated.

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All aggregated sexual abuse data from Berkeley Police Department facilities and private facilities with which it contracts shall be made readily available to the public at least annually through the department website or, if it does not have one, through other means. Before making aggregated sexual abuse data publicly available, all personal identifiers shall be removed (28 CFR 115.189).

902.8 RECORDS

The Department shall retain all written reports from administrative and criminal investigations pursuant to this policy for as long as the alleged abuser is held or employed by the Department, plus five years (28 CFR 115.171).

All other data collected pursuant to this policy shall be securely retained for at least 10 years after the date of the initial collection unless federal, state or local law requires otherwise (28 CFR 115.189).

902.9 TRAINING

All employees, volunteers and contractors who may have contact with detainees shall receive department-approved training on the prevention and detection of sexual abuse and sexual harassment within this facility. The Personnel and Training Sergeant shall be responsible for developing and administering this training as appropriate, covering at a minimum (28 CFR 115.131):

- The Department's zero-tolerance policy and the right of detainees to be free from sexual abuse and sexual harassment, and from retaliation for reporting sexual abuse or harassment.
- The dynamics of sexual abuse and harassment in confinement settings, including which detainees are most vulnerable.
- The right of detainees and staff members to be free from sexual abuse and sexual harassment, and from retaliation for reporting sexual abuse or harassment.
- Detecting and responding to signs of threatened and actual abuse.
- Communicating effectively and professionally with all detainees.
- Compliance with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

Investigators assigned to sexual abuse investigations shall also receive training in conducting such investigations in confinement settings. Training should include (28 CFR 115.134):

- Techniques for interviewing sexual abuse victims.
- Proper use of *Miranda* and *Garrity* warnings.
- Sexual abuse evidence collection in confinement settings.
- Criteria and evidence required to substantiate a case for administrative action or prosecution referral.

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The Personnel and Training Sergeant shall maintain documentation that employees, volunteers, contractors and investigators have completed required training and that they understand the training. This understanding shall be documented through individual signature or electronic verification.

All current employees and volunteers who may have contact with detainees shall be trained within one year of the effective date of the PREA standards. The agency shall provide annual refresher information to all such employees and volunteers to ensure that they understand the current sexual abuse and sexual harassment policies and procedures.

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Detainee Transportation

903.1 PURPOSE AND SCOPE

The purpose of this policy is to establish procedures for the transportation of detainees.

903.2 POLICY

Detainees shall be transported to a custodial facility, court or hospital in a safe and secure manner.

Officers transporting a detainee should not respond to calls for service or take police action regarding an on-view incident unless immediate action is necessary to preserve life.

(a) An officer who takes immediate police action to preserve life shall do so with reasonable consideration of both the benefits from police action and risk to the safety and security of the detainee being transported.

903.3 GENERAL TRANSPORTATION

The officer responsible for a detainee shall ensure he/she is supervised and under reasonable control during the initial custody and transportation to a custodial or other required facility.

To ensure the safety of the transporting officer, all detainees shall be searched prior to being placed in the transporting vehicle. Transported detainees shall be physically restrained in accordance with the Handcuffing and Restraints Policy.

Except when not possible or practical, detainees shall be transported in cage-equipped police vehicles and secured in a passenger safety restraint system in the area of the vehicle designed for detainee containment (i.e., rear seat of a patrol car).

Upon completion of transportation, the transporting officers shall search the transportation vehicle to ensure no contraband or evidence has been discarded or secreted therein.

Non-aggressive detainees may be transported by a single officer from the scene of an arrest.

903.4 DETAINEES OF THE OPPOSITE SEX

When an officer transports a detainee or suspect of the opposite sex, the officer shall either be accompanied by a second officer or shall provide the Communications Center via radio with the number of the police vehicle and the odometer reading, both before and after the transportation.

903.5 COMBATIVE DETAINEES

Combative detainees may be transported in a police vehicle from the scene of an arrest to the BPD Jail by one officer. However, additional officers should follow in convoy or should meet the officer at the sally port to assist with booking.

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903.6 FIT FOR INCARCERATION

A detainee who has been medically cleared for incarceration may be transported in a police vehicle from a hospital to the BPD Jail or another designated custodial facility. See the Temporary Custody of Adults Policy for restrictions on medications, etc.

903.7 MULTIPLE DETAINEES

At least two officers shall participate in the transportation of multiple detainees.

(a) Multiple officers involved in detainee transportation may ride in the same transportation vehicle, or in separate vehicles traveling in convoy, whichever is appropriate to the situation.

(b) Custodial protocols referenced in the Temporary Custody of Adults Policy regarding detainee classification-based segregation (i.e., males separate from females) shall be followed during transportation.

903.8 LONG DISTANCE TRANSPORTATION

At least one officer involved in a long-distance transportation, during which a need to stop for a detainee's personal needs may occur, shall be of the same sex as the detainee being transported.

Transporting officers shall afford the detainee the opportunity to tend to personal needs (i.e., restroom breaks), accompanied and effectively supervised by an officer of the same sex.

In event transportation time will exceed eight hours, the detainee shall be provided a meal. Transporting officers shall make reasonable efforts to ensure detainee security and public safety during detainee meal and personal need activities.

903.9 WHEELCHAIR-BOUND DETAINEES

Physically disabled detainees who use a wheelchair to ambulate should be transported in a disabled-lift equipped vehicle.

(a) When practical and appropriate, wheelchair-bound detainees should be cited and released in accordance with the Cite and Release Policy, or, when eligible, released from custody pursuant to Penal Code §849(b).

(b) Employees should not remove a physically disabled person from his/her wheelchair for transport, unless it is necessary for his/her safety.

903.10 MENTALLY DISORDERED OR INJURED DETAINEES

Mentally disordered detainees shall be transported in accordance with the Crisis Intervention Policy.

If an illness, disability or injury incapacitates the detainee, transportation should be arranged with an ambulance.

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903.11 NON-CAGE VEHICLE TRANSPORTATION

(a) When necessary to transport a single detainee in a non-cage equipped common passenger vehicle, two officers shall participate in the following seating arrangement:

1. Driver officer alone in the front seat area;
2. Detainee secured in the right rear passenger seat; and,
3. Passenger officer behind the driver in the left rear passenger seat.

(b) When necessary to transport two detainees in a non-cage equipped common passenger vehicle, two officers shall participate in the following seating arrangement:

1. Driver officer alone in the front seat area;
2. Detainees secured in the right rear and center rear passenger seats; and,
3. Passenger officer behind the driver in the left rear passenger seat.

903.12 PROHIBITED TRANSPORTATION

Detainees shall not be transported to special events or activities (e.g., visiting an ill person, attending a funeral, attending the reading of a will, etc.).

903.13 ESCAPE DURING TRANSPORTATION

If a detainee escapes, or attempts an escape, during transportation within the City limits, the transporting officer shall immediately notify the Communication Center of his/her location and the incident circumstances.

If a detainee escapes, or attempts an escape, during transportation within another jurisdiction, the transporting officer(s) shall immediately notify and request assistance from the police agency where the escape occurred.

(a) The transporting officer shall notify the Communication Center of his/her location and the incident circumstances as soon as practical.

(b) The Communication Center shall ensure the Watch Commander, or if absent or unavailable, the senior on-duty patrol sergeant, is advised of the incident.

With due regard to officer safety, the transporting officer(s) shall make reasonable efforts to regain and/or maintain custody of the detainee(s) (Penal Code §§ 835a, 854 and 855).

The transporting officer(s) shall document the escape, or attempted escape, in accordance with established criminal investigation and reporting procedures (Penal Code § 836.6).

903.14 IN CUSTODY SERIOUS INJURY OR DEATH

Any serious injury to, or death of, a detainee during transportation shall be handled in accordance with protocols described in the Temporary Custody of Adults Policy.

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Chapter 10 - Personnel

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Recruitment and Selection

1000.1 PURPOSE AND SCOPE

This policy provides a framework for employee recruiting efforts and identifying job-related standards for the selection process. This policy supplements the rules that govern employment practices for the Berkeley Police Department and that are promulgated and maintained by the Personnel and Training Bureau.

1000.2 POLICY

In accordance with applicable federal, state and local law, the Berkeley Police Department provides equal opportunities for applicants and employees, regardless of actual or perceived race, gender expression, age, pregnancy, religion, creed, color, national origin, ancestry, physical or mental handicap, genetic information, veteran status, marital status, sex or any other protected class or status. The Department does not show partiality or grant any special status to any applicant, employee or group of employees unless otherwise required by law.

The Department will recruit and hire only those individuals who demonstrate a commitment to service and who possess the traits and characteristics that reflect personal integrity and high ethical standards.

1000.3 RECRUITMENT

The Professional Standards Division Captain should employ a comprehensive recruitment and selection strategy to recruit and select employees from a qualified and diverse pool of candidates.

The strategy should include:

(a) Identification of racially and culturally diverse target markets.

(b) Use of marketing strategies to target diverse applicant pools.

(c) Expanded use of technology and maintenance of a strong internet presence. This may include an interactive department website and the use of department-managed social networking sites, if resources permit.

(d) Expanded outreach through partnerships with media, community groups, citizen academies, local colleges, universities and the military.

(e) Employee referral and recruitment incentive programs.

(f) Consideration of shared or collaborative regional testing processes.

The Professional Standards Division Captain shall avoid advertising, recruiting and screening practices that tend to stereotype, focus on homogeneous applicant pools or screen applicants in a discriminatory manner.

The Department should strive to facilitate and expedite the screening and testing process.

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1000.4 SELECTION PROCESS

The Department shall actively strive to identify a diverse group of candidates who have in some manner distinguished themselves as being outstanding prospects. Minimally, the Department should employ a comprehensive screening, background investigation, and selection process that assesses cognitive and physical abilities and includes review and verification of the following:

(a) A comprehensive application for employment (including previous employment, references, current and prior addresses, education, military record)

1. The personnel records of any applicant with prior peace officer experience in this state shall be requested from the appropriate law enforcement agency and reviewed prior to extending an offer of employment (Penal Code § 832.12).

2. This includes review of prior law enforcement employment information maintained by POST (Penal Code § 13510.9).

(b) Driving record

(c) Reference checks

(d) Employment eligibility, including U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form I-9 and acceptable identity and employment authorization documents consistent with Labor Code § 1019.1. This required documentation should not be requested until a candidate is hired. This does not prohibit obtaining documents required for other purposes.

(e) Information obtained from public internet sites

(f) Financial history consistent with the Fair Credit Reporting Act (FCRA) (15 USC § 1681 et seq.)

(g) Local, state, and federal criminal history record checks

(h) Computerized Voice Stress Analysis (CVSA) exam (when legally permissible) (Labor Code § 432.2)

(i) Medical and psychological examination (may only be given after a conditional offer of employment)

(j) Hiring authority review

(k) Records of police misconduct

1000.4.1 VETERAN'S PREFERENCE

Qualifying veterans of the United States Armed Forces who receive a passing score on an entrance examination shall be ranked in the top rank of any resulting eligibility list. The veteran's preference shall also apply to a widow or widower of a veteran or a spouse of a 100 percent disabled veteran (Government Code § 18973.1).

1000.5 BACKGROUND INVESTIGATION

Every candidate shall undergo a thorough background investigation to verify his/her personal integrity and high ethical standards, and to identify any past behavior that may be indicative of

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the candidate's unsuitability to perform duties relevant to the operation of the Berkeley Police Department (11 CCR 1953).

The narrative report and any other relevant background information shall be shared with the psychological evaluator. Information shall also be shared with others involved in the hiring process if it is relevant to their respective evaluations (11 CCR 1953).

1000.5.1 NOTICES

Background investigators shall ensure that investigations are conducted and notices provided in accordance with the requirements of the FCRA and the California Investigative Consumer Reporting Agencies Act (15 USC § 1681d; Civil Code § 1786.16).

1000.5.2 STATE NOTICES

If information disclosed in a candidate's criminal offender record information (CORI) is the basis for an adverse employment decision, a copy of the CORI shall be provided to the applicant (Penal Code § 11105).

1000.5.3 REVIEW OF SOCIAL MEDIA SITES

Due to the potential for accessing unsubstantiated, private or protected information, the Professional Standards Division Captain shall not require candidates to provide passwords, account information or access to password-protected social media accounts (Labor Code § 980).

The Professional Standards Division Captain should consider utilizing the services of an appropriately trained and experienced third party to conduct open source, internet-based searches and/or review information from social media sites to ensure that:

(a) The legal rights of candidates are protected.

(b) Material and information to be considered are verified, accurate and validated.

(c) The Department fully complies with applicable privacy protections and local, state and federal law.

Regardless of whether a third party is used, the Professional Standards Division Captain should ensure that potentially impermissible information is not available to any person involved in the candidate selection process.

1000.5.4 DOCUMENTING AND REPORTING

The background investigator shall summarize the results of the background investigation in a narrative report that includes sufficient information to allow the reviewing authority to decide whether to extend a conditional offer of employment. The report shall reference the Background Investigation Dimensions and include any findings of behaviors, traits, and/or attributes relevant to bias per the Bias Assessment Framework as described in the POST Background Investigation Manual. The report shall not include any information that is prohibited from use, including that from social media sites, in making employment decisions. The report and all supporting documentation shall be included in the candidate's background investigation file (11 CCR 1953).

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The background investigator shall document proof of verification of qualification for peace officer appointment on the Verification of Qualification for Peace Officer Appointment form and forward to the Support Services Division Captain for final review and submission to POST (11 CCR 1953).

1000.5.5 RECORDS RETENTION
The background report and all supporting documentation shall be maintained for a minimum of four years and in accordance with the established records retention schedule (Government Code § 12946; 11 CCR 1953).

1000.5.6 BACKGROUND INVESTIGATION UPDATE
A background investigation update may, at the discretion of the Chief of Police, be conducted in lieu of a complete new background investigation on a peace officer candidate who is reappointed within 180 days of voluntary separation from the Berkeley Police Department, or who is an interim police chief meeting the requirements contained in 11 CCR 1953(f).

1000.5.7 INVESTIGATOR TRAINING
Background investigators shall complete POST-certified background investigation training prior to conducting investigations (11 CCR 1953; 11 CCR 1959).

1000.6 DISQUALIFICATION GUIDELINES
As a general rule, performance indicators and candidate information and records shall be evaluated by considering the candidate as a whole, and taking into consideration the following:

- Age at the time the behavior occurred
- Passage of time
- Patterns of past behavior
- Severity of behavior
- Probable consequences if past behavior is repeated or made public
- Likelihood of recurrence
- Relevance of past behavior to public safety employment
- Aggravating and mitigating factors
- Other relevant considerations

A candidate's qualifications will be assessed on a case-by-case basis, using a totality-of-the-circumstances framework.

1000.6.1 DISQUALIFICATION FOR PAST MISCONDUCT
Notwithstanding section 1000.6 of this Policy, a candidate shall be immediately disqualified if:

(a) The applicant has been the subject of a sustained finding against the applicant by any law enforcement agency or oversight agency, following an investigation and opportunity for administrative appeal by the applicant, that the applicant, while employed as a peace officer, engaged in serious misconduct, which includes but

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is not limited to the following: use of excessive force, racial bias, sexual assault, discrimination against any person or group based on race, gender, religion, nationality, or sexual orientation, or dishonesty directly relating to the reporting, investigation of misconduct by another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence; or

(b) The applicant resigned or retired from their employment as a peace officer in any jurisdiction during the pendency of a disciplinary proceeding related to alleged serious misconduct by the applicant while they were employed as a peace officer, and the proceeding was suspended or terminated as a result of the applicant's resignation or retirement, until such a time that the applicant has been exonerated for the pending allegation.

1000.7 EMPLOYMENT STANDARDS

All candidates shall meet the minimum standards required by state law (Government Code § 1029; Government Code § 1031; Penal Code § 13510.1; 11 CCR 1950 et seq.). Candidates will be evaluated based on merit, ability, competence, and experience, in accordance with the high standards of integrity and ethics valued by the Department and the community. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

Validated, job-related, and nondiscriminatory employment standards shall be established for each job classification and shall minimally identify the training, abilities, knowledge, and skills required to perform the position's essential duties in a satisfactory manner. Each standard should include performance indicators for candidate evaluation. The Personnel and Training Bureau should maintain validated standards for all positions.

1000.7.1 STANDARDS FOR OFFICERS

Candidates shall meet the minimum standards established by POST or required by state law (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.):

(a) Free of any felony convictions

(b) Be legally authorized to work in the United States under federal law

(c) At least 21 years of age except as provided by Government Code § 1031.4

(d) Fingerprinted for local, state, and national fingerprint check

(e) Good moral character as determined by a thorough background investigation (11 CCR 1953)

(f) High school graduate, passed the GED or other high school equivalency test and completed at least 60 college semester units or 90 college quarter units

(g) Free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation which might adversely affect the exercise of police powers (11 CCR 1954; 11 CCR 1955)

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(h) Free of hate group memberships, participation in hate group activities, or advocacy of public expressions of hate within the previous seven years, and since 18 years of age, as determined by a background investigation (Penal Code § 13681)

(i) Candidates must also satisfy the POST selection requirements, including (11 CCR 1950 et seq.):

1. Reading and writing ability assessment (11 CCR 1951)
2. Oral interview to determine suitability for law enforcement service (11 CCR 1952)

(j) POST certification that has not been revoked, denied, or voluntarily surrendered pursuant to Penal Code § 13510.8(f)

(k) Not identified in the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training or similar federal government database that reflects revoked certification for misconduct or reflects misconduct that would result in a revoked certification in California.

In addition to the above minimum POST required standards, candidates may be subjected to additional standards established by the Department (Penal Code § 13510(d)).

1000.7.2 STANDARDS FOR DISPATCHER

Candidates shall satisfy the POST selection requirements, including (11 CCR 1956):

(a) A verbal, reasoning, memory and perceptual abilities assessment (11 CCR 1957)

(b) An oral communication assessment (11 CCR 1958)

(c) A medical and psychological evaluation (11 CCR 1960)

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Special, Temporary Duty or Specialized Duty Assignments - Application and Selection

1002.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the application, evaluation and appointment of sworn and designated non-sworn employees to specialized assignments. The appointment shall be based on professional performance, ability, merit and departmental needs.

1002.2 POLICY

It is the policy of this department to fairly evaluate and select qualified personnel for special, temporary duty and specialized duty assignments, and effectively manage associated administrative processes.

The provisions of this policy shall not apply to captains and lieutenants, or to sergeants appointed to the Internal Affairs Bureau, who shall be assigned by the Chief of Police based on departmental needs.

Notwithstanding the procedures described in this policy, the Chief of Police shall have the authority to assign personnel in any manner deemed advisable for the best interest of the Department, including exception to eligibility criteria for, or the extension or reduction of the term of an assignment. Any aforementioned exceptions shall be communicated to the members of the Department and include the reason(s) when possible.

1002.3 DEFINITIONS

Extension of Assignment: The continuation of service in a special or temporary duty assignment, beyond the prescribed primary service term. Generally the extension shall be for a period of up to one year for officers and community service officers. However, the Traffic Bureau Motorcycle Officer and Crime Scene Unit Community Service Officer Identification Technician special assignments are eligible for two extensions of up to one year each. Supervisors are eligible for two extensions of up to one year each, or as otherwise authorized in this policy. Decisions to extend an employee in a special or temporary duty assignment shall be announced via bulletin notice.

Special Assignment: A duty assignment other than Patrol (for officers and sergeants) or the Jail (for community service officers and supervisors) that has a primary service term of three years.

Specialized Duty Assignment: An appointment to a specialized detail or team that provides “as needed” instructional, supervisory or operational services, and in which participation is additional to an employee’s primary duty assignment.

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Temporary Duty Assignment: A duty assignment other than Patrol (for officers and sergeants) or the Jail (for community service officers and supervisors) that has a primary service term of one year.

1002.4 ELIGIBILITY REQUIREMENTS

Unless otherwise prescribed within BPD policies, employees must have successfully completed at least one year of service with the Department in their job classification to be eligible for appointment to a special, temporary duty or specialized duty assignment.

(a) Except for newly created special assignments, an employee who is in a special assignment, or who has completed a prior special assignment within the previous year, should not be considered for appointment to another special assignment.

1002.5 ADMINISTRATIVE MANAGEMENT / SELECTION

1002.5.1 DESIGNATION

Assignments shall be designated as special, temporary duty or specialized duty at the discretion of the Chief of Police.

1002.5.2 RESPONSIBILITY

The Personnel and Training Bureau shall be responsible for the administration of special, temporary duty and specialized duty assignments and the associated application processes.

1002.5.3 BULLETIN NOTICE

A bulletin notice announcing the opening of a special, temporary duty or specialized duty assignment shall be issued not less that fifteen calendar days prior to the closing date for application submission. The bulletin notice shall include information to help prospective candidates prepare for the interview. The information shall be provided to the Personnel and Training Bureau by the bureau lieutenant responsible for the open assignment.

1002.5.4 APPLICATION

To be considered a candidate for a particular position, employees shall submit a Special Assignment Application form to the Personnel and Training Bureau by the closing date indicated in the bulletin notice.

(a) Applicants shall complete the required sections of the Special Assignment Application form detailing relevant specialized training, prior assignments and other pertinent background information.

(b) Applicants may request to review their Special Assignment Application form prior to their interview.

(c) If less than three applications are received for an assignment, the Chief of Police may reopen the application process by extending the form submission deadline.

After the closing date, a bulletin notice shall be issued listing all persons applying for the announced opening(s).

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1002.5.5 APPLICATION ROUTING / RECOMMENDATIONS

The Personnel and Training Bureau shall route completed Special Assignment Application form(s) to the division captain(s) of the various candidates for supervisor and commanding officer comments.

(a) The candidate's present assignment supervisor and commanding officer shall provide input regarding the candidate's performance and qualification for the desired assignment, and then return the form without delay to the division captain.

(b) The division captain shall ensure Special Assignment Application forms containing supervisor and command officer comments are returned to the Personnel and Training Bureau in a timely manner.

1002.5.6 APPLICATION REVIEW / INTERVIEW / FEEDBACK

The Personnel and Training Bureau shall route Special Assignment Application form(s) bearing supervisor and command officer comments to the division captain where the vacancy exists.

The division captain, or his/her designee, assisted by the bureau lieutenant and unit/detail supervisor where the vacancy exists, shall review the applications and interview all eligible candidates in a timely manner.

(a) Upon the completion of each interview, the bureau lieutenant or unit/detail supervisor where a vacancy exists shall place career development comments and appropriate feedback on the individual application forms.

(b) Applicants may also request a meeting with the bureau lieutenant, or unit/detail supervisor, for personal feedback on their performance, including areas of strength and areas for improvement.

1002.5.7 RECOMMENDATION / APPLICATION RETENTION

The division captain where the vacancy exists shall submit his/her recommendation(s) for the open assignment(s) to the Chief of Police as soon as practical following the conclusion of candidate interviews.

The division captain shall ensure the candidate's application is returned to the Personnel and Training Bureau.

(a) The Personnel and Training Bureau shall maintain original applications in a secure file for one year. Applicants shall be able to view or request a copy of their application during this time period.

1002.6 EXTENSION OF ASSIGNMENT

An employee who desires an extension of his/her Special or Temporary Duty assignment shall request the extension via the chain of command to the division captain no less than four months prior to his/her scheduled rotation.

Approval consideration by the division captain for the request shall be based on the employee's overall work performance and the recommendations offered by the employee's chain of command.

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1002.7 TRANSITIONAL TRAINING

It shall be the responsibility of the division captain(s) receiving the “new” employee to ensure appropriate transitional training is provided.

Division captain(s) shall evaluate employees returning to Patrol or the Jail from special or temporary duty assignments, and arrange for any needed training to reacquaint the employee with current operational policies and procedures.

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Grievance Procedure

1003.1 PURPOSE AND SCOPE

It is the policy of this department that all grievances be handled quickly and fairly without discrimination against employees who file a grievance whether or not there is a basis for the grievance. Our Department's philosophy is to promote a free verbal communication between employees and supervisors.

1003.1.1 GRIEVANCE DEFINED

A grievance is any difference of opinion concerning terms or conditions of employment or the dispute involving the interpretation or application of any of the following documents by the person(s) affected:

- The employee bargaining agreement (Memorandum of Understanding)
- This Policy Manual
- City rules and regulations covering personnel practices or working conditions

Grievances may be brought by an individual affected employee or by a group representative.

Specifically outside the category of grievance are complaints related to allegations of discrimination or harassment subject to the Discriminatory Harassment Policy. Also outside the category of grievances are personnel complaints regarding any allegation of misconduct or improper job performance against any department employee that, if true, would constitute a violation of department policy, federal, state, or local law as set forth in the Personnel Complaint Policy.

1003.2 PROCEDURE

Except as otherwise required under a collective bargaining agreement, if an employee believes that he or she has a grievance as defined above, then that employee shall observe the following procedure:

(a) Attempt to resolve the issue through informal discussion with immediate supervisor.

(b) If after a reasonable amount of time, generally seven days, the grievance cannot be settled by the immediate supervisor, the employee may request an interview with the Division Captain of the affected division or bureau.

(c) If a successful resolution is not found with the Division Captain, the employee may request a meeting with the Chief of Police.

(d) If the employee and the Chief of Police are unable to arrive at a mutual solution, then the employee shall proceed as follows:

1. Submit in writing a written statement of the grievance and deliver one copy to the Chief of Police and another copy to the immediate supervisor and include the following information:

    (a) The basis for the grievance (i.e., what are the facts of the case?).

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(b) Allegation of the specific wrongful act and the harm done.

(c) The specific policies, rules or regulations that were violated.

(d) What remedy or goal is being sought by this grievance.

(e) The employee shall receive a copy of the acknowledgment signed by the supervisor including the date and time of receipt.

(f) The Chief of Police will receive the grievance in writing. The Chief of Police and the City Manager will review and analyze the facts or allegations and respond to the employee within 14 calendar days. The response will be in writing, and will affirm or deny the allegations. The response shall include any remedies if appropriate. The decision of the City Manager is considered final.

1003.3 EMPLOYEE REPRESENTATION

Employees are entitled to have representation during the grievance process. The representative may be selected by the employee from the appropriate employee bargaining group.

1003.4 GRIEVANCE RECORDS

At the conclusion of the grievance process, all documents pertaining to the process shall be forwarded to the Office of the Chief for inclusion into a secure file for all written grievances. A second copy of the written grievance will be maintained by the City Manager's office to monitor the grievance process.

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Anti-Retaliation

1004.1 PURPOSE AND SCOPE

This policy prohibits retaliation against members who identify workplace issues, such as fraud, waste, abuse of authority, gross mismanagement or any inappropriate conduct or practices, including violations that may pose a threat to the health, safety or well-being of members.

This policy does not prohibit actions taken for nondiscriminatory or non-retaliatory reasons, such as discipline for cause.

These guidelines are intended to supplement and not limit members' access to other applicable remedies. Nothing in this policy shall diminish the rights or remedies of a member pursuant to any applicable federal law, provision of the U.S. Constitution, law, ordinance or memorandum of understanding.

1004.2 POLICY

The Berkeley Police Department has a zero tolerance for retaliation and is committed to taking reasonable steps to protect from retaliation members who, in good faith, engage in permitted behavior or who report or participate in the reporting or investigation of workplace issues. All complaints of retaliation will be taken seriously and will be promptly and appropriately investigated.

1004.3 RETALIATION PROHIBITED

No member may retaliate against any person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory or retaliatory; for reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy.

Retaliation includes any adverse action or conduct, including but not limited to:

- Refusing to hire or denying a promotion.
- Extending the probationary period.
- Unjustified reassignment of duties or change of work schedule.
- Real or implied threats or other forms of intimidation to dissuade the reporting of wrongdoing or filing of a complaint, or as a consequence of having reported or participated in protected activity.
- Taking unwarranted disciplinary action.
- Spreading rumors about the person filing the complaint or about the alleged wrongdoing.
- Shunning or unreasonably avoiding a person because he/she has engaged in protected activity.

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1004.3.1 RETALIATION PROHIBITED FOR REPORTING VIOLATIONS
An officer shall not be retaliated against for reporting a suspected violation of a law or regulation of another officer to a supervisor or other person in the Department who has the authority to investigate the violation (Government Code § 7286(b)).

1004.4 COMPLAINTS OF RETALIATION

Any member who feels he/she has been retaliated against in violation of this policy should promptly report the matter to any supervisor, command staff member, Chief of Police or the City Professional Standards Division Captain.

Members shall act in good faith, not engage in unwarranted reporting of trivial or minor deviations or transgressions, and make reasonable efforts to verify facts before making any complaint in order to avoid baseless allegations. Members shall not report or state an intention to report information or an allegation knowing it to be false, with willful or reckless disregard for the truth or falsity of the information or otherwise act in bad faith.

Investigations are generally more effective when the identity of the reporting member is known, thereby allowing investigators to obtain additional information from the reporting member. However, complaints may be made anonymously. All reasonable efforts shall be made to protect the reporting member's identity. However, confidential information may be disclosed to the extent required by law or to the degree necessary to conduct an adequate investigation and make a determination regarding a complaint. In some situations, the investigative process may not be complete unless the source of the information and a statement by the member is part of the investigative process.

1004.5 SUPERVISOR RESPONSIBILITIES

Supervisors are expected to remain familiar with this policy and ensure that members under their command are aware of its provisions.

The responsibilities of supervisors include, but are not limited to:

(a) Ensuring complaints of retaliation are investigated as provided in the Personnel Complaints Policy.

(b) Receiving all complaints in a fair and impartial manner.

(c) Documenting the complaint and any steps taken to resolve the problem.

(d) Acknowledging receipt of the complaint, notifying the Chief of Police via the chain of command and explaining to the member how the complaint will be handled.

(e) Taking appropriate and reasonable steps to mitigate any further violations of this policy.

(f) Monitoring the work environment to ensure that any member making a complaint is not subjected to further retaliation.

(g) Periodic follow-up with the complainant to ensure that retaliation is not continuing.

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(h) Not interfering with or denying the right of a member to make any complaint.

(i) Taking reasonable steps to accommodate requests for assignment or schedule changes made by a member who may be the target of retaliation if it would likely mitigate the potential for further violations of this policy.

1004.6 COMMAND STAFF RESPONSIBILITIES

The Chief of Police should communicate to all supervisors the prohibition against retaliation.

Command staff shall treat all complaints as serious matters and shall ensure that prompt actions take place, including but not limited to:

(a) Communicating to all members the prohibition against retaliation.

(b) The timely review of complaint investigations.

(c) Remediation of any inappropriate conduct or condition and instituting measures to eliminate or minimize the likelihood of recurrence.

(d) The timely communication of the outcome to the complainant.

1004.7 WHISTLE-BLOWING

California law protects members who (Labor Code § 1102.5; Government Code § 53296 et seq.):

(a) Report a violation of a state or federal statute or regulation to a government or law enforcement agency, including the member's supervisor or any other member with the authority to investigate the reported violation.

(b) Provide information or testify before a public body if the member has reasonable cause to believe a violation of law occurred.

(c) Refuse to participate in an activity that would result in a violation of a state or federal statute or regulation.

(d) File a complaint with a local agency about gross mismanagement or a significant waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Members shall exhaust all available administrative remedies prior to filing a formal complaint.

(e) Are family members of a person who has engaged in any protected acts described above.

Members are encouraged to report any legal violations through the chain of command (Labor Code § 1102.5).

Members who believe they have been the subject of retaliation for engaging in such protected behaviors should promptly report it to a supervisor. Supervisors should refer the complaint to the Internal Affairs Bureau for investigation pursuant to the Personnel Complaints Policy.

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1004.7.1 DISPLAY OF WHISTLE-BLOWER LAWS

The Support Services Division Captain shall ensure the display of a notice to members regarding their rights and responsibilities under the whistle-blower laws, including the whistle-blower hotline maintained by the Office of the Attorney General (Labor Code § 1102.8).

1004.8 RECORDS RETENTION AND RELEASE

The Support Services Division Captain shall ensure that documentation of investigations is maintained in accordance with the established records retention schedules.

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Reporting of Employee Convictions

1005.1 PURPOSE AND SCOPE

Convictions of certain offenses may restrict or prohibit an employee's ability to properly perform official duties. Therefore, all employees shall be required to promptly notify the Department of any past and current criminal convictions.

The Professional Standards Division shall submit in a timely manner a notice to the Commission on Peace Officer Standards and Training (POST) of any appointment, termination, reinstatement, name change or status change regarding any peace officer, reserve peace officer, public safety dispatcher and records supervisor employed by this department (11 CCR 1003).

The Professional Standards Division shall submit in a timely manner a notice to POST of a felony conviction or Government Code § 1029 reason that disqualifies any current peace officer employed by this department or any former peace officer if this department was responsible for the investigation (11 CCR 1003).

1005.2 DOMESTIC VIOLENCE CONVICTIONS, OUTSTANDING WARRANTS AND RESTRAINING ORDERS

California and federal law prohibit individuals convicted of, or having an outstanding warrant for, certain offenses and individuals subject to certain court orders from lawfully possessing a firearm. Such convictions and court orders often involve allegations of the use or attempted use of force or threatened use of a weapon on any individual in a domestic relationship (e.g., spouse, cohabitant, parent, child) (18 USC § 922; Penal Code § 29805).

All members are responsible for ensuring that they have not been disqualified from possessing a firearm by any such conviction or court order and shall promptly report any such conviction or court order to a supervisor, as provided in this policy.

1005.3 OTHER CRIMINAL CONVICTIONS AND COURT ORDERS

Government Code § 1029 prohibits any person convicted of a felony from being a peace officer in the State of California. This prohibition applies regardless of whether the guilt was established by way of a verdict, guilty, or nolo contendere plea.

Convictions of certain violations of the Vehicle Code and other provisions of law may also place restrictions on an employee's ability to fully perform the duties of the job.

Outstanding warrants as provided in Penal Code § 29805 also place restrictions on a member's ability to possess a firearm.

Moreover, while legal restrictions may or may not be imposed by statute or by the courts upon conviction of any criminal offense, criminal conduct by members of this department may be inherently in conflict with law enforcement duties and the public trust.

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1005.4 REPORTING PROCEDURE

All members of this department and all retired officers with an identification card issued by the Department shall promptly notify their immediate supervisor (or the Chief of Police in the case of retired officers) in writing of any past or current criminal arrest, outstanding warrant or conviction regardless of whether or not the matter is currently on appeal and regardless of the penalty or sentence, if any.

All members and all retired officers with an identification card issued by the Department shall further promptly notify their immediate supervisor (or the Chief of Police in the case of retired officers) in writing if the member or retiree becomes the subject of a domestic violence restraining order or similar court order or becomes the subject of an outstanding warrant.

Any member whose criminal conviction unduly restricts or prohibits that member from fully and properly performing his/her duties may be disciplined including, but not limited to, being placed on administrative leave, reassignment and/or termination. Any effort to remove such disqualification or restriction shall remain entirely the responsibility of the member on his/her own time and expense.

Any member failing to provide prompt written notice pursuant to this policy shall be subject to discipline.

1005.5 PROCEDURE FOR RELIEF

Pursuant to Penal Code § 29855, a peace officer may petition the court for permission to carry a firearm following a conviction under state law. Federal law, however, does not provide for any such similar judicial relief and the granting of a state court petition under Penal Code § 29855 will not relieve one of the restrictions imposed by federal law. Therefore, relief for any employee falling under the restrictions imposed by federal law may only be obtained by expungement of the conviction. Employees shall seek relief from firearm restrictions on their own time and through their own resources.

Pursuant to Family Code § 6389(h), an individual may petition the court for an exemption to any restraining order, which would thereafter permit the individual to carry a firearm or ammunition as a part of the individual's employment. Relief from any domestic violence or other restriction shall also be pursued through the employee’s own resources and on the employee’s own time.

Pending satisfactory proof of relief from any legal restriction imposed on an employee’s duties, the employee may be placed on administrative leave, reassigned, or disciplined. The Department may, but is not required to return an employee to any assignment, reinstate any employee, or reverse any pending or imposed discipline upon presentation of satisfactory proof of relief from any legal restriction set forth in this policy.

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Drug- and Alcohol-Free Workplace

1006.1 PURPOSE AND SCOPE

The purpose of this policy is to establish clear and uniform guidelines regarding drugs and alcohol in the workplace.

1006.2 POLICY

It is the policy of this department to provide a drug- and alcohol-free workplace for all members.

1006.3 SECTION TITLE

Intoxicant - Alcohol, a prescription drug, an illegal drug, or other substance that impairs a person's normal physical and mental capacity to act and reason.

Medical Review Officer (MRO) - A licensed physician designated by the City who shall conduct a validation review of any report associated with the drug analysis of blood or urine samples obtained pursuant to this policy.

Positive Test Result - An analysis report, evaluated and validated by a Medical Review Officer, indicating the presence of an intoxicant in a sample of blood or urine. The presence of any amount of alcohol shall be treated as a positive result.

1006.4 GENERAL GUIDELINES

Alcohol and drug use in the workplace or on department time can endanger the health and safety of department members and the public. Such use shall not be tolerated (41 USC § 8103).

Members who have consumed any amount of an alcoholic beverage, drug or medication, that would tend to adversely affect their mental or physical abilities shall not report for duty. Affected members shall notify the Watch Commander or appropriate supervisor as soon as the member is aware that he/she will not be able to report to work. If the member is unable to make the notification, every effort should be made to have a representative contact the supervisor in a timely manner. If the member is adversely affected while on-duty, he/she shall be immediately removed and released from work (see the Work Restrictions section of this policy).

1006.4.1 USE OF MEDICATIONS

Members should avoid taking any medications that will impair their ability to safely and completely perform their duties. Any member who is medically required or has a need to take any such medication shall report that need to his/her immediate supervisor prior to commencing any on-duty status.

No member shall be permitted to work or drive a vehicle owned or leased by the Department while taking any medication that has the potential to impair his/her abilities, without a written release from his/her physician.

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1006.4.2 USE OF MARIJUANA
Possession of marijuana, including medical marijuana, or being under the influence of marijuana on- or off-duty is prohibited and may lead to disciplinary action.

1006.5 MEMBER RESPONSIBILITIES

Members shall report for work in an appropriate mental and physical condition.

Members who are authorized to consume alcohol as part of a special assignment shall not do so to the extent of impairing on-duty performance.

Alcohol may be consumed by employees in a controlled training environment, such as a training class/workshop on the administration of Field Sobriety Tests (FSTs). Controlled substances may be manipulated by employees for authorized training purposes.

Members shall notify a supervisor immediately if they observe behavior or other evidence that they believe demonstrates that a fellow member poses a risk to the health and safety of the member or others due to drug or alcohol use.

Members are required to notify their immediate supervisors of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction (41 USC § 8103).

1006.6 EMPLOYEE ASSISTANCE PROGRAM

There is a voluntary employee assistance program available to assist those who wish to seek help for alcohol and drug problems (41 USC § 8103). Insurance coverage that provides treatment for drug and alcohol abuse also may be available. Employees should contact the Peer Support Team, the Personnel and Training Bureau, their insurance providers or the employee assistance program for additional information. It is the responsibility of each employee to seek assistance before alcohol or drug problems lead to performance problems.

1006.7 WORK RESTRICTIONS

If a member informs a supervisor that he/she has consumed any alcohol, drug or medication that could interfere with a safe and efficient job performance, the member may be required to obtain clearance from his/her physician before continuing to work.

If the supervisor reasonably believes, based on objective facts, that a member is impaired by the consumption of alcohol or other drugs, the supervisor shall prevent the member from continuing work and shall ensure that he/she is safely transported away from the Department.

1006.8 REQUESTING SCREENING TESTS

The supervisor may request an employee submit to a screening test when the supervisor reasonably believes, based upon objective facts, that the employee is:

(a) Under the influence of alcohol or drugs that are impairing his/her ability to perform duties safely and efficiently.

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(b) Under the influence of alcohol or drugs and the employee discharges a firearm, other than by accident, in the performance of his/her duties.

(c) Under the influence of alcohol or drugs during the performance of his/her duties, the employee drives a motor vehicle and becomes involved in an incident that results in bodily injury to him/herself or another person, or substantial damage to property.

(d) In possession of illegal drugs or controlled substances and reasonably believes that such possession is a violation of the law.

1006.8.1 SUPERVISOR RESPONSIBILITY

The supervisor shall prepare a written record documenting the specific facts that led to the decision to request the test, and shall inform the employee in writing of the following:

(a) The test will be given to detect either alcohol or drugs, or both.

(b) The result of the test is not admissible in any criminal proceeding against the employee.

(c) The employee may refuse the test, but refusal may result in dismissal or other disciplinary action.

If circumstances require, and when directed by competent authority, sworn employees shall surrender to the supervisor or command officer all weapons in their immediate possession.

A supervisor or command officer should designate an employee of equal or superior rank to the subject employee to remain in the immediate presence of the employee throughout the testing process.

1006.8.2 SCREENING TEST REFUSAL

An employee's refusal to cooperate, deliberate obstruction, delay, or failure to successfully complete testing authorized by this policy, including a refusal to sign consent or chain of custody forms, shall be considered a failure to obey an order from a superior officer, subject to disciplinary action, up to and including termination.

An employee may be subject to disciplinary action, up to and including termination, if he/she:

(a) Fails or refuses to submit to a screening test as requested.

(b) Deliberately obstructs or delays completing the screening test.

(c) After taking a screening test that indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested, that he/she took the controlled substance as directed, pursuant to a current and lawful prescription issued in his/her name.

(d) Violates any provisions of this policy.

The disciplinary action for refusal will include the same penalty as if the employee had tested with a positive result.

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1006.9 APPROVAL AND MANNER OF TESTING

The Chief of Police, or if unavailable, a division captain, must approve and order any alcohol and/or drug testing authorized by this policy.

The Chief of Police, or his/her designee, not the subject employee, shall select the testing method based on the circumstances, which shall be either a blood draw administered by a licensed medical professional, or a two-part urine sample, with individual samples taken 30 minutes apart.

The testing procedure shall occur as soon as practical at a location and time designated by the Department.

The subject employee may consult with a legal or police association representative as long as the consultation does not unreasonably delay the testing.

1006.10 SAMPLES

(a) Two samples shall be taken with one preserved for any potential additional testing. The employee may, at his/her expense, elect to have a third blood or urine specimen collected and forwarded by the City's testing service to another DHHS-certified laboratory for independent supplemental analysis.

(b) The City will use licensed technicians to collect all samples. The City's current service for administrative drug and alcohol testing, On Site Health and Safety, has technicians available to respond within one hour, 24 hours per day, 7 days per week at (510) 245-2700. In addition, Preferred Alliance may also be contacted at (877) 272-5227 to request a technician be dispatched.

(c) If the subject employee is being treated at a hospital or other medical facility, arrangements may be made for a blood draw or the collection of urine samples by that facility or by having On Site Health and Safety send a technician.

(d) The samples should be delivered without delay to a Department of Health and Human Services (DHHS) certified laboratory designated by the City.

1006.11 ADMINISTRATIVE MANAGEMENT

The supervisor or command officer supervising the testing process shall forward all relevant information and documents to the Chief of Police via the chain of command in a manner that ensures confidentiality.

Employees directed to submit to testing authorized by this policy may be subject to temporary reassignment or paid administrative leave pending final disposition.

The Director of Human Resources, or his/her designee, is responsible for the receipt of specimen analysis results and coordination of Medical Review Officer (MRO) review.

1006.12 TEST RESULTS

(a) Positive test results indicating only the presence of alcohol in a blood and/or urine sample shall not require an MRO review.

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(b) Positive test results associated with a drug-related analysis of blood and/or urine samples will be reviewed for validation by the MRO.

(c) To evaluate whether or not the presence of a particular intoxicant found in the sample was caused by its lawful and appropriate usage, the MRO will contact the subject officer.

1. The MRO may, with the express authorization of the subject employee, review relevant medical records and interview the subject employee.

(d) A positive test result without satisfactory explanation to the MRO shall be considered a validated positive result.

1006.13 ADMINISTRATIVE REVIEW

Subsequent to the receipt of the specimen analysis and MRO review results from the Director of Human Resources, the Chief of Police will be responsible for ensuring timely administrative review and disposition.

(a) An employee who has a positive test for alcohol and/or a validated positive test for a substance other than alcohol may be subject to disciplinary action.

Employees tested pursuant to this policy shall receive a copy of all available information, data and reports associated with the testing process and results.

Administrative alcohol and/or drug test results shall not be disclosed as part of a criminal investigation unless the employee has consented in writing or disclosure is required by law.

Nothing in this policy shall prevent a criminal investigator from requesting an employee voluntarily submit to an alcohol and/or drug test when the employee is the subject of the investigation.

Nothing in this policy shall prevent a criminal investigator from requiring an employee to submit to an alcohol and/or drug test when such testing is authorized by law based on probable cause.

1006.14 COMPLIANCE WITH THE DRUG-FREE WORKPLACE ACT

No later than 30 days following notice of any drug statute conviction for a violation occurring in the workplace involving a member, the Department will take appropriate disciplinary action, up to and including dismissal, and/or requiring the member to satisfactorily participate in a drug abuse assistance or rehabilitation program (41 USC § 8104).

1006.15 CONFIDENTIALITY

The Department recognizes the confidentiality and privacy due to its members. Disclosure of any information relating to substance abuse treatment, except on a need-to-know basis, shall only be with the express written consent of the member involved or pursuant to lawful process.

The written results of any screening tests and all documents generated by the employee assistance program are considered confidential medical records and shall be maintained separately from the employee's other personnel files.

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Sick Leave

1007.1 PURPOSE AND SCOPE

This policy provides general guidance regarding the use and processing of sick leave. The accrual and terms of use of sick leave for eligible employees are detailed in the City personnel manual or applicable collective bargaining agreement.

This policy is not intended to cover all types of sick or other leaves. For example, employees may be entitled to additional paid or unpaid leave for certain family and medical reasons as provided for in the Family and Medical Leave Act (FMLA) (29 USC § 2601 et seq.) and the California Family Rights Act, and leave related to domestic violence, sexual assault, stalking or for organ or bone marrow donor procedures (29 CFR 825; Government Code § 12945.2; Labor Code § 230.1; Labor Code § 1510).

1007.2 POLICY

It is the policy of the Berkeley Police Department to provide eligible employees with a sick leave benefit.

1007.3 USE OF SICK LEAVE

Sick leave is intended to be used for qualified absences. Sick leave is not considered vacation. Abuse of sick leave may result in discipline, denial of sick leave benefits, or both.

Employees on sick leave shall not engage in other employment or self-employment or participate in any sport, hobby, recreational activity or other activity that may impede recovery from the injury or illness (see Outside Employment Policy).

Qualified appointments should be scheduled during a member's non-working hours when it is reasonable to do so.

1007.3.1 NOTIFICATION

All members should notify the Watch Commander or appropriate supervisor as soon as they are aware that they will not be able to report to work and no less than one hour before the start of their scheduled shifts. If, due to an emergency, a member is unable to contact the supervisor, every effort should be made to have a representative for the member contact the supervisor (Labor Code § 246).

When the necessity to be absent from work is foreseeable, such as planned medical appointments or treatments, the member shall, whenever possible and practicable, provide the Department with no less than 30 days' notice of the impending absence (Labor Code § 246).

Upon return to work, members are responsible for ensuring their time off was appropriately accounted for, and for completing and submitting the required documentation describing the type of time off used and the specific amount of time taken.

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1007.4 REQUIRED NOTICES

The Professional Standards Division Captain shall ensure:

(a) Written notice of the amount of paid sick leave available is provided to employees as provided in Labor Code § 246.

(b) A poster is displayed in a conspicuous place for employees to review that contains information on paid sick leave as provided in Labor Code § 247.

1007.5 SUPERVISOR RESPONSIBILITIES

The responsibilities of supervisors include, but are not limited to:

(a) Monitoring and regularly reviewing the attendance of those under their command to ensure that the use of sick leave and absences is consistent with this policy.

1. Single or multiple uses of sick leave having an identifiable pattern (i.e., taken in conjunction with days off, holidays or vacation), or a questionable explanation provided by the employee, may be deemed abusive.

(b) Attempting to determine whether an absence of four or more days may qualify as family medical leave and consulting the Personnel and Training Bureau as appropriate.

(c) Addressing absences and sick leave use in the member's performance evaluation when excessive or unusual use has:

1. Negatively affected the member's performance or ability to complete assigned duties; or

2. Negatively affected department operations.

(d) When appropriate, counseling members regarding excessive absences and/or inappropriate use of sick leave.

(e) Referring eligible members to an available employee assistance program when appropriate.

1007.6 PHYSICIAN VERIFICATION - EMPLOYEE RESPONSIBILITIES

In order to ensure appropriate medical care, the supervisor may require the employee to submit a "physician verification" each time the employee is absent due to an apparent illness and/or injury.

(a) A "physician verification" shall, at minimum, include the following information:

1. The date and time the employee went to see the physician;

2. A statement that a physician treated the employee, and that the physician determined that the employee was in fact ill and/or injured on the date of the absence;

3. A return to work date; and,

4. Whether or not the employee is able to fully perform his/her normal assigned duties.

(b) A "physician verification" may also be required in cases of excessive absence due to injury or illness care for an employee's immediate family.

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An employee required to submit a “physician verification” shall present it to his/her supervisor upon return to work, at the beginning of that day’s duty shift.

An employee’s failure to provide a required “physician verification” may result in the modification of his/her attendance record from “Sick Leave” to “Unauthorized Leave Without Pay”, and may result in disciplinary action.

1007.7 ATTENDANCE MONITORING

When a supervisor observes a single absence, or pattern of absences, that may be consistent with an abuse of sick leave, or the use of more than half of the employee’s sick leave accrual for the preceding twelve month period, he/she shall review the associated absence report record(s) to evaluate the reason(s) provided for the absence(s) of concern.

The supervisor shall advise the subject employee of the specific absence(s) in question and circumstances which revealed the issue, and determine if there was a valid reason for the absence(s) of concern.

In the event an employee provides a reasonable explanation for unplanned and/or seemingly excessive uses of sick leave (e.g., an employee’s care for him/herself or a family member regarding a serious medical condition), and where there is anticipation of a related future absence, the supervisor may recommend the employee apply for benefits provided by the Federal Family and Medical Leave Act (FMLA) and/or the City of Berkeley Employee Assistance Program (ref. City of Berkeley Administrative Regulation 2.4).

If the employee’s explanation for the subject absence(s) reveals a violation of this policy, or is questionable or inadequate, the supervisor shall counsel the employee against abusive use of sick leave and admonish him/her regarding possible disciplinary action should future abuse occur.

The supervisor may also initiate a Performance Improvement Plan (PIP) as a mechanism to monitor an employee’s attendance and use of sick leave.

The supervisor should inform the employee of their right to administrative representation at future progress report meetings, as any subsequent violation(s) of this policy could lead to discipline.

1007.7.1 FOLLOW-UP

Following the initial counseling meeting, the supervisor shall review the relevant attendance records with the employee every 30 days for a period of six months.

(a) If an abuse of sick leave does not recur in the six month period following the initial counseling meeting, the supervisor shall inform the employee that his/her attendance will be reviewed quarterly for, at minimum, six months.

(b) Attendance monitoring authorized by this policy, whether informal or as part of a PIP, will remain in effect no more than one year from the date of the initial counseling meeting, unless continued monitoring is necessary.

If during the six month monitoring period there is another incident of sick leave abuse, the supervisor shall document the matter as a formal personnel complaint and advise the employee:

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1. If not already initiated, a PIP will be instituted and administrative monitoring will continue for a period of one year; and,
2. The failure to correct substandard performance with regard to sick time abuse may result in disciplinary action as prescribed in the Personnel Complaints Policy.

Upon the conclusion of an attendance monitoring program, the supervisor shall inform the subject employee and advise him/her that their attendance will be routinely reviewed in accordance with this policy.

1007.8 ADMINISTRATIVE DOCUMENTATION

The supervisor shall provide a written summary, in memorandum form, of the initial counseling session, including any corrective action plan implemented, to the employee for their review.

(a) The employee shall initial the supervisor's memorandum as acknowledgement that he/she reviewed its contents.

(b) An employee who disagrees with the content of, or wishes to provide additional information to, the supervisor's memorandum may submit to the supervisor their own memorandum containing such information.

The supervisor will submit the reviewed and initialed summary memorandum, and all attachments, to the Division Captain via the chain of command.

In accordance with the Performance Appraisal Report Policy, the supervisor responsible for the completion of a PAR for an employee counseled and monitored for suspected or confirmed inappropriate use of sick leave shall include within the PAR a summary of the administrative review that identified the issue and outcome of the associated performance improvement process.

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Smoking and Tobacco Use

1009.1 PURPOSE AND SCOPE

This policy establishes limitations on smoking and the use of tobacco products by members and others while on-duty or while in Berkeley Police Department facilities, buildings or vehicles.

For the purposes of this policy, smoking and tobacco use includes, but is not limited to, any tobacco product, such as cigarettes, cigars, pipe tobacco, snuff, tobacco pouches and chewing tobacco, as well as any device intended to simulate smoking, such as an electronic cigarette or personal vaporizer.

1009.2 POLICY

The Berkeley Police Department recognizes that tobacco use is a health risk and can be offensive to others.

Smoking and tobacco use also presents an unprofessional image for the Department and its members. Therefore smoking and tobacco use is prohibited by members and visitors in all department facilities, buildings and vehicles, and as is further outlined in this policy (Government Code § 7597; Labor Code § 6404.5).

1009.3 SMOKING AND TOBACCO USE

Smoking and tobacco use by members is prohibited anytime members are in public view representing the Berkeley Police Department.

It shall be the responsibility of each member to ensure that no person under his/her supervision smokes or uses any tobacco product inside City facilities, buildings or vehicles.

1009.4 ADDITIONAL PROHIBITIONS

No person shall use tobacco products within 20 feet of a main entrance, exit or operable window of any public building (including any department facility), or buildings on the campuses of the University of California, California State University and California community colleges, whether present for training, enforcement or any other purpose (Government Code § 7596 et seq.).

1009.4.1 NOTICE

The Chief of Police or the authorized designee should ensure that proper signage is posted at each entrance to the Department facility (Labor Code § 6404.5).

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Personnel Complaints

1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Berkeley Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1010.2 POLICY

The Berkeley Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1010.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1010.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Internal Complaint - A complaint initiated by a Police Department employee against another Police Department employee.

Formal Complaint - A matter in which a supervisor determines that further action is warranted. Such complaints shall be referred to the Internal Affairs Bureau.

External Complaint - A complaint received by any other source.

1010.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

(a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.

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(b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.

(c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.

(d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.

(e) Tort claims and lawsuits may generate a personnel complaint.

1010.3.3 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1010.3.4 AVAILABILITY OF WRITTEN PROCEDURES

The Department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

1010.4 PROHIBITED CONTENT

Employees involved in an Internal Affairs investigation or Police Accountability Board investigation shall not contact complainants or witnesses regarding the complaint. Employees may make contact with complainants or witnesses when necessary in the course of normal police business, conducting investigations or responding to calls for service.

1010.5 INTERNAL AFFAIRS BUREAU (IAB)

The Internal Affairs Bureau (IAB) consists of two investigative sergeants who report directly to the Chief of Police. Their responsibilities include:

(a) Investigating all externally received complaints alleging employee misconduct.

(b) Investigating internally initiated complaints of misconduct as may be assigned by the Chief of Police.

(c) Preparing investigations and reports on inquiries into employee conduct as may be required by the Chief of Police.

(d) Preparing letters, documents and memoranda associated with the disciplinary process in complaint matters.

(e) Preparing letters and correspondence on other matters as may be required by the Chief of Police.

(f) Maintaining liaison with the District Attorney's office during investigations involving alleged criminal conduct on the part of an employee.

1. Coordinating the Department's Complaint Review Board process

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2. Assisting the City Attorney's Office with the investigation of civil claims against BPD and/or its employees
3. Assisting the City Attorney's Office in the preparation and presentation of Pitchess Motions
4. Acting as liaison with the City Attorney, the Police Accountability Board and legal defense attorneys
5. Advising the Chief of Police on matters relating to discipline, liability and training issues

1010.6 INTERNAL COMPLAINTS

An internal complaint may be initiated by any employee of the Police Department to his or her sworn or non-sworn supervisor or, in the absence of a supervisor, to his/her commanding officer or to a sergeant from IAB. Complaints will be documented in writing either by the employee making the complaint or by the supervisor or command officer receiving the complaint.

(a) The complaint shall document the alleged violation(s) of Department rules, regulations, orders, policies or procedures.

(b) The complaint shall also include an explanation of the circumstances surrounding the alleged violation(s).

1010.6.1 CONFIDENTIALITY

Employees may make complaints confidentially and the matter shall be investigated without disclosure of the complainant’s identity unless disclosure is necessary to provide the subject employee with his/her procedural due process rights or disclosure is required by law.

1010.6.2 TIMELINE

Once an employee is made aware of the alleged violation(s), an internal complaint should be made within 30 days. Questions as to the acceptability of a complaint shall be resolved by the Chief of Police.

The Chief of Police and the captain of the division to which the subject employee(s) is assigned shall be notified of the allegation(s) as soon as possible.

1010.6.3 INVESTIGATION WITHIN THE DIVISION

Primary responsibility for the investigation of an internal complaint shall rest with the captain of the division to which the subject employee is assigned.

(a) Investigations handled within the involved division shall be conducted in a complete and thorough manner. The investigation shall be forwarded directly to the Chief of Police who may consult with the appropriate division captain(s) prior to making a disposition.

(b) If the division captain feels that the investigation should not be conducted within the division, a request may be made to the Chief of Police that the matter be investigated by IAB.

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1010.6.4 INVESTIGATION BY INTERNAL AFFAIRS

If the internal complaint involves any of the following circumstances, the division captain shall make a request to the Chief of Police that the matter be investigated by IAB.

(a) When the complaint involves employees assigned to different divisions and/or the alleged act(s) of misconduct encompasses more than one division.

(b) When the complaint involves serious allegations, including but not limited to the following:

1. Dishonesty.
2. Any act which may constitute the commission of a misdemeanor or felony crime.
3. Improper use of force.
4. Employee(s) under the influence of intoxicants.
5. Any discrimination or harassment on the basis of sex, race, age, religion, color, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, pregnancy, sexual orientation, gender, gender identity, gender expression, military and veteran status, and any other classifications protected by state or federal law.

1010.6.5 COMPLETED INVESTIGATION

When an internal complaint has been investigated by IAB, the completed investigation shall be forwarded directly to the Chief of Police who may consult with the appropriate division captain(s) prior to making a disposition.

(a) The subject employee shall be advised of the disposition to the complaint by the Chief of Police.

(b) The complaining employee shall be advised of the disposition to the complaint by his/her division captain.

1010.6.6 PERSONAL RELATIONSHIPS

No supervisor or command officer shall conduct a complaint or administrative investigation of a subject employee who is a “near relative,” as defined in City of Berkeley Administrative Regulation 2.12, or when the investigator and the subject employee have a personal relationship that could compromise objectivity.

When there is a question regarding what constitutes a “personal relationship that could compromise objectivity,” the investigator shall inform his/her commanding officer or the Chief of Police of any such relationship, and the Chief shall determine if the investigation should be reassigned.

The City’s 2016 Administrative Regulation 2.12 defines “near relative” as an individual’s spouse, parent, sibling, child, grandparent, aunt, uncle, niece, nephew, mother-in-law, father in law, sister in law, brother in law, son in law, daughter in law, stepparent, stepsibling, stepchild, grandchild, dependent or domestic partner or immediate family members of a domestic partner.

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1010.7 EXTERNAL COMPLAINTS

1010.7.1 MAKING A COMPLAINT DURING BUSINESS HOURS

A person making a complaint in person or by telephone during business hours shall be referred directly to IAB.

(a) A brochure is available to provide citizens with a description of the complaint investigation procedure. A supply of these brochures will be maintained in IAB and at the front counter of the Police Department to be available to citizens upon request.

1010.7.2 MAKING A COMPLAINT DURING NON-BUSINESS HOURS

When IAB is closed or its personnel are unavailable, individuals making a complaint in person or by telephone shall be interviewed by the Operations Division Watch Commander.

(a) If the Watch Commander is not available, the complaint shall be referred to an appropriate sergeant or supervisor.

(b) Complainants shall not be told to return or call back during IAB business hours to make their complaint.

An IAB "Complaint Investigation" form shall be completed by the supervisor or command officer receiving the complaint. If possible, the complainant should write a brief statement describing the complaint incident on the reverse side of the form. If for any reason that cannot be done, the supervisor or command officer receiving the complaint shall write or type the narrative account for the complainant. When possible, the complainant should sign the form. The completed complaint form shall be forwarded directly to IAB.

1010.7.3 COMPLAINTS TO THE POLICE ACCOUNTABILITY BOARD

Complaints made to the Police Accountability Board shall also be investigated by IAB as "external complaints."

(a) As directed by the City Manager, the requirement to testify before the Police Accountability Board shall not apply to non-sworn Parking personnel affiliated with the Investigations Division.

1. Personnel falling within the provisions of this exempted classification, however, shall fully cooperate will all aspects of external/internal personnel complaint investigations conducted by IAB and/or other designated Departmental staff.

1010.7.4 TIMELINE

An external complaint should be made within thirty days of the date of the incident upon which the complaint is based unless the complainant, for reasons beyond his/her control, is unable to do so (i.e., illness, injury, out of the immediate area, etc.). The decision as to the acceptability of a complaint shall be made by the Chief of Police.

(a) Complaints filed with the Police Accountability Board beyond the thirty day limit and accepted for late filing by that body will be accepted for investigation by IAB.

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1010.7.5 INTERNAL AFFAIRS

IAB will advise the Chief of Police, on a weekly basis, of all external complaints received, providing an update as to the status of each as it progresses through the investigative process towards disposition. However, the Chief of Police will be immediately notified of the receipt of external complaints of a sensitive or urgent nature.

1010.7.6 THE BOARD OF REVIEW

Following the investigation of each external complaint by a member of IAB (pertains only to sworn members), a Board of Review may be convened by the Chief of Police for the purpose of reviewing and making findings on the complaint (see the Review Boards Policy).

1010.8 EMPLOYEE RESPONSIBILITIES

When an employee, who is not a supervisor, becomes aware of or observes what he/she believes to be possible misconduct by another Department employee, he/she shall, by the end of the employee's current shift or, if off duty, within 24 hours, notify a supervisor, or in the absence of a supervisor, a command officer or IAB personnel. However, serious allegations, including but not limited to those listed below, shall be reported immediately.

(a) Dishonesty.

(b) Any act which may constitute the commission of a misdemeanor or felony crime.

(c) Improper use of force.

(d) Employee(s) under the influence of intoxicants.

(e) Any discrimination or harassment on the basis of sex, race, age, religion, color, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, pregnancy, sexual orientation, gender, gender identity, gender expression, military and veteran status, and any other classifications protected by state or federal law.

If required by the supervisor, command officer or IAB, a written report documenting the alleged misconduct shall be made by the reporting employee initiating the complaint.

1010.9 SUPERVISOR RESPONSIBILITIES

A supervisor or command officer with knowledge of, or who is made aware of alleged acts of misconduct, shall when practicable, take appropriate corrective action. A supervisor shall also immediately notify their command officer or the Duty Command Officer, who shall give direction as to the proper procedure for documenting the complaint. Generally, the procedures will follow the guidelines listed in this policy relating to either external or internal complaints.

When the alleged act of misconduct is of a nature that the integrity of the investigation might be jeopardized by reducing the allegations to writing, the concerned Supervisor shall report orally to their command officer, or if he/she is unavailable, to the on-call Duty Command Officer who will notify the Chief of Police.

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1010.10 DOCUMENTATION

Supervisors shall ensure that all formal complaints are documented on a complaint form.

1010.11 INTERNAL AFFAIRS ADMINISTRATIVE INVESTIGATIONS

(a) Complainants will be notified in writing that their complaint has been received and will be investigated.

(b) Allegations of misconduct made by complainants will be attached to the complaint as the initial basis for receipt and investigation of the complaint. The complainant shall be provided with a copy of his or her statement, if requested.

(c) Employees who are designated as "subject" employees will be notified in writing as to the nature of the allegations made against them and their rights and responsibilities relative to the investigation.

(d) To ensure that all possible allegations of apparent misconduct are brought forth and investigated, and that individual employee's rights to due process are protected, obvious or apparent violations of Departmental rules, regulations, orders, policies, procedures, directives and/or training guidelines noted by IAB during the investigation will be added to the complaint.

1010.11.1 ADMINISTRATIVE INVESTIGATION PROCEDURES

The following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

(a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.

(b) Unless waived by the member, interviews of an accused member shall be at the Berkeley Police Department or other reasonable and appropriate place.

(c) No more than two interviewers should ask questions of an accused member.

(d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.

(e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.

(f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.

(g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.

1. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators should consider the impact that compelling a statement from the member

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may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).

2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

(h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.

(i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.

(j) All members shall provide complete and truthful responses to questions posed during interviews.

(k) No member may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307). This shall not preclude IAB from administering such tests at the request of a "subject" member**,** following approval by the Chief of Police.

(l) Members may be photographed for purposes of a complaint investigation. This is to include photographing for purposes of formation/presentation of a photo line-up by Internal Affairs investigators.

(m) Members shall not be required to stand in a physical line-up for the purpose of complaint investigations.

No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

1010.11.2 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Summary - Provide a brief summary of the facts giving rise to the investigation.

Allegations - List the allegations separately, including applicable policy sections.

Statements - Comprehensive summaries of member and witness statements.

Investigator Notes - Other evidence related to the complaint should be detailed in this section.

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Attachments - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1010.11.3 DISPOSITIONS
Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or department policy (Penal Code § 832.8).

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1010.11.4 COMPLETION OF INVESTIGATIONS
Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation. Investigators or supervisor assigned to investigate these complaints should be mindful that the investigation, Board of Review, the Chief's initial decision, and employee notification should be completed within 240 days from the date of discovery by an individual authorized to initiate an investigation (BPA/COB MOU#37.4).

In the event that an investigation and subsequent processes cannot be completed within 240 days of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

1010.11.5 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS
The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

1010.12 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

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Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

1010.12.1 DISCLOSURE OF FINANCIAL INFORMATION
Subject employees shall not be required to submit financial disclosure statements or other items of personal property records in connection with complaint investigations.

1010.13 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to paid administrative leave. Absent an emergency, the City Manager's authorization is needed to place an employee on administrative leave. If unable to contact the City Manager, and it's an emergency, the City Manager shall be notified as soon as practicable.

Unless otherwise directed or authorized, any employee placed on administrative leave:

(a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.

(b) Shall refrain from engaging in work-related activity and/or exercising authority associated with his/her office.

(c) Shall be required to continue to comply with all policies and lawful orders of a supervisor.

(d) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation.

(e) Shall be required to report to his/her division captain every duty day for instructions.

(f) Should remain at home during his/her assigned duty hours.

1010.14 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

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The Berkeley Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1010.15 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a pre-disciplinary procedural due process hearing (*Skelly*) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within 240 days (this time parameter only applies to sworn personnel) from the date of discovery of the misconduct (Government Code § 3304(d)). The Chief of Police shall also provide the member with:

(a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.

(b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.

1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
2. If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

1010.16 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or his/her authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint (Penal Code § 832.7(e)).

1010.17 NOTICE REQUIREMENTS

The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed (Penal Code § 832.7(f)).

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1010.18 DISCIPLINE

If the finding of a complaint is "Sustained," or “Preventable” a disciplinary disposition must be selected.Disciplinary actions that may be selected include:

(a) Written Advice.

(b) Written Reprimand.

(c) Suspension (including forfeiture of compensatory or vacation time).

(d) Dismissal.

(e) Dismissal with criminal charges pending.

These dispositions are not all inclusive and may be modified or expanded upon at the discretion of the Chief of Police.

1010.19 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

(a) The response is not intended to be an adversarial or formal hearing.

(b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.

(c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.

(d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.

(e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

1010.20 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1010.21 TERMINATIONS

When an employee terminates employment with the Department, his/her personnel complaint records shall be retained in accordance with the records management timetable set by the Department.

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(a) If an investigation of officer conduct results in a suspension or termination, the officer shall receive a statement citing the reason for suspension or termination and the effective date(s) as provided for by (1975) 15 Cal.3d 194.

1. If the misconduct results in termination, the employee should be referred to the following agencies for information concerning the status of fringe and retirement benefits:

- Public Employees' Retirement System: City Auditor
- Medical and Dental Benefits: Human Resources
- Supplemental Retirement Income Program: Finance

(b) The City of Berkeley Employee Transaction Form shall be completed by designated administrative staff and shall describe the specific reason for the suspension or termination. A copy of this form shall be provided to the employee.

1010.22 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an officer has been placed on a *Brady* list or is otherwise subject to *Brady* restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such *Brady* evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

1010.23 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Government Code § 3303; Government Code § 3304).

At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

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1010.24 POLICY COMPLAINTS

Policy complaints are generally received as a result of external complaints, Police Accountability Board complaints, or findings made by the Police Department's Board of Review (e.g., when an officer followed an existing policy that is in need of revision). These complaints will be investigated by either IAB or a designated command officer, as directed by the Chief of Police.

1010.25 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

1010.26 ANNUAL REPORTS

IAB is responsible for ensuring an annual report is completed. The report will provide statistical summaries which include the type and number of complaints received and investigated. The report should also compare statistics from previous years.

1010.27 TRAINING NEEDS

IAB is responsible for identifying areas of disciplinary concern where remedial/refresher training may be beneficial to one or more employees. After discussing the perceived training need with the Chief of Police and gaining his/her concurrence, IAB will work with the Personnel and Training Sergeant to devise an appropriate training course to address the problem(s).

1010.28 REQUIRED REPORTING TO POST

The Chief of Police or the authorized designee shall notify POST on the appropriate POST form within 10 days of certain officer personnel events, including but not limited to (Penal Code § 13510.9):

(a) Termination or separation from employment or appointment. Separation from employment or appointment includes any involuntary termination, resignation, or retirement.

  1. A POST affidavit-of-separation form shall be executed and maintained by the Department and submitted to POST as required by Penal Code § 13510.9 and 11 CCR 1003.

(b) Events that could affect an officer's POST certification, such as:

  1. Complaints, charges, or allegations of misconduct
  2. Findings of civilian review boards
  3. Final dispositions of any investigations
  4. Civil judgments or court findings based on conduct, or settlement of a civil claim against an officer or the Berkeley Police Department based on allegations of conduct by an officer

The Chief of Police or the authorized designee shall be responsible for providing POST access to or duplication of investigation documentation (e.g., physical or documentary evidence, witness

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statements, analysis, conclusions) for up to two years after reporting of the disposition of an investigation (Penal Code § 13510.9).

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Seat Belts

1011.1 PURPOSE AND SCOPE

This policy establishes guidelines for the use of seat belts and child restraints. This policy will apply to all members operating or riding in department vehicles (Vehicle Code § 27315.5).

1011.1.1 DEFINITIONS

Definitions related to this policy include:

Child restraint system - An infant or child passenger restraint system that meets Federal Motor Vehicle Safety Standards (FMVSS) and Regulations set forth in 49 CFR 571.213.

1011.2 POLICY

It is the policy of the Berkeley Police Department that members use safety and child restraint systems to reduce the possibility of death or injury in a motor vehicle collision.

1011.3 WEARING OF SAFETY RESTRAINTS

All members shall wear properly adjusted safety restraints when operating or riding in a seat equipped with restraints, in any vehicle owned, leased or rented by this department while on- or off-duty, or in any privately owned vehicle while on-duty. The member driving such a vehicle shall ensure that all other occupants, including non-members, are also properly restrained.

Members are required to wear seatbelts in all routine situations, with the following exceptions:

- Unusual situations where wearing a seat belt would endanger the member or the public, e.g. while evacuating members of the public in an emergency situation. Seatbelts shall be utilized as soon as practical when in the member's judgment it is safe to do so; or
- Where, based on specific facts, in the member's judgment, an exigency exists or may exist as they approach the location of call where the member reasonably believes they may need to take immediate enforcement or evasive action which could be hindered by a seatbelt.

Members must be prepared to justify any deviation from this requirement.

1011.4 TRANSPORTING CHILDREN

Children under the age of 8 shall be transported in compliance with California's child restraint system requirements (Vehicle Code § 27360; Vehicle Code § 27363). A vehicle without a cage should be used when feasible.

1011.5 TRANSPORTING SUSPECTS, PRISONERS OR ARRESTEES

Suspects, prisoners and arrestees should be in a seated position and secured in the rear seat of any department vehicle with a prisoner restraint system or, when a prisoner restraint system is not available, by seat belts provided by the vehicle manufacturer. The prisoner restraint system is not intended to be a substitute for handcuffs or other appendage restraints.

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Prisoners in leg restraints shall be transported in accordance with the Handcuffing and Restraints Policy.

1011.6 INOPERABLE SEAT BELTS

Department vehicles shall not be operated when the seat belt in the driver's position is inoperable. Persons shall not be transported in a seat in which the seat belt is inoperable.

Department vehicle seat belts shall not be modified, removed, deactivated or altered in any way, except by the vehicle maintenance and repair staff, who shall do so only with the express authorization of the Chief of Police.

Members who discover an inoperable restraint system shall report the defect to the appropriate supervisor. Prompt action will be taken to replace or repair the system.

1011.7 VEHICLES MANUFACTURED WITHOUT SEAT BELTS

Vehicles manufactured and certified for use without seat belts or other restraint systems are subject to the manufacturer’s operator requirements for safe use.

1011.8 VEHICLE AIRBAGS

In all vehicles equipped with airbag restraint systems, the system will not be tampered with or deactivated, except when transporting children as written elsewhere in this policy. All equipment installed in vehicles equipped with airbags will be installed as per the vehicle manufacturer specifications to avoid the danger of interfering with the effective deployment of the airbag device.

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Body Armor

1012.1 PURPOSE AND SCOPE

The purpose of this policy is to provide law enforcement officers with guidelines for the proper use of body armor.

1012.2 POLICY

It is the policy of the Berkeley Police Department to maximize officer safety through the use of body armor in combination with prescribed safety procedures. While body armor provides a significant level of protection, it is not a substitute for the observance of officer safety procedures.

1012.3 ISSUANCE OF BODY ARMOR

The Personnel and Training Sergeant shall ensure that body armor is issued to all officers when the officer begins service at the Berkeley Police Department and that, when issued, the body armor meets or exceeds the standards of the National Institute of Justice.

The Personnel and Training Sergeant shall establish a body armor replacement schedule and ensure that replacement body armor is issued pursuant to the schedule or whenever the body armor becomes worn or damaged to the point that its effectiveness or functionality has been compromised.

1012.3.1 USE OF BODY ARMOR

Generally, the use of body armor is required subject to the following:

(a) Officers shall only wear agency-approved body armor.

(b) Officers shall wear body armor anytime they are in a situation where they could reasonably be expected to take enforcement action.

(c) Officers may be excused from wearing body armor when they are functioning primarily in an administrative or support capacity and could not reasonably be expected to take enforcement action.

(d) Body armor shall be worn when an officer is working in uniform or taking part in Department range training.

(e) An officer may be excused from wearing body armor when he/she is involved in undercover or plainclothes work that his/her supervisor determines could be compromised by wearing body armor, or when a supervisor determines that other circumstances make it inappropriate to mandate wearing body armor.

1012.3.2 INSPECTIONS OF BODY ARMOR

Supervisors should ensure that body armor is worn and maintained in accordance with this policy through routine observation.

1012.4 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

The Personnel and Training Sergeant should:

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(a) Monitor technological advances in the body armor industry for any appropriate changes to Department approved body armor.

(b) Assess weapons and ammunition currently in use and the suitability of approved body armor to protect against those threats.

(c) Provide training that educates officers about the safety benefits of wearing body armor.

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Personnel Records

1013.1 PURPOSE AND SCOPE

This policy governs maintenance and access to personnel records. Personnel records include any file maintained under an individual member's name.

1013.2 POLICY

It is the policy of this department to maintain personnel records and preserve the confidentiality of personnel records pursuant to the Constitution and the laws of California (Penal Code § 832.7).

1013.3 DEPARTMENT FILE

The department file shall be maintained as a record of a person's employment/appointment with this department. The department file should contain, at a minimum:

(a) Personal data, including photographs, marital status, names of family members, educational and employment history, or similar information. A photograph of the member should be permanently retained.

(b) Election of employee benefits.

(c) Personnel action reports reflecting assignments, promotions, and other changes in employment/appointment status. These should be permanently retained.

(d) Original performance evaluations. These should be permanently retained.

(e) Discipline records, including copies of sustained personnel complaints (see the Personnel Complaints Policy).

    (a) Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to the established records retention schedule and at least four years (Government Code § 12946).

    (b) Disciplinary action resulting from a sustained civilian's complaint involving misconduct shall be maintained pursuant to the established records retention schedule and at least 15 years (Penal Code § 832.5).

    (c) A civilian's complaint involving misconduct that was not sustained shall be maintained pursuant to the established records retention schedule and at least five years (Penal Code § 832.5).

(f) Adverse comments such as supervisor notes or memos may be retained in the department file after the member has had the opportunity to read and initial the comment (Government Code § 3305).

    1. Once a member has had an opportunity to read and initial any adverse comment, the member shall be given the opportunity to respond in writing to the adverse comment within 30 days (Government Code § 3306).

    2. Any member response shall be attached to and retained with the original adverse comment (Government Code § 3306).

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3. If a member refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment and the member should sign or initial the noted refusal. Such a refusal, however, shall not be deemed insubordination, nor shall it prohibit the entry of the adverse comment into the member's file (Government Code § 3305).

(g) Commendations and awards.

(h) Any other information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

1013.4 SUPERVISOR FILE

Supervisor files may be separately maintained internally by a member's supervisor for the purpose of completing timely performance evaluations. The file may contain supervisor comments, notes, notices to correct and other materials that are intended to serve as a foundation for the completion of timely performance evaluations.

All materials intended for this interim file shall be provided to the employee prior to being placed in the file in accordance with Government Code § 3305 and Government Code § 3306.

1013.5 TRAINING FILE

An individual training file shall be maintained by the Personnel and Training Sergeant for each member. Training files will contain records of all training; original or photocopies of available certificates, transcripts, diplomas and other documentation; and education and firearms qualifications. Training records may also be created and stored remotely, either manually or automatically.

(a) The involved member is responsible for providing the Personnel and Training Sergeant or immediate supervisor with evidence of completed training/education in a timely manner.

(b) The Personnel and Training Sergeant or supervisor shall ensure that copies of such training records are placed in the member’s training file.

1013.6 INTERNAL AFFAIRS FILE

Internal affairs files shall be maintained under the exclusive control of the Internal Affairs Bureau in conjunction with the office of the Chief of Police. Access to these files may only be approved by the Chief of Police or the Internal Affairs Bureau supervisor.

Internal Affairs files shall contain discipline records, including copies of sustained personnel complaints.

1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to the established records retention schedule and at least five years (Government Code § 26202; Government Code § 34090).

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2. Disciplinary action resulting from a sustained civilian's complaint shall be maintained pursuant to the established records retention schedule and at least five years (Penal Code § 832.5).

These files shall contain the complete investigation of all formal complaints of member misconduct, regardless of disposition (Penal Code § 832.12). Investigations of complaints that result in the following findings shall not be placed in the member's department file but will be maintained in the member's internal affairs file:

(a) Not sustained

(b) Unfounded

(c) Exonerated

Investigation files arising out of sustained civilian's complaints involving misconduct shall be maintained pursuant to the established records retention schedule and for a period of at least15 years. Investigations that resulted in other than a sustained finding may not be used by the Department to adversely affect an employee's career (Penal Code § 832.5).

Investigation files arising out of internally generated complaints shall be maintained pursuant to the established records retention schedule and for at least four years (Government Code §12946).

Investigation files arising out of a civilian complaint involving misconduct that was not sustained shall be maintained pursuant to the established records retention schedule and for at least five years (Penal Code § 832.5).

1013.7 MEDICAL FILE

A medical file shall be maintained separately from all other personnel records and shall contain all documents relating to the member’s medical condition and history, including but not limited to:

(a) Materials relating to a medical leave of absence, including leave under the Family and Medical Leave Act (FMLA).

(b) Documents relating to workers’ compensation claims or the receipt of short- or long-term disability benefits.

(c) Fitness-for-duty examinations, psychological and physical examinations, follow-up inquiries and related documents.

(d) Medical release forms, doctor’s slips and attendance records that reveal a member’s medical condition.

(e) Any other documents or materials that reveal the member’s medical history or medical condition, including past, present or future anticipated mental, psychological or physical limitations.

1013.8 SECURITY

Personnel records should be maintained in a secured location and locked either in a cabinet or access-controlled room. Personnel records maintained in an electronic format should have adequate password protection.

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Personnel records are subject to disclosure only as provided in this policy, the Records Maintenance and Release Policy or according to applicable discovery procedures.

Nothing in this policy is intended to preclude review of personnel records by the City Manager, City Attorney or other attorneys or representatives of the City in connection with official business.

1013.8.1 RELEASE OF PEACE OFFICER RECORDS RELATING TO HATE COMPLAINTS
Records relating to an officer for an investigation of a hate complaint described in Penal Code § 13682 with a sustained finding that the officer engaged in membership in a hate group, participated in a hate group activity, or advocacy of public expressions of hate are not confidential and shall be made available for public inspection though a public records request (Penal Code § 13683).

Records disclosed may be redacted as provided in Penal Code § 13683.

1013.8.2 RELEASE OF LAW ENFORCEMENT GANG INFORMATION
Information relating to the termination of an officer from this department for participation in a law enforcement gang shall be disclosed to another law enforcement agency that is conducting a pre-employment background investigation except where specifically prohibited by law (Penal Code § 13670).

1013.9 REQUESTS FOR DISCLOSURE

Any member receiving a request for a personnel record shall promptly notify the Custodian of Records or other person charged with the maintenance of such records.

Upon receipt of any such request, the responsible person shall notify the affected member as soon as practicable that such a request has been made (Evidence Code § 1043).

The responsible person shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this may require assistance of available legal counsel.

All requests for disclosure that result in access to a member’s personnel records shall be logged in the corresponding file.

1013.10 RELEASE OF PERSONNEL INFORMATION

Personnel records shall not be disclosed except as allowed by law (Penal Code § 832.7; Evidence Code § 1043) (See also Records Maintenance and Release Policy).

Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any member of this department may be guilty of a misdemeanor (Penal Code § 146e).

The Department may release any factual information concerning a disciplinary investigation if the member who is the subject of the investigation (or the member's representative) publicly makes a statement that is published in the media and that the member (or representative) knows to be false. The disclosure of such information, if any, shall be limited to facts that refute any such false statement (Penal Code § 832.7).

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1013.11 MEMBERS' ACCESS TO THEIR PERSONNEL RECORDS

Any member may request access to the member's own personnel records during the normal business hours of those responsible for maintaining such files. Any member seeking the removal of any item from the member's personnel records shall file a written request to the Chief of Police through the chain of command. The Department shall remove any such item if appropriate, or within 30 days provide the member with a written explanation of why the contested item will not be removed. If the contested item is not removed from the file, the member's request and the written response from the Department shall be retained with the contested item in the member's corresponding personnel record (Government Code § 3306.5).

Members may be restricted from accessing files containing any of the following information:

(a) An ongoing internal affairs investigation to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the member of the intent to discipline.

(b) Confidential portions of internal affairs files that have not been sustained against the member.

(c) Criminal investigations involving the member.

(d) Letters of reference concerning employment/appointment, licensing, or issuance of permits regarding the member.

(e) Any portion of a test document, except the cumulative total test score for either a section of the test document or for the entire test document.

(f) Materials used by the Department for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments, or other comments or ratings used for department planning purposes.

(g) Information of a personal nature about a person other than the member if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.

(h) Records relevant to any other pending claim between the Department and the member that may be discovered in a judicial proceeding.

1013.12 RETENTION AND PURGING

Unless provided otherwise in this policy, personnel records shall be maintained in accordance with the established records retention schedule.

(a) During the preparation of each member's performance evaluation, all personnel complaints and disciplinary actions should be reviewed to determine the relevancy, if any, to progressive discipline, training and career development. Each supervisor responsible for completing the member's performance evaluation should determine whether any prior sustained disciplinary file should be retained beyond the required period for reasons other than pending litigation or other ongoing legal proceedings.

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(b) If a supervisor determines that records of prior discipline should be retained beyond the required period, approval for such retention should be obtained through the chain of command from the Chief of Police.

(c) If, in the opinion of the Chief of Police, a personnel complaint or disciplinary action maintained beyond the required retention period is no longer relevant, all records of such matter may be destroyed in accordance with the established records retention schedule.

1013.13 RELEASE OF PERSONNEL RECORDS AND RECORDS RELATED TO CERTAIN INCIDENTS, COMPLAINTS, AND INVESTIGATIONS OF OFFICERS

Personnel records and records related to certain incidents, complaints, and investigations of officers shall be released pursuant to a proper request under the Public Records Act and subject to redaction and delayed release as provided by law.

The Custodian of Records should work as appropriate with the Chief of Police or the Internal Affairs Bureau supervisor in determining what records may qualify for disclosure when a request for records is received and if the requested record is subject to redaction or delay from disclosure.

For purposes of this section, a record includes (Penal Code § 832.7(b)(3):

- All investigation reports.
- Photographic, audio, and video evidence.
- Transcripts or recordings of interviews.
- Autopsy reports.
- All materials compiled and presented for review to the District Attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and department policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take.
- Documents setting forth findings or recommending findings.
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the *Skelly* or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Unless a record or information is confidential or qualifies for delayed disclosure as provided by Penal Code § 832.7(b)(8) or other law, the following records (hereinafter qualifying records) shall be made available for public inspection no later than 45 days from the date of a request (Penal Code § 832.7(b)(1)):

(a) Records relating to the report, investigation, or findings of:

1. The discharge of a firearm at another person by an officer.
2. The use of force against a person resulting in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) by an officer.

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3. A sustained finding involving a complaint that alleges unreasonable or excessive force.
4. A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(b) Records relating to an incident where a sustained finding was made by the Department or oversight agency regarding:

1. An officer engaged in sexual assault of a member of the public (as defined by Penal Code § 832.7(b)).
2. Dishonesty of an officer relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.
3. An officer engaged in conduct including but not limited to verbal statements, writings, online posts, recordings, and gestures involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
4. An officer made an unlawful arrest or conducted an unlawful search.

Qualifying records will be made available regardless of whether the officer resigns before the Department or an oversight agency concludes its investigation (Penal Code § 832.7(b)(3)).

A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure (Penal Code § 832.7(b)(4)).

When an investigation involves multiple officers, the Department shall not release information about allegations of misconduct or the analysis or disposition of an investigation of an officer unless it relates to a sustained finding of a qualified allegation as provided by Penal Code § 832.7(b)(5). However, factual information about the action of the officer during an incident or the statements of an officer shall be released if the statements are relevant to a finding of the qualified allegation against another officer that is subject to release (Penal Code § 832.7(b)(5)).

1013.13.1 NOTICE OF DELAY OF RECORDS

When there is justification for delay of disclosure of qualifying records, the Custodian of Records shall provide written notice of the reason for any delay to a requester as follows (Penal Code § 832.7):

(a) Provide the specific basis for the determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. The notice shall also include the estimated date for the disclosure of the withheld information.

(b) When delay is continued beyond the initial 60 days because of criminal enforcement proceedings against anyone, at 180-day intervals provide the specific basis that

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disclosure could reasonably be expected to interfere with a criminal enforcement proceeding and the estimated date for disclosure.

1. Information withheld shall be disclosed when the specific basis for withholding the information is resolved, the investigation or proceeding is no longer active, or no later than 18 months after the date of the incident, whichever occurs sooner, unless:

    (a) When the criminal proceeding is against someone other than an officer and there are extraordinary circumstances to warrant a continued delay due to the ongoing criminal investigation or proceeding, then the Department must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest for prompt disclosure of records about misconduct or use of force by officers.

In cases where an action to compel disclosure is brought pursuant to Government Code § 7923.000, the Department may justify delay by filing an application to seal the basis for withholding if disclosure of the written basis itself would impact a privilege or compromise a pending investigation (Penal Code § 832.7(b)(8)).

1013.13.2 DELAY OF RELEASE

Unless otherwise directed by the Chief of Police, the Custodian of Records should consult with a supervisor familiar with the underlying investigation to determine whether to delay disclosure of qualifying records due to any of the following conditions (Penal Code § 832.7):

(a) Active criminal investigations

1. Disclosure may be delayed 60 days from the date the misconduct or use of force occurred or until the District Attorney determines whether to file criminal charges, whichever occurs sooner.

2. After the initial 60 days, delay of disclosure may be continued if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer or against someone other than an officer who engaged in misconduct or used the force.

(b) Filed criminal charges

1. When charges are filed related to an incident in which misconduct occurred or force was used, disclosure may be delayed until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea has passed.

(c) Administrative investigations

1. Disclosure may be delayed until:

    (a) There is a determination from the investigation whether the misconduct or use of force violated law or department policy, but no longer than 180 days after the date of the department's discovery of the misconduct or use of force or allegation of misconduct or use of force

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1013.13.3 REDACTION

The Custodian of Records, in consultation with the Chief of Police or authorized designee, shall redact the following portions of qualifying records made available for release (Penal Code § 832.7(b)(6)):

(a) Personal data or information (e.g., home address, telephone number, identities of family members) other than the names and work-related information of officers

(b) Information that would compromise the anonymity of whistleblowers, complainants, victims, and witnesses

(c) Confidential medical, financial, or other information where disclosure is prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force

(d) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the officer or another person

Additionally, a record may be redacted, including redacting personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing it (Penal Code § 832.7(b)(7)).

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Commendations

1014.1 PURPOSE AND SCOPE

This policy provides general guidelines for recognizing commendable or meritorious acts of members of the Berkeley Police Department and individuals from the community.

1014.2 POLICY

It is the policy of the Berkeley Police Department to recognize and acknowledge exceptional individual or group achievements, performance, proficiency, heroism and service of its members and individuals from the community through commendations.

1014.3 COMMENDATIONS

Commendations for members of the Department or for individuals from the community may be initiated by any department member or by any person from the community.

1014.4 CRITERIA

A meritorious or commendable act may include, but is not limited to:

- Superior handling of a difficult situation.
- Conspicuous bravery or outstanding performance.
- Any action or performance that is above and beyond typical duties.

1014.5 DEPARTMENT MEMBER DOCUMENTATION

Members of the Department should document meritorious or commendable acts. The documentation should contain:

(a) Identifying information:

1. For members of the Department - name, division and assignment at the date and time of the meritorious or commendable act
2. For individuals from the community - name, address, telephone number

(b) A brief account of the meritorious or commendable act with report numbers, as appropriate.

(c) The signature of the member submitting the documentation.

1014.6 COMMUNITY MEMBER DOCUMENTATION

Documentation of a meritorious or commendable act submitted by a person from the community should be accepted in any form. However, written documentation is preferred. Department members accepting the documentation should attempt to obtain detailed information regarding the matter, including:

(a) Identifying information:

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1. For members of the Department - name, division and assignment at the date and time of the meritorious or commendable act
2. For individuals from the community - name, address, telephone number

(b) A brief account of the meritorious or commendable act with report numbers, as appropriate.

(c) The signature of the person submitting the documentation.

1014.7 DEPARTMENT ROUTING

Commendations shall be forwarded through the chain of command. The Chief will return the commendation to the Professional Standards Division for routing and entry into the employee's personnel file.

When appropriate or directed, the Professional Standards Division shall forward copies of commendations to the following:

(a) City Manager

(b) Berkeley Police Association

(c) Police Review Commission

If deemed appropriate, a communication of acknowledgment will be prepared and sent to the originator of an external commendation.

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Fitness for Duty

1015.1 PURPOSE AND SCOPE

All officers are required to be free from any physical, emotional or mental condition which might adversely affect the exercise of peace officer powers. The purpose of this policy is to ensure that all officers of this department remain fit for duty and able to perform their job functions (Government Code § 1031).

1015.2 EMPLOYEE RESPONSIBILITIES

(a) It shall be the responsibility of each member of this department to maintain good physical condition sufficient to safely and properly perform essential duties of their position.

(b) Each member of this department shall perform his/her respective duties without physical, emotional and/or mental constraints.

(c) During working hours, all employees are required to be alert, attentive and capable of performing his/her assigned responsibilities.

(d) Any employee who feels unable to perform his/her duties shall promptly notify a supervisor. In the event that an employee believes that another employee is unable to perform his/her duties, such observations and/or belief shall be promptly reported to a supervisor.

1015.3 SUPERVISOR RESPONSIBILITIES

A supervisor observing an employee, or receiving a report of an employee who is perceived to be, unable to safely perform his/her duties due to a physical or mental condition shall take prompt and appropriate action in an effort to resolve the situation.

Whenever feasible, the supervisor should attempt to ascertain the reason or source of the problem and in all cases a preliminary evaluation should be made in an effort to determine the level of inability of the employee to perform his/her duties.

In the event the employee appears to be in need of immediate medical or psychiatric treatment, all reasonable efforts should be made to provide such care.

In conjunction with the Watch Commander or employee's available Division Captain, a determination should be made as to whether or not the employee should be temporarily relieved from his/her duties.

The Chief of Police shall be promptly notified in the event that any employee is temporarily relieved from duty.

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1015.4 NON-WORK RELATED CONDITIONS

Any employee suffering from a non-work related condition which warrants a temporary relief from duty may be required to use sick leave or other paid time off in order to obtain medical treatment or other reasonable rest period.

1015.5 WORK RELATED CONDITIONS

Any employee suffering from a work related condition which warrants a temporary relief from duty shall be required to comply with personnel rules and guidelines for processing such claims.

Upon the recommendation of the Watch Commander or unit supervisor and concurrence of a division captain, any employee whose actions or use of force in an official capacity result in death or serious injury to another may be temporarily removed from regularly assigned duties and/or placed on paid administrative leave for the wellbeing of the employee and until such time as the following may be completed:

(a) A preliminary determination that the employee's conduct appears to be in compliance with policy and, if appropriate,

(b) The employee has had the opportunity to receive necessary counseling and/or psychological clearance to return to full duty.

1015.6 PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS

(a) Whenever there is reasonable cause to indicate that an employee is unfit for duty, the Chief of Police may serve that employee with a written order to undergo a physical and/or psychological examination in cooperation with Personnel and Training Bureau to determine the level of the employee’s fitness for duty (see also COB/BPA MOU 53.1). The order shall indicate the date, time and place for the examination.

(b) The examining physician or therapist will provide the Department with a report indicating that the employee is either fit for duty or, if not, listing any functional limitations which limit the employee's ability to perform job duties. If the employee places his/her condition at issue in any subsequent or related administrative action/ grievance, the examining physician or therapist may be required to disclose any and all information which is relevant to such proceeding (Civil Code § 56.10(c)(8)).

(c) In order to facilitate the examination of any employee, the Department will provide all appropriate documents and available information to assist in the evaluation and/ or treatment.

(d) All reports and evaluations submitted by the treating physician or therapist shall be part of the employee’s confidential personnel file.

(e) Any employee ordered to receive a fitness for duty examination shall comply with the terms of the order and cooperate fully with the examining physician or therapist regarding any clinical interview, tests administered or other procedures as directed. Any failure to comply with such an order and any failure to cooperate with the examining physician or therapist may be deemed insubordination and shall be subject to discipline up to and including termination.

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(f) Once an employee has been deemed fit for duty by the examining physician or therapist, the employee will be notified to resume his/her duties.

1015.7 LIMITATION ON HOURS WORKED

Absent emergency operations members should not work more than:

- 16 hours in one day (24 hour) period or
- 30 hours in any 2 day (48 hour) period or
- 84 hours in any 7 day (168 hour) period

Except in very limited circumstances members should have a minimum of 8 hours off between shifts. Supervisors should give consideration to reasonable rest periods and are authorized to deny overtime or relieve to off-duty status any member who has exceeded the above guidelines.

Limitations on the number of hours worked apply to shift changes, shift trades, rotation, holdover, training, general overtime and any other work assignments.

1015.8 APPEALS

An employee who is separated from paid employment or receives a reduction in salary resulting from a fitness for duty examination shall be entitled to an administrative appeal as outlined in the Personnel Complaints Policy.

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Meal Periods and Breaks

1016.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for meal periods and breaks during an employee's shift.

1016.1.1 MEAL PERIODS

Sworn employees shall remain on duty and subject to call during meal breaks. All other employees are not on call during meal breaks unless directed otherwise by a supervisor.

Officers on patrol shall request clearance from the Communications Center prior to taking a meal period. Uniformed officers shall take their breaks within the City limits unless on assignment outside of the City.

The time spent for the meal period shall not exceed the authorized time allowed.

1016.2 SPORTSCARE

Employees may, upon clearance by the on-duty supervisor, extend their lunch period by no more than thirty minutes in order to work out. Employees availing themselves of this opportunity will limit their workout within the Berkeley City limits and remain available and reachable by telephone during the entire period in the event of a specific need (COB/BPA MOU Section 18.3).

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Lactation Break Policy

1017.1 PURPOSE AND SCOPE

The purpose of this policy is to provide reasonable accommodations to employees desiring to express breast milk for the employee's infant child (29 USC § 207 and Labor Code §§ 1030-1032).

1017.2 POLICY

It is the policy of this department to provide, in compliance with the Fair Labor Standards Act, reasonable break time and appropriate facilities to accommodate any employee desiring to express breast milk for her nursing infant child (29 USC § 207 and Labor Code § 1030).

1017.3 LACTATION BREAK TIME

A rest period should be permitted each time the employee has the need to express breast milk (29 USC § 207). In general, lactation breaks that cumulatively total 30 minutes or less during any four-hour work period or major portion of a four-hour work period would be considered reasonable. However, individual circumstances may require more or less time. Such breaks, if feasible, should be taken at the same time as the employee's regularly scheduled rest or meal periods.

While a reasonable effort will be made to provide additional time beyond authorized breaks, any such time exceeding regularly scheduled and paid break time will be unpaid (Labor Code § 1030).

Employees desiring to take a lactation break shall notify the Communications Center or a supervisor prior to taking such a break. Such breaks may be reasonably delayed if they would seriously disrupt department operations (Labor Code § 1032).

Once a lactation break has been approved, the break should not be interrupted except for emergency or exigent circumstances.

1017.4 PRIVATE LOCATION

The Department will make reasonable efforts to accommodate employees with the use of an appropriate room or other location to express milk in private. Such room or place should be in close proximity to the employee's work area and shall be other than a bathroom or toilet stall. The location must be shielded from view and free from intrusion from co-workers and the public (29 USC § 207 and Labor Code § 1031).

Employees occupying such private areas shall either secure the door or otherwise make it clear to others that the area is occupied with a need for privacy. All other employees should avoid interrupting an employee during an authorized break, except to announce an emergency or other urgent circumstance.

Authorized lactation breaks for employees assigned to the field may be taken at the nearest appropriate private area.

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1017.5 STORAGE OF EXPRESSED MILK

Any employee storing expressed milk in any authorized refrigerated area within the Department shall clearly label it as such and shall remove it when the employee ends her shift.

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Payroll Record Procedures

1018.1 PURPOSE AND SCOPE

Payroll records are submitted to the Payroll Clerk on a daily basis (for patrol teams) and a weekly basis (for bureaus and details outside of patrol) for the payment of wages.

1018.1.1 RESPONSIBILITY FOR COMPLETION OF PAYROLL RECORDS

Employees are responsible for the accurate and timely submission of payroll records for the payment of wages.

1018.1.2 TIME REQUIREMENTS

All employees are paid on a bi-weekly basis, usually on Friday with certain exceptions such as holidays. Payroll records shall be completed and submitted to the Payroll Clerk no later than 1400 hrs on the payroll closing day, usually on the Monday after the end of the pay period, unless specified otherwise.

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Overtime Compensation Requests

1019.1 PURPOSE AND SCOPE

It is the policy of the Department to compensate non-exempt salaried employees who work authorized overtime either by payment of wages as agreed and in effect through the Memorandum of Understanding (MOU), or by the allowance of accrual of compensatory time off. In order to qualify for either, the employee must complete and submit an Extraordinary Duty Report as soon as practical after overtime is worked.

1019.1.1 DEPARTMENT POLICY

Because of the nature of police work, and the specific needs of the Department, a degree of flexibility concerning overtime policies must be maintained.

Non-exempt employees are not authorized to volunteer work time to the Department. All requests to work overtime shall be approved in advance by a supervisor. If circumstances do not permit prior approval, then approval shall be sought as soon as practical during the overtime shift and in no case later than the end of shift in which the overtime is worked.

Short periods of work at the end of the normal duty day (e.g., less than one hour in duration) may be handled unofficially between the supervisor and the employee by flexing a subsequent shift schedule to compensate for the time worked rather than by submitting requests for overtime payments. If the supervisor authorizes or directs the employee to complete a form for such a period, the employee shall comply.

The individual employee may request compensatory time (aka "comp time") in lieu of receiving overtime payment.

1019.2 TYPES OF OVERTIME AND COMPENSATION

Time spent in a pay status but not actually worked (e.g., sick leave, vacation leave, comp time, holiday leave, etc.) shall be considered "time worked" in computing the basic forty hour week. However, employees shall be eligible to work in an overtime capacity while actually on such absence, but only in accordance with the provisions of the current MOU between the City of Berkeley and the employee's working group.

When a City recognized holiday falls within the workweek, the employee's basic workweek is reduced by eight hours for each holiday.

If an employee commences or terminates employment with the City within the workweek or is on suspension or leave of absence without pay during the workweek, the employee is not eligible for overtime benefits until hours worked exceed forty hours during that week.

With the exception of court overtime situations, an employee's name and overtime worked shall be reflected on a time sheet.

Unless specifically stated otherwise, all overtime is awarded at time and a half.

(a) Non-sworn personnel receive double time after 12 hours in any 24-hour period.

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(b) Sworn personnel receive holiday overtime at the straight time rate;

(c) Non-sworn personnel receive double time for Christmas and Thanksgiving.

(d) An explosives technician shall receive double time for time spent (from call to completion) in dealing with explosives, whether on or off duty.

(e) Special Response Team members shall receive an additional 5% pay when involved in an active SRT incident, either on or off duty.

(f) Field Training Officers shall receive an additional 10% differential when actually working as a Field Training Officer.

(g) The Field Training Program Sergeant shall receive a 5% salary differential while occupying that position.

(h) The Homicide Sergeant shall receive a 4% salary differential. Homicide detectives shall receive a 3% salary differential.

Those holding the classification of Captain are excluded from overtime benefits.

1019.3 REQUEST FOR OVERTIME COMPENSATION

1019.3.1 EMPLOYEES RESPONSIBILITY

Employees shall complete the Extraordinary Duty Reports immediately after working the overtime and turn them in to their immediate supervisor or the Watch Commander. Employees submitting Extraordinary Duty Reports for on-call pay when off duty shall submit the forms to their supervisor the first day after returning for work.

1019.3.2 SUPERVISORS RESPONSIBILITY

The supervisor who verifies the overtime earned shall verify that the overtime was worked before approving the request.

After approval, the Extraordinary Duty Report shall be forwarded to the employee's Division Captain for final approval.

1019.3.3 DIVISION CAPTAIN RESPONSIBILITY

The Division Captain, after approving payment, shall then forward the report to the Payroll Clerk for review.

1019.4 ACCOUNTING FOR OVERTIME WORKED

Employees are to record the actual time worked in an overtime status. In some cases, the Memorandum of Understanding provides that a minimum number of hours will be paid, (e.g., four hours for Court). The supervisor will enter the actual time worked.

1019.4.1 ACCOUNTING FOR PORTIONS OF AN HOUR

When accounting for less than a full hour, time worked shall be rounded up to the nearest quarter of an hour as indicated by the following chart:

TIME WORKED	INDICATE ON CARD

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1 to 15 minutes	.25
16 to 30 minutes	.50
31 to 45 minutes	.75
46 to 60 minutes	1 hour

1019.4.2 VARIATION IN TIME REPORTED
Where two or more employees are assigned to the same activity, case, or court trial and the amount of time for which payment is requested varies from that reported by the other officer, the Watch Commander or other approving supervisor may require each employee to include the reason for the variation on the Extraordinary Duty Report.

1019.5 RECOVERY / COMPENSATORY OVERTIME (COMP TIME)

Recovery / Compensatory overtime (comp time) is overtime credited with time rather than pay.

To obtain comp time credit the employee shall promptly submit a completed Extraordinary Duty Report for approval by both the employee's supervisor and commanding officer.

It is City and Police Department policy that employees not be permitted to accumulate excessive comp time.

(a) Sworn employees are allowed to accrue up to 120 hours of comp time.

(b) Non-sworn employees are allowed to accrue up to 90 hours of comp time.

Employees may be allowed comp time off only when that amount of time has been previously accumulated.

An employee who wishes to use accumulated comp time shall make such request on an Absence Report submitted to his/her supervisor, who shall determine if the absence would hinder the unit's operation and either approve or deny the request. Within the Operations Division, the final decision rests with the Patrol Staffing Lieutenant.

1019.6 OVERTIME / SHIFT EXTENSION

Overtime shall be defined as time worked by an employee in excess of 40 hours per week. For paid overtime to be credited, an employee is required to submit an Extraordinary Duty Report immediately following the overtime assignment.

An Extraordinary Duty Report requires approval from the employee's supervisor and commanding officer, both of whom must check the report for accuracy, ensuring that the "reason" and the paid overtime budget designations are properly stated.

(a) Completed Extraordinary Duty Reports must be routed to the Division Captain for final approval.

(b) Completed reports must be routed to the Payroll Clerk no later than 1400 hours on the Monday before the payday in order to be included in that pay period.

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1019.7 HOLIDAY OVERTIME

Holiday overtime is earned in lieu of taking the time off during the same week of a holiday or when an employee works any part of a recognized City of Berkeley holiday or has that day as a regularly scheduled day off.

Holiday overtime is awarded at time for time for sworn employees; for non-sworn employees it is awarded at time and a half, however on Thanksgiving and Christmas it is awarded at double time.

Holiday overtime may be received as either paid overtime or compensatory overtime (if the maximum accrual of compensatory overtime has not been reached).

(a) Sworn employees have the option of either pay or compensatory overtime.

(b) Non-sworn employees require Division Captain approval for compensatory overtime.

In lieu of pay or comp time, an employee may be allowed an alternative day off during the same calendar week as the holiday with supervisor approval.

When a holiday occurs during an employee's vacation leave, the holiday shall not be charged as vacation leave and the employee’s leave may be extended accordingly, with supervisor approval.

The choice of comp time or holiday pay shall be computed by the Payroll Clerk from information provided on the timesheets.

1019.8 COURT OVERTIME

Court overtime is defined as that overtime worked in connection with an assigned appearance before any criminal or civil court, Police Review Commission meeting or Board of Inquiry, BPD Board of Review, and any other specially approved appearance on behalf of another City department or commission.

Unless otherwise approved by a Commanding Officer, all court overtime shall be paid.

A sworn employee who makes an off-duty court appearance shall receive a minimum of four hours overtime unless his or her scheduled duty reporting time, regular shift or overtime shift is less than four hours after the scheduled court appearance in which case the employee will receive overtime in the lesser amount.

Non-sworn employees shall receive a minimum of three hours overtime unless their scheduled duty reporting time is less than three hours after the scheduled court appearance in which case the non-sworn employee will receive overtime in the lesser amount.

Overtime spent conferring with the prosecuting attorney will be considered as court overtime and part of the court session only if the employee's presence is required in court shortly after the conference.

For off duty, out of town court appearances, travel constitutes court overtime and is determined by the round trip time from the Public Safety Building.

An employee required to attend two or more court sessions on the same day is eligible for overtime compensation during the period between the sessions if subpoenaed on his/her day off (limited to

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a maximum of two hours between each session) but is not eligible for session break compensation if court appearance falls on a regular duty day.

To receive court overtime credit an employee shall submit an Extraordinary Duty Report.

(a) The subpoena should be attached and case number indicated if either or both are available.

(b) The overtime report is to be completed by the employee and should specify the amount of time required for "testifying/conferring" or "time waiting" or indicate that they were “not needed”.

(c) The employee's supervisor shall review the report for accuracy and complete the lower boxed area, indicating the court paid overtime budget code, the activity code and the proper project designation.

1019.9 COURT OVERTIME - TELEPHONE STANDBY

(a) Sworn employees who are placed on telephone standby for court will be given comp time (in accordance with the current MOU between the City of Berkeley and the Berkeley Police Association) as follows:

1. Duty Day: One-hour minimum comp time and hour for hour thereafter.
2. Day Off: Two-hour minimum comp time and hour for hour thereafter.

(b) To receive compensatory overtime credit for telephone standby an officer shall submit an Extraordinary Duty Report.

1. The subpoena should be attached and case number indicated if either or both are available.
2. The report is to be completed by the officer and shall specify the case number and the name of the Deputy District Attorney placing him/her on telephone standby.

1019.10 TRAINING OVERTIME

Training overtime is earned when an employee is assigned to attend a class, conference or seminar during off duty hours. Training overtime shall be reported on an Extraordinary Duty Report. To receive credit for the time spent training, a Training Time Credit Record shall be completed and routed to Personnel and Training.

Employees attending schools or classes away from the PSB will normally be credited with an eight hour day even though the number of hours may vary due to the nature of the instruction, see also the Attendance at Conferences and Meetings Policy.

1019.11 EMERGENCY / EMERGENCY ON-CALL OVERTIME

An employee shall be paid or given comp time off for being placed on emergency on-call status as follows:

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(a) An employee who is placed on emergency on-call status on his or her regularly scheduled work day shall be paid for a minimum of one hour and at a one quarter (¼) time rate.

(b) An employee who is placed on emergency on-call status on his or her regularly scheduled day off shall be paid for a minimum of two hours and at a one quarter (¼) time rate.

(c) Emergency Overtime - An employee is guaranteed at least three hours overtime when called to emergency overtime duty from his or her residence. If the employee's regular reporting time is less distant than the guaranteed overtime the employee will receive overtime in that lesser amount.

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Outside Employment

1020.1 PURPOSE AND SCOPE

In order to avoid actual or perceived conflicts of interest for departmental employees engaging in outside employment, all employees shall obtain written approval from the Chief of Police prior to engaging in any outside employment. Approval of outside employment shall be at the discretion of the Chief of Police in accordance with the provisions of this policy.

1020.1.1 DEFINITIONS

Outside Employment - Any member of this department who receives wages, compensation or other consideration of value from another employer, organization or individual not affiliated directly with this department for services, product(s) or benefits rendered. For purposes of this section, the definition of outside employment includes those employees who are self-employed and not affiliated directly with this department for services, product(s) or benefits rendered.

1020.2 OBTAINING APPROVAL

No member of this department may engage in any outside employment without first obtaining prior written approval from the City Manager. Failure to obtain prior written approval for outside employment or engaging in outside employment is prohibited by this policy and may lead to disciplinary action.

In order to obtain approval for outside employment, the employee must complete a Request to Engage in Outside Employment Application which shall be submitted to the employee's immediate supervisor. The application will then be forwarded through channels to the Chief of Police and the City Manager.

If approved, the employee will be provided with a copy of the approved permit. Unless otherwise indicated in writing on the approved permit, a permit will be valid through the end of the calendar year in which the permit is approved. Any employee seeking to renew a permit shall submit a new Request to Engage in Outside Employment Application in a timely manner.

Any employee seeking approval of outside employment, whose request has been denied, shall be provided with a written reason for the denial of the application at the time of the denial (Penal Code § 70(e)(3)).

1020.2.1 APPEAL OF DENIAL OF OUTSIDE EMPLOYMENT

If an employee's Request to Engage in Outside Employment Application is denied or withdrawn by the Department, the employee may file a written notice of appeal to the City Manager.

If the employee's appeal is denied, the employee may file a grievance pursuant to the procedure set forth in the current Memorandum of Understanding (MOU).

1020.2.2 REVOCATION/SUSPENSION OF OUTSIDE EMPLOYMENT PERMITS

Any outside employment permit may be revoked or suspended under the following circumstances:

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(a) Should an employee's performance at this department decline to a point where it is evaluated by a supervisor as needing improvement to reach an overall level of competency, the Chief of Police may, at his or her discretion, revoke any previously approved outside employment permit(s). That revocation will stand until the employee's performance has been reestablished at a satisfactory level and his/her supervisor recommends reinstatement of the outside employment permit

(b) Suspension or revocation of a previously approved outside employment permit may be included as a term or condition of sustained discipline

(c) If, at any time during the term of a valid outside employment permit, an employee's conduct or outside employment conflicts with the provisions of department policy, the permit may be suspended or revoked

(d) When an employee is unable to perform at a full duty capacity due to an injury or other condition, any previously approved outside employment permit may be subject to similar restrictions as those applicable to the employee's full time duties until the employee has returned to a full duty status

1020.3 PROHIBITED OUTSIDE EMPLOYMENT

Consistent with the provisions of Government Code § 1126, the Department expressly reserves the right to deny any Request to Engage in Outside Employment Application submitted by an employee seeking to engage in any activity which:

(a) Involves the employee's use of departmental time, facilities, equipment or supplies, the use of the Department badge, uniform, prestige or influence for private gain or advantage

(b) Involves the employee's receipt or acceptance of any money or other consideration from anyone other than this department for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course or hours of employment or as a part of the employee's duties as a member of this department

(c) Involves the performance of an act in other than the employee's capacity as a member of this department that may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other employee of this department

(d) Involves time demands that would render performance of the employee's duties for this department less efficient

1020.3.1 OUTSIDE SECURITY AND PEACE OFFICER EMPLOYMENT

Consistent with the provisions of Penal Code § 70, and because it would further create a potential conflict of interest, no member of this department may engage in any outside or secondary employment as a private security guard, private investigator or other similar private security position.

1020.3.2 SPECIAL RESTRICTIONS

Except for emergency situations or with prior authorization from the division captain, undercover officers or officers assigned to covert operations shall not be eligible to work overtime or other

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assignments in a uniformed or other capacity which might reasonably disclose the officer's law enforcement status.

1020.4 DEPARTMENT RESOURCES

Employees are prohibited from using any department equipment or resources in the course of or for the benefit of any outside employment. This shall include the prohibition of access to official records or databases of this department or other agencies through the use of the employee's position with this department.

1020.4.1 REVIEW OF FINANCIAL RECORDS

Employees approved for outside employment expressly agree that their personal financial records may be requested and reviewed/audited for potential conflict of interest (Government Code § 3308; Government Code § 1126). Prior to providing written approval for an outside employment position, the Department may request that an employee provide his/her personal financial records for review/audit in order to determine whether a conflict of interest exists. Failure of the employee to provide the requested personal financial records could result in denial of the off-duty work permit. If, after approving a request for an outside employment position, the Department becomes concerned that a conflict of interest exists based on a financial reason, the Department may request that the employee provide his/her personal financial records for review/audit. If the employee elects not to provide the requested records, his/her off-duty work permit may be revoked pursuant to the Revocation/Suspension of Outside Employment Permits section of this policy.

1020.5 CHANGES IN OUTSIDE EMPLOYMENT STATUS

If an employee terminates his or her outside employment during the period of a valid permit, the employee shall promptly submit written notification of such termination to the Chief of Police through channels. Any subsequent request for renewal or continued outside employment must thereafter be processed and approved through normal procedures set forth in this policy.

Employees shall also promptly submit in writing to the Chief of Police any material changes in outside employment including any change in the number of hours, type of duties or demands of any approved outside employment. Employees who are uncertain whether a change in outside employment is material are advised to report the change.

1020.6 OUTSIDE EMPLOYMENT WHILE ON DISABILITY

Department members engaged in outside employment who are placed on disability leave or modified/light-duty shall inform their immediate supervisor in writing within five days whether or not they intend to continue to engage in such outside employment while on such leave or light-duty status. The immediate supervisor shall review the duties of the outside employment along with any related doctor's orders, and make a recommendation to the Chief of Police whether such outside employment should continue.

In the event the Chief of Police determines that the outside employment should be discontinued or if the employee fails to promptly notify his/her supervisor of his/her intentions regarding their work

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permit, a notice of revocation of the member's permit will be forwarded to the involved employee, and a copy attached to the original work permit.

Criteria for revoking the outside employment permit include, but are not limited to, the following:

(a) The outside employment is medically detrimental to the total recovery of the disabled member, as indicated by the City's professional medical advisors.

(b) The outside employment performed requires the same or similar physical ability, as would be required of an on-duty member.

(c) The employee’s failure to make timely notice of their intentions to their supervisor.

When the disabled member returns to full duty with the Berkeley Police Department, a request (in writing) may be made to the Chief of Police to restore the permit.

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Occupational Disease and Work-Related Injury Reporting

1021.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance regarding the timely reporting of occupational diseases, mental health incidents, and work-related injuries.

1021.1.1 DEFINITIONS

Definitions related to this policy include:

Occupational disease or work-related injury - An injury, disease, or mental health issue arising out of employment (Labor Code § 3208; Labor Code § 3208.3; Labor Code § 3212 et seq.).

1021.2 POLICY

The Berkeley Police Department will address occupational diseases and work-related injuries appropriately, and will comply with applicable state workers' compensation requirements (Labor Code § 3200 et seq.).

1021.3 RESPONSIBILITIES

1021.3.1 MEMBER RESPONSIBILITIES

Any member sustaining any occupational disease or work-related injury shall report such event as soon as practicable, but in all incidents within 24 hours, to a supervisor, and shall seek medical care when appropriate (8 CCR 14300.35).

1021.3.2 SUPERVISOR RESPONSIBILITIES

A supervisor learning of any occupational disease or work-related injury shall ensure the member receives medical care as appropriate.

Supervisors shall ensure that required documents regarding workers' compensation are completed and forwarded to the Personnel & Training Bureau via the injured employee's chain of command promptly. If this connot be accomplished within 24 hours, the supervisor shall route original copies directly to the Personnel & Training Bureau and route copies to the employee's chain of command. Any related city-wide disease- or injury-reporting protocol shall also be followed.

Supervisors shall determine whether the Major Incident Notification policy applies and take additional action as required.

1021.3.3 DIVISION CAPTAIN RESPONSIBILITIES

The division captain who receives a report of an occupational disease or work-related injury should review the report for accuracy and determine what additional action should be taken. The report shall then be forwarded to the Chief of Police, the City's risk management entity, and the Professional Standards Division Captain to ensure any required Division of Occupational Health

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and Safety Administration (Cal/OSHA) shall be within 24 hours of an employee being admitted into any hospital as a result of a work-related injury. Employee treatment occurring at a hospital facility without admittance does not require (Cal/OSHA) notification.

1021.3.4 CHIEF OF POLICE RESPONSIBILITIES
The Chief of Police or their designee shall review and forward copies of the report to the Personnel and Training Bureau. Copies of the report and related documents retained by the Department shall be filed in the member's confidential medical file.

1021.4 OTHER DISEASE OR INJURY

Diseases and injuries caused or occurring on-duty that do not qualify for workers' compensation reporting shall be documented on the designated report of injury form, which shall be signed by a supervisor. A copy of the completed form shall be forwarded to the appropriate Division Captain through the chain of command.

Unless the injury is extremely minor, this report shall be signed by the affected member, indicating that he/she desired no medical attention at the time of the report. By signing, the member does not preclude his/her ability to later seek medical attention.

1021.5 SETTLEMENT OFFERS

When a member sustains an occupational disease or work-related injury that is caused by another person and is subsequently contacted by that person, his/her agent, insurance company or attorney and offered a settlement, the member shall take no action other than to submit a written report of this contact to his/her supervisor as soon as possible. The employee's supervisor shall forward the report to the Personnel & Training Bureau through their chain of command.

1021.5.1 NO SETTLEMENT WITHOUT PRIOR APPROVAL
No less than 10 days prior to accepting and finalizing the settlement of any third-party claim arising out of or related to an occupational disease or work-related injury, the member shall provide the Chief of Police with written notice of the proposed terms of such settlement. In no case shall the member accept a settlement without first providing written notice to the Chief of Police. The purpose of such notice is to permit the City to determine whether the offered settlement will affect any claim the City may have regarding payment for damage to equipment or reimbursement for wages against the person who caused the disease or injury, and to protect the City's right of subrogation, while ensuring that the member's right to receive compensation is not affected.

1021.6 PROCEDURES FOR OBTAINING MEDICAL TREATMENT

1021.6.1 GENERAL

(a) For a major injury:

1. During business & non-business hours: The member may choose to go to Highland Hospital, Alta Bates Hospital or the member’s pre-designated physician* (i.e. Kaiser ER).

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(b) For a minor injury, including an exposure:

1. During business hours: The member may choose to go to Concentra Medical Center or the member's pre-designated physician* (i.e. Kaiser appt, Urgent Care or ER).
2. During non-business hours: The member may choose to go to Alta Bates Hospital or the member's pre-designated physician* (i.e. Kaiser Urgent Care or ER).

1021.6.2 SUPERVISOR PROCEDURES

(a) Complete the "Supervisor's Investigation" report

(b) Complete section 2 of the "Work Status" slip to authorize treatment for the member

(c) Furnish the member with the Department of Worker's Compensation form (DWC-1) (even if treatment is not sought, the form needs to be provided)

(d) Provide a copy of the "Supervisor's Investigation" report to the member's Chain of Command

(e) ** For an Exposure ** If applicable, complete the State's "Report of Potential HIV Exposure to Law Enforcement Employees" form and the City's "Exposure Incident Report Form".

(f) Deliver all original forms to the Personnel and Training Bureau via the respective Chain of Command

1021.6.3 MEMBER PROCEDURES

(a) Complete the Employee Injury Report (even if treatment is not sought)

(b) Bring the "Work Status" slip with you to the initial physician for completion (on subsequent visits you will also need to obtain a Work Status slip but this will be provided by the physician)

(c) Complete the Department of Worker's Compensation form (DWC-1) (if treatment is sought)

(d) Deliver all original forms to your supervisor for review and routing to the Personnel and Training Bureau

* A Pre-Designated Physician Form must be completed and approved prior to the member being treated. The form is located on the City's Intranet via the Human Resources link and there are hard copies in the Professional Standards Division

1021.7 RECORD KEEPING

The City of Berkeley shall establish and maintain an accurate medical record for each employee with occupational exposure. The city shall ensure that all employee medical records required by this section are kept confidential (Section 5199 of Title 8, California Code of Regulations).

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Personal Appearance Standards

1022.1 PURPOSE AND SCOPE

Employees shall maintain their personal hygiene and appearance in order to project a professional image appropriate for this department and for their assignment.

1022.2 GROOMING STANDARDS

Unless otherwise stated and because deviations from these standards could present officer safety issues, the following appearance standards shall apply to all employees, except those whose current assignment would deem them not appropriate, and where the Chief of Police has granted exception.

1022.2.1 HAIR

Hairstyles of all members shall be clean, well-groomed and professional in appearance.

1022.2.2 FACIAL HAIR

Facial hair shall be clean, well-groomed and professional in appearance.

1022.2.3 JEWELRY AND ACCESSORIES

No jewelry, pins or personal ornaments shall be worn by officers on any part of the uniform or equipment, except those authorized within this manual. Jewelry, if worn around the neck, shall not be visible above the shirt collar.

1022.3 TATTOOS

At no time while on-duty or representing the Department in any official capacity, shall any offensive tattoo or body art be visible. Examples of offensive tattoos or body art include, but are not limited to, those which depict racial, sexual, discriminatory, gang related or obscene graphics or language.

1022.4 EXEMPTIONS

Members who seek cultural (e.g., culturally protected hairstyles) or other exemptions to this policy that are protected by law should generally be accommodated (Government Code § 12926). A member with an exemption may be ineligible for an assignment if the individual accommodation presents a security or safety risk. The Chief of Police should be advised any time a request for such an accommodation is denied or when a member with a cultural or other exemption is denied an assignment based on a safety or security risk.

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Uniform Regulations

1023.1 PURPOSE AND SCOPE

The purpose of this policy is to provide a general overview of the Berkeley Police Department's uniform regulations and to ensure that uniformed officers will be readily identifiable to the public through the proper use and wearing of department uniforms. Employees should also refer to the Uniform and Equipment Specifications manual as well as the following associated policies:

- Department Owned and Personal Property
- Body Armor
- Personal Appearance Standards

The Uniform and Equipment Specifications manual is maintained and periodically updated by the Professional Standards Bureau. The manual contains a more detailed description of BPD's uniform regulations and should be consulted regarding authorized equipment and uniform specifications.

The Berkeley Police Department will provide a uniform allowance to all uniformed employees in the frequency agreed upon in the respective employee group’s collective bargaining agreement.

1023.2 WEARING AND CONDITION OF UNIFORM AND EQUIPMENT

Police employees wear the uniform to be identified as the law enforcement authority in society. The uniform also serves an equally important purpose to identify the wearer as a source of assistance in an emergency, crisis or other time of need.

(a) Uniform and equipment shall be maintained in a serviceable condition and shall be ready at all times for immediate use. Uniforms shall be neat, clean, and appear professionally pressed.

(b) All peace officers of this department shall possess and maintain at all times, a serviceable uniform and the necessary equipment to perform uniformed field duty.

(c) Personnel shall wear only the uniform specified for their rank and assignment.

(d) The uniform is to be worn in compliance with the specifications set forth in the department’s Uniform and Equipment Specifications manual which is maintained separately from this policy.

(e) All supervisors will perform periodic visual inspections of their personnel to ensure conformance to these regulations.

(f) Civilian attire shall not be worn in combination with any distinguishable part of the uniform.

(g) Uniforms are only to be worn while on duty, while in transit to or from work, for court or at other official department functions or events.

(h) If the uniform is worn while in transit, an outer garment shall be worn over the uniform shirt so as not to bring attention to the employee while he/she is off-duty.

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(i) Employees are not to purchase or drink alcoholic beverages while wearing any part of the department uniform, including the uniform pants.

1023.3 UNIFORM CLASSES

1023.3.1 CLASS A UNIFORM

The Class A uniform is to be worn on special occasions such as funerals, graduations, ceremonies, or as directed. The Class A uniform is required for all sworn personnel. The Class A uniform includes the standard issue uniform with:

(a) Class A jacket

(b) Class A hat

(c) Long sleeve shirt with tie

(d) Polished shoes

(e) Boots with pointed toes are not permitted.

1023.3.2 CLASS B UNIFORM

All officers will possess and maintain a serviceable Class B uniform at all times.

The Class B uniform will consist of the same garments and equipment as the Class A uniform with the following exceptions:

(a) The long or short sleeve shirt may be worn with the collar open. No tie is required

(b) A white, navy blue or black crew neck t-shirt must be worn with the uniform

(c) All shirt buttons must remain buttoned except for the last button at the neck

(d) Polished shoes

(e) Unpolished shoes (approved and all black)

(f) Boots with pointed toes are not permitted

1023.3.3 CLASS C UNIFORM

The Class C uniform has been be established to allow field personnel a more comfortable option than the Class B uniform. The Class C uniform will consist of the same garments and equipment as the Class B uniform with the exception that the material will differ, the pants will have cargo pockets and the name and badge will be embroidered. See the Uniform and Equipment Specifications manual for a more detail.

1023.3.4 SPECIALIZED UNIT UNIFORMS

The Chief of Police may authorize special uniforms to be worn by officers in specialized units such as the Special Response Team, Motor Officers and other specialized assignments.

1023.3.5 RAIN GEAR

The Uniform and Equipment Specifications manual lists the authorized uniform jacket and rain gear.

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1023.4 INSIGNIA AND PATCHES

(a) Shoulder Patches - The authorized shoulder patch shall be machine stitched to the sleeves of all uniform shirts and jackets, three-quarters of an inch below the shoulder seam of the shirt and be bisected by the crease in the sleeve.

(b) Service stripes, stars, etc. - Service stripes and other indicators for length of service may be worn on long sleeved shirts and jackets. They are to be machine stitched onto the uniform. The bottom of the service stripe shall be sewn the width of one and one-half inches above the cuff seam with the rear of the service stripes sewn on the dress of the sleeve. The stripes are to be worn on the left sleeve only.

(c) The regulation nameplate shall be worn at all times while in uniform. The nameplate shall display the employee's first name initial and last name. The nameplate shall be worn and placed above the right pocket located in the middle, bisected by the pressed shirt seam, with equal distance from both sides of the nameplate to the outer edge of the pocket. An authorized embroidered nameplate may be worn in the same manner, but shall only display the employee's first initial and last name.

(d) When a jacket is worn, the nameplate or an authorized sewn on cloth nameplate shall be affixed to the jacket in the same manner as the uniform.

(e) Ancillary Assignment Insignias - Ancillary assignment insignias, (SRT, CIT, FTO, etc.) may be worn as designated by the Chief of Police.

(f) Flag Pin - A flag pin may be worn, centered above the nameplate.

(g) Badge - The department issued badge, or an authorized sewn on cloth replica, must be worn and visible at all times while in uniform.

(h) Rank Insignia - The designated insignia indicating the employee’s rank must be worn at all times while in uniform. The Chief of Police may authorize exceptions.

1023.4.1 MOURNING BADGE

Uniformed employees shall wear a black mourning band across the uniform badge whenever a law enforcement officer is killed in the line of duty. The following mourning periods will be observed:

(a) An officer of this department - From the time of death until midnight on the 14th day after the death.

(b) An officer from this or an adjacent county - From the time of death until midnight on the day of the funeral.

(c) Funeral attendee - While attending the funeral of an out of region fallen officer.

(d) National Peace Officers Memorial Day (May 15th) - From 0001 hours until 2359 hours.

(e) As directed by the Chief of Police.

1023.5 CIVILIAN ATTIRE

There are assignments within the Department that do not require the wearing of a uniform because recognition and authority are not essential to their function. There are also assignments in which the wearing of civilian attire is necessary.

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(a) All employees shall wear clothing that fits properly, is clean and free of stains, and not damaged or excessively worn.

(b) All male administrative, investigative and support personnel who elect to wear civilian clothing to work shall wear button style shirts with a collar, slacks or suits that are moderate in style.

(c) All female administrative, investigative and support personnel who elect to wear civilian clothes to work shall wear slacks, shirts, blouses, dresses or suits which are moderate in style.

(d) The following items shall not be worn on duty:

1. A t-shirt alone
2. Open toed sandals or flip-flops
3. Swimsuits, tube tops, or halter-tops
4. Spandex type pants or see-through clothing
5. Distasteful printed slogans, buttons or pins

(e) Variations from this order are allowed at the discretion of the Chief of Police or designee when the employee's assignment or current task is not conducive to the wearing of such clothing.

(f) No item of civilian attire may be worn on duty that would adversely affect the reputation of the Berkeley Police Department or the morale of the employees.

1023.6 POLITICAL ACTIVITIES, ENDORSEMENTS AND ADVERTISEMENTS

Unless specifically authorized by the Chief of Police, Berkeley Police Department employees may not wear any part of the uniform, be photographed wearing any part of the uniform, utilize a department badge, patch or other official insignia, or cause to be posted, published, or displayed, the image of another employee, or identify himself/herself as an employee of the Berkeley Police Department to do any of the following (Government Code §§ 3206 and 3302):

(a) Endorse, support, oppose, or contradict any political campaign or initiative.

(b) Endorse, support, oppose, or contradict any social issue, cause or religion.

(c) Endorse, support, or oppose, any product, service, company or other commercial entity.

(d) Appear in any commercial, social, or non-profit publication, or any motion picture, film, video, public broadcast or any website.

1023.7 OPTIONAL EQUIPMENT - MAINTENANCE AND REPLACEMENT

(a) Any of the items listed in the Uniform and Equipment Specifications as optional shall be purchased totally at the expense of the employee. No part of the purchase cost shall be offset by the Department for the cost of providing the Department issued item.

(b) Maintenance of optional items shall be the financial responsibility of the purchasing employee. For example, repairs due to normal wear and tear.

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(c) Replacement of items listed in this order as optional shall be done as follows:

1. When the item is no longer functional because of normal wear and tear, the employee bears the full cost of replacement.
2. When the item is no longer functional because of damage in the course of the employee's duties, it shall be replaced following the procedures for the replacement of damaged personal property (see the Department Owned and Personal Property Policy).

1023.7.1 RETIREE BADGES

The Chief of Police may issue identification in the form of a badge, insignia, emblem, device, label, certificate, card or writing that clearly states the person has honorably retired from the Berkeley Police Department. This identification is separate and distinct from the identification authorized by Penal Code § 25455 and referenced in the Retired Officer CCW Endorsement Policy in this manual.

If a badge is issued by the Department, the retiree shall be instructed that any such badge will remain the property of the Berkeley Police Department and will be revoked in the event of misuse or abuse (Penal Code § 538d).

1023.8 UNAUTHORIZED UNIFORMS, EQUIPMENT AND ACCESSORIES

Berkeley Police Department employees may not wear any uniform item, accessory or attachment unless specifically authorized in the Uniform and Equipment Specifications or by the Chief of Police or his/her designee.

Berkeley Police Department employees may not use or carry any safety item, tool or other piece of equipment unless specifically authorized in the Uniform and Equipment Specifications or by the Chief of Police or his/her designee.

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Police Aide Program

1024.1 PURPOSE AND SCOPE

Police aides perform a variety of routine and progressively more advanced tasks in an apprenticeship program in preparation for a career in law enforcement. The purpose of this policy is to provide a brief outline of their duties and requirements.

1024.2 EDUCATION REQUIREMENTS

Police aides are required to maintain a minimum grade point average of 2.0 (“C” grade) for all courses taken. Police aides shall complete six semester units (or the equivalent) of college course work per semester.

1024.3 PROGRAM COORDINATOR

The Personnel and Training Sergeant will serve as the Program Coordinator. This supervisor will be responsible for tracking the educational and job performance of police aides as well as making their individual assignments throughout the Department. He/she will also monitor the training provided for all police aides and review all decisions affecting job assignments, status for compensation, school attendance and performance evaluations.

1024.3.1 PROGRAM ADVISORS

The Personnel and Training Sergeant may select individual officers to serve as advisors for the Police Aide Program. These officers will serve as mentors for each police aide.

1024.4 ORIENTATION AND TRAINING

Newly hired police aides will receive an orientation of the organization and facilities before reporting to their first assignment. On-the-job training will be conducted in compliance with the Police Aide Training Manual. Training sessions will be scheduled as needed to train police aides for as many assignments as possible. In addition to job-specific training, information will be offered to prepare police aides to compete successfully in the police officer selection process, as well as the academy training. All training will focus on improving job performance, as well as preparation to become police officers.

1024.5 POLICE AIDE UNIFORMS

Each police aide will be provided two uniforms meeting the specifications described in the Uniform Equipment and Specifications Manual.

1024.6 ROTATION OF ASSIGNMENTS

Rotating job assignments should occur on a regular basis to enhance the career development for each police aide. Department needs and concerns will take precedence over individual considerations with the final decision resting with the Personnel and Training Sergeant.

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In general, more senior police aides will be assigned to positions requiring more technical skill or responsibility, as well as serving to train police aides for new assignments or those newly hired.

1024.7 RIDE-ALONG PROCEDURES

All police aides are authorized to participate in the Ride-Along Program on their own time and as approved by their immediate supervisor and the appropriate Watch Commander. Applicable waivers must be signed in advance of the ride-along. Police aides shall wear their uniform while participating on a ride-along.

1024.8 PERFORMANCE EVALUATIONS

Performance evaluations for all police aides shall be completed bi-monthly during their first six months on probation. Upon successful completion of probation, police aides will be evaluated on a yearly basis to assess their current job performance and their potential as police officers.

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Nepotism and Conflicting Relationships

1025.1 PURPOSE AND SCOPE

It is the policy of the Berkeley Police Department to avoid nepotism in its hiring and promotion actions and to ensure that merit is the basis for employee selection. When BPD employees are related, as specified below, such persons shall not have the same immediate supervisor or have supervisory relationships, except if approved in writing by the City Manager.

No individual shall be excluded from the competitive examination process by virtue of his or her relationship as described below.

No person shall be appointed, promoted, demoted, flexibly placed, or transferred to any position, whether exempt, permanent, provisional, acting, part-time, seasonal or temporary, in any division of any department of the City or to a department without divisions, where such person's near relative already holds a position which would create a supervisory relationship as described herein.

No employee shall interview, recommend or in any way be involved in the selection or disciplinary process of an employee's near relative.

1025.1.1 DEFINITIONS

Business relationship - Serving as an employee, independent contractor, compensated consultant, owner, board member, shareholder, or investor in an outside business, company, partnership, corporation, venture or other transaction, where the Department employee's annual interest, compensation, investment or obligation is greater than $250.

Conflict of interest - Any actual, perceived or potential conflict of interest in which it reasonably appears that a department employee's action, inaction or decisions are or may be influenced by the employee's personal or business relationship.

Nepotism - The practice of showing favoritism to relatives over others in appointment, employment, promotion or advancement by any public official in a position to influence these personnel decisions.

Personal relationship - Includes marriage, cohabitation, dating or any other intimate relationship beyond mere friendship.

Public official - A supervisor, officer or employee vested with authority by law, rule or regulation or to whom authority has been delegated.

Near Relative - An employee's spouse, parent, sibling, child, grandparent, aunt, uncle, niece, nephew, mother in law, father in law, sister in law, brother in law, son in law, daughter in law, stepparent, stepsibling, stepchild, grandchild, dependent or domestic partner or immediate family members of domestic partner.

Subordinate - An employee who is subject to the temporary or ongoing direct or indirect authority of a supervisor.

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Supervisor - An employee who has temporary or ongoing direct or indirect authority over the actions, decisions, evaluation and/or performance of a subordinate employee.

1025.2 RESTRICTED DUTIES AND ASSIGNMENTS

The Department will not prohibit all personal or business relationships between employees. However, in order to avoid nepotism or other inappropriate conflicts, the following reasonable restrictions shall apply (Government Code § 12940):

(a) Employees are prohibited from directly supervising, occupying a position in the line of supervision or being directly supervised by any other employee who is a relative or with whom they are involved in a personal or business relationship.

1. If circumstances require that such a supervisor/subordinate relationship exist temporarily, the supervisor shall make every reasonable effort to defer matters pertaining to the involved employee to an uninvolved supervisor.

2. When personnel and circumstances permit, the Department will attempt to make every reasonable effort to avoid placing employees in such supervisor/ subordinate situations. The Department, however, reserves the right to transfer or reassign any employee to another position within the same classification in order to avoid conflicts with any provision of this policy.

(b) Employees are prohibited from participating in, contributing to or recommending promotions, assignments, performance evaluations, transfers or other personnel decisions affecting an employee who is a relative or with whom they are involved in a personal or business relationship.

(c) Whenever possible, FTOs and other trainers will not be assigned to train relatives. FTOs and other trainers are prohibited from entering into or maintaining personal or business relationships with any employee they are assigned to train until such time as the training has been successfully completed.

(d) To avoid actual or perceived conflicts of interest, members of this department shall refrain from developing or maintaining personal or financial relationships with victims, witnesses or other individuals during the course of or as a direct result of any official contact.

(e) Except as required in the performance of official duties or, in the case of immediate relatives, employees shall not develop or maintain personal or financial relationships with any individual they know or reasonably should know is under criminal investigation, is a convicted felon, parolee, fugitive or registered sex offender or who engages in serious violations of state or federal laws.

1025.2.1 EMPLOYEE RESPONSIBILITY

City employees shall submit the "Near Relative Notification" form to Human Resources within 30 days of becoming a near relative to another city employee, see COB Admin Regulation 2.12 for further.

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Prior to entering into any personal or business relationship or other circumstance which the employee knows or reasonably should know could create a conflict of interest or other violation of this policy, the employee shall promptly notify his/her uninvolved, next highest level of supervisor.

Whenever any employee is placed in circumstances that would require the employee to take enforcement action or provide official information or services to any relative or individual with whom the employee is involved in a personal or business relationship, the employee shall promptly notify his/her uninvolved, immediate supervisor. In the event that no uninvolved supervisor is immediately available, the employee shall promptly notify dispatch to have another uninvolved employee either relieve the involved employee or minimally remain present to witness the action.

1025.2.2 SUPERVISOR'S RESPONSIBILITY
Upon being notified of, or otherwise becoming aware of any circumstance that could result in or constitute an actual or potential violation of this policy, a supervisor shall take all reasonable steps to promptly mitigate or avoid such violations whenever possible. Supervisors shall also promptly notify the Chief of Police of such actual or potential violations through the chain of command.

1025.3 EXCEPTIONS TO POLICY

The City Manager may authorize exceptions to this policy whenever the City Manager determines that the best interests of the City so require. If an exception is granted, it shall be in writing and a copy placed in the employees personnel file.

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Department Badges

1026.1 PURPOSE AND SCOPE

The Berkeley Police Department badge and uniform patch as well as the likeness of these items and the name of the Berkeley Police Department are property of the Department and their use shall be restricted as set forth in this policy.

1026.2 POLICY

The uniform badge shall be issued to department members as a symbol of authority and the use and display of departmental badges shall be in strict compliance with this policy. Only authorized badges issued by this department shall be displayed, carried or worn by members while on duty or otherwise acting in an official or authorized capacity.

1026.2.1 FLAT BADGE

Sworn officers may purchase, at his/her own expense, a flat badge capable of being carried in a wallet. The use of the flat badge is subject to all the same provisions of departmental policy as the uniform badge.

(a) An officer may sell, exchange, or transfer the flat badge he/she purchased to another officer within the Berkeley Police Department.

(b) Should the flat badge become lost, damaged, or otherwise removed from the officer's control, he/she shall make the proper notifications as outlined in the Department Owned and Personal Property Policy.

(c) An honorably retired officer may keep his/her flat badge upon retirement.

(d) The purchase, carrying or display of a flat badge is not authorized for non-sworn personnel.

1026.2.2 NON-SWORN PERSONNEL

Badges and departmental identification cards issued to non-sworn personnel shall be clearly marked to reflect the position of the assigned employee (e.g. Parking Enforcement Officer, Dispatcher).

(a) Non-sworn personnel shall not display any department badge except as a part of his/her uniform and while on duty, or otherwise acting in an official and authorized capacity.

(b) Non-sworn personnel shall not display any department badge or represent him/herself, on or off duty, in such a manner which would cause a reasonable person to believe that he/she is a sworn peace officer.

1026.2.3 RETIREE UNIFORM BADGE

Upon honorable retirement employees may purchase his/her assigned duty badge for display purposes. It is intended that the duty badge be used only as private memorabilia as other uses of the badge may be unlawful or in violation of this policy.

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Retirees may also purchase or be given (either by the Department or Association) an “Honorably Retired” badge to be carried or kept as memorabilia.

1026.2.4 PROMOTIONS
Upon promotion to another rank, employees may purchase his/her previously assigned duty badge for display purposes. It is intended that the duty badge be used only as private memorabilia as other uses of the badge may be unlawful or in violation of this policy.

1026.3 UNAUTHORIZED USE

Except as required for on-duty use by current employees, no badge designed for carry or display in a wallet, badge case or similar holder shall be issued to anyone other than a current or honorably retired peace officer.

Department badges are issued to all sworn employees and non-sworn uniformed employees for official use only. The department badge, shoulder patch or the likeness thereof, or the department name shall not be used for personal or private reasons including, but not limited to, letters, memoranda, and electronic communications such as electronic mail or web sites and web pages.

The use of the badge, uniform patch and department name for all material (printed matter, products or other items) developed for department use shall be subject to approval by the Chief of Police.

Employees shall not loan his/her department badge or identification card to others and shall not permit the badge or identification card to be reproduced or duplicated.

1026.4 PERMITTED USE BY EMPLOYEE GROUPS

The likeness of the department badge shall not be used without the expressed authorization of the Chief of Police and shall be subject to the following:

(a) The employee associations may use the likeness of the department badge for merchandise and official association business provided they are used in a clear representation of the association and not the Berkeley Police Department.

(b) The likeness of the department badge for endorsement of political candidates shall not be used without the expressed approval of the Chief of Police.

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Temporary Modified-Duty Assignments

1027.1 PURPOSE AND SCOPE

This policy establishes procedures for providing temporary modified-duty assignments. This policy is not intended to affect the rights or benefits of employees under federal or state law, City rules, current memorandums of understanding or collective bargaining agreements. For example, nothing in this policy affects the obligation of the Department to engage in a good faith, interactive process to consider reasonable accommodations for any employee with a temporary or permanent disability that is protected under federal or state law.

1027.2 POLICY

Subject to operational considerations, the Berkeley Police Department may identify temporary modified-duty assignments for employees who have an injury or medical condition resulting in temporary work limitations or restrictions. A temporary assignment allows the employee to work, while providing the Department with a productive employee during the temporary period.

1027.3 ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES

Employees on Workers' Compensation Leave: The City may assign any employee on Workers' Compensation leave who is medically released to return to modified duty when feasible, to such work within the Police Department which is consistent with medical limitations as determined by the attending physician and the employee's skills and abilities at no reduction in the employee's regular rate of pay. Prior to changing the shift of a member who is medically released to return to work on modified duty, the Department shall make a reasonable and good faith effort to accommodate the member’s personal/family scheduling for the duration of the period on modified duty. However, if the Department is not able to accommodate the member’s personal/family scheduling for the period of the modified duty the Department is not precluded from changing the member’s shift.

1027.4 NON-INDUSTRIAL INJURIES

The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment. The City will periodically review such modified assignments in order to determine whether such assignments continue to meet the needs of the City.

The modified assignment may be in that employee's classification. To be eligible for such a modified assignment, the employee must initially, and subsequently at the request of the City, provide the Human Resources Department with a medical statement from his or her attending physician that clearly states the medical limitations and abilities of the employee and estimates when the employee will be able to return to a regular assignment. If modification of that assignment within that employee's classification does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily

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disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

1027.5 GENERAL CONSIDERATIONS

Priority consideration for temporary modified-duty assignments will be given to employees with work-related injuries or illnesses that are temporary in nature. Employees having disabilities covered under the Americans with Disabilities Act (ADA) or the California Fair Employment and Housing Act (Government Code § 12940 et seq.) shall be treated equally, without regard to any preference for a work-related injury.

No position in the Berkeley Police Department shall be created or maintained as a temporary modified-duty assignment.

Temporary modified-duty assignments are a management prerogative and not an employee right. The availability of temporary modified-duty assignments will be determined on a case-by-case basis, consistent with the operational needs of the Department. Temporary modified-duty assignments are subject to continuous reassessment, with consideration given to operational needs and the employee's ability to perform in a modified-duty assignment.

The Chief of Police or the authorized designee may restrict employees working in temporary modified-duty assignments from wearing a uniform, displaying a badge, carrying a firearm, operating an emergency vehicle, engaging in outside employment, or being otherwise limited in employing their peace officer powers.

Temporary modified-duty assignments shall generally not exceed a cumulative total of 1,040 hours in any one-year period.

1027.6 PROCEDURE

Employees may request a temporary modified-duty assignment for short-term injuries or illnesses.

Employees seeking a temporary modified-duty assignment should contact their supervisor, who will make notifications via the chain of command.

The division captain will make a recommendation to the Chief of Police regarding temporary modified-duty assignments that may be available based on the needs of the Department and the limitations of the employee. The Chief of Police or the authorized designee shall confer with the Personnel and Training Bureau or the City Attorney as appropriate.

Requests for a temporary modified-duty assignment of 20 hours or less per week may be approved and facilitated by the division captain, with notice to the Chief of Police.

1027.7 ACCOUNTABILITY

Written notification of assignments, work schedules and any restrictions should be provided to employees assigned to temporary modified-duty assignments and their supervisors. Those

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assignments and schedules may be adjusted to accommodate department operations and the employee's medical appointments, as mutually agreed upon with the division captain.

1027.7.1 EMPLOYEE RESPONSIBILITIES

The responsibilities of employees assigned to temporary modified duty shall include, but not be limited to:

(a) Communicating and coordinating any required medical and physical therapy appointments in advance with their supervisors.

(b) Promptly notifying their supervisors of any change in restrictions or limitations after each appointment with their treating medical professionals.

(c) Submitting a written status report via the chain of command to the division captain after every medical appointment.

1027.7.2 SUPERVISOR RESPONSIBILITIES

The employee's immediate supervisor shall monitor and manage the work schedule of those assigned to temporary modified duty.

The responsibilities of supervisors shall include, but not be limited to:

(a) Periodically apprising the division captain of the status and performance of employees assigned to temporary modified duty.

(b) Notifying the division captain and ensuring that the required documentation facilitating a return to temporary/modified or full duty is received from the employee and provided to the Personnel and Training Bureau within 24 hours of receipt.

(c) Ensuring that employees returning to full duty have completed any required training and certification.

1027.8 MEDICAL EXAMINATIONS

Prior to returning to full-duty status, employees shall be required to provide certification from their treating medical professionals stating that they are medically cleared to perform the essential functions of their jobs without restrictions or limitations.

The Department may require a fitness-for-duty examination prior to returning an employee to full-duty status, in accordance with the Fitness for Duty Policy.

1027.9 PREGNANCY

If an employee is temporarily unable to perform regular duties due to a pregnancy, childbirth or a related medical condition, the employee will be treated the same as any other temporarily disabled employee (42 USC § 2000e(k)). A pregnant employee shall not be involuntarily transferred to a temporary modified-duty assignment.

1027.9.1 NOTIFICATION

Pregnant employees should notify their immediate supervisors as soon as practicable and provide a statement from their medical providers identifying any pregnancy-related job restrictions or

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limitations. If at any point during the pregnancy it becomes necessary for the employee to take a leave of absence, such leave shall be granted in accordance with the City's personnel rules and regulations regarding family and medical care leave.

1027.10 MAINTENANCE OF CERTIFICATION AND TRAINING

Employees assigned to temporary modified duty shall maintain all certification, training and qualifications appropriate to both their regular and temporary duties, provided that the certification, training or qualifications are not in conflict with any medical limitations or restrictions. Employees who are assigned to temporary modified duty shall inform their supervisors of any inability to maintain any certification, training or qualifications.

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Conference, Meeting and Training Attendance

1028.1 PURPOSE AND SCOPE

The purpose of this policy is to define the procedures to be followed when requesting permission to attend both local and non-local conferences, meetings and training.

1028.2 POLICY

Attendance at such events by department personnel shall conform to the policies contained in the City of Berkeley Administrative Regulation No. 3.9, "Attendance and Payment of Expenses Associated with Conferences, Meetings, Seminars, Trainings, and Workshops" and the related procedures outlined in this policy.

1028.3 DEFINITIONS AND EXAMPLES

1028.3.1 CONFERENCE

A conference, generally, is a gathering of persons associated with a professional membership or support organization for discussing matters of common concern, which may include presentations, programs and exhibits related to municipal government and/or related functions. These include but are not limited to:

(a) California Peace Officers' Association

(b) California Police Chiefs' Association

(c) California Association of Hostage Negotiators

(d) National Tactical Officers' Association

(e) International Association of Chiefs of Police

Not included are:

(a) Legislative hearings

(b) Law enforcement meetings called by the Attorney General

(c) Any assemblage where an officer's presence is required as a matter of law

(d) Travel required to conduct investigations or return prisoners

1028.3.2 MEETING

A meeting, generally, is a gathering of individuals to discuss matters pertaining to city business.

1028.3.3 TRAINING

Training includes seminars and sessions designed to provide information or to upgrade skills which pertain directly to city-related services.

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1028.4 LOCATION

Conferences, meetings and training sessions (hereinafter "events") are classified according to their location:

(a) "Local" describes events in proximity to the Berkeley Police Department, where total travel and meeting time can be accomplished within one day.

(b) "Non-local" describes events where the distance or duration requires overnight travel, or attendance is for more than one day regardless of the distance traveled.

1028.5 THE CITY OF BERKELEY'S ADMINISTRATIVE REGULATION

Attendance shall conform to the City of Berkeley Administrative Regulation No. 3.9, "Attendance and Payment of Expenses Associated with Conferences, Meetings, Seminars, Trainings, and Workshops", which may be amended or superseded by further directives.

(a) Travel to an event, if it would require more than four hours of driving time round-trip will, whenever possible be by air.

(b) All other methods of travel shall conform to those described in the COB Administrative Regulation.

1028.6 OUTSIDE TRAINING REQUESTS

An employee desiring to attend a local event wherein there is an expenditure (i.e., meals, tuition or registration), or any non-local event, shall at the earliest possible time, submit a written request to the employee's commanding officer via an “Outside Training Request” form.

All training requests need to be approved first through the appropriate staffing Lieutenant. Those assigned to attend training during their regular duty shift shall attend in an on-duty status. Employees shall not flex or adjust their schedule in order to receive overtime or compensatory time.

If approved, the division captain shall forward the request to the Personnel and Training Bureau, indicating whether funds have been budgeted or are available.

Personnel and Training will prepare and submitthe "Attendance and Travel Request" form to the Chief of Police for review. If approved, it will be forwarded to the Budget Officer in the City Manager's Office for final review.

(a) Personnel and Training ensures appropriate notifications are made to the officer and his/her commanding officer(s) regarding status of the training class.

1028.7 TRAVEL TIME

Section 29 C.F.R. 785.39 of The Fair Labor Standards Act (FLSA), provides that travel time is compensable work time when it occurs during the employee’s regular working hours. Under this regulation, compensable travel time includes travel time that occurs during the employee’s normal working hours on nonworking days.

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When attending an approved conference/training, “travel time to” will be compensable from the time the employee leaves the PSB or their residence to the time they arrive at their destination (i.e. hotel, class). On the return, “travel time from” will be compensable from the time the employee leaves the conference/training to the time they arrive at the PSB or their residence.

When attending an approved conference or training, the time given for lunch is not compensable. Participation in social gatherings or meetings that are not required for the completion of the conference/training are not compensable.

For auditing purposes, when completing the “Training Time Credit Record”, the time spent traveling needs to be documented separately from the “times attended”. Therefore this travel time needs to be hand-written onto the Training Time Credit Record.

1028.8 MILEAGE

Mileage should be calculated by the distance from either the PSB or your residence to the event, whichever is less (i.e. for a class in Sacramento, mileage from the employee’s house in Vacaville would be used because it is closer to Sacramento than Berkeley). The number of miles will be multiplied by the daily mileage rate (determined by the IRS, see COB Admin Regulation 7.2 - Use of Private Vehicles). Mileage should be documented on the “Mileage Reimbursement” form.

1028.9 CLASS COMPLETION

Class time missed as a result of an excused or unexcused absence shall be made up with the instructor’s approval, prior to receiving a certificate of completion.

1028.10 DOCUMENTATION

All employees attending outside department sponsored training, shall complete and submit a Training Time Credit Report, Statement of Expense Form and/or a Mileage Reimbursement Form and any received certificates to the Personnel and Training Bureau within five days of the completion of training. The Training Sergeant shall route the forms to the Personnel and Training Bureau's Assistant Management Analyst (AMA) to log the training credit and, if applicable, reimburse the employee, per COB Administrative Regulation 3.4 and POST requirements.

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Employee Speech, Expression and Social Networking

1029.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

1029.1.1 APPLICABILITY

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

1029.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Berkeley Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

1029.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect the safety of the Berkeley Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

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- Disclosing a photograph and name or address of an officer who is working undercover.
- Disclosing the address of a fellow officer.
- Otherwise disclosing where another officer can be located off-duty.

1029.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

To meet the department's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, on a matter of public concern):

(a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees.

(b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees. Examples may include:

1. Statements that indicate disregard for the law or the state or U.S. Constitution.
2. Expression that demonstrates support for criminal activity.
3. Participating in sexually explicit photographs or videos for compensation or distribution.

(c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.

(d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Department. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.

(e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Berkeley Police Department.

(f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department for financial or personal gain, or any disclosure of such materials without the express authorization of the Chief of Police or the authorized designee.

(g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches,

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marked vehicles, equipment or other material that specifically identifies the Berkeley Police Department on any personal or social networking or other website or web page, without the express authorization of the Chief of Police.

(h) Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or department-owned, for personal purposes while on-duty, except in the following circumstances:

1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
2. During authorized breaks such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees should take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

1029.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or officer associations, employees may not represent the Berkeley Police Department or identify themselves in any way that could be reasonably perceived as representing the Berkeley Police Department in order to do any of the following, unless specifically authorized by the Chief of Police (Government Code § 3206; Government Code § 3302):

(a) Endorse, support, oppose or contradict any political campaign or initiative.

(b) Endorse, support, oppose or contradict any social issue, cause or religion.

(c) Endorse, support or oppose any product, service, company or other commercial entity.

(d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or officer associations), is affiliated with this department, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Berkeley Police Department.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or officer associations, on political subjects and candidates at all times while off-duty.

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However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

1029.5 PRIVACY EXPECTATION

Employees forfeit any expectation of privacy with regard to e-mails, texts or anything published or maintained through file-sharing software or any Internet site (e.g., Facebook, MySpace) that is accessed, transmitted, received or reviewed on any department technology system.

The Department reserves the right to access, audit and disclose for whatever reason any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department. This includes the department e-mail system, computer network or any information placed into storage on any department system or device.

It also includes records of all key strokes or web-browsing history made at any department computer or over any department network.

The fact that access to a database, service or website requires a user name or password will not create an expectation of privacy if it is accessed through a department computer or network. However, the Department may not require an employee to disclose a personal user name or password or open a personal social website, except when access is reasonably believed to be relevant to the investigation of allegations of work related misconduct (Labor Code § 980).

1029.6 CONSIDERATIONS

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Chief of Police or authorized designee should consider include:

(a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.

(b) Whether the speech or conduct would be contrary to the good order of the Department or the efficiency or morale of its members.

(c) Whether the speech or conduct would reflect unfavorably upon the Department.

(d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.

(e) Whether similar speech or conduct has been previously authorized.

(f) Whether the speech or conduct may be protected and outweighs any interest of the Department.

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1029.7 TRAINING

Subject to available resources, the Department should provide training regarding employee speech and the use of social networking to all members of the Department.

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The Safety Committee

1030.1 PURPOSE AND SCOPE

The purpose of this policy is to establish an ongoing and effective plan to reduce the incidence of illness and injury for members of the Berkeley Police Department, in accordance with the requirements of 8 CCR § 3203.

This policy specifically applies to illness and injury that results in lost time or that requires medical treatment beyond first aid. Although this policy provides the essential guidelines for a plan that reduces illness and injury, it may be supplemented by procedures outside the Policy Manual.

This policy does not supersede, but supplements any related Citywide safety efforts.

1030.2 POLICY

The Berkeley Police Department is committed to providing a safe environment for its members and visitors and to minimizing the incidence of work-related illness and injuries. The Department will establish and maintain a Safety Committee which will evaluate tools, training and safeguards designed to reduce the potential for accidents, illness and injuries. It is the intent of the Department to comply with all laws and regulations related to occupational safety.

1030.3 SAFETY COMMITTEE

The Safety Committee will be comprised of members from every division and will fall under the direction of the Professional Standards Division Captain or their designee. The Safety Committee Chair will be responsible for the following:

(a) Conducting regularly scheduled safety meetings.

(b) Posting or distributing safety information, as necessary.

(c) Providing a system for members to anonymously inform management about workplace hazards.

(d) Preparing and maintaining a written record of safety and health committee meetings.

(e) Reviewing the results of periodic scheduled inspections.

(f) Reviewing investigations of accidents and exposures.

(g) Making suggestions to command staff for the prevention of future incidents.

(h) Reviewing investigations of alleged hazardous conditions.

(i) Submitting recommendations to assist in the evaluation of member safety suggestions.

(j) Assessing the effectiveness of efforts made by the Department to meet relevant standards.

(k) Establishing a process to ensure serious illnesses or injuries and death are reported as required by the Division of Occupational Safety and Health Administration (Cal/OSHA) (8 CCR § 342).

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1030.4 PROFESSIONAL STANDARDS DIVISION CAPTAIN RESPONSIBILITIES

The responsibilities of the Professional Standards Division Captain, or their designee, include, but are not limited to:

(a) Managing a plan to reduce the incidence of member illness and injury.

(b) Ensuring that a system of communication is in place that facilitates a continuous flow of safety and health information between supervisors and members. This system shall include:

(c) Ensuring that all safety and health policies and procedures are clearly communicated and understood by all members.

(d) Taking reasonable steps to ensure that all members comply with safety rules in order to maintain a safe work environment. This includes, but is not limited to:

1. Informing members of the illness and injury prevention guidelines.
2. Recognizing members who perform safe work practices.
3. Ensuring that the member evaluation process includes member safety performance.
4. Ensuring department compliance to meet standards regarding the following:
   - i. Respiratory protection (8 CCR § 5144)
   - ii. Bloodborne pathogens (8 CCR § 5193)
   - iii. Aerosol transmissible diseases (8 CCR § 5199)
   - iv. Heat illness (8 CCR § 3395)
   - v. Emergency Action Plan (8 CCR § 3220)
   - vi. Fire Prevention Plan (8 CCR § 3221)

(e) Making available the City of Berkeley Employee Safety Suggestion form to document inspections, unsafe conditions or work practices, and actions taken to correct unsafe conditions and work practices.

(f) Making available the Summary of Employee Injuries Report, which documents individual incidents or accidents.

(g) Conducting and documenting a regular review of the illness and injury prevention plan.

1030.5 SUPERVISOR RESPONSIBILITIES

Supervisor responsibilities include, but are not limited to:

(a) Ensuring member compliance with illness and injury prevention guidelines and answering questions from members about this policy.

(b) Training, counseling, instructing or making informal verbal admonishments any time safety performance is deficient. Supervisors may also initiate discipline when it is reasonable and appropriate under the Standards of Conduct Policy.

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(c) Establishing and maintaining communication with members on health and safety issues. This is essential for an injury-free, productive workplace.

(d) Completing required forms and reports relating to illness and injury prevention; such forms and reports shall be submitted to the Professional Standards Division Captain.

(e) Notifying the Professional Standards Division Captain when:

1. New substances, processes, procedures or equipment that present potential new hazards are introduced into the work environment.
2. New, previously unidentified hazards are recognized.
3. Occupational illnesses and injuries occur.
4. New and/or permanent or intermittent members are hired or reassigned to processes, operations or tasks for which a hazard evaluation has not been previously conducted.
5. Workplace conditions warrant an inspection.

1030.6 HAZARDS

All members should report and/or take reasonable steps to correct unsafe or unhealthy work conditions, practices or procedures in a timely manner. Members should make their reports to a supervisor (as a general rule, their own supervisors).

Supervisors should make reasonable efforts to correct unsafe or unhealthy work conditions in a timely manner, based on the severity of the hazard. These hazards should be corrected when observed or discovered, when it is reasonable to do so. When a hazard exists that cannot be immediately abated without endangering members or property, supervisors should protect or remove all exposed members from the area or item, except those necessary to correct the existing condition.

Members who are necessary to correct the hazardous condition shall be provided with the necessary personal protection equipment.

All significant actions taken and dates they are completed shall be documented via memo from the respective supervisor and should be forwarded to the Professional Standards Captain via the chain of command.

The Professional Standards Division Captain will take appropriate action to ensure the Safety Committee addresses potential hazards upon such notification.

1030.7 INSPECTIONS

Safety inspections are crucial to a safe work environment. These inspections identify and evaluate workplace hazards and permit mitigation of those hazards.

The Professional Standards Division Captain shall ensure that the appropriate documentation is completed for each inspection.

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1030.7.1 EQUIPMENT

Members are charged with daily vehicle inspections of their assigned vehicles and of their personal protective equipment (PPE) prior to working in the field. Members shall complete a Defective Condition form if an unsafe condition cannot be immediately corrected, see also the Personal Protective Equipment and Vehicle Maintenance Policies.

1030.8 INVESTIGATIONS

Any member sustaining any work-related illness or injury, as well as any member who is involved in any accident or hazardous substance exposure while on-duty shall report such event as soon as practicable to a supervisor. Members observing or learning of a potentially hazardous condition are to promptly report the condition to their immediate supervisors.

A supervisor receiving such a report should personally investigate the incident or ensure that an investigation is conducted. Investigative procedures for workplace accidents and hazardous substance exposures should include:

(a) A visit to the accident scene as soon as possible.

(b) An interview of the injured member and witnesses.

(c) An examination of the workplace for factors associated with the accident/exposure.

(d) Determination of the cause of the accident/exposure.

(e) Corrective action to prevent the accident/exposure from reoccurring.

(f) Documentation of the findings and corrective actions taken.

Additionally, the supervisor should proceed with the steps to report an on-duty injury, as required under the Occupational Disease and Work-Related Injury Reporting Policy, in conjunction with this investigation to avoid duplication and ensure timely reporting.

1030.9 TRAINING

The Professional Standards Division Captain should work with the Personnel and Training Sergeant to provide all members, including supervisors, with training on general and job-specific workplace safety and health practices. Training shall be provided:

(a) To supervisors to familiarize them with the safety and health hazards to which members under their immediate direction and control may be exposed.

(b) To all members with respect to hazards specific to each member's job assignment.

(c) To all members given new job assignments for which training has not previously been provided.

(d) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard.

(e) Whenever the Department is made aware of a new or previously unrecognized hazard.

1030.9.1 TRAINING TOPICS

The Personnel and Training Sergeant shall ensure that training includes:

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(a) Use of appropriate clothing, including footwear and PPE.

(b) Use of respiratory equipment.

(c) Provisions for medical services and first aid.

(d) Handling of bloodborne pathogens and other biological hazards.

(e) Prevention of heat and cold stress.

(f) Identification and handling of hazardous materials, including chemical hazards to which members could be exposed, and review of resources for identifying and mitigating hazards (e.g., hazard labels, Safety Data Sheets (SDS)).

(g) Mitigation of physical hazards, such as heat and cold stress, noise, and ionizing and non-ionizing radiation.

(h) Back exercises/stretches and proper lifting techniques.

(i) Other job-specific safety concerns.

1030.10 RECORDS

Records and training documentation relating to illness and injury prevention will be maintained in accordance with the established records retention schedule.

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Line-of-Duty Deaths

1031.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members of the Berkeley Police Department in the event of the death of a member occurring in the line of duty and to direct the Department in providing proper support for the member's survivors.

The Chief of Police may also apply some or all of this policy in situations where members are seriously injured in the line of duty.

1031.1.1 DEFINITIONS

Definitions related to this policy include:

Line-of-duty death - The death of a sworn member during the course of performing law enforcement-related functions while on- or off-duty, or a non-sworn member during the course of performing their assigned duties.

Survivors - Immediate family members of the deceased member, which can include spouse, children, parents, other next of kin or significant others. The determination of who should be considered a survivor for purposes of this policy should be made on a case-by-case basis given the individual's relationship with the member and whether the individual was previously designated by the deceased member.

1031.2 POLICY

It is the policy of the Berkeley Police Department to make appropriate notifications and to provide assistance and support to survivors and coworkers of a member who dies in the line of duty.

It is also the policy of this department to respect the requests of the survivors when they conflict with these guidelines, as appropriate.

1031.3 ON-DUTY DEATH / SERIOUS INJURY PACKET

Each employee will receive a packet titled "On-Duty Death/Serious Injury." The information provided by the employee is completed voluntary and confidential. No one is under any obligation to fill out the form.

Once the initial information packet is received, it will be stored in a secure location in the Professional Standards Division. The packet will be available for updating at any time for the employee, but should be made available for updating during the employee's annual performance appraisal by the employee's supervisor. Once completed, the packet shall be returned to the Professional Standards Division.

1031.4 MEMBER RESPONSIBILITY

After a line of duty death, members must allow sufficient time for proper notifications to be made to the family and loved ones of the decedent. No member shall notify the decedent's family members or loved ones of the death unless directed to do so by the Watch Commander. No member

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shall make notifications upon social media of the line-of-duty death. Members must allow time for Command Staff to determine and respect the wishes of the decedent in regards to the notification of his/her family members and loved ones.

1031.5 INITIAL ACTIONS BY COMMAND STAFF

(a) Upon learning of a line-of-duty death, the deceased member's supervisor should provide all reasonably available information to the Watch Commander and the Communications Center.

1. Communication of information concerning the member and the incident should be restricted to secure networks to avoid interception by the media or others (see the Public Information Officer section of this policy).

(b) The Watch Commander should ensure that notifications are made in accordance with the Officer-Involved Shootings and Deaths and Major Incident Notification policies as applicable.

(c) If the member has been transported to the hospital, the Watch Commander or the designee should respond to the hospital to assume temporary responsibilities as the Hospital Liaison.

(d) The Chief of Police or the authorized designee should assign members to handle survivor notifications and assign members to the roles of Hospital Liaison (to relieve the temporary Hospital Liaison) and the Department Liaison as soon as practicable (see the Notifying Survivors section and the Department Liaison and Hospital Liaison subsections in this policy).

1031.6 NOTIFYING SURVIVORS

Survivors should be notified as soon as possible in order to avoid the survivors hearing about the incident in other ways.

The Chief of Police or the authorized designee should review the deceased member's emergency contact information and make accommodations to respect the member's wishes and instructions specific to notifying survivors. However, notification should not be excessively delayed because of attempts to assemble a notification team in accordance with the member's wishes.

The Chief of Police, Watch Commander or the authorized designee should select at least two members to conduct notification of survivors, one of which may be the Department Chaplain.

Notifying members should:

(a) Make notifications in a direct and compassionate manner, communicating as many facts of the incident as possible, including the current location of the member. Information that is not verified should not be provided until an investigation has been completed.

(b) Determine the method of notifying surviving children by consulting with other survivors and taking into account factors such as the child's age, maturity and current location (e.g., small children at home, children in school).

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(c) Plan for concerns such as known health concerns of survivors or language barriers.

(d) Offer to transport survivors to the hospital, if appropriate. Survivors should be transported in department vehicles. Notifying members shall inform the Hospital Liaison over a secure network that the survivors are on their way to the hospital and should remain at the hospital while the survivors are present.

(e) When survivors are not at their residences or known places of employment, actively seek information and follow leads from neighbors, other law enforcement, postal authorities and other sources of information in order to accomplish notification in as timely a fashion as possible. Notifying members shall not disclose the reason for their contact other than a family emergency.

(f) If making notification at a survivor's workplace, ask a workplace supervisor for the use of a quiet, private room to meet with the survivor. Members shall not inform the workplace supervisor of the purpose of their visit other than to indicate that it is a family emergency.

(g) Offer to call other survivors, friends or clergy to support the survivors and to avoid leaving survivors alone after notification.

(h) Assist the survivors with meeting childcare or other immediate needs.

(i) Provide other assistance to survivors and take reasonable measures to accommodate their needs, wishes and desires. Care should be taken not to make promises or commitments to survivors that cannot be met.

(j) Inform the survivors of the name and phone number of the Survivor Support Liaison (see the Survivor Support Liaison section of this policy), if known, and the Department Liaison.

(k) Provide their contact information to the survivors before departing.

(l) Document the survivor's names and contact information, as well as the time and location of notification. This information should be forwarded to the Department Liaison.

(m) Inform the Chief of Police or the authorized designee once survivor notifications have been made so that other Berkeley Police Department members may be apprised that survivor notifications are complete.

1031.6.1 OUT-OF-AREA NOTIFICATIONS

The Department Liaison should request assistance from law enforcement agencies in appropriate jurisdictions for in-person notification to survivors who are out of the area.

(a) The Department Liaison should contact the appropriate jurisdiction using a secure network and provide the assisting agency with the name and telephone number of the department member that the survivors can call for more information following the notification by the assisting agency.

(b) The Department Liaison may assist in making transportation arrangements for the member's survivors, but will not obligate the Department to pay travel expenses without the authorization of the Chief of Police.

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1031.7 NOTIFYING DEPARTMENT MEMBERS

Supervisors or members designated by the Chief of Police are responsible for notifying department members of the line-of-duty death as soon as possible after the survivor notification is made. Notifications and related information should be communicated in person or using secure networks and should not be transmitted over the radio.

Notifications should be made in person and as promptly as possible to all members on-duty at the time of the incident. Members reporting for subsequent shifts within a short amount of time should be notified in person at the beginning of their shift. Members reporting for duty from their residence should be instructed to contact their supervisor as soon as practicable. Those members who are working later shifts or are on days off should be notified by phone as soon as practicable.

Members having a close bond with the deceased member should be notified of the incident in person. Supervisors should consider assistance (e.g., peer support group, modifying work schedules, approving sick leave) for members who are especially affected by the incident.

Supervisors should direct members not to disclose any information outside the Department regarding the deceased member or the incident.

1031.8 LIAISONS AND COORDINATORS

The Chief of Police or the authorized designee should select members to serve as liaisons and coordinators to handle responsibilities related to a line-of-duty death, including, but not limited to:

(a) Department Liaison.

(b) Hospital Liaison.

(c) Survivor Support Liaison.

(d) Peer Support / Critical Incident Stress Management (CISM) coordinator.

(e) Funeral Liaison.

(f) Mutual aid coordinator.

(g) Benefits Liaison.

(h) Finance coordinator.

Liaisons and coordinators will be directed by the Department Liaison and should be given sufficient duty time to complete their assignments.

Members may be assigned responsibilities of more than one liaison or coordinator position depending on available department resources. The Department Liaison may assign separate liaisons and coordinators to accommodate multiple family units, if needed.

1031.8.1 DEPARTMENT LIAISON

The Department Liaison should be a Division Captain or of sufficient rank to effectively coordinate department resources, and should serve as a facilitator between the deceased member's survivors and the Department. The Department Liaison reports directly to the Chief of Police. The Department Liaison's responsibilities include, but are not limited to:

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(a) Directing the other liaisons and coordinators in fulfilling survivors' needs and requests. Consideration should be given to organizing the effort using the National Incident Management System (NIMS).

(b) Establishing contact with survivors within 24 hours of the incident and providing them contact information.

(c) Advising survivors of the other liaison and coordinator positions and their roles and responsibilities.

(d) Identifying locations that will accommodate a law enforcement funeral and presenting the options to the appropriate survivors, who will select the location.

(e) Coordinating all official law enforcement notifications and arrangements.

(f) Making necessary contacts for authorization to display flags at half-mast.

(g) Ensuring that department members are reminded of appropriate information–sharing restrictions regarding the release of information that could undermine future legal proceedings.

(h) Coordinating security checks of the member's residence as necessary and reasonable.

(i) Serving as a liaison with visiting law enforcement agencies during memorial and funeral services.

1031.8.2 HOSPITAL LIAISON

The Hospital Liaison should work with hospital personnel to:

(a) Arrange for appropriate and separate waiting areas for:

1. The survivors and others whose presence is requested by the survivors.
2. Department members and friends of the deceased member.
3. Media personnel.

(b) Ensure, as much as practicable, that any suspects who are in the hospital and their families or friends are not in close proximity to the member's survivors or Berkeley Police Department members (except for members who may be guarding the suspect).

(c) Ensure that survivors receive timely updates regarding the member before information is released to others.

(d) Arrange for survivors to have private time with the member, if requested.

1. The Hospital Liaison or hospital personnel may need to explain the condition of the member to the survivors to prepare them accordingly.
2. The Hospital Liaison should accompany the survivors into the room, if requested.

(e) Stay with survivors and ensure that they are provided with other assistance as needed at the hospital.

(f) If applicable, explain to the survivors why an autopsy may be needed.

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(g) Ensure hospital bills are directed to the Department, that the survivors are not asked to sign as guarantor of payment for any hospital treatment and that the member's residence address, insurance information and next of kin are not included on hospital paperwork.

Other responsibilities of the Hospital Liaison include, but are not limited to:

- Arranging transportation for the survivors back to their residence.
- Working with investigators to gather and preserve the deceased member's equipment and other items that may be of evidentiary value.
- Documenting his/her actions at the conclusion of his/her duties.

1031.8.3 SURVIVOR SUPPORT LIAISON

The Survivor Support Liaison should work with the Department Liaison to fulfill the immediate needs and requests of the survivors of any member who has died in the line of duty, and serve as the long-term department contact for survivors.

The Survivor Support Liaison should be selected by the deceased member's Division Captain. The following should be considered when selecting the Survivor Support Liaison:

- The liaison should be an individual the survivors know and with whom they are comfortable working.
- If the survivors have no preference, the selection may be made from names recommended by the deceased member's supervisor and/or coworkers. The deceased member's partner or close friends may not be the best selections for this assignment because the emotional connection to the member or survivors may impair their ability to conduct adequate liaison duties.
- The liaison must be willing to assume the assignment with an understanding of the emotional and time demands involved.

The responsibilities of the Survivor Support Liaison include, but are not limited to:

(a) Arranging for transportation of survivors to hospitals, places of worship, funeral homes and other locations, as appropriate.

(b) Communicating with the Department Liaison regarding appropriate security measures for the family residence, as needed.

(c) If requested by the survivors, providing assistance with instituting methods of screening telephone calls made to their residence after the incident.

(d) Providing assistance with travel and lodging arrangements for out-of-town survivors.

(e) Returning the deceased member's personal effects from the Department and the hospital to the survivors. The following should be considered when returning the personal effects:

1. Items should not be delivered to the survivors until they are ready to receive the items.
2. Items not retained as evidence should be delivered in a clean, unmarked box.

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3. All clothing not retained as evidence should be cleaned and made presentable (e.g., items should be free of blood or other signs of the incident).
4. The return of some personal effects may be delayed due to ongoing investigations.

(f) Assisting with the return of department-issued equipment that may be at the deceased member's residence.

1. Unless there are safety concerns, the return of the equipment should take place after the funeral at a time and in a manner considerate of the survivors' wishes.

(g) Working with the CISM coordinator to ensure that survivors have access to available counseling services.

(h) Coordinating with the department's Public Information Officer (PIO) to brief the survivors on pending press releases related to the incident and to assist the survivors with media relations in accordance with their wishes (see the Public Information Officer section of this policy).

(i) Briefing survivors on investigative processes related to the line-of-duty death, such as criminal, internal and administrative investigations.

(j) Informing survivors of any related criminal proceedings and accompanying them to such proceedings.

(k) Introducing survivors to prosecutors, victim's assistance personnel and other involved personnel as appropriate.

(l) Maintaining long-term contact with survivors and taking measures to sustain a supportive relationship (e.g., follow-up visits, phone calls, cards on special occasions, special support during holidays).

(m) Inviting survivors to department activities, memorial services or other functions as appropriate.

Survivor Support Liaisons providing services after an incident resulting in multiple members being killed should coordinate with and support each other through conference calls or meetings as necessary.

The Department recognizes that the duties of a Survivor Support Liaison will often affect regular assignments over many years, and is committed to supporting members in the assignment.

If needed, the Survivor Support Liaison should be issued a personal communication device (PCD) owned by the Department to facilitate communications necessary to the assignment. The department-issued PCD shall be used in accordance with the Personal Communication Devices Policy.

1031.8.4 PEER SUPPORT / CRITICAL INCIDENT STRESS MANAGEMENT COORDINATOR

The CISM coordinator should work with the Chief of Police or the authorized designee, liaisons, coordinators and other resources to make CISM and counseling services available to members

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and survivors who are impacted by a line-of-duty death. The responsibilities of the CISM coordinator include, but are not limited to:

(a) Identifying members who are likely to be significantly affected by the incident and may have an increased need for CISM and counseling services, including:

1. Members involved in the incident.
2. Members who witnessed the incident.
3. Members who worked closely with the deceased member but were not involved in the incident.

(b) Ensuring that members who were involved in or witnessed the incident are relieved of department responsibilities until they can receive CISM support as appropriate and possible.

(c) Ensuring that CISM and counseling resources (e.g., peer support, debriefing, grief counselors) are available to members as soon as reasonably practicable following the line-of-duty death.

(d) Coordinating with the Survivor Support Liaison to ensure survivors are aware of available CISM and counseling services and assisting with arrangements as needed.

(e) Following up with members and the Survivor Support Liaison in the months following the incident to determine if additional CISM or counseling services are needed.

1031.8.5 FUNERAL LIAISON

The Funeral Liaison should work with the Department Liaison, Survivor Support Liaison and survivors to coordinate funeral arrangements to the extent the survivors wish. The Funeral Liaison's responsibilities include, but are not limited to:

(a) Assisting survivors in working with the funeral director regarding funeral arrangements and briefing them on law enforcement funeral procedures.

(b) Completing funeral notification to other law enforcement agencies.

(c) Coordinating the funeral activities of the Department, including, but not limited to the following:

1. Honor Guard
   - (a) Casket watch
   - (b) Color guard
   - (c) Pallbearers
   - (d) Bell/rifle salute
2. Bagpipers/bugler
3. Uniform for burial
4. Flag presentation
5. Last radio call

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(d) Briefing the Chief of Police and command staff concerning funeral arrangements.

(e) Assigning an officer to remain at the family home during the viewing and funeral.

(f) Arranging for transportation of the survivors to and from the funeral home and interment site using department vehicles and drivers.

1031.8.6 MUTUAL AID COORDINATOR

The mutual aid coordinator should work with the Department Liaison and the Funeral Liaison to request and coordinate any assistance from outside law enforcement agencies needed for, but not limited to:

(a) Traffic control during the deceased member's funeral.

(b) Area coverage so that as many Berkeley Police Department members can attend funeral services as possible.

The mutual aid coordinator should perform his/her duties in accordance with the Mutual Aid and Outside Agency Assistance Policy.

1031.8.7 BENEFITS LIAISON

The Benefits Liaison should provide survivors with information concerning available benefits and assist them in applying for benefits. Responsibilities of the Benefits Liaison include, but are not limited to:

(a) Confirming the filing of workers' compensation claims and related paperwork (see the Occupational Disease and Work-Related Injury Reporting Policy).

(b) Researching and assisting survivors with application for federal government survivor benefits, such as those offered through the:

1. Public Safety Officers' Benefits (PSOB) Programs.
2. Public Safety Officers' Educational Assistance (PSOEA) Program.
3. Social Security Administration.
4. Department of Veterans Affairs.

(c) Researching and assisting survivors with application for state and local government survivor benefits.

1. Education benefits (Education Code § 68120)
2. Health benefits (Labor Code § 4856)
3. Worker's compensation death benefit (Labor Code § 4702)

(d) Researching and assisting survivors with application for other survivor benefits such as:

1. Private foundation survivor benefits programs.
2. Survivor scholarship programs.

(e) Researching and informing survivors of support programs sponsored by police associations and other organizations.

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(f) Documenting and informing survivors of inquiries and interest regarding public donations to the survivors.

1. If requested, working with the finance coordinator to assist survivors with establishing a process for the receipt of public donations.

(g) Providing survivors with a summary of the nature and amount of benefits applied for, including the name of a contact person at each benefit office. Printed copies of the summary and benefit application documentation should be provided to affected survivors.

(h) Maintaining contact with the survivors and assisting with subsequent benefit questions and processes as needed.

1031.8.8 FINANCE COORDINATOR

The finance coordinator should work with the Chief of Police and the Department Liaison to manage financial matters related to the line-of-duty death. The finance coordinator's responsibilities include, but are not limited to:

(a) Establishing methods for purchasing and monitoring costs related to the incident.

(b) Providing information on finance-related issues, such as:

1. Paying survivors' travel costs if authorized.

2. Transportation costs for the deceased.

3. Funeral and memorial costs.

4. Related funding or accounting questions and issues.

(c) Working with the Benefits Liaison to establish a process for the receipt of public donations to the deceased member's survivors.

(d) Providing accounting and cost information as needed.

1031.9 PUBLIC INFORMATION OFFICER

In the event of a line-of-duty death, the department's PIO should be the department's contact point for the media. As such, the PIO should coordinate with the Department Liaison to:

(a) Collect and maintain the most current incident information and determine what information should be released.

(b) Ensure that department members are instructed to direct any media inquiries to the PIO.

(c) Prepare necessary press releases.

1. Ensure coordination with other entities having media roles (e.g., outside agencies involved in the investigation or incident).

2. Ensure that important public information is disseminated, such as information on how the public can show support for the Department and deceased member's survivors.

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(d) Arrange for community and media briefings by the Chief of Police or the authorized designee as appropriate.

(e) Respond, or coordinate the response, to media inquiries.

(f) If requested, assist the member's survivors with media inquiries.

1. Brief the survivors on handling sensitive issues such as the types of questions that reasonably could jeopardize future legal proceedings.

(g) Release information regarding memorial services and funeral arrangements to department members, other agencies and the media as appropriate.

(h) If desired by the survivors, arrange for the recording of memorial and funeral services via photos and/or video.

The identity of deceased members should be withheld until the member's survivors have been notified. If the media has obtained identifying information for the deceased member prior to survivor notification, the PIO should request that the media withhold the information from release until proper notification can be made to survivors. The PIO should ensure that media are notified when survivor notifications have been made.

1031.10 DEPARTMENT CHAPLAIN

The Department chaplain may serve a significant role in line-of-duty deaths. His/her duties may include, but are not limited to:

- Assisting with survivor notifications and assisting the survivors with counseling, emotional support or other matters, as appropriate.
- Assisting liaisons and coordinators with their assignments, as appropriate.
- Assisting department members with counseling or emotional support, as requested and appropriate.

Further information on the potential roles and responsibilities of the chaplain is in the Chaplains Policy.

1031.11 INVESTIGATION OF THE INCIDENT

The Chief of Police shall ensure that line-of-duty deaths are investigated thoroughly and may choose to use the investigation process outlined in the Officer-Involved Shootings and Deaths Policy.

Investigators from other agencies may be assigned to work on any criminal investigation related to line-of-duty deaths. Partners, close friends or personnel who worked closely with the deceased member should not have any investigative responsibilities because such relationships may impair the objectivity required for an impartial investigation of the incident.

Involved department members should be kept informed of the progress of the investigations and provide investigators with any information that may be pertinent to the investigations.

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1031.12 NON-LINE-OF-DUTY DEATH

The Chief of Police may authorize certain support services for the death of a member not occurring in the line of duty.

1031.13 ADDITIONAL RESOURCES

The Alameda County Law Enforcement Funeral Protocol, if needed can provide further guidance in the proper protocols associated with the funeral service.

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The Critical Incident Stress Management (CISM) and Peer Support Program

1032.1 PURPOSE AND SCOPE

The Berkeley Police Department places the greatest possible value and emphasis upon the welfare of its members and recognizes public safety employees face situations which may create significant distress. The Berkeley Police Department's Critical Incident Stress Management (CISM) and Peer Support Program is designed to provide confidential emotional support during and after times of personal or professional crisis to members who express a need for assistance, or for whom supervisory staff feel could benefit from program involvement. The CISM and Peer Support Program shall promote trust, allow anonymity, and preserve confidentiality for all members utilizing the program.

1032.2 POLICY

It is the policy of the Berkeley Police Department to provide peer and psychological support for members involved in critical incidents, on or off duty. This will be accomplished through the use of the CISM and Peer Support Program.

1032.3 CRITICAL INCIDENT DEFINED

A critical incident is defined as any event that has a stressful impact which is sufficient enough to overwhelm the usually effective coping skills of an individual. An event is considered a critical incident based on an individual's unique, internal reaction to the event, not necessarily the external appearance or apparent magnitude of the event. A critical incident is not necessarily a life-threatening event. Common incidents that pose an increased potential for trauma include, but are not limited to:

(a) Shootings

(b) An actual or perceived threat to one's life or of grievous physical harm

(c) Suicide or attempted suicide by a colleague

(d) Serious injury inflicted on, or death of, a colleague

(e) Serious injury or death of a non-member, especially a child

(f) Cruelty/abuse to a child

(g) Death or injury of a person resulting from duty operations

(h) Perceived "failure" during a tragic/traumatic event

(i) Large scale or prolonged disaster

(j) Events with high media exposure

(k) Any event that may have private or personal emotional significance to a member, particularly when the event is characterized by: relative surprise; intense negative emotion; and perceived helplessness.

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1032.4 CRITICAL INCIDENT STRESS MANAGEMENT (CISM)

CISM is a crisis intervention program used to support employees involved in a critical incident. It is a formal, highly structured, and professionally recognized process for helping those involved in a critical incident to share their experiences, vent emotions, and learn about stress reactions and symptoms. The CISM program is facilitated by the Peer Support Team.

CISM encompasses the following components:

(a) Critical Incident Stress Debriefing (CISD): A structured group discussion of thoughts and reactions resulting from the incident. Discussion of typical stress-related symptoms will also be included. It is designed to mitigate acute symptoms, assess the need for follow-up, and accelerate the normal recovery processes to provide, if possible, a sense of post-crisis psychological closure.

(b) Defusing: A voluntary individual or group meeting held shortly after a critical incident aimed to educate, inform and assess the needs of the employees exposed to the incident. It is a brief process that, in most cases, is considered sufficient to assist the employee in coping with the aftermath. The defusing may be used to determine the need for a CISD and/or other services.

(c) Rest Information Transition Services (RITS) {formerly known as “Demobilization”}: The CISM intervention used during a major catastrophe in which large numbers of persons must be moved from a scene with the possibility of having to return to the scene for addition work. (i.e. natural disaster; major transportation accidents) RITS occur immediately after a member is removed from a scene and provides only the basic needs necessary at that point, such as food, water, rest and informational handouts regarding recuperation.

(d) Peer/Individual Debriefing: A discussion between the affected employee and a Peer Support Team Member designed to help mitigate symptoms of stressful events and/ or to make referrals as needed.

(e) Peer Support: A process by which trained personnel provide emotional support and referrals to a colleague during a crisis or when they are under stress. Generally, peer support is sought by the employee in need or suggested by the employee's peer(s) or supervisor. Peer Support does not replace the need for structured group intervention following trauma.

All CISM components are intended to mitigate symptoms, assess the need for follow up and accelerate the normal recovery process.

1032.5 PEER SUPPORT TEAM COMPOSITION

The Peer Support Team is a formally established and CISM trained group of peers and mental health professionals capable of providing one-on-one support, referrals, assistance with stress awareness and reduction, along with guidance during defusings and debriefings.

The Peer Support Team is comprised of the following members:

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- Professional Standards Division Captain: The Professional Standards Division Captain shall be responsible for the Peer Support Program budget, choosing the Peer Support Team Liaison and assisting the Liaison with the Program as needed.Peer Support Team Liaison: The Liaison will be responsible for management oversight of the team and serves as the intermediary between Command Staff and the Peer Support Team. The Liaison is generally someone at the rank of Lieutenant and should have sufficient autonomy and authority to provide for responsibilities such as authorization of overtime across multiple work groups or teams, and ability to access sensitive information regarding incidents or involving personnel.
- Peer Support Team Coordinator:The Coordinator will be responsible for the day to day operations of the team, providing both direct and indirect supervision of team members during their tenure on the peer team. The Coordinator will generally be someone at the rank of Sergeant and should have strong organizational and leadership skills. Based on Departmental need, there may be more than one coordinator.
- Peer Support Team Member: A Peer Support Team Member shall be an employee who, by virtue of prior experience, training, or interest, has expressed a desire and has been selected to provide support for employees of the Berkeley Police Department. Team Members shall be nominated from Department personnel at large. Team Members should consist of officers of several ranks, if possible, as well as civilian staff such as Community Service Officers, Parking Enforcement Officers and Public Safety Dispatchers.
- Peer Support Advisory Committee and Members: A Peer Support Team Advisor shall be an employee who attends team meetings and provides advice regarding the Team's function and direction.
- Peer Support Mental Health Professional: A Psychologist, Psychiatrist, Licensed Marriage and Family Therapist (LMFT), or Licensed Clinical Social Worker (LCSW) who has the requisite training and experience in the International Critical Incident Stress Foundation (ICISF) protocols and CISM standards. This may include a member of Berkeley's Mobile Crisis Team, or a person who is independent of the Department.

1032.6 PEER SUPPORT TEAM SELECTION

All employees, sworn and non-sworn, will nominate individuals from the Department as a whole.Employees will be asked to nominate employees with whom they feel comfortable and who may exceed in the following areas:

(a) Confidentiality;

(b) Personal Experience;

(c) Motivation;

(d) Communication skills;

(e) Listening skills;

Nominees must be willing to accept the position if selected and must strictly abide by this policy.Once the team is selected, a list of qualified candidates will be established. Future vacancies

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will be filled from that list, which may be periodically updated at the recommendation of the overseeing clinician.

1032.7 PEER SUPPORT TEAM TRAINING

Mandatory courses shall include:

(a) Basic Peer Support course (POST); and

(b) ICISF Group Crisis Intervention and Assisting Individuals In Crisis (combined as Group Crisis Intervention- GRIN), and

(c) ICISF Suicide intervention course.

Peer Support Team Members should attend on-going training to stay current on the latest practices and procedures for assistance to employees. Any additional training, such as an advanced CISM course, may be requested and approved by the Chief of Police or Program Liaison.

In addition, The California Peer Support Association, the Public Safety Peer Support Association, or similar, may offer a training conference during the year. A selected number of team members may be budgeted to attend. Those who attend shall provide training for team members unable to attend.

1032.8 PEER SUPPORT TEAM RESPONSIBILITIES

The responsibilities of a Peer Support Team Member include, but are not limited to the following:

(a) Providing emotional support during and after times of personal or professional crisis to other employees who need assistance;

(b) Promoting trust, allowing anonymity, and preserving confidentiality for persons using Peer Support;

(c) Responding to the scene of a critical incident if requested by the Incident Commander, Watch Commander, or Peer Support Coordinator;

(d) Promoting an awareness of the self-help resources available to employees;

(e) Promoting an atmosphere of support and trust among employees;

(f) Checking on the status members out on injury and providing support where desired and needed;

(g) Understanding that being a Peer Support Team Member is voluntary and that they must be prepared to answer calls for help on a 24-hour basis;

(h) Abiding by the program policy or risk being removed from program participation;

(i) Notifying the Program Coordinator should a conflict of interest arise;

(j) To remain active on the team, members shall attend regular update and continuing education training provided or coordinated by the Peer Support Mental Health Provider;

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Generally, when a team member is on duty, Peer Support related meetings and follow-up contacts will be coordinated with the member's immediate supervisor. Consideration should be given to minimum staffing levels and calls for service.

1032.9 PEER SUPPORT TEAM COORDINATOR RESPONSIBILITIES

The Peer Support Program Team Coordinator shall function as the primary liaison between the Team Members and the Peer Support Team Liaison. The Coordinator shall be responsible for:

(a) General supervision;

(b) Preparing a list of current professional counseling services and making it available to all employees;

(c) Acting as the liaison for peer support referrals, and being responsible for assigning team members to assist employees consistent with the particular need;

(d) Oversee and lead regular team meetings;

(e) Developing resources to assist employees when problems are identified;

(f) Gather statistics and report to Liaison important information about team activities;

(g) Make recommendations to Liaison and agency regarding team training, departmental training, equipment needs, or other items requiring additional approval;

(h) Scheduling CISM activities including Critical Incident Stress Debriefings, Defusings, large group interventions, and other protocols where appropriate;

(i) Serve as a mentor and resource to team members;

(j) Assist and support Liaison as needed;

(k) Coordinate resources and serve as main point of contact for team clinician;

(l) Recruit new team members;

(m) Maintain team roster, training records and activity reports;

(n) Coordination and scheduling of continuing education for team;

(o) Identification of short comings or areas for additional team development

(p) Serve as a trained peer to other first line supervisors within the organization;

(q) Represent team at meetings or other events;

(r) Serve as the first point of contact for team deployment;

(s) Be well regarded within the organization and able to maintain positive interactions in their relationships with others, both within and outside the organization;

(t) Be a firm believer and supporter of employee mental health and wellness.

(u) Attend regular update and continuing education training provided or coordinated by the Department Peer Support Mental Health Provider.

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1032.10 PEER SUPPORT TEAM LIAISON RESPONSIBILITIES

The Peer Support Program Team Liaison shall function as the primary liaison between the Peer Support Coordinator and the Professional Standards Division Captain. The Liaison shall be responsible for:

(a) Lead the peer support team steering committee;

(b) Team budget requests and oversight

(c) Approval and oversight of team training and development;

(d) Manage and resolve complaints, problems, and other conflicts within the team or regarding team performance;

(e) Oversee team member selection;

(f) Work with Team Coordinator to set team goals, priorities, and fulfill team mission;

(g) Supervise and support Team Coordinator;

(h) Serve as a peer to other managers within the organization;

(i) Oversee contract with team clinician or other mental health providers;

(j) Advocate to command staff for team resources, training, and other needs;

(k) Be well regarded within the organization and able to maintain positive interactions in their relationships with others, both within and outside the organization;

(l) Be a firm believer and supporter of employee mental health and wellness initiatives.

(m) Attend regular update and continuing education training provided or coordinated by the Department Peer Support Mental Health Provider.

1032.11 CONFIDENTIALITY

The acceptance and success of the Peer Support Program will be determined largely in part by the observance of confidentiality. It is imperative each Peer Support Team Member keep all information learned about an employee confidential, within the guidelines of this program.

Team members are prohibited from sharing peer support conversation details with any other members of the department. If a team member needs guidance regarding a particular topic, they may contact the Coordinator. There may be times when a team member may need to share specific information with the Coordinator in order to determine the proper level of support to give, but this should only be done when absolutely necessary to care for the employee. The Coordinator shall keep confidential any information received from team members.

The Coordinator may also need to share specific information with a team member when someone may be more receptive to support if they are approached by a particular team member (other than the Coordinator) with whom they are more familiar.

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Employees shall not question Peer Support Team Members regarding their conversations with other employees, nor will they be allowed to inquire as to which individuals attended a defusing or CISD and/or what was said there.

Team members are prohibited from recording or taking notes while providing support to employees or otherwise making a record, report, or notes after the fact.

1032.12 PEER SUPPORT CONFIDENTIALITY AND THE LAW

"Confidential communication" means any information, including, but not limited to, written or oral communication, transmitted between a BPD employee and a peer support team member that was given in confidence. (GC 8669.3(a))

"Confidential communication" does not include a communication in which a BPD employee discloses the commission of a crime or a communication in which the BPD employee's intent to defraud or deceive an investigation into a critical incident is revealed.

A BPD employee, whether or not a party to an action, has a right to refuse to disclose, and to prevent another from disclosing, a confidential communication between themselves and a Peer Support Team Member, when it was made while the Peer Support Team Member was providing peer support services.

However, confidential communication may be disclosed under the following circumstances (GC 8669.4):

(a) To refer a law enforcement personnel to receive crisis referral services by a peer support team member.

(b) During a consultation between two peer support team members.

(c) If the peer support team member reasonably believes that disclosure is necessary to prevent death, substantial bodily harm, or commission of a crime.

(d) If the law enforcement personnel expressly agrees in writing that the confidential communication may be disclosed.

(e) In a criminal proceeding

(f) If otherwise required by law.

1032.13 PEER SUPPORT TEAM REFERRALS

Department employees who believe another employee may benefit from Peer Support may make a verbal or written referral to the Coordinator or Team Leader. The referred employee will be contacted to assess their receptiveness to Peer Support and/or referrals. The identity of the person who initiated the referral will remain confidential.

Individual employees may contact any Peer Support Team Member for an informal, confidential, one-on-one discussion, anytime, at their discretion.

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1032.14 PEER SUPPORT GUIDANCE

There may be times wherein an employee seeks advice or counsel from another employee who is not on the Peer Support Team. The sought after employee may contact a Peer Support Team Member for guidance but should maintain the original employee's confidentiality. All employees should know that when you seek advice from another employee who is not bound by policy to confidentiality, there is no recourse to a breech in that confidentiality.

1032.15 PEER SUPPORT TEAM ACTIVATION

Trauma takes a variety of forms and cannot be accurately or exhaustively quantified in description. However, certain events are of such magnitude they should be considered disruptive to nearly anyone involved. For the purpose of the Peer Support Team's activation response criteria, situations appropriate for mandatory activation and usage include, but are not limited to:

(a) Line of duty deaths/serious injuries;

(b) Officer involved shootings;

(c) Officer involved fatal incidents;

(d) Suicide or attempted suicide of a colleague.

When such incidents occur, the Watch Commander shall confirm the Peer Support Team Coordinator and/or Team Leader is notified.

When it is not considered a mandatory activation, any employee may contact the Coordinator or Team Leader to determine the need for immediate peer support and/or a group debrief or defusing.

1032.16 DEFUSINGS

A defusing should be conducted immediately following the critical event and generally lasts no longer than one hour.A defusing is not a critique of the incident, tactical debrief, or investigative tool.

The defusing should be arranged and organized by the incident supervisor and/or their designee. The Peer Support Coordinator or Team Leader may be contacted for assistance and/or guidance.

A Defusing shall not be used in any officer involved fatal incident protocol incident, line of duty death, or other complex incident where a Defusing may adversely impact affected personnel's return to normal function.

1032.16.1 PERSONNEL

The defusing should be facilitated by a supervisor. Attendance at defusings should be mandatory for all employees directly involved in the critical incident; however, participation in the discussion is not required. If requested, a Peer Support Team member may be present at the defusing to give assistance and support.

1032.16.2 OBJECTIVES

A defusing should be conducted with the following objectives in mind.

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(a) Allowing the employee to discuss their reactions and thoughts immediately following the incident.

(b) Serving as a reminder to employees about the importance of self-care, i.e. exercise and healthy eating;

(c) Eliminating the need for a formal debriefing; or enhancing the more formal CISD (the Professional Standards Division Captain and/or the Peer Support Coordinator will decide on the need for a CISD).

1032.16.3 LOCATION

The defusing may be conducted in the briefing room, multipurpose room, or any location that provides ample space, privacy, and freedom from distractions.

1032.17 CRITICAL INCIDENT STRESS DEBRIEFINGS

A CISD should be conducted as soon as practical (within 24-72 hours) after a critical incident and may last 2 to 4 hours. It is not a critique of the incident, tactical debrief, or investigative tool.

The CISD should be arranged and organized by the Professional Standards Division Captain and the Program Coordinator, in coordination with the affected employee(s) chain of command.

The CISD is designed to provide an opportunity for employees to discuss their feelings or reactions to the stress resulting from exposure to a critical incident and to accelerate the normal recovery process. The CISD shall be conducted by a trained and experienced Peer Support Mental Health Professional.

1032.17.1 CISD PERSONNEL

The CISD should be facilitated by a Peer Support Team Member selected by the Peer Support Coordinator. Attendance at debriefings shall be mandatory for all employees directly involved in the critical incident; however, participation in the discussion is not required. CISD's should consist of a Peer Support Mental Health Professional, and generally one Peer Support Team Member for every 5 employees. A Chaplain is optional but recommended, see Chaplain Policy for further. Excused absences may only be granted by the employee's respective Division Commander, or their designee.

1032.17.2 CISD OBJECTIVES

The CISD should be conducted with the following objectives in mind:

(a) Mitigating the impact of a traumatic incident;

(b) Facilitating the normal recovery process;

(c) Providing emotional support to the employee;

(d) Providing information regarding possible reactions the employee or his/her family may experience;

(e) Suggesting resources and referrals to the employee; and/or

(f) Helping to identify members who may benefit from additional support or professional care.

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1032.17.3 CISD LOCATION

The CISD should be conducted in any location, preferably outside of the Public Safety Building, which provides ample space, privacy, and freedom from distractions.The site selection is subject to the approval of the Peer Support Coordinator, who may request an alternate location if he/she determines the site to be unsuitable.

1032.18 ADDITIONAL FACTORS

If the employee has caused injury or death to another (i.e., vehicle accident, shooting, etc.), the employee's Commanding Officer may:

(a) Schedule a mandatory appointment for the employee with a licensed psychologist.

1. The mandated visit shall be educational and informative in nature and arranged through the Professional Standards Division Captain. The visit with the psychologist is to meant provide the employee with the opportunity to discuss the incident in a completely confidential environment and to provide helpful information to the employee regarding possible psychological reactions to the incident. The psychologist shall not furnish information about the visit to the Department unless he/she determines the employee is experiencing complications which may result in danger to the employee or others.Any subsequent counseling would be completely voluntary.

(b) Grant paid administrative leave to the employee for a period of time (as determined by the Chief of Police) if the employee is scheduled to work immediately following the incident.

(c) Direct the employee to contact his/her supervisor to discuss a temporary reassignment which will ensure a lapse of time before possible exposure to similar, additional traumatic incidents.

1032.19 OVERTIME

Any member of the Peer Support Team who is required, asked, or authorized to perform his/her peer support duties by a supervisor or above shall be paid overtime or compensatory time if the time involved in the Peer Support Team duties is outside of his/her regular duty hours and such payment does not conflict with overtime eligibility provisions of a collective bargaining agreement.

1032.20 PEER SUPPORT ADVISORY COMMITTEE

The committee should be made up of the following personnel

(a) Peer Support Team Liaison

(b) Peer Support Team Coordinator(s)

(c) Employee Labor Group Representative(s)

(d) At Large member – Professional Staff

(e) At Large member – CSO

(f) At Large member – PSD

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(g) At Large member – Peer Support Team

(h) Peer Support Mental Health Professional

1032.20.1 PURPOSE

The purpose of the Advisory Committee shall be to support the Peer Support Team. The Advisory Committee shall perform the following support services for the Peer Support Team:

(a) Provide recommendations for program continuity

(b) Assess training needs and provide recommendations to the Department

(c) Asses and recommend program utilization goals

(d) Asses and make recommendations to enhance program effectiveness

(e) Explore sources of funding and make recommendations for materials or equipment that would enhance peer team operations such as team shirts, team events, additional training or conferences, additional outside resources, etc.

1032.20.2 MEETINGS

(a) The committee should meet quarterly, or as needed, for the first 12 months following the program introduction.

(b) The committee should meet semi-annually, or as needed, during the second 12 months of program operation

(c) The committee should meet annually, as needed, thereafter

(d) The committee may be disbanded any time after the first 12 months if, in the opinion of the Team Liaison, Team Coordinator(s) and Team Mental Health Professional, the committee is no longer needed.

1032.21 REMOVAL OF A TEAM MEMBER

Any member of the Peer Support Team may be removed for any of the following reasons:

(a) Breech of confidentiality

(b) Failure to follow the standard of care

(c) Abuse of Team membership or Team resources

(d) Conduct unbecoming

A team member may be suspended and/or removed from the team based on a completed investigation by the Team Liaison, or in the instance where the Team Liaison is investigated, the Professional Standards Captain.

A team member will have the right to appeal any suspension or removal, within 30 days of notification of said suspension or removal, to the Professional Standards Captain via a memo or in person meeting. The Captain’s decision will be final.

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A team member may be able to return to the team after suspension or removal based on the recommendation of the Team Liaison, Team Coordinator(s) and the Team Mental Health Professional. The recommendation will go to the Professional Standards Captain and they will determine when the suspension is finished and/or if the team member may return.

1032.22 TEMPORARY OR PERMANENT LEAVE FROM THE TEAM

Team Members may choose to leave the Team at any time. This leave can be temporary, so as to relieve them from their duties for a short time or it can be permanent. If a member leaves permanently, but later wish to return, the member will need to be re-nominated in another round.

1032.23 USE OF CHAPLAINS

Chaplains should be utilized whenever possible. Peer Support Team Members may refer employees to contact the Chaplains where applicable. The Chaplains may also be called upon to provide support services to the general public, other City employees, or individuals outside of the Department. See the Chaplains Policy for further.

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Employee Absences

1033.1 PURPOSE AND SCOPE

This policy defines the Department's reporting procedures for employee absences.

1033.2 POLICY

It is the policy of the Berkeley Police Department that all employees adhere to prescribed procedures relative to all anticipated and unanticipated absences.

1033.3 PROCEDURES

The Absence Report form shall be used whenever an employee will be absent from his/her assigned duty or becomes absent during the assigned duty.

(a) The form should be used whenever an employee is absent, or expected to be absent, because of vacation, floating holiday, recovery (compensatory time off), sick leave, family sick leave, military leave, death leave, parental leave, Worker's Compensation leave, suspension, leave without pay, organizational leave or other absences not amounting to an extended leave without pay.

1033.4 ANTICIPATED ABSENCE

When an employee requests a day off, he or she should complete an Absence Report form.

(a) If the time off requested is more than two weeks away and staffing has not been completed, the employee shall:

1. For Operations/Patrol: Place the request form in the designated location within the Lieutenant's Office.
2. For Special Assignments: Place the request form in the designated location within their unit/detail or deliver the form directly to their supervisor.

(b) If the time off requested is less than two weeks away, the employee shall:

1. For Operations/Patrol: Place the request form in the Team tray, or deliver the form directly to their supervisor.
2. For Special Assignments: Deliver the request form directly to their supervisor.

The employee has the responsibility to submit supporting documents with the request form (e.g. military leave orders, etc.).

1033.5 UNANTICIPATED ABSENCE

When an employee makes a request for sick leave, family sick leave, death leave, Worker's Compensation leave or another unanticipated (emergency) absence, the request shall be made to a supervisor or commanding officer of the employee's division or, if none are available, the Communications Center supervisor on duty or in his/her absence an Operations Division supervisor or commanding officer.

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(a) Except in the case of emergencies, absence because of illness or injury shall be reported at least one hour prior to the start of the employee's shift. Other absences shall be reported as far in advance of the effective date/time as possible.

Upon notification of an employee's unanticipated absence the supervisor shall prepare the Absence Report and, if applicable, forward it to the employee's actual supervisor.

1033.6 BPA ASSOCIATION RELEASE TIME

Berkeley Police Association Members are allotted a specified number of hours for “Release Time” each year for Association related activities (BPA meetings, negotiations, PRC representation and preparation, training, etc.). A BPA member using Release Time, should notify their supervisor as far in advance as possible so that a supervisor may fill any vacancies and post overtime if necessary.

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Complaint Review Board

1034.1 PURPOSE AND SCOPE

This policy establishes a process for the Berkeley Police Department to review complaints involving its employees.

This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the complaint.

1034.2 POLICY

A Review Board will objectively evaluate complaints involving its members to ensure that their authority is used lawfully, appropriately and is consistent with training and policy.

The Chief of Police has the sole authority to convene a Review Board.

1034.3 ESTABLISHED REVIEW BOARDS

The Chief of Police has established the following standing Review Boards:

(a) Complaint Board of Review

(b) Traffic Collision Board of Review (see the Traffic Collision Review Board Policy)

(c) Use of Force Review Board (see the Use of Force Review Board Policy)

(d) Use of Force Training Review Board (see the Use of Force Policy)

1034.4 RESPONSIBILITY

The Complaint Review Board aka “Board of Review” shall be responsible for the examination of Internal Affairs Bureau investigations of external personnel complaints and, if directed by the Chief of Police, policy complaints.

1034.5 INVESTIGATIVE REPORTS

IAB’s investigative report is a confidential document that will not be released to the subject officer or his/her chosen representative prior to the time that copies are sent to members of the Board of Review and/or the Chief of Police.

(a) In cases of great sensitivity, the Chief of Police may keep the report confidential until such time as required by law to release the information.

1034.6 COMPOSITION

The Complaint Review Board shall be composed of the following:

(a) The Professional Standards Division Captain (Chair/Hearing Officer)

(b) An Internal Affairs Sergeant

(c) A designated on-duty patrol sergeant,

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(d) The division captain of the subject employee,

(e) A representative of the City Manager's Office, and

(f) 2 representatives of the subject employee's labor group

(g) The subject employee (optional)

All sworn participating members of the Board of Review must be of equal or higher rank than the subject officer in the complaint under consideration.

The Chief of Police shall consider the nature of the subject matter under inquiry and the relevant qualifications of the employees selected to serve as members.

1034.7 REPRESENTATION

As provided by law or as directed by the Chief of Police, the Board will allow a subject employee to have a representative (e.g., legal counsel, a collective bargaining unit representative, etc.) present during a Board proceeding in which he/she is participating.

1034.8 ATTENDANCE

The subject employee and his/her chosen representative are encouraged to attend the Board of Review hearing to present arguments or explanations and to answer questions which may be presented to them by Board members. Subject employees are not required to attend unless specifically ordered to do so by the Chief of Police.

1034.9 ADDITIONAL ATTENDEES

In addition to the Board, additional attendees may be needed/requested as follows:

(a) The Chief of Police may invite other person(s) to sit with the Board as participating members as he/she deems appropriate.

(b) Any Board member may select a qualified subject matter expert or resource person to provide relevant information to the Board.

1034.10 REVIEW BOARD PROCEDURES

The Complaint Board of Review shall examine the evidence thoroughly and may ask clarifying questions to the investigator and parties present.

Following the Board's review and discussion, each Board member will make a recommendation to the Chair relative to their finding(s). If the subject officer is in attendance, he/she shall be excused during this portion of the review. The Board will need to reach a majority decision in order to present the recommendation for disposition to the Chair.

Recommendations for disposition are as follows:

- **Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

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- **Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful, within policy and/or proper.
- **Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.
- **Sustained** -When the investigation discloses that the alleged act occurred and is in violation of departmental policy.

The Chair will listen to the recommendations made by the other Board members but will have the responsibility for making the final disposition recommendation to the Chief of Police.

1034.11 FINAL REPORT TO THE CHIEF OF POLICE

Unless otherwise directed by the Chief of Police, the Chair shall submit a final report to the Chief of Police within ten business days of the hearing. The final report shall contain:

(a) The findings of the Board

(b) The concurring or non-concurring signatures of each member.

1. Dissenting Board members may submit a minority report which shall be included with the final report.

(c) Recommendations of the Board (when directed)

(d) Documents, photographs, and related evidence used during the Board's examination shall be submitted with the final report.

The Chief of Police retains the right to agree or disagree with the final recommendations of the Board, and to limit or augment those recommendations.

Upon approval of the final report by the Chief of Police, the Board shall be deactivated.

1034.12 NOTIFICATION OF SUBJECT EMPLOYEE

The subject employee shall be notified of the Chief's decision as soon as possible (see Personnel Complaints Policy for further).

1034.13 FINAL REPORT FORMAT

The memorandum format below shall be used when preparing a final report:

EXEMPLAR

To: (Chief of Police)

From: (Name of Review Board)

Subject: (XXXXXXXXXXXXXXXXXX)

Composition of the Board:

The Chair and members of the Board will be identified.

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Summary of the Investigation:

This will be a statement in chronological sequence of the incident and the Board's examination.

Conclusion:

This will contain a statement of the Board's findings and recommendation(s) (e.g., Sustained or Exonerated).

Additional Observations:

This entry is optional and can be used to provide the Chief of Police with additional or independent information or observations.

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Traffic Collision Review Board

1035.1 PURPOSE AND SCOPE

This policy establishes a process for the Berkeley Police Department to review the traffic collisions and complaints involving its employees.

This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the complaint or traffic collision.

1035.2 POLICY

A Review Board will objectively evaluate traffic collisions involving its members to ensure that their authority is used lawfully, appropriately and is consistent with training and policy.

The Chief of Police has sole authority to convene a Review Board as provided by this policy.

1035.3 ESTABLISHED REVIEW BOARDS

The Chief of Police has established the following standing Review Boards which may be convened as needed or directed by policy:

(a) Complaint Board of Review (see the Complaint Review Board Policy)

(b) Traffic Collision Board of Review

(c) Use of Force Review Board (see the Use of Force Review Board Policy)

(d) Use of Force Training Review Board (see the Use of Force Policy)

1035.4 RESPONSIBILITY

The Traffic Collision Review Board shall be responsible for the review of all traffic collisions involving a Department employee operating a City-owned vehicle.

1035.5 INVESTIGATIVE REPORTS

The collision report will be distributed to the Board Members prior to the review.

1035.6 COMPOSITION

The Traffic Collision Board of Review shall be composed of the following:

(a) Three lieutenants (one lieutenant shall be selected as the Chair)

(b) The subject employee (optional)

(c) The subject employee’s representative (optional)

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1035.7 REPRESENTATION

As provided by law or as directed by the Chief of Police, the Board will allow a subject employee to have a representative (e.g., legal counsel, a collective bargaining unit representative, etc.) present during a Board proceeding in which he/she is participating.

1035.8 ATTENDANCE

The subject employee and his/her chosen representative are encouraged to attend the Board of Review hearing to present arguments or explanations and to answer questions which may be presented to them by Board members. Subject employees are not required to attend unless specifically ordered to do so by the Chief of Police.

1035.9 ADDITIONAL ATTENDEES

In addition to the Board, additional attendees may be needed/requested as follows:

(a) The Chief of Police may invite other person(s) to sit with the Board as participating members as he/she deems appropriate.

(b) Any Board member may select a qualified subject matter expert or resource person to provide relevant information to the Board.

1035.10 REVIEW BOARD PROCEDURES

The Traffic Collision Review Board shall examine the evidence thoroughly and may ask clarifying questions to the involved employee, if present.

Following the Board's review and discussion, each Board member will make a recommendation to the Chair. Once a majority decision is reached the Chair will prepare a final report to the Chief of Police indicating that the collision was “Preventable" or "Not Preventable".

1035.11 FINAL REPORT TO THE CHIEF OF POLICE

Unless otherwise directed by policy or the Chief of Police, the Chair shall submit a final report of the Board's examination and any other related reports within ten (10) business days following the end of the hearing to the Chief of Police.

(a) The final report shall contain the findings of the Board and the concurring or non-concurring signatures of <u>all</u> its members.

1. Dissenting members of a Board may submit a minority report which shall be included with the final report.
2. The final report shall contain the findings and, when so directed, recommendations of the Board.
3. Upon approval of the final report by the Chief of Police, the Board shall be deactivated.

(b) Documents, photographs, and related evidence used during the Board's examination shall be submitted with the final report.

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The Chief of Police retains the right to agree or disagree with the final recommendations of the Board of Review, and to limit or augment those recommendations.

1035.12 NOTIFICATION OF SUBJECT EMPLOYEE

The subject employee shall be notified of the decision of the Chief of Police as soon as possible after the decision is made (see Personnel Complaints Policy for further).

1035.13 FORMAT

The memorandum format below shall be used when preparing a final report:

EXEMPLAR

To: (Chief of Police)

From: (Name of Review Board)

Subject: (XXXXXXXXXXXXXXXXXX)

Composition of the Board:

The Chairperson and members of the Board will be identified.

Summary of the Investigation:

This will be a statement in chronological sequence of the incident and the Board's examination.

Conclusion:

This will contain a statement of the Board’s findings and recommendation(s) (e.g., Preventable or Non#preventable)).

Additional Observations:

This entry is optional and can be used to provide the Chief of Police with additional or independent information or observations.

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LGBTQ+ Liaison Officer

1040.1 PURPOSE AND SCOPE

This Department procedure establishes guidelines for the role of the Berkeley Police Department's LGBTQ+ Liaison Officer with the LGBTQ+ community.

1040.2 POLICY

Outline the role of the LGBTQ+ Liaison Officer within the Berkeley LGBTQ+ community.

1040.3 INTRODUCTION

The Berkeley Police Department is committed to fostering a healthy, trusting, and inclusive relationship with the City of Berkeley's LGBTQ+ community through on-going training and with designated LGBTQ+ Liaison Officers.

1040.4 PROCEDURES

The LGBTQ+ Liaison Officers strengthen the relationship between the LGBTQ+ community and the Police Department by creating mutual trust and confidence in the Police through community involvement, departmental education, and the provision of fair and professional policing services.

- Serves as a personal, point of contact between the Police Department and the LGBTQ + community.
- Assists, advises, and consults with the Police Department leadership and other officers on cases involving the LGBTQ+ community or LGBTQ+ issues.
- Provides/coordinates training for members of the department on LGBTQ+ topics.
- Meets with and provides a forum for business owners, community groups, and individuals of the LGBTQ+ community, and presents information on relevant law enforcement issues.
- Provides a forum for the LGBTQ+ community to express its concerns regarding crimes directed against the LGBTQ+ community.
- Attends events in the LGBTQ+ community(when possible) as a representative of the Police Department.
- Collaborates with community leaders, residents and businesses to design and implement public safety projects and programs to establish a closer, more effective dialogue between the police and the LGBTQ+ community.
- Identifies and attends training related to LGBTQ+ topics.
- Facilitates an overall open relationship between the LGBTQ+ community and the Police Department.

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EARLY WARNING SYSTEM

1041.1 PURPOSE

The purpose of this Order is to establish policy and procedures for an informal performance review and intervention program, the “Early Warning System” (EWS). The program monitors employee performance that may be inconsistent with professional police conduct and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues and correction of these issues through constructive counseling sessions rather than the formal disciplinary process.

1041.2 POLICY

All employees shall participate in the EWS program and comply with the guidelines set forth in this Order.

Participation in the EWS program shall not be deemed punitive, nor a formal disciplinary process.

(a) Notwithstanding the initiation of the EWS process, the Department retains its right and responsibilities with regard to investigation of policy violation and enforcement of employee discipline.

1041.3 PROCEDURES

Employee behavior or performance that is subject to EWS review includes, but is not limited to:

(a) Poor attendance and/or abusive use of leave;

(b) Multiple formal sustained or not sustained complaints;

(c) Multiple informal complaint inquiries:

(d) Multiple use of force incidents;

(e) Multiple obstructing/resisting arrest incidents;

(f) Multiple vehicle collisions; and,

(g) Substandard conduct/performance concerns observed by a superior officer.

(h) Irregular demographic stop data on pedestrian, bike, and vehicle enforcement, while considering the factors of the assignment (geographical area of the city the officer is working, the specific detail/assignment, and the nature of enforcement).

The Racial and Identify Protection Act (RIPA) data will be available to supervisors in the form of an electronic data dashboard. This will provide supervisors and commanders with the ability to review stop data created by officers assigned under their span of control. The individualstop data for individual officers should be considered a personnel record as it may provide supervisory guidance for specific officer stop data, if necessary. The public release of any RIPA data will remain anonymized as previously agreed upon Meet and Confer with the Berkeley Police Association and provisions of Government Code 3300 et.al.

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Supervisors, commanders and managers shall monitor the activity of their subordinate employees to identify actual or perceived unprofessional behavior and/or substandard performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police via the Chain of Command.

Personnel assigned to the Internal Affairs Bureau (IAB) shall monitor all formal and informal allegations of employee misconduct received by their office for behavior or performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police.

Personnel assigned to the Support Services Division Report Review Detail shall forward to the Chief of Police copies of all reports pertaining to:

(a) Obstruction/resisting arrests cases (i.e., Penal Code §§148, 69, etc.)

Administrative reports regarding use of force shall be forwarded to the Chief of Police as directed in Policy 300.

1041.4 MANAGEMENT OF PROGRAM RECORDS

The Office of the Chief of Police shall be responsible for aggregation and administrative management of information, data and records associated with the EWS program.

(a) The administrative assistant assigned to the Office of the Chief of Police shall be responsible for preparing a quarterly report summarizing information and activities associated with the EWS program for use in administrative review.

Information, data and records associated with the EWS program are used for personnel purposes. Accordingly, they are confidential personnel files and not public records.

Documents, data and records shall be maintained by the Office of the Chief of Police for a period of two (2) years.

Access to EWS records shall be restricted to the supervisor, commander and/or manager involved in the monitoring of a particular employee, subject to the approval of the Chief of Police.

(a) An individual employee may be granted access to EWS records that pertain to him/her.

1041.5 ADMINISTRATIVE REVIEW BOARD

The Chief of Police will convene a quarterly Review Board comprised of all Division Commanders to review program records to determine if initiation of the EWS Program is recommended.

Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program.

1041.6 INITIATION OF EWS PROGRAM

Upon the direction of the Chief of Police, an informal counseling meeting will be held that may include:

(a) The subject employee;

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(b) The employee's supervisor;

(c) An Internal Affairs Bureau sergeant;

(d) The employee's Lieutenant; and,

(e) The employee's Division Commander, who shall preside over the meeting.

Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.

(a) If the meeting cannot be scheduled during the employee's regularly scheduled working hours, personnel participating while off-duty shall be compensated with compensatory time (minimum time as may be authorized by the employee's MOU) or, with Division Commander approval, allowed to flex an equal amount of time within that same work week.

The subject employee may have one fellow employee accompany him/her to the counseling meeting.

(a) The accompanying employee's presence is allowed to offer general support to the subject employee, not to be an active participant in the counseling meeting.

As in general supervisor counseling meetings, the employee shall be informed of the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response.

The subject employee may be given information regarding the City of Berkeley Employee Assistance Program.

No formal document will be generated referencing this meeting, and the meeting shall not be deemed a punitive or disciplinary proceeding against the employee. There shall be no permanent record of the meeting.

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Chapter 11 - Special Orders

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Special Order 2018-0001

1100.1 PC 647(E) ENFORCEMENT AND 9TH CIRCUIT DECISION

The Ninth Circuit Court of Appeals recently held in Martin v. City of Boise that municipalities may not enforce general laws prohibiting sleeping on public property when there is nowhere else for a homeless individual to sleep. The Court noted that its decision did not address enforcement of ordinances "prohibiting sitting, lying, or sleeping outside at particular times or in particular locations."

Effective immediately and until further notice, officers shall not enforce PC § 647(e) (lodging on public property without the owner's consent) unless authorized to do so by the Chief of Police, such as when participating in a coordinated effort with City of Berkeley staff engaged in an encampment resolution activity.

This decision applies only to the enforcement of PC § 647(e). Officers shall enforce other provisions of Penal Code and Berkeley Municipal Codes using existing policy and discretion, including, but not limited to:

Laws relating to trespass on private property:

- 06.32.020 Park curfew violation 2200 - 0600 hrs;
- 06.32.030 No structures (including tents), large objects, or collection of objects covering over 10 square feet may be placed in city parks without a permit;
- 13.36.065 City building rules - remaining on curtilage without COB business; and
- 14.32.040 Standing in roadway, use of divisional islands; i.e., on the median

Comm Center personnel should dispatch officers to assess complaints called in by the public, and officers should evaluate calls on a case-by-case basis when attempting to address a complaint. Should a given incident have no other enforcement option (e.g. there is only a PC § 647(e) complaint) the officer should advise the reporting party of this issue.

This order is meant to clarify enforcement restrictions in light of the recent Ninth Circuit Court decision, and will be in effect until it is rescinded or issued in the form of a policy.

Andrew R. Greenwood

Chief of Police

Issued: 10/02/18

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Special Order 2020-0001

1101.1 PC 835; CHANGES IN PENAL CODE

On January 1, 2020, CA Penal Code 835a, which governs use of force by police officers, became law. Per Departmental Training Order 2019-00277, all sworn personnel were required to view POST's Training video, "AB 392: California's New Use of Force Standards: What You Need to Know", which can be found at https://lp.post.ca.gov/activity/3023. POST also created a publicly available resource page which includes this video and other resources, at https://post.ca.gov/use-of-force-standards.

BPD's current Use of Force Policy, General Order U-2, is being revised not only to incorporate provisions of PC 835a, but also as a result of a Council referral. The revised policy will be issued as Policy 300 in 2020.

Effective immediately, and until such time as the revised Use of Force policy is issued, General Order U-2 remains in effect, and sworn personnel shall further ensure their actions are in accordance with the new requirements of PC 835a, including but not limited to the provisions below:

PC 835a(b) amends the "reasonable force" standard to "objectively reasonable force."

PC 835a(c)(1) amends deadly force standards to include "totality of the circumstances" when:

- Defending against imminent threat of death or serious bodily injury to an officer or to another person.
- Apprehending a fleeing person for a felony
  - Involving threatened or actual death or serious bodily injury;
  - Where immediate apprehension is reasonably believed to be needed in order to prevent death or serious bodily injury to another; and
  - Which requires, when reasonable, that officers identify themselves and warn of intent to use force.

PC 835a(c)(2) prohibits using deadly force against persons who pose a danger only to themselves.

PC 835a(d) amends self-defense language to include "objectively reasonable" force.

PC 835a(e) adds definitions for deadly force, imminent, and totality of the circumstances.

This order is meant to highlight legal requirements pertaining to use of force by sworn personnel in light of the recent changes to CA Penal Code 835a, and will be in effect until it is rescinded or issued in the form of a revised use of force policy.

Andrew R. Greenwood

Chief of Police

Issued: Jan. 3, 2020

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Special Order 2020-0002

1102.1 ENFORCEMENT OF ISOLATION AND QUARANTINE ORDERS

The City of Berkeley Public Health Officer has the authority to issue civil orders for the isolation of persons diagnosed with or under investigation for having an infectious disease, and for the quarantine of persons who have been exposed to an infectious disease. This Special Order establishes Berkeley Police Department policy for the enforcement of such isolation and quarantine orders.

Isolation is defined as “separation of infected persons from other persons for the period of communicability in such places and under such conditions as will prevent the transmission of the infectious agent.” (17 CCR § 2515.) The Public Health Officer may require strict or modified isolation of an infected person. (17 CCR §§ 2516-17.)

Quarantine is defined as “the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease for a period of time equal to the longest usual incubation period of the disease, in such manner as to prevent effective contact with those not so exposed.” (17 CCR § 2520.) If a disease requires quarantine of persons having contacts in addition to isolation of the infected person, “the local health officer shall determine the contacts who are subject to quarantine, specify the place to which they shall be quarantined, and issue instructions accordingly.”

Isolation and quarantine may be enforced pursuant to the order of the Public Health Officer without a prior court order based on the Health Officer’s determination that there is reasonable cause that a person is infected with or has been exposed to a communicable disease. (Health and Safety Code § 120130(d); *In re Application of Arata* (1921) 52 Cal. App. 380, 383.) The Health Officer’s order must inform the isolated or quarantined person of the right to seek administrative review of the order by the Public Health Division and the right to seek judicial review pursuant to Penal Code § 1473.

Any person who violates an isolation or quarantine order is guilty of a misdemeanor, punishable by a fine of not less than $50 nor more than $1,000, or by imprisonment for a term of not more than 90 days, or by both. (Health and Safety Code § 120295.) Each day of the violation may be charged a separate offense. (*Ibid*.)

The Chief of Police may enforce any isolation or quarantine order issued by the Public Health Officer. (Gov. Code § 41601.) If any person refuses to comply with the Health Officer’s order, a Police Officer or an authorized employee (as defined in General Order U-02) may arrest and/or detain the person to enforce the order. Any arrest of a person for a violation of an isolation or quarantine order shall be made in accordance with the Use of Force Policy (General Order U-02). The isolated or quarantined person shall be detained at home, in a medical facility, or at some other location consistent with the requirements of the isolation or quarantine order, as directed by the Public Health Officer. It may be necessary for a Police Officer or an authorized employee to remain present to ensure compliance with the terms of the isolation or quarantine order.

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Special Order 2020-0002

All Berkeley Police Department members assisting with the enforcement of an isolation or quarantine order shall comply with infection control procedures to control the risk of transmission of aerosol transmissible diseases. (8 CCR § 5199(c).)

Tuberculosis Isolation and Quarantine: It should be noted that special procedures apply for the isolation or quarantine of persons infected with or exposed to tuberculosis. Those procedures are outside the scope of this Special Order. Berkeley Police Department members shall direct inquiries regarding enforcement of an isolation or quarantine order arising from infection with or exposure to tuberculosis through their chain of command to the Chief of Police or his/her designee, who shall in turn consult with the Public Health Officer and the City Attorney's Office prior to issuing direction.

This Order will remain in effect until it is rescinded or issued in the form of a policy.

Andrew R. Greenwood

Chief of Police

Issued: March 4, 2020

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Special Order 2020-0003

1103.1 COVID-19 WELLNESS SCREENING

Our top priority is to support the health of our staff and contractors in furtherance of our goal to provide emergency services to our community. The purpose of this Special Order is to support that priority by requiring all individuals who enter the Public Safety Building to complete a wellness screening. This procedure is consistent with guidelines provided by our Public Health Officer and the CDC to stop the spread of Covid-19.

It is critical for all staff and contractors to follow these guidelines to prevent the further spread of Covid-19. If you have any questions, please contact your supervisor.

Prior to, and upon, arrival at your work site ALL employees complete the following screening:

PRE-SCREENING PRIOR TO COMING TO WORK:

Evaluate yourself for any Covid-19 related symptoms (fever, cough, shortness of breath, uncontrollable runny nose, prolonged sore throat, or diarrhea) or any other seasonal cold/allergy related symptoms.

(a) Take your temperature from home if you have an available thermometer.

(b) Do not come to work if you are sick.

1. Immediately notify your supervisor.
2. Also, specifically notify your supervisor if you have a fever over 100.4 or Covid-19 related symptoms. Your supervisor will contact the DICO.

PRE-SHIFT / ARRIVAL AT WORK:

This procedure is required prior to the start of a shift. If personnel become symptomatic during their shift they should immediately notify their supervisor.

Upon arrival at your work site (and no later than within 30 minutes of arrival) all employees shall complete the following screening, which should be conducted by your direct supervisor for the day. In the event that your supervisor is not available, you should seek out an on duty supervisor.

For the interview portion of screening, the supervisor should keep social distance (or wear an N-95 or surgical mask if they are unable to maintain social distance).

Answer the following questions:

(a) Do you feel like you are running a fever with or without chills?

(b) Do you have respiratory symptoms such as cough or shortness of breath?

(c) Do you have uncontrollable runny nose or prolonged sore throat?

(d) Do you have diarrhea associated with acute illness?

(e) Have you had close contact with a person infected with Covid-19 while on or off duty?

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If yes to any of the above questions, the employee should immediately put a surgical mask on, and the supervisor will contact the DICO.

NOTE: if there is any suspected fever, the supervisor should obtain one of the below thermometers and complete the below screen. The EOC will also have a thermometer available.

Upon arrival at your work site (and no later than within 30 minutes of arrival) all Patrol, Communications Center, Traffic Division, and Jail employees shall complete the following additional screening:

Have your temperature checked.

At this time thermometers will be issued to the Traffic Substation, Communications Center, Jail (employee use) and Patrol. For the temperature portion of screening, the supervisor should wear an N-95 or surgical mask and latex gloves.

At least one temperature reading should be taken. If the result is anything above 100, a second temperature should be taken. Be aware that physical exertion or stress can elevate temperatures. If either temperature reading is above 100.4 degrees, the employee should immediately put a surgical mask on, and the supervisor will contact the DICO.

More thermometers are on order and will be made more available as they arrive. The ultimate goal is that each work area will have a dedicated thermometer. After the temperature readings are completed, the thermometer should be wiped down with the bleach and water solution, Clorox wipes, or the issued Sonos cleaning wipes.

FAQ and OTHER INFORMATION FOR ALL EMPLOYEES:

Specific procedures for conducting the above screening may be adjusted by your chain of command where necessary, but will follow these guidelines.

Any personal health information obtained during these initial screening procedures will not be tracked.

Individuals presenting symptom(s) of Covid-19, including a temperature of 100.4 degrees or higher, will be sent/stay home and will be referred to the Berkeley Police Department or Berkeley Fire Department Designated Infection Control Officer (DICO) for further investigation. The DICO will notify the employee's direct supervisor and chain of command that they have been sent home as soon as possible.

Supervisors do not need to don a new surgical mask for every individual screening, but should properly dispose of any mask that they believe may have been compromised.

If you have questions or concerns about any individual screening results contact the DICO.

BPD DICO Contact information: Sergeant Andrew Frankel (510-926-0007) or Officer Chris Waite (510-559-0523).

This Order will remain in effect until it is rescinded or issued in the form of a policy.

Andrew R. Greenwood

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Special Order 2020-0003

Chief of Police

Issued: April 08, 2020

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Special Order 2020-0004

1104.1 COVID-19 RELATED PROTECTIVE GUIDELINES

REDUCING RISK OF TRANSMISSION

Wear a face covering . Face coverings do not prevent the inhalation of aerosolized transmissible disease, but coverings can slow the spread of the virus and help people who may have the virus and not know it from transmitting it to others. According to the CDC, face coverings should be worn in public settings where other social distancing measures are difficult to maintain. On duty BPD personnel should wear a face covering whenever unable to maintain isolation or social distancing.

- **Cloth face coverings:** The CDC advises the use of simple cloth face covering. These coverings should:
  - fit snugly but comfortably against the side of the face
  - be secured with ties or ear loops
  - include multiple layers of fabric
  - allow for breathing without restriction
  - be able to be laundered and machine dried without damage or change to shape
  - Individuals should be careful not to touch their eyes, nose, and mouth when removing their face covering and wash hands immediately after removing.
- **Surgical masks:** Like cloth face masks, surgical masks do not prevent the inhalation of aerosolized transmissible disease. An employee may wear a surgical mask in place of a cloth mask to help slow the spread of the virus but due to the high demand and limited supply, these masks should be reserved for prisoner transport and arrestees because they are disposable.

Practice proper hygiene by promptly washing or sanitizing hands:

- after coughing or sneezing
  - before and after eating and/or
  - after physically interacting with others

Disinfect regularly : Use provided cleaning supplies, or any antiviral disinfectant, to disinfect:

- Desk or workstation
  - Gear including: Phone, Laptop/Tabletop Computer, Clipboard, Pens, and E-Cite Machine
  - Patrol car equipment: Steering wheel, Gear shift, Radio, and Door handles

PERSONAL PROTECTIVE EQUIPMENT (PPE)

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Issued PPE: All officers and staff directed to work in the field have been issued the following PPE and provided training on donning and doffing. **Personnel are required to request replacement from their direct supervisor if it has been used or contaminated**:

- N95 Respirator- either flat or cupped model.
- Gloves- Do not use leather or neoprene gloves unless covered with Nitrile gloves.
- Goggles- Officers and field support staff may use prescription glasses or personally purchased glasses if they still prevent adequate splash protection.
- Gowns
- caps

Storage of PPE: PPE must be stored properly to ensure it remains effective

- N95 Respirators should be kept in their natural position in a clean, breathable container such as a paper bag between uses. They can be reused unless any of the following criteria have been met:
    - You suspect the mask was contaminated with blood, respiratory or nasal secretions, or other bodily fluids from contacts.
    - The mask is obviously damaged or becomes hard to breathe through.
    - The wearer is no longer able to maintain an adequate seal conducting a positive/ negative pressure test.
- The gowns, caps and goggles were issued in a plastic Ziploc bag. The gown and cap should remain in the bag for protection until needed for use.
- The goggles may be removed for use if officers or support staff need them in place of personally purchased eyewear.

When to Wear PPE: The wearing of PPE will depend on the situation. The following are examples of a layered approach to wearing PPE and is not intended to be an inclusive list. When in doubt, err on the side of wearing additional PPE to keep yourself safe.

- **N95 masks and Nitrile gloves** – Officers and staff should use their discretion regarding the wearing of an N95 masks and Nitrile gloves during their shift keeping in mind their ability to maintain social distancing.
- **N95 mask, Nitrile gloves and eye protection** – Officers and staff should wear this PPE in the following situations:
    - All medical calls including DBF's
    - When making entry into a building or potentially densely populated location such as nursing homes, shelters, encampments, and shared housing coops.
    - When making personal contact (within 6') with a subject / suspect. This includes all crimes in progress where apprehension of the suspect is possible and W&I 5150 calls.

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- **N95 mask, Nitrile gloves, eye protection, gowns and caps** – Officers and staff should wear this PPE when you determine there is a suspected or known COVID-19 subject and you are required to be within 6' of the person or cannot ensure social distance can be maintained.

Officers and staff who have any questions regarding the wearing of PPE should consult a supervisor.

Doffing PPE: PPE items should be removed in the following order and placed into a biohazard bag. Be cautious not to shake the items:

- Gown and cap with gloves.
- Goggles
- N-95

Decontamination: PPE is considered contaminated if it was worn within 6' of a suspected or known COVID -19 subject.

- Remove gown first by pulling it from the shoulders over your gloved hands and away from the body. If you must handle the gown, try to do so from the interior of the gown (presumably where it is clean)
- Remove gloves and don a fresh set (To do so, pinch the first glove and pull it off of your hand. With the bare hand, reach under the 2nd glove and peel it off from the inside being cautions not to touch the exterior part of the glove.
- While keeping your mask, eye protection and gloves in place, decontaminate your protective equipment (external carrier, duty belt), remove them and place them on the table at the boot cleaning station in the North parking lot.
    - Use wipes or water and bleach solution on the belt
    - Use wipes or Lysol on your external carrier to spot clean (or wash external carrier during next opportunity)
- Remove eye protection and use alcohol wipes to decontaminate them.
- Remove mask and gloves.
- Place discarded gloves, gown, cap and respirator into a brown paper or plastic bag (the one it was issued in)
    - Discard bags in the biohazard barrels at the base of radio tower at the PSB when you return from the call for service
- Vigorously wash hands with hot water and soap

PPE Disposal: All PPE that has been doffed and placed in a bio-hazard bag can be disposed in the 55 gallon biohazard disposal containers located under the radio tower. The Department has a vendor who will pick up and dispose of the waste in these drums.

Useful website for PPE:

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Special Order 2020-0004

https://www.cdc.gov/hai/pdfs/ppe/ppe-sequence.pdf

If you have questions or concerns contact the Exposure Control Officers.

This order will remain in effect until it is rescinded or issued in the form of a policy.

Andrew R. Greenwood

Chief of Police

Issued:April 16, 2020

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Special Order 2020-0005

1105.1 BMC CHAPTER 2.99--BAN ON FACIAL RECOGNITION TECHNOLOGY

The purpose of this Special Order is to (1) ensure all members are aware of the Berkeley Municipal Code's prohibition on the use of Facial Recognition Technology, including but not limited to use of the Clearview application, or any software service or application providing facial recognition search capabilities, and; (2) to provide a procedure to report the inadvertent or unintentional receipt of information obtained through Facial Recognition Technology to the Chief of Police.

On March 27, 2018, the Berkeley City Council enacted Berkeley Municipal Code (BMC) Chapter 2.99, Acquisition and Use of Surveillance Technologies. This ordinance governs the use and acquisition of certain described surveillance technologies by the Berkeley Police. The ordinance included "facial recognition software" among those surveillance technologies governed by the ordinance.

On October 15, 2019, the Berkeley City Council amended BMC Chapter 2.99, in order to formally ban the Department's use of any "Facial Recognition Technology", defined as "an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face."

It is a violation of BMC 2.99 and this policy for any employee to "obtain, retain, request, access, or use any facial recognition technology."

There are two exceptions to the ban, as provided BMC 2.99.030(5):

1. Facial recognition technology may be used to unlock personal communication devices, such as an cellular phone, iPad, or similar device, which is used in the regular course of conducting City business, whether city-owned or personally owned; and

2. The inadvertent or unintentional receipt, access to, or use of information obtained from Face Recognition Technology, provided that the BPD employee did not request or solicit the receipt, access to, or use of such information, and all copies of the information are promptly destroyed upon discovery of the information, and the information is not used for any purpose.

   (a) However, in the case of inadvertent receipt of information received relating to the investigation of a specific crime that may have been generated from Face Recognition Technology, but which was not intentionally solicited, shall *not* be a violation of this ordinance, and may be used in connection with a specific criminal investigation.

Should any employee inadvertently or unintentionally receive information obtained from Face Recognition Technology, that employee shall report the receipt of the information through their chain of command to the Chief of Police, who shall ensure such receipt is reported in the Annual Surveillance Technology Report, as required by the ordinance (2.99.030(5)).

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Special Order 2020-0005

Use of Clearview or any other facial recognition application or software service providing facial recognition search capabilities is not allowed under the ordinance and this policy.

This order is meant to highlight legal requirements pertaining to use of Surveillance Technology by Berkeley Police personnel in light of the recent changes to Berkeley Municipal Code. 2.99, and will be in effect until it is rescinded or issued in the form of a self-standing policy.

Andrew R. Greenwood

Chief of Police

Issued: July 21, 2020

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Special Order 2020-0006

1106.1 BMC CHAPTER 2.99--PRIOR APPROVAL REQUIRED FOR TEMPORARY ACQUISITION AND USE OF NEW SURVEILLANCE EQUIPMENT; EXIGENT CIRCUMSTANCES EXCEPTION

The purpose of this Special Order is to (1) ensure BPD personnel are aware of department-owned surveillance technologies and policies; and (2) to provide a procedure to request the temporary acquisition and use of surveillance technology not already owned by the Berkeley Police Department, under the exigent circumstances exception to BMC 2.99, Acquisition and Use of Surveillance Technology.

On March 27, 2018, the Berkeley City Council enacted Berkeley Municipal Code (BMC) Chapter 2.99, Acquisition and Use of Surveillance Technologies. This ordinance governs the use and acquisition of certain surveillance technologies by the Berkeley Police Department.

The Department currently owns and utilizes the following three Surveillance Technologies: Body Worn Cameras, Automated License Plate Readers, and Global Positioning System Tracking Devices. Use of these technologies is governed by existing policies.

BMC Chapter 2.99.030(1) prohibits BPD from seeking, acquiring, sharing or using any new Surveillance Technology without obtaining authorization from the City Council, except in exigent circumstances, and as approved by the City Manager.

Surveillance Technology is defined in Section 2.99.020(1) as follows:

“Surveillance Technology” means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associate with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers, body worn cameras, gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 1(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

Exigent Circumstance is defined in Section 2.99.020(5) as follows:

… a good faith belief that an emergency involving imminent danger of death or serious bodily injury to any person, or imminent danger or significant property damage, requires the use of Surveillance Technology or the information it provides.

The Exigent Circumstance exception for using new Surveillance Technology without prior City Council approval is set forth in Section 2.99.040 as follows:

… the City Manager may borrow, acquire, and/or temporarily use Surveillance Technology in Exigent Circumstances. In such cases, the City Manager must: (1) Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such

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exigency; (2) if the use of the technology is anticipated to continue beyond the exigency, the Department must submit an Acquisition Report and Use Policy to Council; and (3) include the surveillance technology in the next City Manager's Annual Surveillance Technology Report.

Effective immediately, any Department member wishing to use any new Surveillance Technology (not already in use at BPD) due to an Exigent Circumstance must, in writing, formally request permission to use the technology. This request shall describe the exigency, the new technology to be used, and how the new technology is anticipated to be successful. This request shall be made through the employee's chain of command, to the Chief of Police, who will convey the request to the City Manager for consideration and approval. If approved, the Chief will provide written authorization for the use of the new technology.

Should use be approved, the use shall be reported publicly to the Council within 30 days of the commencement of the exigency, and again in the following year's Annual Surveillance Technology Report.

This order is meant to highlight legal requirements pertaining to use of Surveillance Technology by Berkeley Police personnel in light of the recent changes to Berkeley Municipal Code. 2.99, and will be in effect until it is rescinded or issued in the form of a self-standing policy.

Andrew R. Greenwood

Chief of Police

Issued: July 21, 2020

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Special Order 2020-0007

1107.1 COUNCIL POLICY: PROHIBITIONS ON THE USE OF TEAR GAS, PEPPER SPRAY, AND SMOKE.

On June 9, 2020, The Berkeley City Council established an official City of Berkeley policy 1) prohibiting the use of tear gas by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, and 2) prohibiting the use of pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. Based on their actions, the following policies are now in effect.

1107.2 EFFECTIVE IMMEDIATELY AND UNTIL FURTHER NOTICE:

1. Tear Gas shall not be carried in the field or deployed in any way on any operation.

   (a) This Order overrides all existing policies with regards to the use of tear gas, including but not limited to Policy 303.6 Tear Gas Guidelines, and Policy 428 First Amendment Assemblies.

2. The use of pepper spray or smoke for crowd control is prohibited during the COVID-19 pandemic, until such time as the City Council removes this prohibition, except as set forth in (c) and (d) below.

   (a) The use of pepper spray during routine patrol duties is not affected by this prohibition, and is governed by Policy 303 and General Order U-2.

   (b) The use of pepper projectiles (aka “Pava” rounds) is not affected by this prohibition, except for crowd control purposes, and is governed by Policy 303.

   (c) General Order U-2 Use of Force, Section 20, still applies. Pepper spray may still be used in accordance with Council’s existing policy.

      i. Officers shall not use pepper spray as a crowd control technique to disperse or move a crowd. Oleoresin Capsicum (pepper spray) shall not be directed against a person or persons who are engaged in legal speech or other expression that is protected by the First Amendment, nor upon those committing unlawful acts by non-violent or passive resistant means, (e.g. sitting or lying down to block a street or doorway).

   (d) General Order U-2, Use of Force, Section 18 remains in effect.

      18 - In crowd situations, less-than-lethal force and/or chemical agents [including smoke] shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request

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from being made and the delay would likely risk injury to citizens or police personnel (e.g., [incendiary weapons, explosives] rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).

(a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.

(b) In the event a use of force as described in Section 23 of this Order occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.

(c) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g., the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

(d) Officers deploying pepper spray in a crowd situation shall attempt to limit collateral exposure to non-involved parties. Where there is probable cause to arrest for a crime, officers shall prioritize where practical the arrest of individuals upon whom pepper spray has been deployed.

This Order will remain in effect until it is rescinded or otherwise issued in the form of a policy.

Andrew R. Greenwood

Chief of Police

Issued: August 5th, 2020

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Special Order 2021-0001

1109.1 RESPONSE TO AB 1950

AB-1950 (Kamlager) - Probation: Length of Terms

Penal Code 1203a and 1203.1 (Amend)

PURPOSE AND SCOPE:

This Special Order is intended to provide temporary guidance and clarity to the recently implemented AB 1950, which limits the term of probation to no longer than two years for a felony conviction, and one year for misdemeanor conviction, except for offenses that include a specific probation term in statute. Additionally this order provides an outline of the workflow for the alignment process with the stakeholders, the main highlights of AB 1950, the list of exceptions, and method for officers and dispatchers to apply AB 1950 to individuals with active Alameda County Probation terms.

BACKGROUND:

AB 1950 was signed into law on Sept. 30, 2020. This new law amended PC 1203a and 1203.1, reducing probation terms for felony and misdemeanors. It is now being understood to apply retroactively to people already on probation, thus shortening their probation terms. At the Alameda County Chiefs of Police and Sheriff Association recent meeting the Alameda County District Attorney announced their interpretation of AB 1950. The Alameda County DA has chosen to apply the AB 1950 probation limits to pre-2021 probations. The DA's office will be compiling a list of eligible probation and dockets, ultimately terminating the applicable probations on the record. These will effectively be updated in CRIMS.

AB 1950 provides that the two-year probation limit does not apply to offenses defined by law as violent felonies, or to an offense that includes a specific probation term within its provisions. It provides that for these offenses, the court, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence and under conditions as it shall determine

It should also be noted that there may be exceptions to this list in the future plea agreements post-2021, for example:

It's possible that post 1/1/21 a person commits a robbery (PC 211). The suspect agrees to a plea of PC 487 and may waive their right to AB 1950 and accept a 5 year probation. This would be reflected in CRIMS in the probation and dockets for cases resolved in 2021 and beyond .

PROCEDURES:

While the Alameda County District Attorney is addressing the modification to applicable active probationers and dockets, Officers and Dispatchers will need to take the following steps to ensure lawful applications of those with reduced 4th Amendment waiver conditions .

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If an individuals with active probation term is detained for a lawful purpose, and an Officer elects to exercise their respective search clause, one additional step will be necessary. Officers and Dispatchers shall check the conviction date on the individuals' active docket. Per AB 1950 Officers or Dispatch shall add two years from the conviction date on felony convictions, or one year from misdemeanor convictions in order to get an accurate term length on the individual's respective probation. AB 1950 only applies to the term length of probation, it does nothing to change any other terms of the probation.

AB 1950 provides the following two-year probation limit does not apply to:

- Murder or voluntary manslaughter
- Mayhem
- PC 261 and 262 rape
- Sodomy
- Oral copulation
- Lewd or lascivious acts
- Felony punishable by death or LWOP
- Felony with GBI infliction
- Robbery
- Arson
- Sexual penetration
- Attempted murder
- Kidnapping
- Assault with intent to commit a felony
- Child sex abuse
- Carjacking
- Rape, spousal rape, or penetration
- Extortion
- First degree burglary
- Some financial crimes – [convictions under PC 487(b)(3), 503 or 532a – where the amount of loss is > $25,000.00]

AB 1950 provides the following one-year probation limit does not apply to:

- DUI probation, because they are outlined under VC 23600 as 3 and 5 year terms.
- Child endangerment
- Child abuse

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- Domestic Violence (m 243(e)(1) and m 273.5)
- Violation of a protective or stay away order
- Elder and dependent abuse

Officers should document their review of the probationer's conviction date and application of AB 1950 in their police reports. Additionally Officers should document any search of a probationer that falls into one of the above exceptions.

This Order will remain in effect until it is rescinded or issued in the form of a policy.

Andrew R. Greenwood

Chief of Police

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Special Order 2021-0002

1110.1 LAW ENFORCEMENT RESPONSE TO SHELTER SITES DURING COVID-19

This order is intended to clarify when Berkeley Police Department members may conduct law enforcement action at any of the shelter sites within the City of Berkeley during Covid-19.

TYPES OF SHELTER SITES DURING COVID-19

Traditional Congregate Shelters

(a) Dorothy Day House Vet's Building, 1931 Center St-Basement

(b) Dorothy Day House BESS Winter Shelter, 2134 MLK Way – OCH 1st Fl.

(c) Berkeley Food and Housing Project Dwight Way Shelter,2140 Dwight Way (Men's on the first floor, Women's on the 3rd floor)

(d) BOSS Harrison House/Ursula Sherman Village Singles/Families, 711 Harrison St

(e) BACS Stair Center, 2nd/Cedar

Respite Sites*

(a) 1281 University Avenue: 6 RV Trailers

(b) 701 Harrison Street: 12 RV Trailers

(c) 1654 5th Street: 4 bedroom Single-Family Home

Safer Ground Hotels*

(a) Rodeway Inn, 1461 University Avenue - Lease ends on 06/30/21

*Berkeley Food and Housing Project is the operator of the Respite Sites and Safer Ground Hotels. The Respite Sites and Safer Ground Hotels are funded through Alameda County.

REMOVAL OF SHELTER OCCUPANT AT REQUEST OF SHELTER EMPLOYEES

Shelter occupants are licensees who occupy real property at the permission of the operator of the facility (the owner, owner's agent, or person in lawful possession). If Officers are called to the scene of a shelter because a person refuses to leave and the person continues to refuse, that person can be cited and/ or arrested for trespass, as set forth in Penal Code 602(o).

Traditional Congregate Shelters have on-site managers who are available to speak to Officers and may often be the caller who initiated the police response. On-site managers may emphasize the fact that a rule violation is the reason for the removal of the shelter occupant. For legal purposes the relevant question is whether the elements of trespass set forth in Penal Code 602(o) have been met, namely that the person has refused to leave the property after requests to do so by the operator of the facility, and by the Officer(s) at the request of the operator.

The Respite Site RV trailers are equivalent to a congregate facility. If the operator of the site, Berkeley Food and Housing Project, requests that Officers remove a person who has refused

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to leave the site, that person may be cited and/or arrested for trespass on private property as detailed above.

In the case of Safer Ground hotel sites, the existence of an on-site hotel operator and private rooms can create complications for law enforcement response. Where the hotel operator and any County designee disagree about the need for removal of an occupant, Officers should make an independent determination as to whether criminal conduct justifies a citation and/ or an arrest. Where the County designee seeks to remove an occupant for trespass (as detailed above), Officers should follow applicable protocols to secure permission for any property damage that may result from breeching a locked room or seek to obtain an arrest warrant for the trespasser.

(a) **Shelter Occupants Do Not Acquire Tenant's Rights Based Solely on the Type of Residence or Duration of Occupancy**

RV trailer residents generally have tenant's rights set forth in the Mobile home Residency Law (Civil Code 798 et seq.). However, this law has no applicability to our Respite Sites. The trailers at the Respite Sites are subject to the Shelter Crisis statute (Gov. Code 8698.4) which expressly exempts such temporary shelters from the protections otherwise offered by the Mobile home Residency Law. Officers who report to 1281 University Avenue or 701 Harrison Street should be advised accordingly; the occupants of those properties do not have a right to remain on-site after being instructed to leave by Berkeley Food and Housing Project staff.

Long-term guests in hotels in California acquire the right to exclusive possession of their room after the 30th consecutive day of their stay. However, this right is predicated upon the fact that they have made a contract with the hotel operator and paid the rent for their room. This "long-term guest" rule to the Safer Ground Hotel Sites, because the residents are not paying rent and do not have the lawful right to exclusive possession of the hotel rooms. They occupy the hotel rooms at the pleasure of the County designee, Berkeley Food and Housing Project, who may ask them to leave.

Where Officers encounter a situation in which an occupant of one of the Safer Ground Hotel Sites alleges that they have gained a right to remain because of the duration of their stay, Officers may request proof of payment for the duration, or they may request documentation from the County designee, Berkeley Food and Housing Project, that the occupant is occupying one of the Safer Ground Hotel Sites.

In the case of the Single-Family Home at 1654 5th Street, Officers may consider that an eviction notice is required to remove occupants and that such removal can only be accomplished by the Sheriff. However, as with the traditional congregate shelters, occupants do not have an ongoing right of possession of the property and can be removed at the option of the operator of the facility, Berkeley Food and Housing Project, and cited and/or arrested for failure to comply pursuant to Penal Code 602(o).

(b) **ENFORCEMENT PROCEDURES**

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(a) As set forth in Penal Code 602(o) it is a trespass for a person to refuse to leave private property not open to the public upon being requested to do so by the owner, the owner's agent or designee, or by a police officer acting on the owner's behalf.

(b) The police officer who conducts the request must inform the person that they are acting at the behest of the owner and must give the person an opportunity to leave the premise. This pre-arrest warning is in accordance with our Council policy to seek voluntary compliance and provide sufficient notice to community members who may be part of a vulnerable demographic.

(c) If the person refuses to leave after adequate notice to vacate, officers may arrest or issue a field citation for Penal Code 602(o) in accordance with BPD General Order C-10 (Citation Release).

The above provided information should not be construed to limit the ability of the Berkeley Police Department members in maintaining the peace at any of these facilities or otherwise sanctioning criminal conduct.

This Order will remain in effect until it is rescinded or otherwise issued in the form of a policy.

Andrew R. Greenwood

Chief of Police

Issued: February 25, 2021

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Chapter 12 - Training and Information

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Social Host Ordinance

1200.1 BACKGROUND

In 2007, the Berkeley City Council enacted the Social Host Ordinance (SHO).By enacting the Ordinance, Council formally recognized the harm caused by the unsupervised and illegal consumption of alcohol by minors at unlicensed premises, public places and private property, including private residences.

The Council stated that parties, gatherings and/or events where minors are consuming alcohol can lead to physical altercations, drunk driving, binge drinking, unprotected or unplanned sex, sexual assaults, vandalism and excessive neighborhood noise. The control of parties, gatherings and/or events where minors are consuming alcohol is necessary when such activity is determined to be a threat to the peace, health, safety or general welfare of the public (BMC §13.49.030).

1200.2 PURPOSE

The purpose of the SHO is to address the problems identified above and protect the public health, safety and general welfare by enhancing the enforcement of laws prohibiting the consumption of alcohol by minors and reducing the costs of providing police services to parties, gatherings, or events requiring a response, by requiring hosts to ensure minors are not consuming alcoholic beverages (BMC 13.49.010B).

1200.3 DEFINITIONS

Minor: Any person under 21 years of age.

Gathering: A group of persons who have assembled or are assembling for a social occasion or social activity.

Host: The person or person(s) who permit, allow, or host a gathering under his/her/their control where minors will be present (e.g., resident tenant, owner, event organizer, house president, etc.).

Premises: Any residence or other private property, individual unit or place, including any commercial or business property.

Public Place: Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

1200.4 THE STATUTE

BMC §13.49.030(A) provides it is unlawful for any person to:

(a) Permit, allow, or host a party, gathering or event at his or her place of residence or other private property, public place, or any other premises under his or her control where alcoholic beverages are being consumed by any minor.

The SHO does not apply:

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1. If all minors consuming an alcoholic beverage are being supervised by their parents or guardians [BMC §13.49.030(B)]; or,
2. At any location or place regulated by the California Department of Alcoholic Beverage Control (i.e., bars, restaurants, special events with an issued 1-day ABC license.) [BMC §13.49.030(C)];

1200.5 CRIMINAL CHARGING AND PENALTIES

A violation of the SHO may be cited as either a misdemeanor or an infraction. However, a violation shall not be charged as a misdemeanor unless the citing officer observes egregious behavior or aggravating circumstances (BMC §13.49.040A). The fine for the first violation is $250 and will increase for subsequent violations by the same person (BMC §13.49.040B).

1200.6 HOST SELF-REPORTING - NO CRIMINAL LIABILITY

A person hosting the gathering shall not be in violation if he/she seeks assistance from the Police Department or other law enforcement agency to remove any person who refuses to abide by the host's responsibilities imposed by this Ordinance, or end the event because he/she has been unable to prevent minors from consuming alcoholic beverages, despite having taken all reasonable steps to do so, as long as such a request for assistance is made before any other person makes a complaint (BMC §13.49.030E).

1200.7 RESPONSIBILITY OF THE HOST

The SHO requires the Host take reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering.

To be held responsible for a SHO violation, the Host must have knowledge of the prohibited activity. The Host shall be deemed to have actual or constructive knowledge that a minor has consumed an alcoholic beverage under either of the following conditions:

(a) If the Host is present at the premises of the gathering at the time any minor consumes an alcoholic beverage; or,

(b) If the Host has **not** taken all reasonable steps to prevent the consumption of alcoholic beverages by minors, as set forth in BMC §13.49.030(D):

1. Controlling access to alcoholic beverages at the gathering.
2. Controlling the quantity of alcoholic beverages at the gathering.
3. Verifying the age of persons attending the gathering by inspecting driver's licenses or other government issued identification.
4. Monitoring the activities of persons at the gathering.
5. Monitoring the conduct of minors at the gathering.

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1200.8 PROCEDURES

To successfully enforce the SHO, the prohibited activity and the standards of 'reasonableness' and 'knowledge', as related to any criminal liability on the part of the Host(s), should be identified and evaluated. Therefore, investigating officers should:

(a) Make observations and conduct interviews that clarify the factual circumstances of a gathering or event wherein minors may be consuming alcoholic beverages.

(b) Request the assistance of additional officers, if available, to ensure officer safety and accomplish desired detentions.

(c) Interview detainees to verify their identity and age, and explore how they gained access to the event and came into possession of an alcoholic beverage.

(d) Note the presence or absence of anyone collecting money at the door or checking identification cards, etc.

(e) Document all relevant observations (i.e., dozens of minors running around with red cups attempting to elude officers, several high school age or other minors detained with alcohol on their person or breath, etc.)

If any of the detainee(s) are determined to be under 21 years of age, determine if the Host took reasonable steps (as outlined above in 1200.7(b)) to control their access to alcoholic beverages. If the Host is determined not to have taken reasonable steps, he/she should be issued a citation for a violation of BMC §13.49.030, or if necessary, taken into custody for a misdemeanor violation.

1200.9 DOCUMENTATION

An investigation of a Social Host Ordinance (SHO) violation shall be documented on a case report.

Enforcement of the SHO does not preclude enforcement of other observed criminal violations.

A SHO violation may also constitute a violation of the "Second Response" Ordinance (BMC §13.48.040), see the Second Response Policy for further.

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Taxicab Enforcement

1201.1 PURPOSE AND SCOPE

The Professional Standards Bureau has prepared this enforcement guide to provide assistance in identifying, and enforcing the Berkeley Municipal Code (BMC), and California Vehicle Code (CVC) as they apply to taxicabs being operated in the City of Berkeley. It is intended to serve as a general summary of ordinances that pertain to taxicab enforcement, but is not an exhaustive list of enforcement options (use of non-taxicab related CVC statutes, or Penal Code statutes). The codes are abbreviated for ease of reading, and to focus on codes that are reasonably enforceable by BPD officers. There are other administrative codes that govern taxicabs, but it would not be feasible for BPD officers to enforce these codes.

1201.2 GENERAL GUIDELINES

There are three classes of taxicabs operating within the City of Berkeley: permitted taxicabs, non-permitted taxicabs, and illegal taxicabs.

Permitted taxicabs have been inspected for safety, have paid fees to the City, and are operated by permitted drivers. They are required to follow City of Berkeley taxicab regulations.

Non-permitted taxicabs are those with permits issued by other cities. Some City of Berkeley requirements also apply to them, such as, for instance the requirement that they not obstruct the right of way.

Illegal taxicabs are those not allowed to operate at all, whether or not they do so in compliance with Ordinance.

Permitted taxicabs may use taxi stands and pick up customers in the City, but are not allowed to create their own taxi stands by waiting near exits to crowded venues such as University of California football games, concerts, etc. Non-permitted taxicabs are prohibited from taking on any customers within the City, or attempting to do so.

When enforcing violations of the Ordinance by non-permitted taxicabs, specifically whether they have picked up a customer in Berkeley, the investigating officer should question both the taxicab driver, and the passengers independently to ascertain where the customer was picked up.

The following are examples of a driver's permit and vehicle permit:

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A permitted taxicab is required to have these two items in the vehicle (see below for further detail), and to have a business owner permit on file with the City. A BPD officer is not expected to investigate whether a taxicab operator has a business owner permit, but can refer this matter to the Code Enforcement Unit (see contact information at the conclusion of this policy), if the officer suspects the taxicab operator is not in compliance with this ordinance.

1201.3 AUTHORITY TO ENFORCE

9.52.170 Enforcement--Violation--Public Nuisance--Penalty.

A. The City Manager and authorized employees are empowered to investigate and conduct inspections to determine whether permittees and other persons are complying with this chapter.

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B. It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor, but may be charged with an infraction at the discretion of the citing officer.

C. Violation of this chapter is hereby declared to be a public nuisance.

D. The remedies set forth in this chapter are cumulative. (Ord. 6874-NS § 7 (part), 2005: Ord. 6325-NS § 19, 1996)

1201.4 PERMITS REQUIRED

9.52.020 Annual permits required for business owners, drivers, and vehicles--Fees, expiration and limitation on number of permits

A. Annual Permits--Approval Required. No person, corporation, partnership, cooperative, business, fictitious name, or dispatch center shall engage in the business of operating any taxicab or vehicle for hire within the City without a taxicab business owner's permit, driver's permit and vehicle permit issued by the City. Such permits shall not be assigned, sold or transferred to another business owner, driver or vehicle.

9.52.030 Business owner's permits

A. Permit Applications. Any person or entity seeking to operate as a business owner shall apply in the manner set forth herein. The application shall be in writing, signed by the business owner, and shall set forth all the information required in the permit application form and accompanying documentation, including but not limited to the following:

9.52.040 Vehicle permits

A. Permit Application. Each vehicle for hire operated in the City must be subject to a vehicle permit from the City as set forth herein. The application shall be in writing, signed by the owner, and shall set forth all the information required in the permit application form and accompanying documentation, including, but not limited to the following:

9.52.050 Driver's permits

A. Permit Application. Any person seeking to operate a vehicle for hire as a driver shall apply for a permit in the manner set forth herein. No person under the age of 21 years shall be issued a driver's permit. The application shall be in writing, signed by the driver, and shall set forth all the information required in the permit application form including, but not limited to, the following:

1201.5 REGISTRATION AND INSURANCE

9.52.060 Registration and licensing requirements--Conspicuous posting in vehicle

C. Vehicle Permit Affixed to Vehicle. Every vehicle for hire authorized to operate under this chapter shall have attached to the left rear window a current vehicle permit issued by the City in accordance with the provisions of this chapter and all expired permits will be removed.

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E. Driver's Permit--Required Posting. The driver's permit shall be posted in full view of the passenger at all times while said driver is operating the vehicle. Every driver's permit shall show the photograph of the driver, driver's permit number, name of the business owner by which the driver is employed, if any, a telephone number of the business and a City telephone number such that passengers may communicate complaints.

9.52.070 Insurance requirements

A. Motor Vehicle Liability Policy--Required.

1. It is unlawful to operate any vehicle for hire in the City unless there is on file with the City a valid motor vehicle liability insurance policy

1201.6 RIGHT OF WAY OBSTRUCTION

9.52.120 Standards for driver conduct

C. Unlawful Obstruction of Public Right-of-Way - It is unlawful for the driver of any vehicle for hire at any time or place when waiting for or engaged in his or her employment, to obstruct any street or sidewalk.

1201.7 USE OF TAXI STANDS

9.52.140 Taxicab stands

A. Taxicab Stands - Joint Use and Regulation. The City Council may approve the establishment and removal of taxicab stands by resolution.

1. All approved taxi stands shall be for the joint use of all taxicab business owners and drivers permitted to operate within the City.
2. During the period of use of the spaces referred to in this section, vehicles shall at all times be parked in accordance with existing markings on the pavement or, in event that specific space is set aside for the use of taxicabs, parking by taxicabs shall be restricted to such specific location.
3. No taxicab shall stand or park while awaiting employment at any place other than at a joint use taxicab stand as specified in this chapter.
4. No taxicab shall be parked unattended in any taxicab stand for a period of time exceeding five minutes.

1201.8 SMOKING PROHIBITED

12.70.030 Locations where smoking is prohibited

Smoking shall be prohibited in all public places including but not limited to the following unless otherwise provided and in all places where the owner or person in charge of the establishment has posted a nonsmoking sign:

I. In buses, trains, taxicabs and other means of public transit while operating within the boundaries of the City, and in ticket areas and waiting rooms of transit terminals and stations.

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1201.9 CONCLUSION

Code Enforcement Officers are also available during normal business hours to assist in investigations or provide guidance. The Code Enforcement Unit is located at 2180 Milvia St. (City Hall) on the first floor. The supervisor of the unit is Wanda Drouillard, and she can be reached at 981-2482, or by email at wdrouillard@cityofberkeley.info.

Officers should use the appropriate citation forms (moving citation or parking citation) to cite for BMC violations. The violations will be handled in Traffic Court as infractions.

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Second Response

1202.1 BACKGROUND

In 1993, the Berkeley City Council stated,

"Due to inadequate supervision, some large gatherings of people, such as parties, frequently become loud and unruly to the point that they constitute a threat to the peace, health, safety, or general welfare of the public as a result of conduct such as one or more of the following: excessive noise, excessive traffic, obstruction of public streets or crowds who have spilled over into public streets, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, and litter.

The City of Berkeley is required to make multiple responses to such unruly gatherings in order to restore and maintain the peace and protect public safety. Such gatherings are a burden on scarce City resources and can result in police responses to regular and emergency calls being delayed and police protection to the rest of the City being reduced. In order to discourage the occurrence of repeated loud and unruly gatherings, the persons responsible for the public nuisance created by these gatherings should be fined."

1202.2 THE ORDINANCE

Berkeley Municipal Code §13.48.020 states it shall be unlawful and a public nuisance to conduct a gathering, which incorporates the following criteria:

- Ten or more persons are involved;
- The event is occurring on private property; and,
- The gathering is occurring in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of unlawful conduct.

Examples of such unlawful conduct may include the following:excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service of alcohol to minors, public urination, fights, disturbances of the peace and littering.A gathering constituting a public nuisance may be abated by all reasonable means including, but not limited to, an order requiring the gathering be disbanded, and citation and/or arrest of any law violators under any applicable local laws and state statutes.

The Ordinance explicitly prohibits targeted enforcement against student housing.However, nothing in the Ordinance precludes the City from setting priorities in the use of its resources by employing the Ordinance against events that are the most disruptive, against properties at which disruptive events are held most often, or on the basis of other similar legitimate factors.

1202.3 EXHIBIT A

When the police intervene at a gathering which constitutes a nuisance under the Ordinance, a "Notice" must be prominently posted at the premises at which the nuisance occurred.The Notice, referred to in the Ordinance as an "Exhibit A," states that the intervention by the police has been

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necessitated as a result of a public nuisance caused by an event at the premises.The “Exhibit A” also indicates:

- The date and time of the police intervention;
- Any subsequent police intervention at the same premises within a one hundred twenty-day (120) period, including an intervention on the same day as the posting of the “Exhibit A,” shall result in civil penalties;and,
- Liability may fall upon any guests causing the public nuisance, all sponsors of the gathering, all residents of the premises, all persons in control of the premises, and all owners of the premises that reside on or adjacent to the premises or are present at the premises when the notice is posted.

The residents or persons in control of the property, if present, must be consulted regarding a location where the Notice can be conspicuously and securely posted.When consulted, those persons, as well as sponsors of the nuisance event, if involved in the decision, become responsible for ensuring that the “Exhibit A” is neither removed nor defaced.If either occurs, those responsible for the security of the notice become liable for a civil penalty of $100.00, in addition to any other penalties which may be due under the Ordinance.

1202.4 EXHIBIT B

Should the police intervene at a premises with an active “Exhibit A”, a new notice shall be posted and a fine imposed against the property by means of an administrative citation.The new notice, referred to in the Ordinance as an “Exhibit B,” states that the intervention by the police has been necessitated as a result of a public nuisance caused by an event at the premises.The “Exhibit B” also indicates:

- The date and time of the police intervention;
- Whether the nuisance is the second, third, fourth, etc. at the premises within the last 120 days;
- The fine amount associated with the violation (second - $750, third - $1,500, fourth and subsequent violations - $2,500);
- The 120 day period is extended another 120 days from the date of the “Exhibit B” posting;
- Liability may fall upon any guests causing the public nuisance, all sponsors of the gathering, all residents of the premises, all persons in control of the premises, and all owners of the premises that reside on or adjacent to the premises or are present at the premises when the nuisance occurs.

For every subsequent violation of the Ordinance, a new “Exhibit B” form shall be completed and posted. The residents or persons in control of the property, if present, must be consulted regarding a location where the Notice can be conspicuously and securely posted.When consulted, those persons, as well as sponsors of the nuisance event, if involved in the decision, become responsible for ensuring that the “Exhibit B” is neither removed nor defaced.If either occurs, those responsible

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for the security of the notice become liable for a civil penalty of $100.00, in addition to any other penalties which may be due under the Ordinance.

1202.5 PROCEDURE - OFFICER

An officer responding to a “loud party”, “unruly gathering”, etc. type call for service should:

(a) Contact the resident, person in control of the property, or event organizer, and determine if Ordinance enforcement is appropriate.

(b) Complete an “Exhibit A” or “Exhibit B” form.

(c) Confer with the resident, person in control of the property, or event organizer and identify a conspicuous and secure location to post the “Exhibit” form. Should the resident, person in control of the property, or event organizer decline to confer, the officer should choose an appropriate posting location and inform the parties present that removal or defacement of the notice within the 120 day period may result in a $100.00 fine.

(d) Post the duplicate copy of the Exhibit form at the premises and retain the original for the report.

(e) Complete a Case Report and document the following information

- Known complainant’s identification and report information;
- Identification of parties responsible for the property hosting the gathering;
- The overall condition and/or general environment of the premises;
- The number of people involved at the gathering;
- Whether or not alcohol was a factor;
- Any traffic conditions affected by the gathering;
- Any other information that may be relevant to the Ordinance violation; and,
- The exact location the Exhibit form was posted.

(f) Submit the report in AEGIS, route the original Exhibit form to Records Management and place a copy in the CSB mailbox to ensure proper administrative follow-up.

1202.6 REPEAT VIOLATIONS

Officers should be aware of what properties in their assigned area have been posted for Ordinance violation(s) and should monitor them for repeat violations within the prescribed term.If, within 120 days of the initial posting, an officer investigates another unruly gathering as described in the Ordinance, the officer should replace the Exhibit A posting with an Exhibit B, document their observations and actions on a new Case Report and forward a copy of the report CSB for administrative follow-up.

It is important to know that with each subsequent occurrence of a nuisance at a previously posted property, the 120 day “clock” resets.For example, if an address was initially posted on January

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1st, and there was a reported violation on March 1st, the 120 day period restarts and would conclude, absent a subsequent violation, on June 28th.As such, knowing the date of the most recent documented Ordinance violation at a posted property will allow an officer to determine if the 120 day term is still in effect or has expired.

1202.7 CSB AREA COORDINATOR FOLLOW-UP PROCEDURES

(a) An Area coordinator receiving a follow up request for a Second Response violation should: Ensure a Premise Alert has been entered into CAD for the subject property: Minimally, the CAD entry should include: the date/time the Exhibit form was posted; the name and phone number of the liable person(s) contacted; and, the location where the notice form was posted.Additionally, if regarding an Exhibit B, the alert should include the violation number (second, third, fourth, etc.) and the fine amount to be imposed against the property.Having this information available in CAD will help patrol officers enforce the Ordinance should they respond to subsequent loud, unruly parties during the 120 day period.Additionally, requesting the Communication Center staff to revise the CAD event description to “2nd Response” will help with event tracking and future administrative research efforts.

(b) Mail a notice of the police intervention to the property owner(s):BMC 13.48.030(B) requires a notice of police intervention be mailed to the property owner(s) on file in the City’s property tax assessment records.The notice is a letter from the responsible Area Coordinator along with a copy of the Exhibitform, which advisesthe property owner(s) that any subsequent event within 120 days on the same premises necessitating police intervention shall result in liability of the property owner for all penalties associated with such intervention as more particularly set forth in the Ordinance.

(c) Set a three week follow-up inspection: The Area Coordinator should set a three week follow-up in order to conduct an initial inspection visit of the site to examine the Exhibit A posting.In the event the form has been removed, a new Exhibit A form shall be posted.Observed violations of the Ordinance and related enforcement actions must be documented in a supplemental report, which will support a demand for the prescribed civil fine.

(d) Conduct additional inspectionsto ensure Ordinance compliance and document any subsequent violations on a Case Report.

(e) Mail an Exhibit B notice letter for each subsequent violation: For each instance wherein an Ordinance violation is identified, the Area Coordinator is responsible for mailing an Exhibit B notice letter to the person(s) liable for the civil penalty.

(f) Provide the City of Berkeley Finance Department with copies of all reports and letters associated with any Ordinance violation to facilitate billing of the responsible parties.

1202.8 CIVIL PENALTIES AND COLLECTION PROCEDURES

Civil penalties may be assessed against all persons liable for the City's intervention to abate a gathering deemed a public nuisance.The schedule of penalties is as follows:

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- For a second violation of the Ordinance during the 120-day period, the penalty shall be the sum of $750.
- For a third violation of the Ordinance response during the 120-day period, the penalty shall be the sum of $1,500.
- For any subsequent violation of the Ordinance during the 120-day period, the penalty shall be the sum of $2,500 for each intervention by police.

Billed by the Exhibit B form, all persons liable for applicable civil penalties will be directed to remit payment within thirty days of the letter's postmark to the City of Berkeley Finance Department, who will be responsible for collections.If payment is not received within the stated term, the bill will be deemed delinquent, and all persons liable for the penalties will be subject to accrued interest at the maximum legal rate, as well as an additional penalty of $100.

1202.9 SUMMARY

A tool wielded to quell public nuisances, the "2nd Response" Ordinance can improve, if not restore, the quality of life in neighborhoods adversely affected by loud and unruly gatherings.This result cannot occur, however, unless the Ordinance is used effectively.Knowing the elements of the statute and the role the police officer plays in its enforcement will help ensure success.Make and document detailed observations in your report, post the Exhibit A form appropriately, and route the report package properly so the administrative effort that follows may be readily accomplished.

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Smoking Ordinance

1203.1 BACKGROUND

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke can cause lung cancerin nonsmokers.Those who are at special risk include elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Other health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, broncho-constriction and broncho-spasm.

1203.2 PURPOSE

This policy describes the City of Berkeley Ordinance regarding smoking restrictions and tobacco control policies, and the expanded locations at which smoking is prohibited.The Berkeley City Council's findings are included as background and rationale for the Ordinance, and to promote an understanding of enforcement recommendations.

1203.3 SMOKING POLLUTION CONTROL ORDINANCE

1203.3.1 LEGISLATIVE INTENT

The intent of the City Council in enacting this Ordinance was to:

(a) Protect public health and welfare by prohibiting smoking in public places, places of employment, and specially designated public play areas where small children are at risk of choking on or ingesting cigarette butts and other toxic tobacco litter;

(b) Guarantee the rights of nonsmokers to breathe smoke-free air, and to recognize that the right to breathe smoke-free air shall have priority over the desire to smoke; and,

(c) Promote self-enforcement through educational outreach regarding smoking prohibitions.

1203.3.2 DEFINITIONS

"Smoke" or "smoking" means and includes either (1) inhaling or exhaling upon, burning, or carrying any lighted smoking equipment for tobacco, nicotine or any other plant or product used for personal habit commonly known as smoking or (2) inhaling or exhaling upon, vaporizing, or otherwise using any electronic smoking device.

"Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances, including but not limited to any device manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

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"Commercial area sidewalk" means any sidewalk in front of or adjoining any property designated with a C on the City's Official Zoning Map attached hereto.

"Commercial Area Sidewalk" includes:

(a) Shattuck Avenue between Rose Street and Dwight Way;

(b) Telegraph Avenue between Bancroft Way and Parker Street;

(c) College Avenue between Russell Street and Webster Street;

(d) Avenue; TulareSolano Avenue between The Alameda and

(e) 4th Street between Virginia Street and Addison Street;

(f) Avenue; ShattuckBancroft Way between College Avenue and

(g) San Pablo Avenue between Channing Way and Parker Street;

(h) Street; 62ndAdeline Street between Fairview Street and

(i) Euclid Avenue between Hearst Street and Ridge Road;

(j) Street; CameliaGilman Street and

(k) University Avenue between Oxford Street and 4th Street;

(l) Addison Street between Oxford Street and Martin Luther King, Jr. Way;

(m) Way between Oxford Street and Martin Luther King, Jr. Way; and,Allston

(n) Kittredge Street between Oxford Street and Milvia Street.

1203.3.3 REGULATED LOCATIONS
The Ordinance prohibits smoking in the following venues:

- Bars.
- Restaurants.
- Public restrooms.
- All indoor worksites and at outdoor worksites having more than two employees.
- Sidewalks in all commercial zones.
- Recreational locations (i.e., bingo/gaming parlors, museums, libraries, aquariums,etc.) and other outdoor venues open to the public (i.e., stadiums, parks, athletic fields, hiking trails, biking paths, outdoor theaters, parking garages, etc.).
- Within 25 feet of doorways, windows, and air intake vents of any building open to the public; bus and other transit stops; and, service areas, such as ATMs, ticket lines, and cab stands.
- Within 50 feet of any building used as a health care facility, hospital, licensed child or adult care facility or senior center.
- All units of multi-unit residences and all common areas of multi-unit residences.
- Inside all public transit, including taxis, while operating in Berkeley.

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- See BMC §12.70.030 and 12.70.035 for more affected locations.

Appendix A offers maps specifying commercially zoned areas.

1203.3.4 PLACES NOT REGULATED BY ORDINANCE
The Ordinance does not regulate smoking in retail tobacco stores or private residences, unless the residence is used as a child or health care facility.Notwithstanding this exemption, the owner or person in control of the business may designate the entire establishment as nonsmoking.

1203.3.5 SMOKING MEDICAL CANNABIS AT DISPENSARIES
Notwithstanding anything to the contrary in this Ordinance, the inhalation of medical cannabis through the use of an electronic smoking device inside a dispensary and on the public right of way within 50 feet of such a Dispensary, by a member of that dispensary, is not prohibited by this Chapter. (Ord. 7369-NS § 3, 2014)

1203.3.6 VIOLATIONS AND PENALTIES
Set forth in BMC §12.70.110, any person who violates the provisions of this Ordinance shall be guilty of an infraction and subject to fine.The following subsections describe particular unlawful activity:
(A) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this Ordinance to fail to comply with its provisions.
(B) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Ordinance.

1203.4 ENFORCEMENT
The Ordinance states, “any owner, manager, operator or employee of any establishment controlled by this [Ordinance] shall have the right to inform persons violating this [Ordinance] of the appropriate provisions thereof.”Similarly, private citizens may “bring legal action” to enforce this Ordinance.Officers should be responsive to public requests for law enforcement assistance.

Keeping with the Council’s intent, gaining compliance through education and responsible party cooperation is the preferred method of enforcement.In most cases, advice and a warning should prove sufficient to resolve the complaint.Enforcement of this Ordinance is not intended to consume an inordinate amount of an officer’s time and should not be considered a high priority.

In some instances, however, the issuance of a citation may be necessary.For example, citing a chronic violator who has disregarded repeated warnings may be appropriate in order to abate a violation and convey the desired public health message.Similarly, a community member reporting an Ordinance violation may be insistent that a citation be issued.In such cases where the reported offense is observed by the investigating officer, a citation may be written.

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1203.5 ATTACHMENTS

See attachment: 1203 Zoning Map 2019.pdf

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Chapter 13 - Surveillance Technology

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Surveillance Use Policy - Body Worn Cameras

1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance and fulfills the requirements of Berkeley Municipal Code (BMC) Chapter 2.99, and incorporates by reference language from the Berkeley Police Department Body Worn Camera Policy #425- Body Worn Cameras and adds elements as required by BMC Chapter 2.99. Guidelines, procedures, and practices for the use of Body Worn Cameras by members of the Berkeley Police Department while in performance of their duties are fully set forth in the Berkeley Police Department Law Enforcement Manual Policy 425- Body Worn Cameras.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

1300.2 AUTHORIZED USE

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

(a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.

(b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.

(c) Self-initiated field contacts in which a member would normally notify the Communications Center.

(d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

(e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.

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(f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Pursuant to 1300.2.1, members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

(a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s)

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shall be taken from them and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

(b) Personnel uploading secured BWC video files shall not view the files unless authorized.

(c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.

(d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording. Where both an original statement and supplemental statement or document have been produced, both the original statement, without alteration, and the supplemental statement or document shall be included in the report.

(e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

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1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

(a) Recorded files may also be reviewed:

1. Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.
5. Pursuant to 1300.9, access to recordings will be granted to the Police Review Commission Officer and/or Investigator investigating a specific compliant where BWC evidence files are available, and are not part of any ongoing criminal investigation of an officer.

(b) Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4). Any member(s) of the public that appears in video footage used for outside training

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purposes (e.g. if video footage is shown by an authorized member of the Police Department for training purposes outside of the Berkeley Police Department such as at a conference or other training), to the extent feasible, will be blurred out or redacted in a manner to protect the privacy rights of those involved in the incident.

1300.4.5 COB CIVIL CLAIMS AND LAWSUITS
BWC recordings may be reviewed and used by City of Berkeley counsel for civil claims and lawsuits. (Ref. policy 425.17.5)

1300.5 DATA PROTECTION
To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.(Ref. policy 425.14)

1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION
The Berkeley Police Department's mission is to safeguard our diverse community through proactive law enforcement and problem solving, treating all people with dignity and respect. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law and City of Berkeley rules and regulations. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1300.7 DATA RETENTION
The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated,

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at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

1300.8 PUBLIC ACCESS AND THIRD PARTY DATA SHARING

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information). (Ref. policy 425.18) and Government Code § 6254(f).

General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

In the event that the Police Department or City intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage of specific incidents with law enforcement agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18). Pursuant to Berkeley Police Department Policy 415, video footage may not be shared with federal immigration enforcement officials.

Access to recorded files may be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23, privacy protections indicated in this policy, Government Code section 6254(f), other applicable law and policy governing the release of public records, and subject to the review of the City Attorney's Office. (Ref. policy 425.18)

1300.9 POLICE REVIEW COMMISSION

Access to recorded files will be granted for the purposes of review to the Police Review Commission (PRC) Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation of a complainant or an officer. (Ref. policy 425.18.1)

(a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.

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(b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.

(c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.

(d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.

(e) The evidence management system shall only be accessed on City premises.

(f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

1300.10 TRAINING

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

1300.11 AUDITING AND OVERSIGHT

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

1300.12 MAINTENANCE

The BWC system will be maintained by the Applications Programmer Analyst and assigned Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

(a) Establishing a system for uploading, storing and security of recordings.

(b) Designating persons responsible for uploading recorded data.

(c) Establishing a maintenance system to ensure availability of BWCs.

(d) Establishing a system for tagging and categorizing data according to the type of incident captured.

(e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.

(f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.

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(g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

(h) All recordings shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

1300.13 APPENDIX A

See attachment: 1300 BWC APPENDIX A.pdf

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Surveillance Use Policy- GPS Tracking Devices

1301.1 PURPOSE

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals. GPS trackers electronically relay their precise location in real time, and thereby assist BPD in the recovery of evidence and arrest of suspects.

1301.2 AUTHORIZED USE

GPS trackers shall only be used during active criminal investigations. GPS trackers shall only be used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

GPS trackers shall only be utilized for law enforcement purposes.

1301.3 DATA COLLECTION

Location data may be obtained through the use of a GPS Tracker.

1301.4 DATA ACCESS

Access to GPS tracker data shall be limited to Berkeley Police Department (BPD) personnel utilizing the GPS Tracker(s) for active criminal investigations. Information may be shared in accordance with 1301.9 below.

In support of active criminal investigations, BPD personnel may receive GPS tracker data from probation or parole agencies which utilize GPS trackers (e.g. ankle monitors) as a condition of probation or parole.

1301.5 DATA PROTECTION

The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.

1301.6 CIVIL LIBERTIES AND RIGHTS PROTECTION

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1301.4 Data Access, 1301.5 Data Protection, 1301.7 Data Retention, 1301.8 Public Access and 1301.9 Third Party Data Sharing serve to protect against any unauthorized use of GPS tracker data. These procedures ensure the data is not used in a way that would violate or infringe upon anyone’s civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

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1301.7 DATA RETENTION

A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker identification label. This data is stored indefinitely by the vendor. The data does not contain any images, names of subjects, vehicle information, etc.

Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.

1301.8 PUBLIC ACCESS

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

1301.9 THIRD-PARTY DATA-SHARING

Data collected from the GPS trackers may be shared with the following:

(a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;

(b) Other law enforcement personnel as part of an active criminal investigation;

(c) Other third parties, pursuant to a Court Order.

1301.10 TRAINING

Training for the operation of the GPS trackers shall be provided by BPD personnel. All BPD personnel shall be provided with this Surveillance Use Policy.

1301.11 AUDITING AND OVERSIGHT

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

1301.12 MAINTENANCE

GPS trackers shall only be obtained with the permission of the Investigations Division Captain or his/her designee. The Investigations Division Captain or his/her designee will ensure the trackers are returned when the mission/investigation is completed.

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Surveillance Use Policy- Automated License Plate Reader

1302.1 PURPOSE

This Surveillance Use Policy is legally-enforceable pursuant to BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for Parking Enforcement Operations, Parking Analysis, and limited criminal enforcement purposes associated with Parking Enforcement Operations while recognizing the established privacy rights of the public.

1302.2 DEFINITIONS

"**Alleged Parking Violation**" means an alleged violation of time limits in parking areas designated by state and local law, or a violation of time limits and/or non-permit parking in the City's RPP zones.

"**ALPR Read Image**" means images of license plates, vehicles, wheels or any other incidentally captured image.

"**ALPR Read**" means computer-readable data captured by an ALPR Reader, including ALPR Read Image and associated ALPR Read Metadata. ALPR Reads are transient means to create potential government records, to include Parking Analysis data and Enforced Citations.

"**ALPR Hit**" means an Alleged Parking Violation or Stolen Vehicle System alert resulting from computer generated analysis of ALPR Reads by the Genetec ALPR System resulting in an apparent:

1. match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the Stolen Vehicle System; or
2. cross checking between ALPR Read and permit information which is stored on the Genetec ALPR System.

"**ALPR Read Metadata**" means any image-based or other metadata, including but not limited to, global positioning system coordinates, block face information, tire position information, digitized license plates in alphanumeric characters, and timestamps.

"**Automated License Plate Reader**" or "**ALPR**" means one or more Genetec AutoVu mobile cameras affixed to Parking Enforcement Vehicles and combined with computer software and algorithms to read and convert images of license plates, the characters they contain, and associated ALPR Read Metadata related to Parking Enforcement Operations or Parking Analysis into computer-readable data.

"**Deploy**" or "**Deployment**"means any operation or use of ALPR Readers affixed to Parking Enforcement Vehicles.

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"**Enforced ALPR Hit**" means an Alleged Parking Violation confirmed by a Parking Enforcement Officer that results in the transmission of associated ALPR Read Image and ALPR Read Metadata to the Passport Parking Management System for storage in a database as a government record for the purpose of citation processing.

"**Genetec ALPR System**" means the computerized Genetec server and database that stores all ALPR Reads, metadata and hits, and also pushes an Enforced ALPR Hit metadata to the Passport Parking Management System.

"**Residential Preferential Parking**" or "**RPP**" permit means an annual, visitor, merchant or in-home care parking permit, typically represented by a vehicle's license plate, and associated with the City's Residential Preferential Parking program across designated zones.

"**Parking Enforcement Vehicle**" means the GO-4 three-wheeled parking enforcement vehicle.

"**Parking Enforcement Officers**" means employees of the City who work weekly rotations on Parking Enforcement Operations beats throughout the City and are properly trained to operate ALPRs and access the Genetec ALPR System.

"**Parking Enforcement Operations**" means Parking Enforcement Officer enforcement of parking regulations associated with local ordinances, the California Vehicle Code, and Stolen Vehicle System enforcement through Parking Enforcement Vehicle-based automated (ALPR) and non-automated means.

"**Personally Identifiable Information**" or "PII" means information:

1. that directly identifies an individual (e.g., name, address, telephone number, email address, etc.) or
2. by which the City or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification.

"**Parking Analysis**" means ongoing computational or algorithmic analyses performed by the City of Berkeley and/or a third-party data analysis and visualization vendor contracted by Public Works on ALPR Read Metadata regarding the occupancy and/or turnover of public parking spaces as part of goBerkeley, the City's data-driven, demand-responsive parking management program. ALPR Read Metadata data associated with Parking Analysis may include non-randomized license plates, to be maintained by Public Works and/or a third-party data analysis and visualization vendor contracted by Public Works for Parking Analysis.

"**Parking Permit Application**" means an application submitted to the City for RPP or other permit that may include but is not limited to PII such as names, address, photo identification, vehicle registration (license plate and vehicle identification number), phone number and email address.

"**Passport Parking Management System**" means the servers and databases maintained by Passport Labs Incorporated, containing the database of the license plate numbers and other

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PII associated with Parking Permit Applications and Residential Parking Permits, and including historic parking citation data, to include Enforced Hits.

"**OPSMan Mobile**" means a mobile device providing handheld ticket issuance and ALPR data reference capabilities.

"**Stolen Vehicle System**" or "**SVS**" means information from the California Law Enforcement Telecommunications System's (CLETS) Department of Justice (DOJ) Stolen Vehicle System (SVS) database providing data regarding wanted and stolen vehicles.

1302.3 AUTHORIZED AND PROHIBITED USES

Use of an ALPR is restricted to the purposes outlined below.

All data and images gathered by the ALPR are for official use by the Berkeley Police Department (BPD) for Parking Enforcement Operations and may be retroactively queried in limited circumstances only as specified by this policy and/or federal, state, local law.

ALPR data may be used by the Finance, Information Technology (IT), Customer Service, and Public Works Departments only as specified in this policy, and consistent with Parking Enforcement Operations and Parking Analysis. Data that is considered confidential pursuant to case law, state statues, and BPD Policy 804 Records Release Management and/or applicable federal, state, or local law is not open to public review.

Berkeley Police Department members or other Departments shall not use, or allow others to use the equipment or database records for any unauthorized purpose, and will enforce this policy pursuant to Section 1302.11(1).

(a) An ALPR shall only be Deployed and used for Parking Enforcement Operations, and Parking Analysis.

(b) ALPR data obtained from Parking Enforcement Operations and retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits, may be queried and used to support a specific BPD criminal investigation when an officer has a good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene. Approval to query the data must be granted by the Chief of Police, or the Acting Chief of Police. The City Manager shall log any queries or use of such information pursuant to this subsection in its Annual Surveillance Technology Report pursuant to BMC 2.99.

(c) Notwithstanding subsection (b), officers may investigate hits based on reasonable suspicion resulting from apparent matches, discovered in the regular course of work of Parking Enforcement Operations, between the Genetec ALPR System and the following databases: Stolen Vehicles System, Amber, Silver, and Blue Alerts, local missing persons, scoff law violator, gig car, general permit, or other non-criminal local lists.

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(d) Data obtained from Parking Analysis shall not be queried or used for criminal investigations.

(e) The following uses of the Genetec ALPR System are specifically prohibited:

1. Invasion of Privacy

   (a) It is a violation of this Policy to utilize the Genetec ALPR system to capture license plates not on a public road or street, or in a place not accessible to the public.

2. Crowd Control

   (a) ALPRs shall not be deployed in crowd control operations except strictly for th purposes of Parking Enforcement Operations.

3. Criminal Enforcement

   (a) It is a violation of this Policy to use or Deploy ALPRs to scan or canvass license plates in connection with any crime scene, patrol operation, or investigation except pursuant to Section 1302.3(c) of this policy.

4. Use of Lists and Databases

   (a) It is a violation of this Policy to use the Genetec ALPR System or associated ALPR Read data in conjunction with any list or database other than those specified pursuant to Section 1302.3(c) of this Policy, or for any personal use.

1302.4 DATA COLLECTION AND RETENTION

The Investigations Division Captain, or their designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) Department and associated Genetec ALPR system providers/vendors as identified below.

IT's role will be limited to providing initial infrastructure set-up and accessing or viewing individual records or reports (potentially including PII or CLETS information as authorized by the Chief of Police), and testing the accuracy of the equipment. Genetec ALPR System data provided to Parking Control Officers may also contain confidential CLETS information and is not open to public review.

(a) ALPR Read Images

ALPR Reads Images are license plate images which are uploaded daily Genetec server and shall be purged pursuant to the retention guidelines in subsection (b).

(b) ALPR Reads Not Resulting in ALPR Hits

All ALPR Read Images and ALPR Read Metadata transmitted to and stored in the Genetec ALPR System shall be purged within fourteen (14) days to allow for the City's enforcement of its 72-Hour Rule (BMC Section 14.36.050).

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ALPR Read Metadata in the form of license plate data or other non-PII data may be transmitted to Public Works staff for Parking Analysis purposes. ALPR Read Metadata data associated with Parking Analysis may include non-randomized license plates, to be maintained by Public Works and/or a third-party data analysis and visualization vendor contracted by Public Works for Parking Analysis.

(c) ALPR Hits

All ALPR Hits and related metadata resulting from ALPR Reads should be uploaded daily to the Genetec server and shall be purged from Genetec within fourteen (14) days to allow for the City's enforcement of its 72-Hour Rule (BMC Section 14.36.050).

(d) Unenforced ALPR Hits

All erroneous and unenforced ALPR Hit data shall be purged locally at least nightly.

(e) Enforced ALPR Hits

Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management System servers, with a minimum retention period of one (1) year in Passport and in accordance with the established records retention schedule.

1302.5 DATA ACCESS

(a) Only properly trained Parking Enforcement Officers, Sworn Officers as selected by the Investigation's Division Captain, and Information Technology personnel are allowed access to the Genetec ALPR system or to collect ALPR information.

(b) No member of the BPD shall operate ALPR equipment or access ALPR data without first completing department-approved training, which shall include compliance with this use policy.

(c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

(d) If a Sworn officer is called to verify a stolen vehicle, if practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR Hit.

(e) Sworn Officers shall visually verify that the license plate of interest matches identically with the ALPR Read Image of the license plate number captured (ALPR Read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. BPD members alerted to the fact that an observed motor vehicle's license plate is entered as an ALPR Hit in a specific Stolen Vehicle System list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

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1302.6 DATA PROTECTION

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data:

(a) All ALPR data downloaded to any workstation or server shall be accessible only through a login and/or password-protected system capable of documenting all access of information by name, date and time.

(b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for Parking Enforcement Operations or specific BPD criminal or civil investigations authorized by a court order, subpoena, or search warrant.

(c) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question. If a Berkeley Police Department member becomes aware of an inaccurate manual entry into the ALPR databases, that member shall immediately contact the originating agency orofficer to notify the agency of the inaccuracy. The member shall then notify both the Investigations Division Captain and the Inspections and Audit Sergeant of the data error for appropriate follow up and tracking.

1302.7 CIVIL LIBERTIES AND RIGHTS PROTECTION

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal, state, and local law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third-Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to impacts that may violate the First and Fourth Amendments and other potentially disparate or adverse impacts on any communities or groups.

The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for the purpose of federal immigration enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

1302.8 PUBLIC ACCESS

Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of their identity and of ownership of the vehicle in question. All

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requests will be evaluated on a case-by-case basis to ensure they conform to the requirements and limitations of public records requests and other applicable law.

1302.9 THIRD PARTY DATA-SHARING

(a) Non-law enforcement requests for anonymized ALPR bulk data related to parking enforcement and access to stored ALPR data related to parking management shall be processed according to this policy, the Records Maintenance and Release Policy and applicable federal, state, and local law.

(b) ALPR data obtained from Parking Enforcement Operations and retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits, may be queried and used to support a specific criminal investigation when an officer has a good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene. Approval to query the data must be granted by the Chief of Police, or the Acting Chief of Police. The City Manager shall log any queries or use of such information pursuant to this subsection in its Annual Surveillance Technology Report pursuant to BMC 2.99. ALPR data shall not be shared with federal immigration enforcement officials consistent with this policy and other applicable City policy.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided by this policy and the Records Maintenance and Release Policy.

Aggregated ALPR data not related to specific criminal or civil investigations authorized by a court order, subpoena, or search warrant shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager and only in accordance with this Use Policy.

Such third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 (2) (a).

The Berkeley Police Department is prohibited from selling any ALPR data.

1302.10 TRAINING AND ALPR ADMINISTRATOR

Training for the operation of ALPR technology shall be provided by BPD personnel. All BPD employees who utilize ALPR technology shall be provided a copy of this Surveillance Use Policy.

(1) The Investigations Division Captain shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

i. Ensuring that training requirements are completed for authorized users. The Administrator shall ensure that members receive department-approved training for those authorized to use or access ALPRs (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

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ii. Procedures for system operators to maintain records of access in compliance with Civil Code§ 1798.90.52 and this Use Policy

iii. Ensuring this policy and related procedures are conspicuously posted on the City's website.

1302.11 AUDITING AND OVERSIGHT

Genetec ALPR System audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

1. Any unauthorized access or data breach shall be reported immediately to the City Manager. BPD will enforce against prohibited uses of the Genetec ALPR system, associated ALPR Read and Hit metadata, and lists and databases pursuant to Policy P-26, or other applicable law or policy.
2. The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained within Professional Standards Bureau.

1302.12 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under their command to administer the day-to-day operation of the ALPR equipment and data.

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Chapter 14 - Manuals and Reference

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2019 - LAW ENFORCEMENT MUTUAL AID PLAN

1401.1 OFFICE OF EMERGENCY SERVICES LAW ENFORCEMENT MUTUAL AID PLAN

Download the PDF OES LEMA Blue Book or click here OES LEMA Blue Book

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REFERENCE LINKS

1402.1 OFFICE OF EMERGENCY SERVICES EMERGENCY OPERATIONS GUIDE

Link to Emergency Operations Guide

1402.2 OFFICE OF EMERGENCY SERVICES MUTUAL AID PLAN

Mutual Aid

1402.3 CITY OF BERKELEY EMERGENCY OPERATIONS PLAN

Link to COB Emergency Operations Plan

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Chapter 15 - Legislative Updates

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2019 Legislative Update

1500.1 PURPOSE

The Professional Standards Bureau has prepared this legislative update for the 2019 calendar year. It is intended to serve as a general summary of legal changes that pertain to law enforcement and is not meant to cover every legislative change enacted in 2018. The 2019 Legislative Update Manual published by the California Peace Officers' Association is the main source used for this summary. All personnel are invited to click on the links within this document and read these various codes in their entirety for a more detailed explanation. The changes outlined below go into effect January 1, 2019, unless otherwise indicated.

1500.2 BUSINESS AND PROFESSIONS CODE

CANNABIS IN ALCOHOLIC BEVERAGES AB 2914 (Cooley) - BP §§ 25621.5 and 26070.2: Prohibits an alcoholic beverage licensee from selling, offering, or providing cannabis or cannabis products, including the sale of an alcoholic beverage that contains cannabis, and clarifies existing laws banning alcoholic beverages containing tetrahydrocannabinol or cannabinoids, regardless of source.

PAWN SHOPS - AB 1993 (Gipson) - BP §§ 21636 and 21636.1: Revises the current requirement for secondhand dealers to hold (and not sell) property from 30 days to seven days, with the exception of firearms. In addition, it authorizes the dealer to sell the property after 5 days, if specified information is collected.

1500.3 CIVIL CODE

HUMAN TRAFFICKING - BUSINESSES - AB 2034 (Kalra) - CC § 52.6: Requires businesses and establishments that operate in transportation or handle high volumes of traffic to train their employees in recognizing the signs of human trafficking and reporting suspected human trafficking.

HUMAN TRAFFICKING - EMPLOYEES - SB 970 (Atkins) - GC § 12950.3: Requires, by January 1, 2020, hotels and motels to provide at least 20 minutes of classroom or other effective interactive training and education regarding human trafficking awareness to each employee who is likely to interact or come into contact with victims of human trafficking and who is employed as of July 1, 2019.

1500.4 GOVERNMENT CODE

BODY CAMERAS - FOOTAGE DISCLOSURE - AB 748 (Ting) - GC § 6254: Commencing July 1, 2019, an audio or video recording that relates to a critical incident, as defined, may only be withheld during an active criminal or administrative investigation for 45 days. Agencies will need to show cause for non-release after the 45 days. If not released, the agency will need to continue to show cause and notify the requesting party every 30 days thereafter.

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1500.5 LABOR CODE

WORKERS COMP - OFF DUTY POLICE - AB 1749 (Daly) - Labor Code Section 3600.2 (Amend): Clarifies that certain peace officers injured out of state while performing defined law enforcement duties are eligible to receive workers' compensation benefits, in the discretion of the employing agency.

1500.6 PENAL CODE

FELONY MURDER - ACCOMPLICE - SB 1437 (Skinner) - PC §§ 188 and 189: Limits liability for individuals based on a theory of first- or second-degree felony murder. Specifies that in order for an accomplice to be convicted of murder, he/she must have had the mental state described as malice, unless certain criteria are met. States that malice shall not be imputed to a person based solely on his or her participation in a crime. It's a retroactive bill which will allow those in custody for murder, based on the felony murder rule, to be released or receive a reduced sentence.

FIREARMS - DOMESTIC VIOLENCE - AB 3129 (Rubio) - PC § 29805: Prohibits a person who is convicted of a misdemeanor domestic violence offense, which currently results in a 10-year prohibition against possessing a firearm, from possessing a firearm for life.

FIREARMS - RETIRED PEACE OFFICERS - AB 1192 (Lackey) - PC § 16690: Exempts retired Level I reserve peace officers who meet specified length of service requirements from the ban on possessing high-capacity magazines.

FIREARMS - VEHICLE STORAGE - SB 1382 (Vidak) - PC § 25140: Permits the leaving of a handgun in an unattended vehicle if the handgun is locked in a tool box or utility box and defines a locked tool box or utility box as: "."

GUN VIOLENCE RESTRAINING ORDERS - SB 1200 (Skinner) - PC §§ 11106, et al.: Makes various changes to existing laws related to gun violence restraining orders (GVROs). States that for purposes of the GVRO law, "ammunition" includes a "magazine," as defined in existing law. Requires an officer serving a GVRO to verbally ask the restrained person if he or she has any firearms, firearm parts or components, ammunition, or magazines in his or her possession or under his or her custody or control.

RECORDS - POST ON INTERNET - SB 978 (Bradford) - PC Title 4.7 §13650: Requires, commencing January 1, 2020, POST and each local law enforcement agency to conspicuously post on their Internet websites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available if a request was made pursuant California Public Records (CPRA), and makes Legislative findings and declarations.

RECORDS - POLICE OFFICERS - SB 1421 (Skinner) - PC §§ 832.7 and 832.8: Provides the public with access, through the CPRA, to records related to reports, investigation, or findings of incidents involving:

- The discharge of a firearm at a person by an officer
- The use of force by an officer which results in death or serious bodily injury.

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- A sustained finding that an officer engaged in the sexual assault of a member of the public.
- A sustained finding that an officer was dishonest relating to the reporting, investigation, or prosecution of a crime, or relating to the misconduct of another peace officer, including but not limited to perjury, false statements, filing false reports, destruction/ falsifying/or concealing evidence, or any other dishonesty that undermines the integrity of the criminal justice system.

WOBBLERS - AB 1941 (Jones-Sawyer) - PC § 17: Allows the court to reduce an offense punishable as a felony or a misdemeanor to a misdemeanor upon successful completion of probation, regardless of whether the court had previously imposed a sentence.

WARRANTS - AB 2710 (Obernolte) - PC §§ 817 and 1526: Eliminates the requirement that a judge take the oath over the telephone when an officer makes an application for a search warrant or arrest warrant. “The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant’s signature, digital signature, or electronic signature is genuine.”

1500.7 VEHICLE CODE

BICYCLES - HELMETS - AB 3077 (Caballero) - VC §§ 21212 and 40303.5: Requires a citation issued to a person under the age of 18 for not wearing a helmet when riding a bicycle, scooter, skateboard, or roller or in-line skates to be non-punitive and correctable if the minor’s parent or legal guardian shows proof of correction within 120 days to the issuing law enforcement agency. It requires the officer to keep the citation for 120 days to allow for the parent or guardian to show proof of correction. If proof is shown, the citation may not be turned in to the court.

BICYCLES - HIT AND RUN - AB 1755 (Steinorth) - VC § 21200: Extends the provisions of Vehicle Code Section 20001 to persons operating bicycles on Class I bikeways. A bicyclist, if involved in an accident on a Class I bikeway which results in injury to another involved person, is required to stop, provide identifying information, and render assistance as necessary. A bicyclist who fails to follow these requirements is in violation of the “hit and run” law to the same extent as a vehicle or a bicyclist on a roadway.

DRIVER’S HANDBOOK - AB 2918 (Holden) - VC § 1656.3: The Department of Motor Vehicles Driver’s Handbook will include information addressing the extent and limitations of a peace officer’s authority during a traffic stop and the legal rights of drivers and passengers. The information will be developed by the civil rights section of the Department of Justice in consultation with the Department of Motor Vehicles, California Highway Patrol, Commission on Peace Officer Standards and Training, and civil rights organizations.

DUI - BLOOD TESTS - AB 2717 (Lackey) - VC §§ 23577, 23578, 23612: Modifies California law regarding the refusal to submit to a test of blood alcohol when a person is suspected of driving under the influence (DUI) to attempt to comply with the United States (U.S.) Supreme Court's ruling in Birchfield v. North Dakota, (2016) 136 S. Ct. 2160, by deleting the criminal penalty for refusing to submit to a blood test.

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INSURANCE AT COLLISION SCENE - AB 3246 - VC § 16028: Clarifies that Section 16028(a) of the Vehicle Code (not 16028(c)) is the appropriate section for officers to cite if a driver fails to provide proof of financial responsibility at the scene of a traffic collision.

MOTORIZED SCOOTER - HELMET - AB 2989 (Flora) - VC § 21235: Removes the bicycle helmet requirement for riders of motorized scooters who are 18 years of age or older. It is still illegal to operate a motorized scooter upon a sidewalk, except as necessary to enter or leave adjacent property.

VEHICLES - TOWING AND STORAGE - AB 2392 (Santiago) - VC §§ 10652.5, et al.: Provides additional consumer protections when a vehicle is towed or stored for any reason. There have been instances where towing and storage operators capitalize on consumer confusion by charging excessive fees. This law aims to curb these practices by ensuring that fees are reasonable and do not exceed those that are approved by the California Highway Patrol or local law enforcement's Tow Service Agreements.

1500.8 WELFARE AND INSTITUTIONS CODE

JUVENILES - DNA COLLECTION - AB 1584 (Gonzalez Fletcher) - W&I § 625.4: Law enforcement shall not request a voluntary DNA sample be collected directly from a minor, without first obtaining written consent from the minor and the minor's parent or legal guardian, or attorney representing the minor.

JUVENILES - 12 YEAR OLDS - SB 439 (Mitchell) - W&I §§ 601, et al.: Establishes that a minor under the age of 12 who has committed a minor crime may not be adjudged a ward of the court and should be released to their parent or guardian.However, a minor under 12 who is alleged to have committed specified violent felonies, including murder and rape by force, remains within the jurisdiction of the juvenile court.

JUVENILES - TRIED AS ADULTS - SB 1391 (Lara) - W&I § 707: Repeals the authority of a prosecutor to make a motion to transfer a minor from juvenile court to adult criminal court if the minor was alleged to have committed certain serious offenses when he or she was 14 or 15 years old.

MENTAL HEALTH - FORMS - AB 2099 (Gloria) - W&I § 5150: Allows copies of the 5150 application to be treated as the original by hospitals and mental health facilities.

MENTAL HEALTH - FIREARMS - AB 1968 (Low) - W&I § 8103: Beginning January 1, 2020, requires that a person placed on a W&I 5150 hold more than once within a one-year period be prohibited from owning a firearm for the remainder of his or her life.

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2020 Legislative Update

1501.1 PURPOSE AND SCOPE

The Professional Standards Bureau has prepared this legislative update for the 2020 calendar year. It is intended to serve as a general summary of legal changes that pertain to law enforcement and is not meant to cover every legislative change enacted in 2019. The 2020 Legislative Update Manual published by the California Peace Officers' Association is the main source used for this summary. All personnel are invited to click on the links within this document and read the various codes in their entirety for a more detailed explanation. The changes outlined below go into effect January 1, 2020, unless otherwise indicated.

1501.2 DEADLY FORCE - USE OF

AB 392 (Weber) Revises the standards for use of deadly force by peace officers. Specifies that homicide is justifiable when committed by a peace officer and those acting by their command in their aid and assistance, under either of the following circumstances:

(a) In obedience to any judgment of a competent court; or

(b) When the homicide results from a peace officer's use of force that is in compliance with the standards of Penal Code Section 835a.

1501.3 DEADLY FORCE - TRAINING

SB 230 (Caballero) Requires law enforcement agencies to maintain a policy by January 1, 2021 that provides guidelines on the use of force, utilizing de-escalation techniques and other alternatives to use of force, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents.

1501.4 DMV PRIVILEGE

AB 1168 (Mullin) Removes the ability of the court to delay, suspend or revoke, or order DMV to delay, suspend, or revoke a person's driving privilege as a result of a conviction for various offenses. Repeals the license suspensions for vandalism, controlled substance or alcohol use, possession or related conduct and/or firearm use.

1501.5 CONDOMS - EVIDENCE CODE

SB 233 (Wiener) Provides that possession of a condom is not admissible in the prosecution of a violation of specified crimes related to prostitution.

1501.6 TEXT TO 911

SB 485 (Beall) Requires each public safety agency to deploy a text to 911 service that enables an individual to text "911" for emergency services, by January 1, 2021.

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1501.7 EMBEZZLED VEHICLES

AB 391 (Voepel) Decreases the five-day period following the expiration of an auto-rental agreement or lease for the presumption of embezzlement to apply to 72 hours.

1501.8 DISCOVERY

AB 1600 (Kalra) Shortens the notice requirement in criminal cases when a defendant files a motion to discover police officer misconduct from 16 days to 10 days.

1501.9 GVROS DURATION

AB 12 (Irwin) Extends the duration of gun violence restraining orders (GVRO) and their renewals to a maximum of five years. Authorizes the employing law enforcement agency to be named in a GVRO petition filed by a law enforcement officer in place of the individual officer's name. Delays implementation until September 1, 2020.

1501.10 GVROS - CATEGORY

AB 61 (Ting) Expands the category of persons that may file a petition requesting a court to issue an ex parte temporary gun violence restraining order (GVRO), a one year GVRO, or a renewal of a GVRO, to include an employer, a coworker who has substantial and regular interactions with the subject of the petition for at least one year and has obtained the approval of the employer, and an employee or teacher of a secondary school, or postsecondary school the subject has attended in the last six months and has the approval of the school administration staff. Delays implementation of this measure until September 1, 2020.

1501.11 GVROS - PROCEDURES

AB 339 (Irwin) Requires each law enforcement agency to develop and adopt written policies and standards regarding the use of gun violence restraining orders (GVRO) on or before January 1, 2021.

1501.12 RAPE KITS - RAPID TURNAROUND

SB 22 (Leyva) Requires law enforcement agencies to submit sexual assault forensic evidence to a crime lab within 20 days after it is booked, and requires crime labs to either process the evidence for DNA profiles and upload them into the Combined DNA Index System (CODIS) or transmit the evidence to another crime lab for processing and uploading.

1501.13 MENTAL ILLNESS - TERMS

AB 46 (Carrillo) Replaces terminology used to describe mental health conditions and individuals with mental health conditions.

Replaces, in various sections of California's code:

- "Insane" with "mental health disorder"
- "Mentally incapacitated" with "lacks mental capacity"

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- "Mentally or severely disordered" with "mental or severe mental health disorder"
- "Developmentally disabled" with "developmental disability"
- "Mental disorder" and "mental defect" with "mental health disorder"
- "Mentally ill" with "mental illness."

1501.14 FACIAL RECOGNITION
AB 1215 (Ting) Prohibits, until January 1, 2023, a law enforcement officer or agency from installing, activating, or using a biometric surveillance system in connection with a law enforcement agency's body-worn camera or any other camera.

1501.15 PEER SUPPORT
AB 1117 (Grayson) Enacts the Law Enforcement Peer Support and Crisis Referral Services Program authorizing a local or regional law enforcement agency to establish a peer support and crisis referral program (Peer support program).

1501.16 POSSE COMITATUS
SB 92 (Hertzberg) Repeals the posse comitatus provision of the Penal Code, which makes an able-bodied person 18 years of age or older who neglects or refuses to assist a peace officer or a judge in making an arrest, retaking an escaped person into custody, or preventing the breach of the peace, subject to a fine between $50-$1000.

1501.17 JURY SERVICE
SB 310 (Skinner) Allows for a person with a prior felony conviction to serve on a jury. Provides that a person is ineligible for jury service if they are a 290 registrant, currently on parole, PRCS, or felony probation, or currently incarcerated in any prison or jail.

1501.18 PTSD - WORKER'S COMPENSATION
SB 542 (Stern) Creates a rebuttable presumption for specified peace officers that a diagnosis of post-traumatic stress disorder (PTSD) is occupational, and therefore covered by the workers' compensation system.

1501.19 CHILDHOOD SEXUAL ASSAULT - STATUTE OF LIMITATIONS
AB 218 (Gonzalez) Extends the civil statute of limitations for childhood sexual assault by 14 years, revives, for three years, old claims, and increases certain penalties for childhood sexual assault.

1501.20 BICYCLES
AB 1266 (Rivas) This bill allows bicycles to travel straight through a right or left-hand-turn-only lane while at an intersection, if an official traffic control device indicates the movement is permitted. The Department of Transportation (Caltrans) would be required to develop standards to implement the provisions.

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1501.21 MUFFLER CITATIONS

SB 112 (Budget and Fiscal Review Committee) This bill will allow law enforcement to issue a correctable citation for muffler noise to the drivers of vehicles however, citations for motorcyclists would remain non-correctable.

1501.22 DOMESTIC VIOLENCE

SB 273 (Rubio) Extends the window to prosecute a felony domestic violence crime from three years to five years and makes changes to domestic violence training for peace officers.

1501.23 CASE LAW - BLOOD DRAWS

Mitchell v. Wisconsin (2019) 139 S.Ct. 2525 RULE: When a DUI suspect is unconscious “the general rule is that a warrant is not needed” for a blood test.

1501.24 CASE LAW - MIRANDA

People v. Anthony (2019) 32 Cal.App.5th 1102 RULE: When a suspect invokes Miranda but later decides he wants to speak with officers after all, officers must re-advise him/her of their Miranda rights anew or limit the second interview to questions that are not likely to elicit an incriminating response.

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2021 Legislative Update

1502.1 PURPOSE AND SCOPE

The Professional Standards Bureau has prepared this legislative update for the 2021 calendar year. It is intended to serve as a general summary of legal changes that pertain to law enforcement and is not meant to cover every legislative change enacted in 2020. The 2021 Legislative Update Manual published by the California Peace Officers' Association is the main source used for this summary. All personnel are invited to click on the links within this document and read the various codes in their entirety for a more detailed explanation. The changes outlined below go into effect January 1, 2021, unless otherwise indicated.

1502.2 FALSE REPORTS AND HARASSMENT

AB 1775 (Jones-Sawyer)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1775

Makes it a "wobblette" to knowingly use the 911 emergency system for the purpose of harassing another, and increases the penalty for this crime by up to one year in county jail, or a fine of no more than $2,000 if the harassment is also an act defined to be a hate crime or is an offense committed against a person based on their perceived race, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, gender identity, gender expression, or sexual orientation.

1502.3 CRIMINAL PROCEDURE: DISCRIMINATION

AB 2542 (Kalra)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2542

A LE officer's potential bias, if found by the court, may be the cause for vacation of a conviction.

1502.4 DRIVING PRIVILEGE: SUSPENSION OR DELAY

SB 485 (Beall)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB485

Repeals ability of court to delay, or order to DMV to delay, suspend or revoke a DL as a result of conviction for: Vandalism, Controlled substance or alcohol use or possession, or firearm use.

1502.5 INVASION OF PRIVACY: FIRST RESPONDERS

AB 2655 (Gibson)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2655

Makes it a misdemeanor for a first responder, as defined, operating under color of authority, to use an electronic at the scene of an accident or crime to capture the image of a deceased person for any purpose other than an official law enforcement purpose or for a genuine public interest.

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1502.6 FIREARMS: GUN VIOLENCE RESTRAINING ORDERS

AB 2617 (Gabriel)

Updates PC 18140 language to note that a copy of a GVRO be filed with the court no later than 3 court days after issuance.

1502.7 FIREARM TRANSFERS

AB 1292 (Bauer-Kahan)

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1292

Specifies circumstances which allow a firearm to be transferred from one person to another by operation of law without the need to go through a firearms dealer. Exempts an individual from specified prohibitions on possession and transfer of firearms (including open carry) when the individual is delivering a firearm to law enforcement these circumstances:

- Person gives prior notice to the LE agency that they are transporting the gun
- Person took the gun from someone who was committing a crime against them and notified a LE agency that they are transporting it for disposition

1502.8 FIREARM TRANSFERS II

SB 61 (Portantino)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB61

Extends the prohibition on purchasing more than one handgun a month to include semiautomatic centerfire rifles.

Exempts the following from the “one gun a month” prohibition:

- Any law enforcement agency
- Any state or local correctional facility
- Any person who is properly identified as a full-time peace officer and who is authorized to and does carry a firearm during the course and scope of employment as a peace officer.

1502.9 JUVENILE MIRANDA

SB 203 (Bradford)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB203

Previously Juveniles 15 and under required legal counsel prior to Miranda. As of Jan 1st, 2021 the law has changed to Juveniles 17 and under per SB 203.

1502.10 ELDER AND DEPENDENT ADULT ABUSE POLICIES

SB 338 (Hueso)

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https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB338

Requires a LE agency that adopts or amends its policy regarding senior and disability victimization after **April 13, 2021** to include information and training on elder and dependent abuse.

1502.11 PROBATION: LENGTH OF TERMS

AB 1950 (Kamlager)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1950

Limits the term of probation to no longer than two years for a felony conviction and one year for a misdemeanor conviction, except offenses that include a specific probation term in statute. Provides that the two-year probation limit does not apply to offenses defined by law as violent felonies, or to an offense that includes a specific probation term within its provisions. Provides that the two-year probation limit does not apply to a felony conviction for grand theft from an employer, embezzlement, or theft by false pretenses, if the total value of property taken exceeds $25,000. More to follow after this bill is examined by the DA's Office.

1502.12 CHILD ABUSE: REPORTABLE CONDUCT

AB 1145 (Garcia, Cristina)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1145

Specifies that "sexual assault" for purposes of reporting incidents of abuse under the Child Abuse and Neglect Reporting Act (CANRA) does not include voluntary sodomy, oral copulation, or sexual penetration, if there are no indicators of abuse, unless the conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age. Specifies that "sexual assault" for purposes of reporting incidents of abuse under the Child Abuse and Neglect Reporting Act (CANRA) does not include voluntary sodomy, oral copulation, or sexual penetration, if there are no indicators of abuse, unless the conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age.

1502.13 SEARCH WARRANTS: VEHICLE RECORDING DEVICES

AB 1638 (Obernolte)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1638

Amends PC 1524 to allow law enforcement to obtain a search warrant to access vehicle event data recorder (EDR) information in cases of death or serious injury involving a motor vehicle.

1502.14 CLETS, DOCUMENTATION OF REASONS FOR INQUIRIES

AB 1747 (Gonzalez)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1747

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You will be required, commencing July 1, 2021 to document the reason for the initiation of all non-criminal history inquiries on CLETS (i.e. the non-criminal history inquiries routinely made during traffic stops and at traffic collisions scenes).

1502.15 OPEN CONTAINERS OF ALCOHOL IS PERMITTED ON PEDICABS WITH LOCAL ORDINANCE APPROVAL

SB 543 (Pan)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB543

Alcohol consumption will continue to be allowed on pedicabs. Pedicabs allowing alcohol consumption can only be operated once an operator has met significant safety standards and operating requirements including local government approval have been met. This includes; all passengers being 21 years of age or older, alcohol may only be consumed by passengers while physically onboard the pedicab, alcohol beverages may only be supplied by the passengers of the pedicab, the operator or safety monitor shall have met the safety training course requirement, and the consumption of alcoholic beverages onboard the pedicab shall be authorized by local ordinance or resolution. See VC 21215.2 for the parameters that must be met.

1502.16 EMERGENCY VEHICLES

SB 909 (Dodd)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB909

Allows authorized emergency vehicles to be equipped with a device which emits a “Hi-Lo” audible warning sound that meets regulations established by the California Highway Patrol (CHP).

1502.17 POLICE USE OF FORCE

AB 1506 (McCARTY)

Provides that a state prosecutor shall conduct an investigation of any officer-involved shooting that resulted in the death of an unarmed civilian, and beginning July 1, 2023, to operate a Police Practices Division within the Department of Justice to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.

1502.18 CASE LAW: FOURTH AMENDMENT: SEIZURE OF PROPERTY

People v. Tran (2019) 42 Cal.App.5th 1: Under what circumstances may a police officer seize a digital
device pending an application for a search warrant?
RULE: Law enforcement may seize a digital device to prevent the destruction or loss of evidence pending
an application for a search warrant.

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1502.19 CASE LAW: FOURTH AMENDMENT: DETENTION OF SUSPECT ON FOOT

(2019) 38 Cal.App.5th 617: Can a person be detained solely based on the facts that they are in a high-crime area and fled from law enforcement?

RULE: Flight from a high-crime area is not sufficient, on its own, to establish a reasonable suspicion to detain.

1502.20 CASE LAW: DETENTION VIA VEHICLE STOP

(2020) 53 Cal.App.5th 89: Was a suspect detained when an officer made a U-turn, parked 15-20 feet behind the suspect's legally parked car, turned his spotlight onto the suspect's car, and immediately got out and approached?

RULE: When an officer parks a marked patrol car behind a legally parked car and illuminates the car with a spotlight, the driver may well feel he or she is "the object of official scrutiny," but such directed scrutiny does not amount to a detention.

1502.21 CASE LAW: FOURTH AMENDMENT: REASONABLE SUSPICION FOR VEHICLE STOPS

(2020) 140 S.Ct. 1183: If an officer runs a license plate and learns that the registered owner's driver's license was suspended or revoked, may the officer stop the vehicle to confirm that the driver was the registered owner and, therefore, citable?

RULE: If the registered owner's license of a vehicle has been revoked or suspended, a vehicle stop is reasonable unless the officer has information (e.g., wrong sex or wrong race) negating the inference that the owner is the driver.

1502.22 CASE LAW: FOURTH AMENDMENT: VEHICLE SEARCH- MARIJUANA, PROBABLE CAUSE, AND THE AUTOMOBILE EXCEPTION

(2019) 45 Cal.App.5th Supp. 1: May officers search a vehicle upon finding cannabis flower in a closed container in the center console of a vehicle?

RULE: (1) Automobile exception permitting warrantless search applies when there is probable cause to believe evidence of a crime or contraband may be found; (2) Veh. Code, § 2322 prohibits possession of loose cannabis flowers "not in a container" while driving a motor vehicle.

2. FACTS: An officer conducted a traffic stop; Def. was driver. Officer noticed a strong smell of marijuana, both fresh and burnt, coming from his car. The officer asked Def. if he had marijuana, and he stated that he had "some bud" in the center console. The officer searched the car and discovered 1.14 grams of "dried flower" marijuana in a closed tube in the center console. Upon further search, the officer discovered a loaded pistol under the driver's seat.

3. HELD: Reversed. Vehicle Code, § 23222 prohibits the possession of "loose cannabis flower not in a container" while driving a motor vehicle. Because Def. possessed cannabis flower in a closed container, the possession was lawful and could not be relied upon to justify the search.

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Absent the discovery of the cannabis, there was no probable cause to search the vehicle under the automobile exception, and the firearm would not have been inevitably discovered.

1502.23 CASE LAW: FOURTH AMENDMENT: VEHICLE SEARCH- MARIJUANA, PROBABLE CAUSE, AND THE AUTOMOBILE EXCEPTION

(2020) 53 Cal.App.5th 796: Did officers have probable cause to search the vehicle after observing, in plain view, an open container of marijuana?

RULE: The presence of an unsealed bag of marijuana plainly visible on a passenger's person constitutes probable cause to search the vehicle, including containers.

2. FACTS: Officers initiated a traffic stop of the car Def. was driving for expired registration. After Def. pulled over, one officer approached the driver's side of the car and encountered Def., while his partner approached the passenger's side and encountered a female passenger. As they approached the car, both officers noted the scent of unburned marijuana. When asked about the scent, Def. denied having any marijuana in the car; however, the officer speaking with the female passenger saw an unsealed bag of marijuana in her cleavage. The officers searched the vehicle. On the passenger floorboard was a zipped purse, and inside was a loaded handgun. After warnings, Def. (a felon) admitted the gun was his and that he had placed it in the passenger's purse when he saw the officers behind his car.

3. HELD: Conviction affirmed. The search of the vehicle, including the passenger's purse, was justified pursuant to the automobile exception. While the mere presence of a lawful amount of marijuana is not sufficient to establish probable cause to search under the automobile exception, and there must be some additional evidence of illegality, here there was sufficient additional evidence because the officer observed an open container on the passenger's person (and possession of an unsealed or open container of marijuana in a vehicle is still illegal, no

matter the amount). The presence of this contraband provided probable cause to believe the passenger possessed other open containers, and therefore the officers had probable cause to search the passenger and the vehicle for further evidence of contraband.

1502.24 CASE LAW: FOURTH AMENDMENT: VEHICLE SEARCH- MARIJUANA, PROBABLE CAUSE, AND THE AUTOMOBILE EXCEPTION

(2019) 40 Cal.App.5th 853: Does the seizure of a small amount of marijuana from Def.'s person constitute probable cause to search a vehicle? When may law enforcement impound a vehicle when a driver's license is suspended?

RULE: The warrantless search of a vehicle is allowed: (1) under the automobile exception when there is probable cause to believe evidence of a crime or contraband may be found; or (2) during a vehicle inventory properly conducted in the course of impounding an automobile. A vehicle may be impounded only if it serves a community caretaking function.

2. FACTS: When Def. failed to produce a license after a traffic stop and exiting the vehicle, officers conducted a pat-down search and found a small amount of marijuana and cash in Def.'s

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pocket. When the officer began to handcuff him, Def. tensed up and leaned back in the car to tell something to his passenger. The officers learned that Def. was driving on a suspended license. They handcuffed Def., detained the passenger, and proceeded to search Def.'s car, telling Def. they were going to impound the vehicle due to his suspended license. During the search, officers found cocaine, a gun, and indicia of drug sales. Def. was charged with drug-and-weapon-related offenses and moved to suppress the evidence. The prosecution argued that the search was justified as an automobile search and a vehicle inventory prior to its impound.

3. HELD: Reversed. The officers lacked probable cause under the automobile exception. Finding a small (legal) amount of marijuana and money on Def. did not provide a reasonable basis to believe contraband would be found in the car. There was no evidence that would cause a reasonable person to believe the Def. had more marijuana than the legal amount he possessed (e.g. no odor, open container, or signs of illegal sales activity).

The decision to impound the vehicle was not justified because no community caretaking function was served by impounding the car. The car was parked in or next to an apartment complex. It was not blocking a roadway, the sidewalk, or a driveway. And the trial court reasonably found the officer's primary motive was to investigate, rather than inventory, the car.

• A motive to impound the vehicle was belied by how the search was conducted and the officer's repeated questions to Def. about whether there was anything illegal inside the vehicle. The officer who performed the search did not complete a required San Diego Police Department form (ARJIS-11) for towing and impound. And he did not assist the officer who ultimately completed the vehicle inventory (after discovery of the contraband).

• Although the Vehicle Code authorizes law enforcement to impound a car when a person is found to be driving on a suspended license, "the fact that an inventory search is authorized is not determinative of the search's constitutionality."

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2022 Legislative Update

1503.1 PURPOSE AND SCOPE

The Professional Standards Bureau has prepared this legislative update for the 2022 calendar year. It is intended to serve as a general summary of legal changes that pertain to law enforcement and is not meant to cover every legislative change enacted in 2021. The 2022 Legislative Update Manual published by the California Peace Officers' Association is the main source used for this summary. All personnel are invited to click on the links within this document and read the various codes in their entirety for a more detailed explanation. The changes outlined below go into effect January 1, 2022, unless otherwise indicated.

1503.2 ARREST WARRANTS: DECLARATION OF PROBABLE CAUSE

AB-127 (Kamlager)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB127

Authorizes an employee of a public prosecutor's office to make a declaration of probable cause to arrest to a magistrate *if the defendant is a peace officer*.

1503.3 WITNESS CREDIBILITY: SEXUAL CONDUCT, SOCIAL MEDIA CONTENT

AB 341 (Horvath)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB341

EC 782 (Amended)

Provides additional protections under the Rape Shield Law to victims of sexual assault by requiring evidence mined from their social media accounts to first be evaluated by a judge to demonstrate relevance and admissibility before being introduced in open court to attack the victim's credibility in a sexual assault prosecution

1503.4 ORGANIZED RETAIL THEFT

AB 331 (Jones-Sawyer)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB331

PC 490.4 (Added)

Re-establishes the crime of organized retail theft until to January 1, 2026, and also empowers the existence of a taskforce established by the California Highway Patrol to analyze organized retail theft and vehicle burglary and assist local law enforcement in counties identified as having elevated property crime.

1503.5 PARTICIPATION IN A CRIMINAL STREET GANG: ENHANCED SENTENCE

AB 333 (Kamlager)

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https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB333

Effective: January 1, 2023

PC 186.22 (Amended) and 1109 (Added)

Redefines the terms "pattern of criminal gang activity" and "criminal street gang" for the purposes of the gang offense, enhancement, and alternate penalty under the STEP Act and requires bifurcation of gang-related prosecutions from prosecutions that are not gang-related.

PC 186.22 (f) definition of “Criminal Street Gang:”

An ongoing, organized association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in subdivision (e), having a common name or common identifying sign or symbol, and whose members collectively engage in, or have engaged in, a pattern of criminal gang activity.

1503.6 PEACE OFFICERS: MINIMUM QUALIFICATIONS

AB 89 (Jones-Sawyer)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB89

GC 1031.4 (Added)

(a) In addition to the standards in Section 1031, each state officer and employee designated as peace officers as described in Sections 830.1, with the exception of those described in subdivision (c) of that section, 830.2, with the exception of those described in subdivision (d) of that section, 830.3, 830.32, or 830.33 of the Penal Code, or any other peace officer employed by an agency that participates in the Peace Officer Standards and Training (POST) program shall be at least 21 years of age at the time of appointment.

Penal Code 13511.1 (Added)

“Modern policing degree program” to be recommended to the Legislature by January 1, 2023, by the Chancellor of California Community Colleges, with POST, Law Enforcement stakeholders (admin and employees), California State University, and community organizations to serve as advisors.

1503.7 PEACE OFFICERS: CERTIFICATION, CIVIL RIGHTS

SB 2 (Bradford)

https://legiscan.com/CA/bill/SB2/2021

Disqualifying Provisions (GC 1029 (Amended))

Specifies that any person who, after January 1, 2004, has been convicted of a crime based upon a verdict or finding of guilt of a felony by the trier of fact, or upon the entry of a plea of guilty or nolo contendere to a felony, is disqualified from being a peace officer, even if the court sets aside, vacates, withdraws, expunges or otherwise dismisses or reverses the conviction, unless the court

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finds the person to be factually innocent of the crime for which they were convicted at the time of entry of the order.

Provides that any person who has been issued peace officer certification and has had that certification revoked by POST, or who has voluntarily surrendered that certification permanently, or having met the minimum requirement for issuance of certification, has been denied issuance of certification, is disqualified from being a peace officer.

Requires the Department of Justice (DOJ) to supply POST with necessary disqualifying felony and misdemeanor conviction data for all persons known to be current/former peace officers.

Provides that POST shall be permitted use of the information from DOJ for de-certification purposes and that the data, once received by POST, will become information releasable under the California Public Records Act (CPRA), including documentation of the person's appointment, promotion, and demotion dates, as well as certification/licensing status and reason/disposition for leaving service.

POST

Grants POST the power to investigate and determine the fitness of any person to serve as a peace officer within the POST training program, as specified, in the State of California

Grants POST the power to audit any law enforcement agency that employs peace officers, as specified, <u>without cause and at any time.</u>

Creates a Peace Officer Standards Accountability Division within POST.

> To review investigations conducted by law enforcement agencies or any other investigative authority and to conduct additional investigations, as necessary, into serious misconduct that may provide grounds for decertification, present findings and recommendations to the advisory board created by this bill and to POST and bring proceedings seeking the revocation of certification of peace officers as directed by the board and POST.

Requires POST to establish procedures for accepting complaints from members of the public regarding peace officers or law enforcement agencies that may be investigated by the accountability division or referred to the peace officers' employing agency or the Department of Justice (DOJ).

Peace Officer Standards Accountability Division

Creates a 9-member Advisory Board for the purpose of making recommendations on the decertification of peace officers to POST.

Members:

- One peace officer (or former) appointed by the Governor
- One peace officer (or former) with substantial experience at a management rank in IA or disciplinary proceedings, appointed by the Governor

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- Two members of the public, working in nonprofit or academic institutions on issues related to police misconduct (one by Governor, other by Speaker of the Assembly)
- Two members of the public working at community-based organizations on issues related to police misconduct (one by Governor and one by Senate Rules Committee)
- Two members shall be members of the public, who shall not be former peace officers, with strong consideration given to individuals who have been subject to wrongful use of force likely to cause death or serious bodily injury by a peace officer, or who are surviving family members of a person killed by the wrongful use of deadly force by a peace officer, appointed by the Governor.
- One attorney with substantial professional experience involving oversight of peace officers, as appointed by the Governor.

Grounds for Decertification, Investigation, Appeal

Requires that a certified peace officer have their certification revoked, and an applicant have their application for certification denied, upon a determination that the peace officer or applicant has done any of the following:

(a) The person is or has become ineligible to hold office as a peace officer, as specified;

(b) The person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any "serious misconduct," as defined.

Requires definitions of "*serious misconduct*," without limitation.

Requires, beginning no later than January 1, 2023, that each law enforcement agency be responsible for the completion of investigations of allegations of serious misconduct by a peace officer, regardless of their employment status.

POST may consider the officer's prior conduct and service record in determining whether revocation is appropriate for serious misconduct.

Serious Misconduct

(b) By January 1, 2023, the commission shall adopt by regulation a definition of "serious misconduct" that shall serve as the criteria to be considered for ineligibility for, or revocation of, certification.

This definition shall include all of the following:

1. Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.
2. Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.

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3. Physical abuse, including, but not limited to, the excessive or unreasonable use of force.
4. Sexual assault, as described in subdivision (b) of Section 832.7.
5. Demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner. This paragraph does not limit an employee's rights under the First Amendment to the United States Constitution.
6. Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the commission. Whether a particular factual or legal determination in a prior appeal proceeding shall have preclusive effect in proceedings under this chapter shall be governed by the existing law of collateral estoppel.
7. Participation in a law enforcement gang. For the purpose of this paragraph, a "law enforcement gang" means a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state anti-discrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.
8. Failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to this chapter. For purposes of this paragraph, the lawful exercise of rights granted under the United States Constitution, the California Constitution, or any other law shall not be considered a failure to cooperate.
9. Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

1503.8 FIREARMS TRACING

AB 1191 (McCarty)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1191

PC 11108.3 (Amended)

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Specifies that DOJ shall, by no later than January 1, 2023, and annually thereafter, prepare and submit a report to the Legislature summarizing the data that *law enforcement agencies are required to report to DOJ* regarding information necessary to identify and trace the history of all recovered firearms for trends relating to the sources and origins of firearms used in crimes if the firearms:

- Are illegally possessed;
- Have been used in a crime; or,
- Are suspected of having been used in a crime.

1503.9 MILITARY EQUIPMENT: ACQUISITION AND USE

AB 481 (Chiu)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481

GC 7071 (a) (to be added)

STAGE 1 – January 1, 2022- Approval of new equipment

A law enforcement agency will have to obtain approval of their governing body (as defined) by ordinance, prior to requesting, seeking, or using new 'military equipment' either permanently or temporarily.

STAGE 2- Approval of existing equipment

No later than May 1, 2022, a law enforcement agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2022, shall commence a governing body approval process in accordance with this section.

If the governing body does not approve the continuing use of the equipment, including by adoption of a military equipment use policy within 180 days of submission of the proposed military equipment use policy to the governing body, the law enforcement agency shall cease its use of the military equipment until it receives the approval of the governing body.

GETTING APPROVAL:

In seeking the approval, a law enforcement agency shall submit a proposed military equipment use policy to the governing body and make those documents available on the law enforcement agency's internet website at least 30 days prior to any public hearing (i.e., agendized mtg with public comment) concerning the equipment at issue.

WHAT'S IN A "MILITARY EQUIPMENT USE POLICY?"

"Military equipment use policy" means a publicly released, written document governing the use of military equipment by a law enforcement agency or a state agency that addresses, at a minimum, all of the following:

- A description of each type (i.e., same manufacturer model #) of military equipment

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- The purposes and authorized uses for each type of military equipment.
- The fiscal impact of each type of military equipment
- The legal and procedural rules that govern each authorized use.
- The training that must be completed before agency is allowed to use
- Mechanisms to ensure compliance
- Public complaint procedures

Collaboration with another Law Enforcement Agency in deployment of equipment within governing body's jurisdiction.

WHAT'S INCLUDED MILITARY EQUIPMENT?

- Unmanned, remotely piloted, powered aerial or ground vehicles
- MRAPs or armored personnel carriers (Police versions of standard consumer vehicles excluded)
- Humvees, or wheeled vehicles with breaching or entry apparatus attached
- Tracked armored vehicles providing ballistic protection
- Command and control vehicles built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature.
- Firearms and ammunition of.50 caliber or greater (standard issue shotguns specifically excluded)
- Specialized firearms and ammunition of less than.50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, (with the exception of standard issue service weapons and ammunition of less than.50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.)
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- "Flashbang" grenades, explosive breaching tools, "tear gas," and "pepper balls"
- Taser Shockwave, microwave weapons, water cannons, and LRAD.
- The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and SIM weapons.

ONGOING USE

A law enforcement agency shall submit to the governing body an annual military equipment report for each type of military equipment approved by the governing body within one year of approval, and annually thereafter for as long as the military equipment is available for use and make each annual report publicly available on its internet website for as long as the military equipment is available for use.

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The annual military equipment report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of military equipment:

1. A summary of how the military equipment was used and the purpose of its use.
2. A summary of any complaints or concerns received concerning the military equipment.
3. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
4. The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
5. The quantity possessed for each type of military equipment.
6. If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.
   (a) Within 30 days of submitting and publicly releasing an annual military equipment report pursuant to this section, the law enforcement agency shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment.

1503.10 POSITIONAL ASPHYXIA

AB 490 (Gipson)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB490

GC 7286.5 (a)- (amended)

1. A law enforcement agency shall not authorize the use of a carotid restraint or choke hold by any peace officer employed by that agency.
2. A law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia.
   (a) "Positional asphyxia" means situating a person in a manner that compresses their airway and reduces the ability to sustain adequate breathing. This includes, without limitation, the use of any physical restraint that causes a person's respiratory airway to be compressed or impairs the person's breathing or respiratory capacity, including any action in which pressure or body weight is unreasonably applied against a restrained person's neck, torso, or back, or positioning a restrained person without reasonable monitoring for signs of asphyxia.

1503.11 PEACE OFFICER: LAW ENFORCEMENT GANGS

AB 958 (Gipson)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB958

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PC 13670 (to be added)

Requires all law enforcements agencies to maintain a policy that prohibits participation in a law enforcement gang, cooperate with external investigations (by Inspector General and/or Attorney General) and makes a violation of that policy grounds for termination.

“Law enforcement gang” means a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state anti-discrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.

Except as specifically prohibited by law, a law enforcement agency shall disclose the termination of a peace officer for participation in a law enforcement gang to another law enforcement agency conducting a preemployment background investigation of that former peace officer.

1503.12 LAW ENFORCEMENT: SOCIAL MEDIA

AB 1475 (Low)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1475

PC 13665 (added)

Prohibits a Police Department from sharing on social media the booking photos of an individual arrested on suspicion of committing a nonviolent crime unless *any* of the following circumstances exist:

(a) Agency has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the suspect's image will assist in locating or apprehending the suspect or reducing or eliminating the threat;

(b) A judge orders the release or dissemination of the suspect's image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest;

(c) There is an exigent circumstance that necessitates the dissemination of the suspect's image in furtherance of an urgent and legitimate law enforcement interest.

Applies retroactively to any booking photo shared on social media

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1503.13 PUBLIC PEACE: MEDIA ACCESS

SB 98 (McGuire)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB98

PC 409.7. (to be added)

(a) If peace officers close the immediate area surrounding any emergency field command post or establish any other command post, or establish a police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged in activity that is protected pursuant to the First Amendment to the United States Constitution or Article I of the California Constitution, the following requirements shall apply:

1. A duly authorized representative of any news service, online news service, newspaper, or radio or television station or network may enter the closed areas described in this section.
2. A peace officer or other law enforcement officer shall not intentionally assault, interfere with, or obstruct the duly authorized representative of any news service, online news service, newspaper, or radio or television station or network who is gathering, receiving, or processing information for communication to the public.
3. A duly authorized representative of any news service, online news service, newspaper, or radio or television station or network that is in a closed area described in this section shall not be cited for the failure to disperse, a violation of a curfew or violation of paragraph (1) of subdivision (a) of Section 148. If the duly authorized representative is detained by a peace officer or other law enforcement officer, that representative shall be permitted to contact a supervisory officer immediately for the purpose of challenging the detention, unless circumstances make it impossible to do so.

1503.14 PEACE OFFICERS: RELEASE OF RECORDS

SB 16 (Skinner)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB16

PC 832.5 (b) (to be amended)

- Complaints and any reports or findings relating to these complaints shall be retained for a period of no less than 5 years (not sustained) and no less than 15 years for sustained findings of misconduct.

PC 832.7 (to be amended)

- 832.7(b)(ii): Requires disclosure of an incident involving use of force that resulted in death or Great Bodily Injury.
  - A sustained finding involving a complaint that alleges unreasonable or excessive force.
  - A sustained finding that an officer failed to intervene against another office using force that is clearly unreasonable or excessive.

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Provides a phased-in implementation of this bill so that records relating to incidents (that relate to the new categories of offenses added by this bill) which occurred before January 1, 2022, shall not be subject to the time limitations of the bill until January 1, 2023. However, records of incidents that occur after January 1, 2022, shall be subject to the time limitations of the bill.

1503.15 USE OF FORCE: DUTY TO INTERCEDE

AB 26 (Holden)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB26

GC 7286(a)

Law enforcement agency policies must include:

(a)(9)- A requirement that an officer intercede when present and observing another officer using force that is *clearly beyond* that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

A requirement that an officer that has received all required training on the requirement to intercede and fails to act pursuant to paragraph (9) be disciplined *up to and including* in the same manner as the officer that committed the excessive force.

1503.16 KINETIC ENERGY PROJECTILES AND CHEMICAL AGENTS

AB 48 (Gonzalez)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB48

PC 13652 (to be added)

Kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to disperse any assembly, protest, or demonstration.

Exceptions:

- Deployed by a peace officer who has received training (from POST) on their proper use for crowd control is the use if objectively reasonable to defend against life or serious bodily injury and in accordance with several requirements
- To bring an objectively dangerous and lawful situation safely and effectively under control.
- Not aimed at the head, neck, or any other vital organs
- If the chemical agent is tear gas, only a commanding officer at the scene (of assembly, protest, etc.) may authorize the use of tear gas.

Kinetic energy projectiles and chemical agents can be only be used if all of the following are met:

- **De-escalation techniques are attempted and have failed**

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- **Repeated, audible announcements are made (and attempted in various languages, if necessary) noting intent to use**
- **Persons are given objectively reasonable (OR) opportunity to disperse**
- **OR effort made to identify persons engaged in violent acts and projectiles and agents are used only towards those individuals**
- **Used only with frequency, intensity and in a manner proportional to the threat**
- **OR effort made to extract individuals in distress**
- **Medical assistance is promptly procured or provided for injured persons**

Kinetic energy projectiles and chemical agents cannot be used:

- **Due to violation of curfew**
- **In response to verbal threat**
- **Noncompliance with a law enforcement directive**

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2023 Legislative Update

1504.1 PURPOSE AND SCOPE

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1504.2 THEFT: JURISDICTION

AB 1613 (Irwin)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1613

Provides that when multiple offenses of theft, organized retail theft, or receipt of stolen property that all involve the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper venue for all of the offenses.

1504.3 CRIMES: FALSE PERSONATION

AB 1899 (Mathis)

Penal Code Sections 538d, 538e, 538f, 538g, and 538h (Amend)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1899

Prohibits the false impersonation of peace officers, firefighters, and other public officers and employees through, or on, an Internet website, or by other electronic means.

1504.4 HATE CRIMES: NOOSES, CROSSES AND SWASTIKAS

AB 2282 (Bauer-Kahan)

Penal Code Section 11411 (Amend)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2282

Equalizes the penalty for the crimes of hanging a noose, displaying a symbol of hate, including a Nazi swastika, and burning or desecrating religious symbols, on specified property, for the purpose of terrorizing, and expands and aligns the places where this conduct is prohibited for each offense.

> "Terrorize" - to cause a person of *ordinary emotions* and sensibilities to fear for personal safety.

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1504.5 DIVERSION OF REPEAT RETAIL THEFT CRIMES

AB 2294 (Jones-Sawyer)

Penal Code Sections 853.6 and 978.5 (Amend, Repeal and Add), 1210.2 (Add and Repeal), 1001.81 (Add and Repeal)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2294

States that a peace officer may take into custody a person who has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months or if there is probable cause to believe the person committed organized retail theft, as specified.

1504.6 THEFT: AGGREGATION

AB 2356 (Rodriguez)

Penal Code Section 487 (Amend)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2356

If the value of the money, labor, real property, or personal property taken exceeds $950 over the course of distinct but related acts, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan.

> States that the change made by this bill is declaratory of existing law in People v. Bailey (1961) 55 Cal.2d 514
>
> > "In a series of takings from the same individual, there is a single theft if the takings are pursuant to one continuing impulse, intent, plan or scheme, but multiple counts if each taking is the result of a separate independent impulse or intent."

1504.7 CRIMES: OBSTRUCTION OF JUSTICE

AB 2588 (Maienschein)

PC 146e

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2588

Presently, it is "a crime to maliciously, and with the intent to obstruct justice or the due administration of laws, or with the intent or threat to inflict imminent bodily harm in retaliation for the due administration of the laws, to publish, disseminate, or otherwise disclose the residence address or telephone number of any peace officer, nonsworn police dispatcher, employee of a city police department or county sheriff's office, or public safety official, or that of the spouse or children of those persons…"

AB 2588 extends these protections to the immediate family of these officials, or anyone who regularly resided in the household within the prior 6 months.

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1504.8 LOITERING FOR THE PURPOSES OF PROSTITUTION

SB 357 (Wiener)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB357

Existing law prohibits soliciting or engaging in an act of prostitution, as specified. Existing law also prohibits loitering in a public place with the intent to commit prostitution, as defined, or directing, supervising, recruiting, or aiding a person who is loitering with the intent to commit prostitution, or collecting or receiving all or part of the proceeds of an act of prostitution. Under existing law, a violation of any of these provisions is a misdemeanor.

This bill would repeal those provisions related to loitering with the intent to commit prostitution and would make other conforming changes. This bill would also authorize a person convicted of a violation of loitering with the intent to commit prostitution to petition the court for the dismissal and sealing of their case, and resentencing, if applicable.

Section 653.20 of the Penal Code is repealed.

Section 653.22 of the Penal Code is repealed.

Section 653.23 of the Penal Code is amended to read:

PC 653.23:

(a) It is unlawful for a person to do either of the following:

(1) Direct, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of Section 647.

(2) Collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person in violation of subdivision (b) of Section 647.

(b) Nothing in this section shall preclude the prosecution of a suspect for a violation of Section 266h or 266i or for any other offense, or for a violation of this section in conjunction with a violation of Section 266h or 266i or any other offense.

1504.9 DISORDERLY CONDUCT: PEEPING, RECORDING, AND DISTRIBUTION OF INTIMATE IMAGES AKA "REVENGE PORN"

SB 1081 (Rubio)

PC 647

https://legiscan.com/CA/text/SB1081/id/2609336

Defines the terms "distribute" and "identifiable" for purposes of the existing crime of unlawful distribution of a private image, also known as "revenge porn."

Provides that it is also unlawful for a person who intentionally causes the image to be distributed.

- "Intentionally causes an image to be distributed" to mean "when that person arranges, specifically requests, or intentionally causes another person to distribute the image."

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- "Distribute" to include exhibiting in public or giving possession.
- "Identifiable" through cross-reference to the definition that currently exists in the Penal Code section, which provides that the term means "capable of identification, or capable of being recognized, meaning that someone, including the victim, could identify or recognize the victim. It does not require the victim's identity to actually be established."

1504.10 DNA SAMPLES

SB 1228 (Weiner)

PC 680 and 679.12

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB1228

Prohibits entering samples from a victim or a person who voluntarily gave DNA for exclusion purposes into any DNA databank.

1504.11 CA LAW ENFORCEMENT ACCOUNTABILITY REFORM ACT

AB 655 (Karla)

PC 13680

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB655

Existing law requires that a candidate for a peace officer position be of good moral character, as determined by a thorough background investigation.

This bill would require that background investigation to include an inquiry into whether a candidate for specified peace officer positions has engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate, as specified, and as those terms are defined.

- "Hate group" means an organization that supports, advocates for, threatens, or practices genocide or the commission of hate crimes.
- "Participation in any hate group activity" means active and direct involvement in, or coordination or facilitation of, any hate crime by hate group members.
- "Public expressions of hate" means any statement or expression to another person, including any statement or expression made in an online forum that is accessible to another person, that explicitly supports, or explicitly threatens to commit genocide or any hate crime or that explicitly advocates for or explicitly supports any hate group.

1504.12 PEACE OFFICER: MINIMUM STANDARDS: BIAS EVALUATION

AB 2229 (Rivas)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2229

Requires that prospective officers' evaluations for physical, emotional and mental fitness including that they be found free of bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

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1504.13 PEACE OFFICERS: CITIZENSHIP

SB 960 (Skinner)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB960

Eliminates the requirement that a person be a United States citizen or a permanent resident in order to become a peace officer and instead requires that the person be legally authorized to work in the United States per federal law.

1504.14 FIREARM: PROHIBITED PERSONS

AB 2239 (Maienschein)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2239

Creates a 10-year firearm prohibition for individuals convicted, on or after January 1, 2023, of child abuse and elder and dependent adult abuse involving violence.

1504.15 FIREARM: PROHIBITED PERSONS

AB 2551 (McCarty)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2551

Requires DOJ, upon notification that a specified prohibited person attempted to purchase a firearm, to notify local authorities in the jurisdiction where the prohibited person resides of such attempt.

1504.16 CUSTODIAL INTERROGATION OF MINORS

AB 2644 (Holden)

WI 627 and 627.5

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2644

PART 1 (Takes effect: January 1, 2023)

627. (a) When an officer takes a minor before a probation officer at a juvenile hall or to any other place of confinement pursuant to this article, the probation officer shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that such minor is in custody and the place where he the minor is being held.

(b) Immediately after being taken to a place of confinement pursuant to this article and, except where physically impossible, no later than one hour after the minor has been taken into custody, the minor shall be advised and has the right to make at least two telephone calls from the place where he the minor is being held, one call completed to the minor's parent or guardian, a responsible relative, or their employer, and another call completed to an attorney. The calls shall be at public expense, if the calls are completed to telephone numbers within the local calling area, and in the presence of a public officer or employee. Any public officer or employee who

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willfully deprives a minor taken into custody of their right to make such telephone calls is guilty of a misdemeanor.

(c) Immediately after being taken to a place of confinement pursuant to this article, and no later than two hours after a minor has been taken into custody, the probation officer shall immediately notify the public defender or if there is no public defender, the indigent defense provider for the county, that the minor has been taken into custody.

PART 2 (Takes effect: January 1, 2024)

Commencing January 1, 2024, prohibits law enforcement officers from employing threats, physical harm, deception, or psychologically manipulative interrogation tactics, as specified, during a custodial interrogation of a person 17 years of age or younger.

Does not apply to interrogations of a person 17 years of age or younger if both of the following criteria are met:

- The law enforcement officer who questioned the person reasonably believed the information the officer sought was necessary to protect life or property from an imminent threat.
- The questions by law enforcement officers were limited to those questions that were reasonably necessary to obtain information related to the imminent threat.

1504.17 SPEED CONTESTS

AB 2000 (Gabriel)

VC 23109

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2000

Expands the crimes of motor vehicle exhibition of speed and speed contest on highways to include occurrences in parking lots.

- Makes it a crime for a person to engage in a motor vehicle speed contest in an off-street parking facility or an exhibition of speed in an off-street parking facility (VC 12500c).
- Makes it a crime for a person to aid or abet or to engage in a motor vehicle speed contest in an off-street parking facility or an exhibition of speed in an off-street parking facility.

1504.18 VEHICLES: DRIVER EDUCATION

AB 2537 (Gipson)

VC 12800.6

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2537

Requires DOJ, in conjunction with DMV and POST, to develop and create a video demonstrating the proper conduct by a peace officer and an individual during a traffic stop. DOJ will post the video on its website.

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1504.19 TRAFFIC OR PEDESTRIAN STOPS

AB 2773 (Holden)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2773

Requires, beginning ***January 1, 2024*** , a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions related to a criminal investigation or traffic violation, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat.

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Chapter 16 - Departmental Orders

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CAPTAIN'S INSTRUCTION 2021-001

1600.1 CALL-TAKING PROCEDURES INCLUDING AN UPDATED SECTION ON PROFILING BY PROXY

The effective period of a departmental order shall be specified therein or, absent a "sunset clause", will automatically become inoperative with the passage of the incident or assignment which caused its issuance. If no effective period is provided, it shall be understood that the departmental order will expire after one year from the date of issuance.

This Order will remain in effect until it is rescinded or otherwise permanently issued in the form of a policy.

Jen Louis

Interim Chief of Police

See attachment: Captain Instruction - Call Taking 2021.pdf

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CAPTAIN'S INSTRUCTION 2022-001

1601.1 TRAFFIC COLLISION REPORT REVIEW CHANGE

The effective period of a departmental order shall be specified therein or, absent a "sunset clause", will automatically become inoperative with the passage of the incident or assignment which caused its issuance. If no effective period is provided, it shall be understood that the departmental order will expire after one year from the date of issuance.

See attachment: Captain Instruction Collisions.pdf

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Attachments

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201 special order.pdf

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DEPARTMENTAL ORDER

SPECIAL ORDER #2014-001 **DATE ISSUED: 6/30/14**

SUBJECT: <u>HOUSE CAR ORDINANCE</u>

Effective immediately, officers will utilize the following definition of “habitation” in reference to enforcement of BMC 12.76.010 regarding living in house cars:

Habitation is defined by sleeping inside overnight or daytime occupancy of more than 8 cumulative hours for three consecutive days. Cooking might also be indicia of habitation. Other possible indicia include recently used bedding, amounts of unpacked clothing, and toiletries consistent with lodging, etc.

This order is meant to clarify BMC section 12.76.010 in light of the recent Ninth Circuit Court decision (6-19-2014), and will be in effect until such time as the definition can be added to the BMC, or a General Order is issued to codify the definition.

_____

Chief of Police

cc: All BPD Personnel

Statutes and Legal Requirements.pdf

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Statutes and Legal Requirements

Items listed in this section include sections from the California Penal Code (CPC), Welfare and Institutions Code (WI) and Government Code (GC).

Definitions

CPC 422.55 - Provides general definition of hate crimes in California.

CPC 422.56- Provides definitions of terms included in hate crimes statutes.

GC 12926- Disability-related definitions applicable to some hate crime statutes.

Felonies

Hate Crimes

CPC 422.7 - Commission of a crime for the purpose of interfering with another's exercise of civil rights.

Related Crimes

CPC 190.2(a)(16) - Homicide penalties related to certain hate crime related acts.

CPC 190.03(a) - Homicide penalties related to certain hate crime related acts.

CPC 288(b)(2) - Sexual assault of dependent person by caretaker

CPC 368(b) - Dependent adult abuse generally - may apply as disability-related hate crime.

CPC 594.3 - Vandalism of places of worship.

CPC 11412 - Causing or attempting to cause other to refrain from exercising religion by threat.

CPC 11413 - Arson or destructive device at place of worship.

Misdemeanors

Hate Crimes

CPC 422.6 - Use of force, threats, or destruction of property to interfere with another's exercise of civil rights.

CPC 422.77 - Violation of civil order (Bane Act) protecting the exercise of civil rights

Related Crimes

CPC 302 - Disorderly conduct during an assemblage of people gathered for religious worship at a tax-exempt place of worship.

CPC 538(c) - Unauthorized insertion of advertisements in newspapers and redistribution to the public.

CPC 640.2 - Placing handbill, notice of advertisement on a consumer product or product packaged without authorization.

CPC 11411 - Terrorism of owner or occupant of real property. Placement or display of sign, symbol, or other physical impression without authorization, engagement in pattern of conduct, or burning or desecration of religious symbols.

Enhancements

CPC 190.2(a)(16) - Special circumstances imposing the Death Penalty or Life Without Possibility of Parole, if the victim was intentionally killed because of sexual orientation, gender, or disability.

CPC 190.3 - Special circumstances imposing LWOP if the victim was intentionally killed because of sexual orientation, gender, or disability.

CPC 422.75 - Penalty for felony committed because of victim's race, color, religion, nationality, country or origin, ancestry, disability, or sexual orientation shall be enhanced one, two, or three years in prison, if the person acts alone; and two, three, or four years if the person commits the act with another.

CPC 1170.8 - Enhancement for robbery or assault at a place of worship.

CPC 1170.85(b) - Felony assault or battery enhancement due to age or disability.

Reporting

CPC 13023- Requirement for law enforcement agencies to report hate crime data to DOJ.

WI 15630 – Elder and Dependent Adult Abuse Mandated Reporting (may apply in disability-related hate crimes).

Training and Policy Requirements

CPC 422.87 - Hate crimes policy adoption and update requirements (AB 1985, Effective January 1, 2019).

CPC 13519.6 - Defines hate crime training requirements for peace officers.

CPC 13519.41 - Training requirements on sexual orientation and gender identity-related hate crimes for peace officers and dispatchers (AB 2504, Effective January 1, 2019).

Miscellaneous Provisions

CPC 422.78 - Responsibility for prosecution of stay away order violations.

CPC 422.86 - Public policy regarding hate crimes.

CPC 422.89 - Legislative intent regarding violations of civil rights and hate crimes

CPC 422.92 - Hate crimes victims brochure requirement for law enforcement agencies.

CPC 422.93 - Protection of victims and witnesses from being reported to immigration authorities.

GC 6254 - Victim confidentiality.

DOJ Medical Release Form BCIA 4048 Spanish.pdf

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6.2 COB Emergency Plan - 2016.pdf

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804 Attach June 2022.pdf

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GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

General Policy Statement Regarding Release Of Police Reports To The Public and the Police Accountability Board (PAB):

It shall be the general policy of the Police Department to release a copy of a police report to any member of the public or the PAB, unless the release of the report, or a part of the report, or the information in the report would: (1) endanger a person; (2) endanger the successful completion of the investigation or a related investigation; (3) constitute an unwarranted invasion of privacy as defined in this Policy; or, (4) is prohibited by law.

A release of a police report to a City department, such as the City Attorney's office, the Office of Transportation, or the City Manager's office, is not a release to the public and is not governed by this Policy.

NAMES AND ARRESTEE INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult arrestee's name, occupation, physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held on, including any outstanding warrants from other jurisdictions and parole or probation holds.	Yes, release of this information is required by law, unless the release would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation. [Government Code §6254(f)(1)]		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult suspect name (e.g., when suspect not arrested)	No to general public, but yes to the general public, if the adult suspect's name was already released to the public through the PRC process. Release is also authorized to assist in specific public safety effort, such as locating the suspect.	Unwarranted invasion of privacy.	For PRC to investigate, when relevant to a PRC investigation, the PRC shall get the name of an adult suspect, if ALL of the following conditions apply: (1) the release will not endanger a person's safety; (2) the release will not endanger the successful completion of the investigation or a related investigation; and, (3) the release will not result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.
Juvenile arrestee name and Juvenile suspect name	No. The entire report cannot be released without a Court Order, except that the juvenile's name and address information may be released to the victim, or his/her representative, after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order, dated 4/7/1995; Welfare & Institutions Code §§ 601 and 602; [TNG v. Sup. Ct.]	Prior to release to victim, confirm status of case is no longer active in Juvenile Court.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult and juvenile victim name.	No, if there is an active criminal case pending or a criminal case is likely to be filed, the name of the victim should not be released. [Penal Code §964] If no criminal case is pending or likely to be filed, then: Yes, release of a victim's name is required by law, unless the release of the adult victim's name would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or (3) the victim of one of the crimes listed in GC §6254(f)(2) (e.g., sex crimes, domestic violence, stalking or hate crime) has been asked and has requested or, if a juvenile victim, his or her parent or guardian has requested, that his or her name be kept confidential. [GC §6254(f)(2).]	PC §964 sets forth certain restrictions on the release of a victim's name if a criminal case is pending.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult or juvenile witness or "other party" name; an "other party" is a person who is not an arrestee, suspect, or witness.	No, if there is an active criminal case pending or a criminal case is likely to be filed, the name of the witness (or other party) should not be released. [PC §964] If no criminal case is pending or likely to be filed, then, for an adult witness name: Yes, unless release of the adult witness name would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. Note: The name of a juvenile witness will not be disclosed to the general public, unless it has already been disclosed through the PRC process. The name of a juvenile witness will only be disclosed to the PRC, if the parent or guardian consents to the disclosure.	Protection of witness and potential witnesses; PC §964 sets forth certain restrictions on the release of a witnesses' name if a criminal case is pending	If the PRC requests the name of a witness, the name can only be disclosed if: (1) there is no active criminal case pending or a criminal case is likely to be filed; (2) the release of the name would not endanger a person's safety; and, (3) the release of the name would not endanger the successful completion of the investigation or a related investigation. In addition, if the witness is a juvenile, the parent or guardian must consent to the disclosure to the PRC.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

PHONE NUMBERS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Phone number of person whose name IS released under this Policy	No, to general public, but yes to the general public, if the phone number was already released to the public through the PRC process.	Unwarranted invasion of privacy.	For PRC to investigate, PRC shall get the phone number of any adult person whose name is released to the PRC. However, if the person whose name is released is a juvenile, the phone number will not be released to the PRC without the consent of the juvenile's parent or guardian.
Phone number of any person whose name is NOT released under this Policy	No.	Unwarranted invasion of privacy.	

ADDRESS INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult arrestee address. Adult suspect address Adult/juvenile victim address. Adult/juvenile witness address. Adult/juvenile "other party" address.	No, if the *name* is not released under this Policy and/or applicable law. In cases in which the *name* is released: No, to general public, but yes to the general public**:** if the person's address was already released to the public through the PRC process.	Unwarranted invasion of privacy	For PRC to investigate, when relevant to a PRC investigation, PRC shall get the address of an adult arrestee, or adult suspect, or any victim, witness, or other party, but only if ALL of the following conditions apply: (1) the PRC obtained the name from BPD under this Policy; (2) the person has no working telephone number; (3) the release will not endanger a person's safety; (4) the release will not endanger the successful completion of the investigation or a related investigation; [cont.]

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

ADDRESS INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
			and, (5) the release will not result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. In the case of a juvenile victim, juvenile witness, or juvenile other party, in addition to the above conditions, the address shall not be released to the PRC without consent of the juvenile's parent or guardian. Juvenile arrestee and juvenile suspect addresses are not releasable to the PRC. See below.
Juvenile arrestee address and Juvenile suspect address.	No. The entire report cannot be released without a Court Order, except that name and address information may be released to the victim or his or her representative after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order dated 4/7/1995; WIC §§601, 602. [TNG v. Superior Court]	Prior to release to victim confirm status of case is no longer active in Juvenile Court.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

OTHER PERSONAL INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
Date of birth of non-arrestee. (Date of birth of arrestee is required by law to be released. See above)	No.	Unwarranted invasion of privacy and potential identity theft.	As an alternative, release victim, witness, or suspect's age.
CDL, Social Security #, Bank Account #.	No.	Unwarranted invasion of privacy and potential identity theft.	
Vehicle license plate numbers.	No.	Unwarranted invasion of privacy.	
Medical treatment records.	No, unless a person is requesting his or her own medical records, or the person whose medical records are being requested has signed an authorization for the release of the medical records to the requesting party.	Civil Code §56, et seq. provides that medical records are to be kept confidential; WIC §5328 provides that WIC §5150 records (such as the Berkeley Mental Health staff person's report re a WIC §5150) are confidential. Note: An officer's report re a WIC §5150 call is not a medical treatment record; it is a police report. Information provided by a medical treater noted in a police report is not a medical treatment record, but it should be deleted as an unwarranted invasion of privacy if it is highly sensitive information such as information involving sex crimes, suicide, or mental health.	Medical records can be given to the PRC if the person whose medical records are being requested has signed an authorization for the release of the medical records to the PRC. Alternatively, a person can obtain his or her own medical records held by BPD, if any, directly from BPD, and then give them to the PRC.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

MUG SHOTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
PFN photos taken by BPD (mug shots.)	Yes, unless release would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation.		Obtain Detective Bureau approval for release in all criminal cases.
PFN photos taken by another agency.	No, unless release is made for a public safety purpose.	Policy decision.	Obtain approval from Office of the Chief.

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE			
Subject	**Release**	**No Release Reason**	**Further Direction**
Oral (paraphrased) and written statements from victims, witnesses, and suspects. Investigative narrative. Diagrams. Evidence list.	Yes, unless release would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Evidence photographs.	Yes, unless release would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result the release of highly personal information of a very sensitive nature such as the condition of person's body or a corpse. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		
Communications center audio tapes	Yes, unless release is prohibited under PC §964 (pending criminal case), or release results in an unwarranted invasion of a citizen's privacy. No, as to continuing police radio communications in lengthy incidents occurring more than one hour after the incident first started.	Unwarranted invasion of citizen's privacy and undue burden on staff.	For PRC to investigate, PRC shall get the tapes. However, if witness or victim information is not releasable to the PRC under this Policy or by law (e.g., PC §964), then that information must be deleted. Also, if the tape contains highly personal information of a very sensitive nature such as a victim screaming as she is violently assaulted or killed, such segments shall be deleted before release to the PRC, unless the only person affected is the requesting party, and the person has filed a complaint with the PRC.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Investigative techniques: Trackers, undercover, surveillance locations, 'Johns'/decoy, tactics, interview tactics.	No.	Evidence Code §§1040-1042	
Confidential informant's name or identifying information.	No.	EC §§1040-1042	If the report uses "x" to refer to the confidential informant, release is permitted as no identifying information is included.
Complete, unredacted police report in ID theft (PC530.5) cases.	Yes, to victim only (PC §530.6(a)).		

CRIMINAL HISTORY INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
PFN Number.	No.	Unwarranted invasion of privacy.	
Criminal history: Actual RAP sheet or actual RMS print-out for an individual.	No. However, local criminal history information contained in the RMS print out must be released to the subject of that information, if requested by the subject. [PC §13330(b)(11)]	PC §§11075, 11076, 11105 and 13300.	Okay to release serious felony conviction information only to Housing Authority managing Section 8 program.
Limited criminal history: Fact of prior crime or similar arrests relevant to the investigation, or relevant to the arrest charge, such as felon with a gun.	Yes. Although this information may be contained within a Rap sheet, it can be disclosed as a relevant part of a single police report, which in itself is not a Rap sheet. It can also be disseminated to the public generally for the purpose of assisting in the apprehension of a wanted person. [PC §13305]		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

CRIMINAL HISTORY INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Information taken out of CLETS.	No.	CLETS "Policies, Practices & Procedures" provides that CLETS information (which includes DMV) is confidential and for OFFICIAL USE ONLY.	
Probation or parole hold on an arrestee.	Yes. Release of this information is required by law, unless the release of the probation or parole hold on the arrestee would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation. [GC §6254(f)(1)]		
Probation or parole status when it is related to the investigation or arrest charge.	Yes, unless release of the arrest charge or investigation would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation.		
Probation or parole, general status when there is no "hold" and it is not related to the investigation or arrest charge, and it is not being disclosed for a public safety purpose.	No.	PC §§11075, 11076, 11105 and 13300.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

OPEN AND CLOSED INVESTIGATIONS, HOMICIDE REPORTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Open, Suspended, and Closed investigations.	Yes, unless release would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		Obtain approval from effected Detective Bureau unit prior to release, if a criminal prosecution is still possible. For homicide reports, obtain approval from Homicide Unit and Custodian of Records prior to release.

SPECIAL POLICE REPORTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Juvenile arrest or juvenile suspect reports.	No. The entire report cannot be released without a Court Order, except that the name and address information may be released to the victim or his or her representative after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order dated 4/7/1995; WIC §§601 and 602. [TNG v. Superior Court]	Prior to release to victim confirm status of case is no longer active in Juvenile Court.
Child abuse reports.	No.	PC §§11167 and 11167.5.	
Elder abuse reports.	No.	WIC §15633 prohibits release.	
Vehicle collision reports.	No, except to persons authorized in VC §20012.	VC §20012 limits the release of collision reports to certain interested parties.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

SPECIAL POLICE REPORTS (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Reports from other agencies.	No.	Policy decision.	

REQUESTS BY UNINVOLVED PARTIES, VICTIMS, AND SPECIAL REQUESTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Can an uninvolved party obtain a police report?	**Uninvolved parties will have access to the same information as involved parties, except in the following three situations:** **(1) in compliance with Alameda County Superior Court Juvenile Court Order dated 4/7/95 (release certain information to victim only in juvenile cases in certain circumstances, except if it will endanger a person or investigation);** **(2) in accordance with GC §6254(f) (may withhold from an uninvolved party certain information releaseable to a victim of a misdemeanor or felony crime); and,** **(3) pursuant to VC §§16005 and 20012 (release to involved parties only re: collision reports.)** **A release of information to a crime victim, involved party, or their representative, under these three circumstances does not modify otherwise applicable rules regarding release to others.**		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

REQUESTS BY UNINVOLVED PARTIES, VICTIMS, AND SPECIAL REQUESTS (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Can a victim of a misdemeanor or felony (but not an infraction), or their agent or insurance company, obtain a police report?	**In part. Release of the following information to the victim (or their agent or insurer) is required under Government Code section 6254(f), except where: the release is prohibited by law (e.g., certain juvenile cases (see above)); is witness information in pending criminal cases; the release would endanger a person's safety; or, impede the successful completion of the investigation or a related investigation:** **(1) names and addresses of persons involved in the incident;** **(2) names and addresses of witnesses (other than confidential informants) to the incident;** **(3) description of any property involved;** **(4) date, time and location of the incident;** **(5) statements of parties involved in the incident;** **(6) statements of witnesses (other than confidential informants); and,** **(7) all diagrams.**		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

REQUESTS BY UNINVOLVED PARTIES, VICTIMS, AND SPECIAL REQUESTS (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Categorical requests, such as all reports pertaining to a certain address, all reports regarding a certain type of incident, or all reports related to a particular individual.	Yes, unless: (1) the release will impact citizen privacy issues; (2) the potential assembly of information will reveal criminal history; or, (3) if gathering the information will create an undue burden on staff. Yes, when release will enhance public safety (e.g., in a neighborhood effort to abate a nuisance such as drug dealing at a certain property where the reports are needed for a civil lawsuit.)		Custodian of Records to decide.

SEARCH WARRANTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Search Warrants and Returns.	Yes, unless sealed.	If sealed by Court.	
Search Warrant applications or affidavits, and any police reports attached to application.	Yes, but delete all identifying information pertaining to a victim or a witness in the application, affidavit, or a police report attached to the application.	PC §964 prohibits the release of a witness or victim's identifying information in a Search Warrant application or a police report attached to the application.	

Captain Instruction - Call Taking 2021.pdf

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Police Department

M E M O R A N D U M

Date: February 24, 2021
To: Communications Center Personnel
From: Captain J. Louis #C2 JL C-2
Subject: Captain's Instruction: Call-Taking

This Captain's Instruction on the Call-Taking procedure now includes a section on profiling by proxy. This instruction is effective immediately pending an update into the Communications Center Operations Manual.

CALL TAKING

SCOPE

The function of the Dispatcher working call taking is to provide 24 hour a day service to the public for information as well as routine or emergency assistance. Dispatchers shall follow these standardized procedures and expectations for call processing.

CALL TAKER EXPECTATIONS

1. **CONTROLLING THE CALL: Where, What, When, Weapons, Who**: The call taker should maintain control of the call in order to receive the answers to the most important questions in the shortest period of time.

2. **VERIFICATION AND ACCURACY: Verify details that are received through the initial line of questioning**: The call taker will use active listening and repeat back to the caller the information he/she provided in order to confirm the documented details.

3. **COMPASSION AND PATIENCE**
   - **a. Help the caller understand what is happening:** The call taker will use a firm yet reassuring tone of voice with the caller, stating that you are going to help and will need to ask a number of questions in order to do so.
   - **b. Commit the caller to staying on the line and working with you as long <u>as it is safe to do so</u>:** The call taker will state that it is very important for the caller to remain on the line as long as it is safe to do so, and to provide the best information possible in response to the questions being asked. The call taker will inform the caller that there will be some moments of silence or side conversations with other Dispatchers as the details are being entered, they are not being ignored, nor ending the call, and not to hang up during these periods.
   - **c. Explain what will happen next:** The call taker will remain on the line with the caller as long as practicable to continue information gathering. However, if it is necessary to end the call the call taker will advise the caller a call for service request has been completed. If the caller asks when officers might arrive, the call taker may state they cannot estimate the time and there may be delays due to higher-priority calls or high call volume.

4. **PROFESSIONALISM: Speak calmly and clearly and with enough volume for the caller to hear you**. The call taker should project authority, yet portray understanding and empathy through a steady and reassuring tone. Speak in clear and understandable terms; do not use departmental codes or jargon.

2100 Martin Luther King Jr. Way. Berkeley, CA 94704 Tel: 510.981.5900 TDD: 510.981.5799 Fax: 510.981.5960
E-mail: police@cityofberkeley.info Website: http://www.cityofberkeley.info/police

5. **RESPECT:**

a. **Do not demonstrate an argumentative demeanor**, and do not question the integrity or validity of the caller or the reported incident. What may appear improbable or unlikely upon first report may in fact be what has occurred.

b. **Do not use sarcasm or diminish the caller's perceived importance/urgency of the reported situation. Do not patronize the caller**. All callers should be treated with understanding and dignity, regardless of how well they can articulate or explain what has occurred and/or how well they are able to cooperate/comply with the call intake process.

PROCEDURE FOR INFORMATION GATHERING

The call taker shall obtain the basic information from the caller using the **5 W's format (Where, What, When, Weapons, Who),** as well as any secondary questioning necessary to provide pertinent information. When appropriate, the call taker may ask callers near the end of the call if there is anything they would like to add. All information must be documented in the narrative window of the CAD mask.

1. **WHERE (Location):** The call taker will make every attempt to enter an accurate location of ***where*** the Incident occurred into the CAD call mask.

The call taker shall request the exact location of the incident (structure addresses, intersections).

If the specific location is unknown, the call taker shall request landmarks or estimated proximity to landmarks.

The call taker will tell the caller and any witnesses to remain at their current location (unless determined unsafe) until officers arrive.

Address Verification. The call taker shall verify all addresses reported. This can be accomplished by matching the ALI display, repeating the address, and/or enunciating each digit of the address.

2. **WHAT (Nature of the Incident):** The call taker will question the caller in order to ascertain ***what*** happened.

Determine the appropriate call type.

Ask the caller if there are injuries or if anyone requires medical attention. If **medical attention is required, copy call to Fire, document the nature of the injuries and status of scene security in the call's narrative.** If there are injuries and no police response is required, the call taker will then transfer the caller to ACCREC for pre-arrival instructions (ref. EMD policy).

3. **WHEN (Time of Occurrence):** The call taker will question the caller to ascertain ***when*** the incident occurred. The call taker will determine if the incident is in-progress, just prior, or a cold report.

In Progress: Incidents occurring now or within past 2 minutes

Just Prior: Incidents occurring 2-10 minutes prior or incidents occurring more than 10 minutes prior and the responsible is still on scene or in the area.

Cold Reports: Incidents occurring more than 10 minutes prior and the responsible is no longer in the area.

If the call type is a priority 1 or 2 and the incident is in-progress, just prior (10 minutes or less), or if the suspect is still on scene, the call taker will make the call **"ready for dispatch"** as soon as practicable after the incident location is verified and the call type is determined.

4. **WEAPONS (First Responder/Citizen Safety Hazards):** The call taker will ascertain if there are any weapons involved or other potential on-scene h*azards.*

Weapons: The call taker will ask the caller if any weapons were seen, simulated or threatened.

Intoxicated or Mentally Disturbed Subjects: The call taker will ask secondary questions when a caller reports a subject behaving erratically or unusually.

The call taker will ask the caller if there are any other on-scene ***hazards*** that could potentially harm responding units.

5. **WHO (Descriptions of Involved Subjects):** The call taker will attempt to obtain full subject descriptions using the following questioning sequence:

   Race and/or Complexion; Gender; Age (or Approximate); Height, Weight, Hair/Facial (Color, length, style); Eyes (Glasses); Headwear; Coat; Shirt/Dress; Pants/Shorts/Skirt; Shoes; and Other Distinctive Features

For in-progress or just prior priority 1 and 2 calls, the call taker will ascertain whether the subject is still in sight or if they have left the scene. If the subject has left the scene, the call taker will first ask the caller for the direction of travel, time element and a description of the method of transportation (i.e. foot, vehicle, or bicycle). The call taker will enter this information as soon as practicable into the narrative.

The following order should be used to document descriptions of **transportation methods**:

1. **Vehicles:** The call taker will use the CYMBAL format (Color, Year, Make, Body type, Additional Characteristics, License plate) to ask the caller for a description of a vehicle. The call taker will also ask the number of occupants, position of suspect (i.e. Driver, front or rear seat passenger) and direction of travel.
2. **Bus:** The call taker will ask the caller the Bus Company, coach number, route number and direction of travel.
3. **BART:** The call taker will ask the caller the BART station name, platform information and train destination information (i.e. Richmond, Fremont, San Francisco) and train direction
4. **Bicycle**: The call taker will ask the caller the bike color, type, brand (i.e. Black, mountain bike, Diamondback) and direction of travel.

PROFILING BY PROXY

Bias, racism or profiling by proxy occurs in a call for service when an individual calls the police and makes false or ill-informed claims about persons they dislike or are biased against. Dispatchers and Officers have a role in mitigating bias-based calls for service (CFS), and proper handling of these calls is important to maintain and build trust between the police and the community.

Call takers have a responsibility to do an initial screen and triage of all calls to ensure they are accurately entered as the correct CFS with the appropriate priority attached. Call takers should ask questions and explore whether there are concrete, observable behaviors that form the basis of the suspicious activity or crime the RP is reporting. Calls for service (CFS) should focus on behaviors of involved parties, not appearance. Reports of suspicious activity require the reporting party (RP) to articulate something criminal or reasonably suspicious about a person's behavior.

If a Call Taker believes an RP is making a bias-based call for service, they should:

1. **Create a call for service,**
2. **Enter the details** provided by the RP in the call narrative
3. **In the Nature of Call field enter: "Supervisor review required"** which will ensure that the call is not ready for dispatch, and
4. **Notify the on duty supervisor.** Supervisor will review the merits of the call for service and either approve for dispatching or notify a Watch Commander (or designee)
5. **Watch Commander** will determine if a response will be provided and/or follow-up up with the RP for more information.

BPD Narcan Signed Medical Standing Order.pdf

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NARCAN NASAL SPRAY 4mg
Physician/Medical Director Standing Order

NARCAN is indicated for the reversal of opioid overdose induced by natural or synthetic opioids and exhibited by respiratory depression or unresponsiveness. NARCAN is delivered by intranasal administration as indicated.

This standing order covers the possession and distribution of NARCAN Nasal Spray 4mg.

Trained staff of ___the Berkeley Police Department___ may possess and distribute NARCAN Nasal Spray 4mg to 1) a person at risk of experiencing an opioid-related overdose or 2) a family member, friend, or other person(s) in a position to assist a person at risk of experiencing an opioid-related overdose.

Administration of NARCAN Nasal Spray 4mg to a person suspected of an opioid overdose with respiratory depression or unresponsiveness as follows:

Use NARCAN Nasal Spray for known or suspected opioid overdose in adults and children. Important: For use in the nose only.

- Do not remove or test the NARCAN Nasal Spray until ready to use.
- Each NARCAN Nasal Spray has 1 dose and cannot be reused.
- You do not need to prime NARCAN Nasal Spray.

How to use NARCAN nasal spray:

Step 1. Lay the person on their back to receive a dose of NARCAN Nasal Spray.
Step 2. Remove NARCAN Nasal Spray from the box. Peel back the tab with the circle to open the NARCAN Nasal Spray.
Step 3. Hold the NARCAN Nasal Spray with your thumb on the bottom of the plunger and your first and middle fingers on either side of the nozzle.
Step 4. Tilt the person's head back and provide support under the neck with your hand. Gently insert the tip of the nozzle into one nostril until your fingers on either side of the nozzle are against the bottom of the person's nose.
Step 5. Press the plunger firmly to give the dose of NARCAN Nasal Spray.
Step 6. Remove the NARCAN Nasal Spray from the nostril after giving the dose.
Step 7. Get emergency medical help right away. • Move the person on their side (recovery position) after giving NARCAN Nasal Spray. • Watch the person closely. • If the person does not respond by waking up, to voice or touch, or breathing normally another dose may be given. NARCAN Nasal Spray may be dosed every 2 to 3 minutes, if available. • Repeat Steps 2 through 6 using a new NARCAN Nasal Spray to give another dose in the other nostril. If additional NARCAN Nasal Sprays are available, Steps 2 through 6 may be repeated every 2 to 3 minutes until the person responds or emergency medical help is received.
Step 8. Put the used NARCAN Nasal Spray back into its box.
Step 9. Throw away (dispose of) the used NARCAN Nasal Spray in a place that is away from children.

QTY: 250 REFILLS: 3 SIG: use as directed

DATE 8 / 20 / 2018 Dr. Signature Karl Sporer, MD

C04 2975

Print Dr. Name and contact information: Karl Sporer MD

201 Captains Instruction.pdf

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DEPARTMENTAL ORDER

CAPTAIN'S INSTRUCTION #2018-001 **DATE ISSUED: 05/10/18**

SUBJECT: AEGIS PASSWORD POLICY

Effective immediately, the following **Aegis password** polices will be in place:

- Passwords must be a minimum length of 8 characters
- Passwords require at least one number
- Passwords must differ from your user ID
- Passwords must differ from your previous 10 passwords
- Passwords must be changed every 90 days
- Auto-login to all modules will be disabled

_____

Cpt. J. Louis
Operations Captain

cc: All BPD Personnel

Mileage Reimbursement.pdf

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City of Berkeley

AUTO RECORD FOR MILEAGE REIMBURSEMENT

NAME _____ DEPARTMENT & DIVISION _____ JOB CLASS _____

AUTO YEAR & MAKE _____ MONTH & YEAR RECORDED _____

THIS AUTO RECORD FOR MILEAGE REIMBURSEMENT MUST BE SUBMITTED WITHIN 60 CALENDAR DAYS FROM THE LAST DATE RECORDED OR FORFEIT REIMBURSEMENT

DATE	ORIGIN	DESTINATION	TIME START - END	PURPOSE / CONTACT PERSON	BUDGET CODE Fund/Dept/Div/Act/Proj	* Meters or Bridge Tolls	Garage	Odometer/MapQuest START	Odometer/MapQuest END	MILES	TOTAL
					TOTALS						

2018 Fed IRS Mileage Rate = $0.545

Note: See current AR 7.2 for further information & details. *** Note: no receipts needed for parking meters/bridge tolls, unless required by your dept.**

Office Use Only: **CERTIFICATION OF ATTEMPT TO USE: City Carshare Vehicle ____ City Fleet/Pool Vehicle ____**

I certify that mileage reimbursement is requested for vehicle use incurred in the performance of official duties for the City of Berkeley. I further acknowledge that I am personally responsible for all costs incurred which are not consistent with City policy, and violation of AR 7.2 is subject to disciplinary action.

Employee Signature ***Printed Name*** ***Date***

Supervisor Signature ***Printed Name*** ***Date***

Dept Head Signature ***Printed Name*** ***Date***

Alameda County Double Blind Sequential Lineup Identification Form.pdf

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ALAMEDA COUNTY DOUBLE BLIND SEQUENTIAL LINEUP IDENTIFICATION FORM

Agency Name:	Case Number:
Date:	Time:
Investigator/Officer presenting lineup:	Location of lineup:
Others present during identification:	
Witness name:	DOB:

Select the appropriate witness admonition below. The admonition should be read verbatim prior to conducting the lineup.

USE FOR PHOTO LINEUP

In a moment, I am going to show you a series of six individual photos. The person who committed the crime may or may not be included. Even if you identify someone during this procedure, I will continue to show you all the photos in the series. The investigation will continue whether or not you make an identification.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed and that complexion color may look slightly different in photographs. You should not feel you have to make an identification. It is just as important to exclude innocent persons as it is to identify the perpetrator.

Do not discuss your case with other witnesses.

The photos will be shown to you one at a time. Take as much time as you need to look at each one. If you wish to see a photo again, you will be shown all photos again.

Do you understand these instructions? _____ (WITNESS RESPONSE) _____ (WITNESS INITIALS)

_____ Signature of Witness Viewing Lineup _____ Date _____ Time

USE FOR PHYSICAL LINEUP

In a moment, I am going to show you a series of six people. The person who committed the crime may or may not be included. Even if you identify someone during this procedure, I will continue to show you all the people in the lineup. The investigation will continue whether or not you make an identification.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed and that complexion color may look slightly different. You should not feel you have to make an identification. It is just as important to exclude innocent persons as it is to identify the perpetrator.

Do not discuss your case with other witnesses.

The people will be shown to you one at a time. Take as much time as you need to look at each one. If you wish to see a person again, you will be shown all of the people.

The individuals you will be shown will not be named; they will be assigned numbers. If the suspect in your case is in the lineup, remember their number.

If you wish to have a certain person in the lineup speak, wear a hat, walk rapidly, etc., make this request to the investigator conducting the lineup, and all of the people in the lineup will be asked to do the same thing. No person in the lineup will be singled out to speak or perform.

Do you understand these instructions? _____ (WITNESS RESPONSE) _____ (WITNESS INITIALS)

Post lineup identification procedure:
If the suspect is present, place an "X" in the box below that matches the number of the suspect. If the suspect is not present, do not mark any box. If you believe a person who was present is the suspect, but you are not sure, place a "?" in the box below that matches the number of that person.

#1	#2	#3	#4	#5	#6

_____ Signature of Witness Viewing Lineup _____ Date _____ Time

Police Aide Manual Draft 2018.pdf

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OES - Emergency Operations - RED BOOK - 2019.pdf

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OES - Mutual Aid - BLUE BOOK - 2019.pdf

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2019 Edition

Law Enforcement Mutual Aid Plan

Cal OES
GOVERNOR'S OFFICE
OF EMERGENCY SERVICES

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Gavin Newsom

DIRECTOR:
Mark S. Ghilarducci

LAW ENFORCEMENT BRANCH:

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California Governor's Office of Emergency Services
Law Enforcement Branch
3650 Schriever Avenue
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10th Edition, July 2019

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PREFACE

As you read this; somewhere in California, a law enforcement agency is providing mutual aid to another. Mutual aid is an everyday occurrence in a state as large and diverse as California. This is the continuation of a Cal OES decades-long process of "neighbor helping neighbor." The law enforcement mutual aid system is an ongoing cooperative effort among law enforcement agencies to ensure an effective and organized response to a wide range of emergencies. There may be a misconception that mutual aid is used only during a civil unrest and/or natural disaster; however, this system has been used successfully for many other situations, including large criminal investigations, deployment of special teams such as Special Weapons and Tactics Teams, Bomb Squads, etc.

How will your agency use the mutual aid system? Planning, preparation and operational activities of law enforcement agencies in support of the mutual aid system must be consistent with each department's policies and procedures and must also comply with the Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS).

All law enforcement executives, administrators, managers, and field supervisors should familiarize themselves with this plan and its application. The personnel of the Cal OES Law Enforcement Branch are available to assist you with planning, training and when necessary, emergency response coordination. It is important to note that Cal OES does not "own" the mutual aid system. It is a part of California law enforcement; and those that participate benefit and share in the concept of "neighbor helping neighbor."

Mark N. Pazin, Chief
Law Enforcement Branch

INTRODUCTION

The Law Enforcement Mutual Aid Plan

This document delineates the current state policy concerning law enforcement mutual aid. It is consistent with, and describes state law concerning application of the Standardized Emergency Management System (SEMS) in law enforcement mutual aid situations.

It describes the standard procedures used to acquire law enforcement mutual aid resources and the method to ensure coordination of law enforcement mutual aid planning and readiness at the local, state and federal levels.

The law enforcement mutual aid system works best when there is expeditious receipt and dissemination of law enforcement incident information and situational intelligence related to unusual occurrences.

This document includes information regarding the statutory protections afforded responders under the Emergency Services Act, and provides legal background for law enforcement mutual aid.

New in this Revision

This edition takes the basic information included in prior versions and formats it in a more complete and usable manner. No changes have been made to the system, organizational relationships or the process. What follows is perhaps a more useful explanation of the process.

Updated information on the Law Enforcement Branch and its resources is included; as is updated information on state agencies that routinely provide law enforcement mutual aid. Lastly, a compendium of legal sections has been added. While this is not meant to be exhaustive, it will provide easy access to key sections of law dealing with these issues.

Cal OES Law Enforcement Branch

The Cal OES Law Enforcement Branch functions behind the scenes to maintain the Law Enforcement Mutual Aid System in California. Our peace officers can assist any California law enforcement organization in developing related plans, training, and exercises for their agency. The Branch welcomes input on the Mutual Aid System and suggestions for improvement of this plan, or emergency operations in general.

HISTORY AND AUTHORITY

The Law Enforcement Mutual Aid system has been used successfully for many years. Notable events involving use of this system include:

- Northern California Floods
- Firestorms of 2003, 2007
- Transportation accidents, air crashes
- Watts Riots
- People's Park – Berkeley Civil Unrest
- Huntington Beach "Surf" Riot
- Loma Prieta Earthquake
- East Bay Hills (Oakland) Fire
- Several Environmental Protests
- Los Angeles Civil Unrest
- Polly Klaas and other large searches
- Elem Indian Reservation SWAT Incident
- Hollister "Wild Bunch" Motorcycle Events
- Sund-Peloso Yosemite Murders
- Regional SWAT Mutual Aid Callout for Fresno Deputy's Killer
- Mehserle Shooting Protests
- 2011/2012 Occupy Demonstrations
- Bassler Manhunt - Mendocino County
- Dorner Manhunt – Southern California
- Rim/Clover Fires
- Miller Manhunt-Triple Homicide
- Roseville Mall Fire/Barricaded Subject
- LAX Active Shooter
- Montecito Mudslides
- Woolsley Fire
- Camp Fire

The statewide mutual aid system today is an outgrowth of the California Disaster and Civil Defense and the Master Mutual Aid Agreement (1950), the Emergency Services Act, Chapter 7 of Division 1 of Title 2 of the Government Code (GC), Governor's Executive Order W-9-91, is supported by the California Emergency Plan and by extension, the Law Enforcement Mutual Aid Plan.

The State of California Law Enforcement Mutual Aid Plan is issued and revised under the authority of Sections 8550, 8569, 8615 through 8619, and 8668 of the California Government Code, the California Emergency Plan, and the Master Mutual Aid Agreement.

LIABILITY ISSUES

The Emergency Services Act (the Act) provides law enforcement agencies limited immunity from liability when responding in support of a mutual aid request.[1] Albeit "limited," when interpreting the immunity protections provided by the Act, the courts have regularly found that if the "state must take the steps necessary to quell an emergency, it must be able to act with speed and confidence without fear of incurring tort liability."[2]

Therefore; the Act's immunities are broader than the general immunities provided for discretionary governmental actions, i.e., for decisions made by the high ranking officers, the City Council, or Board of Supervisors regarding policy matters. [3] Also, the protections afforded by the Act generally supplement the other statutory liability protections that may apply to the routine law enforcement role, such as immunities for failure to enforce the law.[4,5] The liability protections of the Act extend to mutual aid provided during a declared state of emergency [6] and non-emergency periods.[7]

The best way that a law enforcement agency can assure that its actions are protected by the Act is to:

- Act in accordance with this plan,
- Respond based upon a request by the Operational Area, Regional, or State Law Enforcement Mutual Aid Coordinator,
- Act in accordance with your local emergency plan approved by the local disaster council in accordance with local ordinance, and
- Verify that your department's plans and procedures are consistent with this plan.[8]

1 California Government Code § 8655.
2 Farmers Ins. Exchange v. State of California (App. 6 Dist. 1985) 221 Cal.Rptr. 225, Cal.App. 6 Dist.,1985
3 Labadie v. State of California(App. 6 Dist. 1989) 256 Cal.Rptr. 604, 208 Cal.App.3d 1366
4 California Government Code § 8656.
5 California Penal Code §§ 818.2, 821.
6 California Government Code § 8616
7 California Government Code § 8617 also see Soto v. State of California (App. 2 Dist. 1997) 65 Cal.Rptr.2d 11,56 Cal.App.4th 196
8 California Government Code §§ 8560, 8568, 8569

DEFINITIONS AND CONCEPTS

Note: Some definitions are not verbatim text from related codes and regulations, but are paraphrased for clear understanding of the concepts involved.

Operational Area

A county, along with all the political subdivisions within that county constitutes an Operational Area.

Operational Area Law Enforcement Coordinator

The county sheriff is the Operational Area law enforcement coordinator, with the exception of the City and County of San Francisco, where the chief of police is the Operational Area Law Enforcement Coordinator.

Mutual Aid Region

A Mutual Aid Region is a geographic area comprised of multiple operational areas. A Mutual Aid Region manages and coordinates information and resources among operational areas within the mutual aid region and between the Operational Areas and the state level.

Regional Law Enforcement Mutual Aid Coordinator

A Regional Law Enforcement Mutual Aid Coordinator is an Operational Area Law Enforcement Coordinator elected by peers from within the mutual aid Region, to coordinate the collective law enforcement mutual aid response of agencies within the Region.

State Law Enforcement Mutual Aid Coordinator

The State Law Enforcement Mutual Aid Coordinator is the Chief of the Law Enforcement Branch of the California Governor's Office of Emergency Services (Cal OES). The state coordinator is responsible for mutual aid response coordination and administrative interaction between state and local law enforcement agencies during emergency and non-emergency situations, where the mutual aid system is, or could be, involved.

State of War Emergency

"State of War Emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent. (Section 8558 (a) GC)

During a state of war emergency, the Governor has complete authority over all agencies of state government and the right to exercise within the area or regions designated, all police power vested in the state by the Constitution and laws of the State of California (GC, Article 12, Section 8620 and Article 13, Section 8627, "California Emergency Services Act"). During a state of war emergency, mutual aid is mandatory. (Discussed later in the Plan.)

State of Emergency

"State of Emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, complications resulting from the Year 2000 Problem, or other conditions, other than conditions resulting from a labor controversy or conditions causing a "state of war emergency," which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission. (Section 8558 (b)(GC))

During a state of emergency, the Governor has complete authority over all agencies of state government and the right to exercise within the area or regions designated, all police power vested in the state by the Constitution and laws of the State of California (GC, Article 12, Section 8620 and Article 13, Section 8627, "California Emergency Services Act"). During a state of emergency, mutual aid is mandatory. (Discussed later in the Plan)

Local Emergency

"Local Emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, complications resulting from the Year 2000 Problem, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission. (Section 8558(c), GC).

In periods of local emergency, political subdivisions (cities or counties) have the power to provide mutual aid to any affected area in accordance with local ordinances, resolutions, plans, or agreements. (It could be argued that having signed the Master Mutual Aid Agreement, the entity is bound to provide resources, if requested in accordance with the Mutual Aid Plan.)

During a local emergency, state agencies may provide mutual aid; including personnel, equipment, and other available resources, to assist local jurisdictions in accordance with mutual aid plans or at the direction of the Governor.

By proclaiming a local emergency, the governing body of a city or county expands its regulatory enforcement subject to constitutional constraints, increases its police power and may promulgate temporary emergency orders and regulations necessary to provide for the protection of life and property.

Response costs are absorbed by the responding agency notwithstanding any other agreements to the contrary, or availability of disaster reimbursement funds from another source.

A Proclamation of Local Emergency is not required before requesting law enforcement mutual aid.

Unusual Occurrence

An unusual occurrence is an event involving potential or actual personal injury or property damage arising from incidents such as natural and manmade disasters, acts of terrorism, and civil unrest.

Fifty Percent Guideline

No jurisdiction is required to unnecessarily deplete its own personnel, equipment and service capabilities in order to furnish mutual aid resources. When requested to provide mutual aid, it is generally accepted that a reasonable response will consist of up to 50% of available on-duty uniformed personnel.

Law Enforcement Branch

The California Governor's Office of Emergency Services Law Enforcement Branch (Cal OES LEB) is the state facilitator of inter-regional law enforcement mutual aid response resources to operational areas. The Law Enforcement Branch also provides ongoing liaison with operational areas, municipalities, and state and federal agencies during non-emergency periods to facilitate emergency preparedness planning and mutual aid awareness training. The branch also coordinates the state's search and rescue and coroner/medical examiner mutual aid programs, as well as other activities in support of local law enforcement mutual aid response. Additional information follows later in this plan.

Mission Numbers

The California Governor's Office of Emergency Services, Law Enforcement Branch, assigns Cal OES law enforcement mission numbers to track law enforcement mutual aid resources responding from outside the requesting Operational or Regional Area jurisdiction.

This most frequently occurs during searches and rescues involving registered Disaster Service Workers (volunteers) to ensure workers compensation coverage.

Search and Rescue incidents are recognized as an emergency, often requiring specialized resources from various parts of the state. A majority of SAR responders are volunteer professionals. It is recommended that any out-of-county SAR mutual aid mission requests be routed directly to Cal OES LEB for the assigning of a state mission number. This facilitates immediate Statewide SAR Mutual Aid (as defined in the SAR Annex), and identifies the existence of an authorized state mutual aid mission providing Disaster Service Worker (DSW) coverage for properly registered volunteer personnel.

Normal Law Enforcement Mutual Aid within a Region does not require a Cal OES Mission number although; mission numbers may also be issued at the request of the Regional Law Coordinator. If law enforcement resources (in the form of mutual aid) respond outside of their Region (SWAT from a county in Region 4 being requested by a County in Region 3) the Law Branch will issue a mission number and track those responding resources until the operation has concluded.

Mission Numbers (Cont.)

If a county within a region desires to have a Cal OES Law Mission number issued for county-to-county mutual aid requests, the request must be directed to the Regional Mutual Aid Coordinator (RMAC) for approval. Upon approval, the RMAC coordinator will contact the Cal OES Law Enforcement Branch Duty Officer and request that a mission number be issued. Any request for law enforcement mutual aid outside of the originating region must have the approval of and be coordinated by the Regional Mutual Aid Coordinator.

The existence of a law enforcement mission number also implies that the law enforcement duty officer queried the requestor to insure that mutual aid criteria were met prior to tasking an out-of-county mutual aid response.

It is suggested that any county routinely providing law enforcement mutual aid (typically a specialized resource, i.e. Bomb squad, SWAT) to another county within its region develop an internal "unusual occurrence" numbering system to document each deployment.

Mission numbers are not a mechanism to assure reimbursement of response costs, they are a database tracking tool to memorialize a mutual aid incident and its disposition.

A CalOES law enforcement mission number consists of three parts: the year (e.g. 2009), the letters "LAW" followed by a four digit sequential number, e.g. 2009-LAW0123.

Day-to-Day Mutual Aid

During the course of normal law enforcement smaller incidents occur that may require immediate assistance, such as: back-up on a traffic stop, perimeter control for a fleeing suspect or crowd control at a barricaded suspect location pending the arrival of additional local resources. Officers from nearby jurisdictions may respond to these emergency broadcasts on their own initiative (department policy permitting) without a formal mutual aid request.

LEVELS OF MUTUAL AID

Mutual aid response within the State of California is based on four governmental levels of increasingly justifiable mutual aid support. These levels are cities (or other similar local jurisdictions), operational areas, mutual aid regions, and the state.

Note: Throughout this segment of the Mutual Aid Plan, the terms chief of police/sheriff are used as the initiators of a mutual aid request. The volatility of some incidents necessitates immediate support. In fact, any designated command, management or supervisory-level officer/ deputy has the ability to request, or provide, law enforcement mutual aid on behalf of the chief/ sheriff, if so authorized by agency policy.

City

City police departments are charged with responsibility for the maintenance of law and order and protection of life and property within the municipal geographic boundaries.

The chief of police is the official responsible for determining the magnitude of a law enforcement emergency within the jurisdiction, the extent of locally committed resources and the necessity for requesting law enforcement mutual aid. In a contract city, the command-level manager from the contracted agency functions much as does a local chief.

Operational Area

The Operational Area (county sheriff) is the next level of law enforcement mutual aid responsibility (See Operational Area map). The Operational Area is a composite of its political subdivisions, i.e., municipalities, contract cities, special districts and county agencies. The county sheriff is the Operational Area Law Enforcement Mutual Aid Coordinator (or, in the case of San Francisco, the chief of police of the city and county of San Francisco).

Region

To facilitate coordination of mutual aid, the State of California is geographically divided into seven law enforcement mutual aid Regions (See Mutual Aid Regional map). Each mutual aid Region is comprised of multiple Operational Areas and has a Regional Law Enforcement Mutual Aid Coordinator.

The Regional Law Enforcement Mutual Aid Coordinator is granted the authority to coordinate the mutual aid response of law enforcement resources within the Region to support a mutual aid request from a jurisdiction within the Region. Requests for mutual aid resources between Regions are coordinated by the Chief of the California Governor's Office of Emergency Services, Law Enforcement Branch.

The Regional Law Enforcement Mutual Aid Coordinator is a sheriff from within the Region who is elected to the position by majority vote of the other Sheriff's of that Region. [See the appendix that describes this process.]

Note: Coroner's mutual aid is coordinated in the same manner as law enforcement mutual aid beginning at the Operational Area level. See the Cal OES companion document that describes Coroner/Medical Examiner Mutual Aid for further detail.

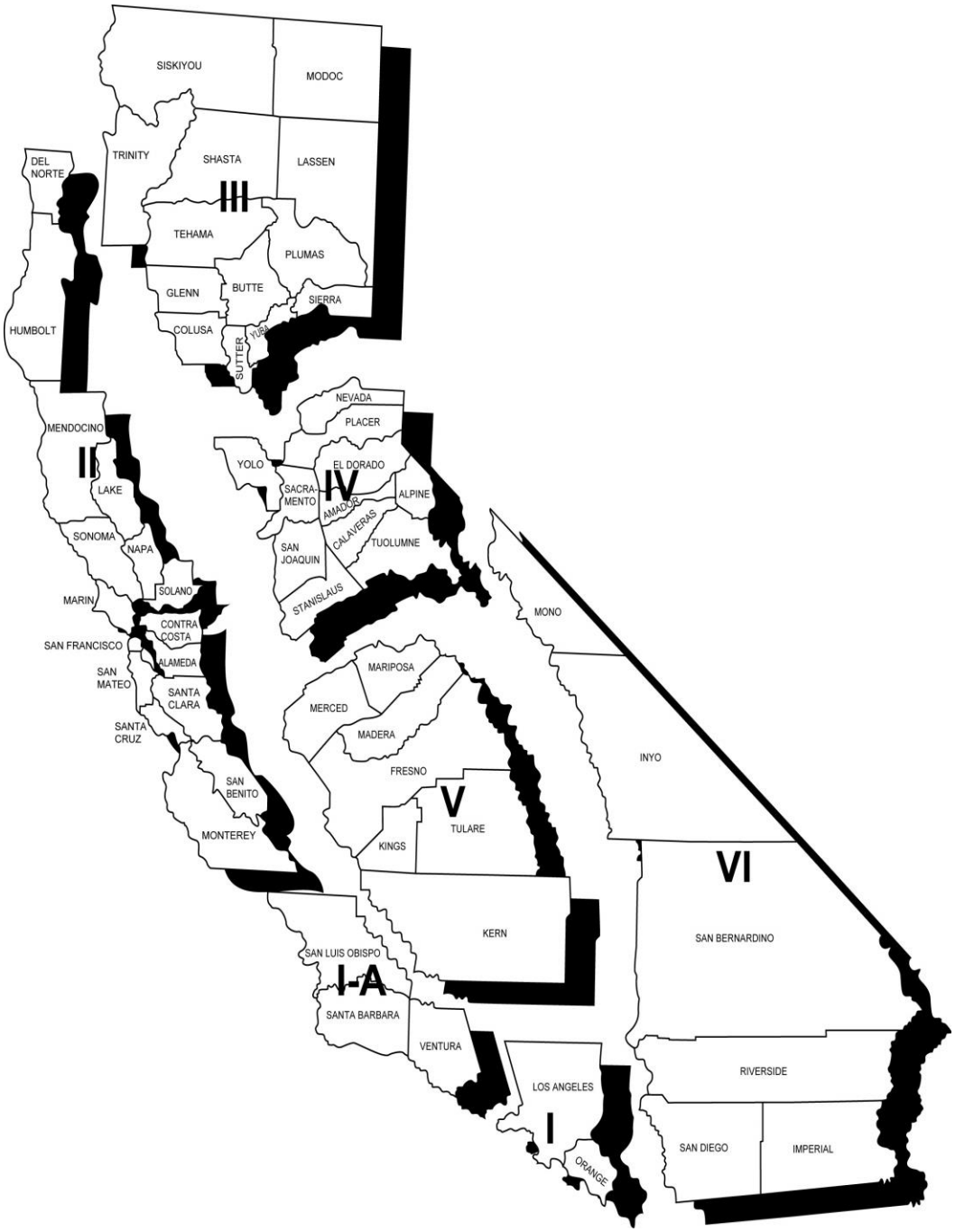
State

On behalf of the Governor, the Director of the California Governor's Office of Emergency Services, through the Chief of the Law Enforcement Branch, has the responsibility for coordination of state law enforcement mutual aid resources in support of local jurisdictions during times of emergency. Information on the resources available from state agencies appears later in this plan.

A number of state law enforcement agencies offer assistance on an "immediate need" basis – much as exists in "day-to-day" mutual aid response situations. Nothing in this plan should be construed to limit this process. Indeed, it is consistent with this plan. Use of state law enforcement resources for mutual aid beyond that level should, however, be coordinated through the Cal OES Law Enforcement Branch.

Federal

The Cal OES Law Enforcement Branch can also assist a local agency in seeking the assistance of federal law enforcement agencies or resources. Our peace officers can assist local law enforcement organizations with requests to the Federal Emergency Management Agency, the US Department of Justice, or other agencies. In some cases, federal reimbursement for response costs is available through these agencies – again accessed through Cal OES Law Enforcement Branch.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PLACER
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YOLO
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LAKE
SACRA-MENTO
IV
ALPINE
AMADOR
CALAVERAS
SONOMA
NAPA
SAN JOAQUIN
TUOLUMNE
SOLANO
MARIN
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MONO
CONTRA COSTA
SAN FRANCISCO
ALAMEDA
MARIPOSA
SAN MATEO
SANTA CLARA
MERCED
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SAN LUIS OBISPO
I-A
SANTA BARBARA
VENTURA
RIVERSIDE
LOS ANGELES
I
SAN DIEGO
IMPERIAL
ORANGE

MUTUAL AID PROCEDURES

Note: Throughout this segment of the Mutual Aid Plan, the terms chief of police/sheriff are used as the initiators of a mutual aid request. The volatility of some police incidents necessitates immediate support. In fact, any designated command, management or supervisory-level officer/ deputy has the ability to request, or provide, law enforcement mutual aid on behalf of the chief/ sheriff, if so authorized by agency policy.

Local Request for Mutual Aid

When a chief of police of a local jurisdiction (or the sheriff, acting as chief law enforcement officer for the unincorporated or a contract area) determines that an unusual occurrence may become or is already beyond the control of local law enforcement resources, it is the chief's (or duly authorized representative's) responsibility to request mutual aid from the Operational Area Law Enforcement Mutual Aid Coordinator.

A declaration of local emergency may or may not be appropriate for the circumstances; however the chief of police may request mutual aid prior to the activation of an EOC or formal declaration of local emergency. Mutual aid request and response is not dependent on a declaration of local emergency.

Operational Area Mutual Aid

When an emergency develops or appears to be developing which cannot be resolved by a law enforcement agency within an Operational Area, it is the responsibility of the Operational Area Mutual Aid Coordinator to provide assistance and coordination to control the problem. (Section 26602 GC)

In response to a request for law enforcement mutual aid by a chief of police within the Operational Area, the sheriff will initiate procedures to activate the mutual aid. The sheriff will coordinate the Operational Area response of law enforcement resources including those of unaffected operational area municipalities, the local CHP, and other law enforcement agencies within the Operational Area, as well as the sheriff's resources in order to assist the affected local chief of police.

If it appears likely that the resources of an Operational Area will become depleted, the Regional Coordinator should be advised in advance.

Regional Mutual Aid

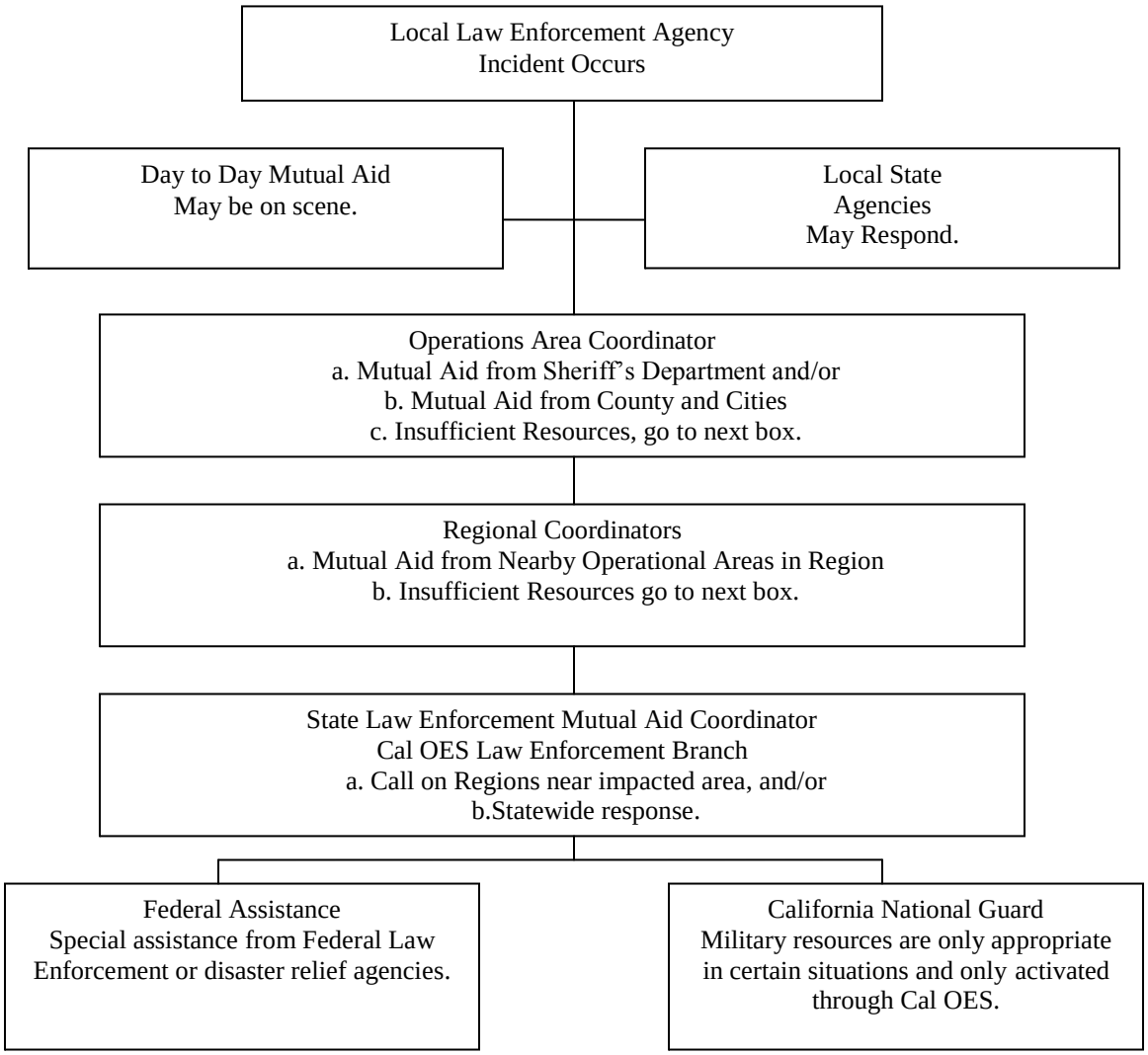
Should an existing or anticipated emergency be of such magnitude as to require the commitment of the resources of one or more Operational Areas, it is the responsibility of the Regional Law Enforcement Mutual Aid Coordinator to organize the notification and response of resources within that region.

The Regional Coordinator will keep the State Law Enforcement Mutual Aid Coordinator, who is the Chief of the California Governor's Office of Emergency Services, Law Enforcement Branch, advised of the situation status. The State Law Enforcement Mutual Aid Coordinator may support the regional response by issuing mission numbers (see glossary, Mission Numbers) and tasking state agencies within the region. An unusual occurrence necessitating regional law enforcement mutual aid does not require a proclamation of a state of emergency.

Statewide Mutual Aid

If the combined resources of a region are not sufficient to cope with an emergency situation, the Regional Coordinator may request additional assistance through the State Law Enforcement Mutual Aid Coordinator. The State Law Enforcement Mutual Aid Coordinator may then task law enforcement resources from Regions statewide, via the Regional Law Enforcement Mutual Aid Coordinators, to assist.

Law Enforcement Mutual Aid Requests



PRACTICAL ISSUES

Mutual Aid Essentials

Reasonable commitment of local law enforcement resources prior to the initiation of a mutual aid request is a fundamental component of mutual aid operations. This does not require the jurisdiction to have expended all personnel resources, but does assume that the agency has reasonably committed the majority of available, on-duty personnel or resources to the incident.

A request for law enforcement mutual aid requires the approval of the chief law enforcement officer of the requesting jurisdiction. A duly authorized sworn staff or command officer acting on behalf of the chief/sheriff may make the request.

Unless otherwise expressly provided, or later agreed upon, the responsible local law enforcement official of the jurisdiction requesting mutual aid shall remain in charge. It is operationally essential that the local law enforcement official coordinate all actions with responding law enforcement agencies to ensure an effective application of forces (8618 GC).

The integrity of responding forces and the policies and procedures of their departments must be maintained. Exceptions will require approval of the concerned department. Refer to the Law Enforcement Guide for Emergency Operations for further policy guidance.

Situation reports should be shared with all interested parties and agencies, including the Regional Coordinator and the Cal OES Law Enforcement Branch on a timely and frequent basis.

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. (Cont)

PRACTICAL ISSUES (Cont):

The responding agency is responsible for the following:

1. Properly equipping its personnel.
2. When possible, assigning a supervisor to maintain unit integrity.
3. Completing response rosters.
4. Dispatching personnel to the staging area.
5. Providing relief for assigned personnel at protracted events.
6. Record keeping as to dates and times of arrival and departure, rank, timekeeping, mileage, damage and expended resources.

Mutual Aid within SEMS

Mutual Aid is intended to augment local resources that have become overwhelmed as a result of unplanned circumstances requiring an emergency response. In California the organizational structure adopted to manage responding resources for all disciplines is the Standardized Emergency Management System (SEMS). SEMS includes the field level Incident Command System (ICS). (8607 GC)

Incident Command

For a detailed description of the Law Enforcement Incident Command System (LEICS) including mutual aid operational procedures, it is recommended that the Law Enforcement Guide for Emergency Operations be reviewed. The five command staff functions of Incident Commander, Operations, Planning/Intelligence, Logistics, Finance/Administration and their subordinate components are discussed in detail.

Planned Events

Planned events are not mutual aid incidents for planning purposes. Scheduled events that by their nature are potentially beyond the ability of local control require the affected jurisdiction, as a matter of responsible planning, to meet with the promoters, the sheriff and any other appropriate government entity to ensure that the law enforcement presence is adequate and that public safety is protected. Such planning may result in a Memorandum of Understanding [MOU] or contract between the local government hosting the event, specific law enforcement agencies involved and the event promoter.

The mutual aid system is not intended to prevent MOU agreements between concerned parties to ensure an adequate law enforcement presence. Policing costs are frequently recovered through event revenues and this should be considered during the planning process. (Cont)

PRACTICAL ISSUES (Cont):

Even with adequate planning, some events are inherently more likely than others to develop into an unusual occurrence. During the planning process, it is not only appropriate but recommended that the mutual aid organization be alerted to this potential. By doing so, those agencies which can be expected to provide support in such an eventuality will be afforded the opportunity to plan and deploy accordingly during the dates of the event. Proper planning will ensure an optimum mutual aid response should it become necessary.

It is recommended that the pre-event planning participants be organized according to the SEMS organization structure. By doing so, each entity can see exactly where it fits in a well defined organizational relationship. At multi-agency events, all levels of event staffing must be knowledgeable of the command hierarchy. If addressed prior to the event, it minimizes confusion and creates a seamless transition from planning to operations.

These things having been said, an unforeseen emergency may occur at a planned event that results in a mutual aid response. Mutual aid does not occur until the local law enforcement authority with jurisdiction determines that an emergency is in progress, that local resources have been reasonably committed or are unavailable and mutual aid assistance is required to restore the peace.

Cal OES Law Enforcement Branch personnel are available for event planning consultation and will staff appropriate positions during the event to facilitate mutual aid response and ensure that the Governor's office is appraised of situational developments. Some events will be of a nature that the federal government will declare them National Security Special Events [NSSE]. In these cases, the US Secret Service will convene a multi-agency planning team, to include local law enforcement. The Federal Bureau of Investigation also assigns Special Event Response Levels [SERL] to certain events. Cal OES Law Enforcement Branch staff can describe the NSSE and SERL processes, and put local law enforcement officials in touch with appropriate officials for further information.

Reserve Officers

Mutual Aid normally consists of sworn officers, technical personnel (sworn and non-sworn) and other resources. Many agencies use reserve officers to augment local field policing. In a law enforcement mutual aid response, reserve officers may best be utilized within their own jurisdiction to backfill vacant positions created by regular officers who have been deployed to the emergency jurisdiction.

Those concerns notwithstanding, reserve officers, as defined by California Penal Code 830.6 (a) 1 & 2 and 836.2, as employed by a law enforcement agency authorized to field reserve officers, may be utilized to enforce the law anywhere in the State of California.

Communications

An essential need during any emergency is the ability of an agency to communicate both internally and with other agencies. With this requirement in mind, the problem of communications should be a priority in mutual aid planning before an incident occurs.

The State of California has established the California Law Enforcement Mutual Aid Radio System (CLEMARS) with special frequencies for emergency law enforcement mutual aid purposes. For a detailed description of the California Law Enforcement Mutual Aid Radio System, it is recommended that the CLEMARS Plan be reviewed. This system is intended for command and control purposes among agencies taking part in emergency operations. It is not to be used as a primary local channel. Local departments may be allowed to use these channels in their day-to-day operations as an auxiliary to their primary frequency upon approved request.

In addition to CLEMARS, Cal OES Telecommunications is able to deploy interoperability communications vehicles to incident command posts. These vehicles are capable of coordinating dissimilar radio frequencies to facilitate communications among responding agencies.

Cal OES Telecommunications is also able to deploy satellite trailers to an Incident Command Post that will permit a combination of up to ten satellite data and telephone links, even in remote areas.

The Cal OES Law Enforcement Branch maintains a cache of handheld radios that are available to law enforcement agencies for emergency deployment. These radios are programmable in the UHF and VHF frequency ranges. Caches of encrypted radios for sensitive situations, investigations or incidents are also available.

Financial Assistance

Law enforcement agencies may be eligible for disaster related financial reimbursement from the state and/or federal government. State financial assistance may occur through the California Disaster Assistance Act (8680 through 8692 GC) when the Governor proclaims a state of emergency. Federal financial assistance may occur under Public Law 93-288 as amended by the Stafford Act. This requires a Presidential declaration of major disaster.

The Fire Management Assistance Grant (FMAG) program was enacted to ensure that adequate resources are available to control a fire incident *before a major disaster occurs*. FMAG assistance must be requested by the local fire agency, through Cal EMA, and approved by FEMA while the fire is burning uncontrolled and threatens such destruction as would constitute a major disaster. If an FMAG is approved by FEMA, seventy five percent of direct emergency response costs, including local law enforcement, may be eligible for federal reimbursement. Authority for this program can be found in *44 CFR Parts 2, 9, 10, 204, and 206*, The Fire Management Assistance Grant Program, and in *Public Law 106-390, the Disaster Mitigation Act of 2000*. Cal OES Law Enforcement Branch staff can advise and assist if a local agency wishes to file a claim for these funds.

Should these proclamations occur, local agencies may be eligible for financial assistance to reimburse a percentage of response costs (i.e., overtime, mileage, etc.), and restoration and reconstruction costs for damage to agency facilities.

The California Governor's Office of Emergency Services Recovery Branch administers both state and federal claims for disaster assistance as a part of the state's disaster recovery program. Briefings on program eligibility are conducted periodically and immediately following disaster proclamations or declarations. Auditors from the State Controller's Office are also available at those briefings to assist agency personnel in documenting costs and identifying necessary records.

Claims for reimbursement must withstand future state/federal audits, or funds advanced as part of the initial assessment must be returned. Therefore, all responding law enforcement agencies should keep accurate and complete records concerning personnel timekeeping, mission tasking and resource expenditures during the period of any incident that may become eligible for future reimbursement. (Cont)

Financial Assistance (Cont)

An additional federal program, the Emergency Federal Law Enforcement Assistance Act (EFLEA) administered through the Department of Justice, Bureau of Justice Assistance (BJA) can assist state and local law enforcement agencies with funding, equipment, training, intelligence information, and personnel to help alleviate emergency situations. The program is not intended to be a routine source of federal financial assistance for criminal justice activities. Detailed information about EFLEA may be found at Title 28, CFR, Chapter 1, Part 65. It is codified at Title 42, USC, Section 10501. For details contact the Cal OES Law Enforcement Branch.

This document does not discuss other grant programs for preparedness activities such as those involving funds for terrorism equipment, training, and exercises. Contact the Cal OES Law Enforcement Branch for information about these programs.

Interstate Assistance

In accordance with the Interstate Civil Defense and Disaster Compact as the basis for mutual aid between states; the California Governor's Office of Emergency Services entered into a Memoranda of Agreement with the neighboring states of Oregon, Nevada and Arizona for law enforcement mutual aid under certain conditions. Most frequently, this form of mutual aid is exercised during Searches and Rescues (see the Search and Rescue Annex to this plan). When necessary, the chief of the Cal OES Law Enforcement Branch coordinates requests for out of state law enforcement mutual aid through the governor's office of the concerned neighboring state.

In 2005, Governor Schwarzenegger signed legislation adopting the Emergency Management Assistance Compact (EMAC) as the primary guidance for the exchange of resources between States. This document allows for the prompt responses of necessary resources to other States upon emergency declaration by the affected State's Governor.

These provisions are in addition to the authorities and procedures in place within the California Vehicle Code and California Penal Code for investigations, pursuits and other criminal matters near state boundaries.

Federal Resources

Acquisition of federal resources in support of local law enforcement emergency operations can be coordinated through the Cal OES Law Enforcement Branch. While day-to-day cooperation from federal law enforcement agencies need not involve this office, during emergencies or major unusual occurrences it is important to ensure that federal assistance is provided in a coordinated, equitable basis – often to multiple locations.

STATE AGENCY ROLES AND RESOURCES

Actions of State Agencies – In General

State law enforcement agency peace officers may be used at any level of law enforcement mutual aid – locally, as part of an operational area or regional response or when coordinated by the Cal OES Law Enforcement Branch as part of a statewide response.

Specific State Agencies

Agency	**California Department of Consumer Affairs-Division of Investigations**
Authority	California Penal Code, California Business and Professions Code
Roles	The Division of Investigation provides centralized law enforcement investigative services for the various regulatory boards, bureaus, programs, committees and commissions within the Department of Consumer Affairs. All investigators employed by the Division of Investigation are P.O.S.T. certified sworn peace officers who are authorized to conduct criminal and administrative investigations, obtain and execute search warrants, serve legal processes and make arrests anywhere within the State of California. The goal is to protect the health, safety and welfare of California consumers by conducting investigations and by filing criminal, administrative and civil actions against licensees on behalf of the client agencies with the Department of Consumer Affairs. Examples of such investigations include fraud, unlicensed activities, assault and battery, narcotics and drug violations, sexual misconduct, patient abuse, wrongful death, workplace violence, threat assessment, enforcement of restraining orders, and theft. Investigators are also detailed for dignitary protection, peacekeeping, security services at hearings, and public meetings held by the client agencies.
Resources	Approximately 58 peace officers assigned to Division of Investigation offices statewide.
Procedures	Request for staff or resources should be directed through the office of the Chief Investigator or the Deputy Chief Investigator. The contact telephone numbers are: (916) 324-1534 or (916) 445-2537.

Agency	**California Department of Corrections and Rehabilitation**
Authority	8598, 8628 Government Code
Roles	Department of Corrections and Rehabilitation employees of the correctional series, responding under formal mutual aid, have the full powers of peace officers as defined under Section 830.2 of the California Penal Code. Therefore; when mutual aid response is authorized, missions accepted will not be limited to operation of detention facilities. Ensure that the mission tasking requested is consistent with the level of training and experience of the responders by consulting with the Department of Corrections and Rehabilitation Emergency Operations staff.
Resources	Approximately 19,000 correctional peace officers at 92 facilities and institutions throughout the state. Additional support may be available from 1,600 parole agent personnel also stationed throughout the state. The Department of Corrections and Rehabilitation also maintains and operates a large fleet of prisoner transportation vehicles which may also be made available on official request.
Policy	It is the policy of the Department of Corrections and Rehabilitation to assist local law enforcement in a manner consistent with the California Mutual Aid Plan when sufficient resources are available.
Procedures	Contact the California Governor's Office of Emergency Services Law Enforcement Branch to request assistance from CDCR personnel during emergency or mutual aid conditions.

Agency	**California Highway Patrol**
Authority	California Penal Code, California Vehicle Code, Executive Orders
Roles	The California Highway Patrol's primary role is to ensure safety and provide service to the public as they use the state's highway transportation system, and to provide safety and security to state employees and state property. Additionally, its role is to assist local governments during emergencies or situations beyond their capabilities.
Resources	Approximately 8,000 peace officers assigned in eight geographic divisions throughout the state.
Policy	Emergency traffic and officer-safety assistance can be requested at any time. This should be considered day-to-day mutual aid. Formal mutual aid will be granted on approval from the Commissioner of the California Highway Patrol. Division Chiefs and Area Commanders have authority to mobilize as many of their personnel as necessary for effective response prior to obtaining headquarters' approval.
Procedures	Contact the closest CHP Area Office or Communications Center to initiate a request for assistance.

Agency **State Military Forces (California National Guard)**

Authority California Military and Veteran's Code

Roles To assist civil authority in the discharge of lawful responsibilities by performing tasks which include but are not limited to; restoration and maintenance of law and order, protection of life and property, limited removal of debris, medical evacuation and limited medical treatment, search and rescue, emergency communications, and general logistics support.

Normally, the CNG will be placed in support of law enforcement agencies and will not usurp or accept the responsibility or authority of civil authorities. Military assistance once provided will be terminated at the earliest practical time at the restoration of law and order, or the resumption of control of local law enforcement.

In order for the Adjutant General, CNG, to properly evaluate the emergency and the need to implement certain procedures that will reduce the reaction time of CNG forces upon call-up, it is essential that early and frequent evaluations of the disturbance or condition and its potential be made by senior law enforcement officials and forwarded through the normal Cal OES communication channels, or directly to the liaison detachment of the Military Department when on the scene.

Resources Resource availability is dependent on federal deployments and other commitments; numbers vary accordingly.

Policy The Governor may order the CNG to perform military duty of every description. The Governor will normally commit the CNG resources in support of civil authority, but only upon determination that emergency conditions exist or are imminent, that all civil resources reasonably available have been or will be committed, that civil authority cannot or will not be able to control the situation, and that military assistance is required and has been requested as provided in law. CNG resources cannot be used in violation of the Economy Act, which requires civilian or commercial resources to be sought before considering use of the Guard.
Under the provisions of Section 143 of the California Military and Veterans Code, the Governor may commit CNG resources without a request from civil authority only under highly perilous conditions where local civil authority no longer exists or is unable or unwilling to employ available civil resources to control or mitigate a situation. (Cont)

State Military Forces (California National Guard) (Cont)

CNG in support of local law enforcement will receive and execute broad mission-type orders of the civil officer in charge, but will at all times remain under the military chain of command. The provisions of Section 365 of the Military and Veterans Code assign all decisions as to tactical direction of troops, type and extent of force to be used, and particular means to be employed to accomplish the objective or goal specified by the civil officer in charge directly to the military commander.

Procedures

Any request for National Guard resources must be forwarded to the Governor through the Cal OES.

Note: Under the stress of emergency conditions, local officials occasionally disregard the mutual aid system in requesting CNG assistance. This results in unnecessary delays in providing a response. Requests must be directed through the Law Enforcement Regional Coordinator to the Cal OES Law Enforcement Coordinator to ensure that all available manpower has been reasonably committed. If at that time it is determined that activation of CNG forces is the most appropriate and expedient means of meeting the requirement, a Cal OES mission number will be issued and military support rendered.

Response

The CNG will make every effort to respond to the scene of an unusual occurrence in the most expeditious manner. Some responses may require the mobilization of additional personnel that are not on active duty at the time of the request. In such cases the CNG will respond initially with liaison personnel and upon gubernatorial approval, will expand deployment based on their assessment of the situation and its potential to worsen. Depending upon global and statewide commitments, additional CNG field resources can be expected to arrive on-scene no later than 24 hours after approval of the initial request.

Agency	**California Department of Justice**
Authority	California Constitution Article 5 (13), 12510 et seq. Government Code; California Penal Code
Roles	Provide legal advice to State and local agencies involved in mutual aid situations. Assist city and county law enforcement jurisdictions by making sworn law enforcement personnel available for mutual aid and emergency assistance, i.e. civil unrest, major disasters (earthquakes and flooding). Activate the Department of Justice Emergency Operations Center to assist local law enforcement agencies with regional or statewide response for mutual aid requests, disasters or major emergencies During normal and emergency circumstances, the Command Center and Telecommunications Units operate 24 hours a day, seven days a week to provide expedited Criminal Offender Record Information (CORI), Criminal Justice Information System (CJIS) i.e., wanted persons, stolen vehicles, stolen property, missing and unidentified persons and other automated file information to law enforcement agencies. Assist in the gathering, analyzing and dissemination of criminal intelligence and terrorism information through the State Terrorism Threat Assessment Center. Make DOJ aviation resources available for local, regional or statewide mutual aid requests. These resources will be used for the transportation of emergency personnel and materials, aerial observation and damage assessment, and evacuation of persons from imminent danger or for medical purposes. During mass casualty/mass fatality incidents, provide identification services for living or deceased persons in support of local law enforcement or at the request of the California Governor's Office of Emergency Services, Law Enforcement Branch.
Resources	Approximately 250 peace officers statewide.
Policy	The Attorney General's Policy is to assist law enforcement and local units of government during emergencies in accordance with the Emergency Services Act and the California Mutual Aid Plan.
Procedures	M-F: Chief, Bureau of Criminal Information and Analysis, DOJ's EOC Commander, at 916-227-3519. EOC Coordinator contact 24 hrs 916-227-3244.

Agency **California Department of Forestry and Fire Protection - CAL FIRE**

Authority California Penal Code, Public Resources Code, Health and Safety Code, Government Code, State Administrative Orders, State Administrative Order, and California Emergency Services Act.

Roles The primary responsibility of CAL FIRE is to provide fire and life safety services, emergency response to disasters, forest and fire law enforcement and protection to the natural resources in the areas of the state designated as State Responsibility Areas (SRA), and to Local Responsibility Areas (LRA) or federal lands where the federal or local governmental agency has requested the state to provide these services through an agreement or contract.

CAL FIRE also has the responsibility to protect state employees and state property from fire, explosion, and related perils, to investigate all fires and explosions occurring in or on state property or building that is determined to be "state occupied." Explosives and fireworks are under the primary jurisdiction of CAL FIRE through the Office of the State Fire Marshal. CAL FIRE may assist in the disposal and/or rendering safe fireworks and explosives

CAL FIRE provides mutual aid to local fire and law enforcement agencies in the investigation of fires, arson, bombings, fireworks or ordinance disposal and rendering safe procedures and other requests for law enforcement assistance. The Governor's Special Arson Task Force is chaired by the State Fire Marshal and provides arson investigative assistance to local governmental agencies, upon request.

Resources There are approximately 180 peace officer personnel throughout CAL FIRE, most are assigned suppression duties. There are approximately 60 dedicated CAL FIRE peace officers, 1 K9 team, and 5 bomb technicians assigned at various locations statewide performing general fire prevention patrol and fire/ arson investigation duties.

Policy

The assignment of CAL FIRE peace officers and the degree of their commitment will be decided by the CAL FIRE Unit, Region, or Sacramento Headquarters Duty Chief and will be based on the capability and availability of resources. All requests will be handled through existing dispatch procedures and notification policies. Formal requests for activation of CAL FIRE law enforcement mutual aid from outside the affected operational area will conform to the mutual aid activation policy for state agency contributors found at the beginning of this chapter. Mission Tasking through Cal OES is another method of requesting CAL FIRE law enforcement personnel when there is a disaster. (Cont)

California Department of Forestry and Fire Protection-CAL FIRE (Cont)

Procedures Informal requests for local level law enforcement, investigative assistance, fireworks, ordinance requests, and Governor's Special Arson Task Force assistance will be made to the local CAL FIRE Unit Emergency Command Center (ECC) or the Region Emergency Operations Command Center (EOCC), or Sacramento Headquarters' Duty Chief:

Sacramento Duty Chief: (916) 327-3063
No California Duty Chief: (530) 224-4944
So California Duty Chief: (951) 782-4236

Agency **California Department of Parks and Recreation**

Roles The primary responsibility of the California Department of Parks and Recreation (CDPR) is to acquire, develop, operate, protect and maintain the peace in the State Park System.

The secondary responsibilities include: assisting local government agencies in reacting to emergencies by performing tasks which include, but are not limited to, the restoration and maintenance of law and order, protection of life and property, first aid treatment, search and rescue, emergency communication and logistics support and where possible, provide displaced residents within the affected area with temporary camping locations with potable water and sanitation facilities.

Resources Approximately 725 peace officer [ranger/lifeguard] personnel are assigned to various state parks, recreational areas and other facilities throughout the state. Each reports to a District Superintendent.

Policy Requests for mutual aid support will only be acted upon when received from properly constituted local authorities as identified in the Law Enforcement Mutual Aid Plan.

Prior to Division approval to commit resources, District Superintendents have the authority to mobilize as many of their existing personnel and resources as necessary. Resources that require additional budgetary support or future reimbursement will not be committed without Division approval.

For incidents which occur within their Division, Division Chiefs are authorized to mobilize as many existing personnel and resources within the Division as they deem appropriate prior to receiving approval from the Deputy Director for Operations. Resources that require additional budgetary support or future reimbursement will not be committed without approval from the Chief Deputy Director for Operations or designee.

Procedures Contact the closest Parks and Recreation regional dispatch center:

NORCOM (Northern California)	(916) 358-1300
CENCOM (Central California)	(831) 649-2810
SURCOM (Southern California)	(951) 443-2964/65

Agency	**California Department of Insurance**
Authority	California Penal Code, Master Mutual Aid Agreement
Roles	The primary responsibility of the Fraud Division is to protect the public from economic loss and distress by actively investigating and arresting those who commit insurance fraud. An additional Fraud Division role is to reduce the overall incidence of insurance fraud through anti-fraud outreach to the public, private and government sectors.
Resources	Approximately 205 sworn peace officers assigned to Department of Insurance offices statewide.
Policy	Upon notification by the Cal OES Law Enforcement Branch and issuance of a mission number, the Chief Deputy and/or CIB Fraud Division chain of command will make internal notifications and fill resource requests.
Procedures	Primary contact is the Chief Deputy Commissioner; backup is the Criminal Investigation Branch Deputy Commissioner.

Agency **California Department of Alcoholic Beverage Control**

Authority California Penal Code, California Business and Professions Code

Roles The mission of the Department is to administer the provisions of the Alcoholic Beverage Control Act in a manner that fosters and protects the health, safety, welfare, and economic well being of the people of the state.

Investigators are available to assist local law enforcement as needed, consistent with the mission of the department, and the Master Mutual Aid Agreement.

Resources Approximately 239 peace officer investigators statewide. Additionally, the SOU (Special Operations Unit) is available upon request. The primary function of SOU is to provide an effective enforcement strike force to address the following problems and activities: disorderly premises investigations; underage drinking; major narcotics investigations; field enforcement; interagency law enforcement task force operations; special events and training.

The Department is in partnership with law enforcement agencies which have formed task forces with full time staffing to address such problems as drug trafficking (INCA, Riverside, IRNET, So. Calif.), money laundering (U.S. Customs TF, San Francisco) and intelligence gathering for anti-terrorism (CATIC, Sacramento).

Policy Upon determination that Mutual Aid is requested from the Department, the Assistant Director of either Northern Division (From: Oregon Border To: Kern County line) or Southern Division (From: Kings County Line To: Mexico Border) will be contacted for staff dispatch.

Procedures Dependent upon geographic location, a requesting agency will notify Cal OES of the request for Mutual Aid. Once Cal OES issues a mission number, Cal OES or the requesting agency will notify the appropriate Assistant Director. The Assistant Director will notify and deploy personnel as needed, and will advise the Department's Director of the request. The Assistant Director will remain the contact person throughout the request period. *NOTE: If the Assistant Directors cannot be contacted, the Director will become the contact person for the Department.

Northern Division Assistant Director
Business # 916-263-6881

California Department of Alcoholic Beverage Control (Cont)

Southern Division Assistant Director:
Business # 562-860-4150

*Director:
Business # 916-263-6889

After hours, contact the Cal OES Law Enforcement Branch to request mutual aid resources from the Department of Alcoholic Beverage Control.

Agency	**California Department of Fish and Wildlife – Law Enforcement Division**
Authority	California Fish and Wildlife Code, California Penal Code, California Government Code, and Administrative Orders
Roles	The mission of the DFW Law Enforcement Division is to protect California's natural resources and provide public safety through effective and responsive law enforcement. Secondary responsibilities include: assisting local government agencies in reacting to emergencies by performing tasks which include, but are not limited to the restoration and maintenance of law and order, protection of life, property and the environment, search and rescue operations, air operations, emergency communications, and logistics support.
Resources	Approximately 325 peace officers assigned in one of four geographic districts or special units within the state. Department of Fish and Wildlife Wardens are equipped for off-road, off-shore, and inland water responses.
Policy	Emergency and officer safety assistance can be requested at any time. Requests for mutual aid support will be acted upon per the guidelines of the California Governor's Office of Emergency Services Law Enforcement Mutual Aid Plan. Formal mutual aid will be granted on approval from the Chief of the Law Enforcement Branch or designee. Prior to headquarters approval, Assistant Chiefs and District Captains have authority to mobilize as many of their personnel as deemed necessary for effective response Contact the Department of Fish and Wildlife Northern Communications Center to initiate a mutual aid request for assistance.

Agency **California Department of Motor Vehicles**

Authority California Penal Code, California Vehicle Code

Roles The California Department of Motor Vehicles (DMV) Investigations Division protects and serves the public interest and maintains the integrity, security, and reliability of the Department's data, services, and products by providing consumer protection through the enforcement of laws, rules, and regulations applicable to licensees, business partners, the public, and employees of the Department.

DMV Investigators improve public safety through protection of the programs and interests of the Department and through active prevention/detection of fraud and counterfeit of the Department's indicia.

The Investigations Division enforces laws, rules, and regulations that apply to new and used vehicle dealers, brokers, dismantlers, registration services, vehicle verifiers, driving schools, traffic violator schools, and other vehicle-related businesses.

DMV is a participant in the State's Emergency Preparedness Alert System and has a fully equipped Department Emergency Operation Center (DEOC) available for State or National emergencies. The primary function of the DEOC is to coordinate Department resources for the protection of agency personnel, customers, facilities, information depositories, and to assist local, State and Federal authorities. Investigators are sworn peace officers under California Penal Code section 830.3 (c) and are available to assist local law enforcement when needed, consistent with the mission of the department and the Master Mutual Aid Agreement.

Resources DMV's Investigation Division is staffed with 240 sworn peace officers assigned to three geographic Regions within the State.

Policy Requests for mutual aid will only be acted upon when received from local authorities as identified in the Law Enforcement Mutual Aid Plan.

The Chief has the authority to mobilize personnel and resources as necessary. Area Commanders must receive approval prior to committing resources. Resources that require additional budgetary support or future reimbursement will not be committed without approval.

Procedures 24 hr Contact-Incident Response Hot Line (916) 657-8100

The California Governor's Office of Emergency Services Law Enforcement Branch

Since 1960, the California Governor's Office of Emergency Services, Law Enforcement Branch has provided valuable services to California's law enforcement agencies. Staffed with experienced peace officers, the Cal OES Law Enforcement Branch works directly with California's Sheriffs and Police Departments. Additionally, division personnel maintain liaison with all federal agencies including the FBI, ATF, Secret Service, State Department, and all the state law enforcement agencies.

Law Enforcement Branch Programs

Within the Response Operations, the California Governor's Office of Emergency Services Law Enforcement Branch is responsible for several key programs:

- Law Enforcement Mutual Aid System
- Search and Rescue Mutual Aid
- Coroner/Medical Examiner Mutual Aid
- Special Resources for Mutual Aid

California Governor's Office of Emergency Services Law Enforcement Branch coordinator/peace officers meet with local law enforcement executives, managers, supervisors and others to ensure that the system is ready at any time to serve California law enforcement. Staff works alongside local counterparts to develop operational plans, design, and present training and exercises; and when appropriate, coordinate mutual aid services during actual events.

Each of our staff members has years of experience in emergency management as it relates specifically to law enforcement agencies and their personnel. There is always a staff member on call to assist local law enforcement. Immediate assistance can be sought from the Cal OES Law Enforcement Branch by calling (916) 845-8700.

Mutual Aid Manuals/Training

The Cal OES Law Enforcement Branch produces several manuals designed to assist law enforcement agencies in correctly applying law enforcement mutual aid. In addition to the Law Enforcement Mutual Aid Plan, the Law Enforcement Guide for Emergency Operations helps law enforcement agencies better understand the State's Emergency Management System, the Incident Command System and how to plan for law enforcement response to major emergencies. The Law Enforcement Mutual Aid Training Course is a P.O.S.T. certified modular course in the concepts and principles of Law Enforcement Mutual Aid which can include a tabletop exercise to assist students in integrating concepts into practical skills. The Coroner Mutual Aid Plan is also available, providing detailed information on concepts in the context of mass fatality operations. As an adjunct to effective mutual aid, the branch shares management of the California Law Enforcement Mutual Aid Radio System [CLEMARS]. The CLEMARS Plan documents application for, and use of, the system.

Search and Rescue

The Law Enforcement Branch is charged with the responsibility for coordinating state mutual aid for search and rescue in California. In addition, it receives and coordinates interstate requests under the auspices of the National Search and Rescue Plan. The branch also coordinates local requests for State and Federal Agency search and rescue assistance. Because Search and Rescue missions are often life threatening, requests for out-of-county, State or Federal resources can be made directly to Cal OES by calling (916) 845-8700, 24 hours a day.

Search and Rescue - Related Products

The Search and Rescue Annex to the Law Enforcement Mutual Aid Plan is a document that explains in detail, the organizations involved in search and rescue, their roles and capabilities, and the process for obtaining their assistance. The branch also offers a P.O.S.T. certified class for those persons responsible for search and rescue management: "Direction and Control of the Search Function" has been offered to law enforcement Search and Rescue Incident Commanders for more than 17 years. More than 2,500 students have completed this 40-hour supervisory course that provides valuable information on the management of wilderness search operations.

Equipment Loan

To assist California law enforcement, the Cal OES Law Enforcement Branch has developed an inventory of special resources. This equipment is available for short-term loan to local and state law enforcement agencies. Hand-held radios, portable radio base stations, mobile communications vehicles and other law enforcement items are available upon request.

THE ROLE OF THE OPERATIONAL AREA LAW ENFORCEMENT MUTUAL AID COORDINATOR

Background

The Operational Area Law Enforcement Mutual Aid Coordinator plays a critical role in California's Law Enforcement Mutual Aid System. It is a dual role, wherein the mutual aid activities of an individual's own department and those of all other law enforcement agencies within the operational area are coordinated.

Duties and Responsibilities

- The Coordinator must have a working knowledge of the Law Enforcement Mutual Aid System and the procedures that enable it to operate efficiently.

- One or more points-of-contact should be identified at the coordinator's employing agency. This individual should serve as the Coordinator's "subject matter expert" and should assist in the actual development and maintenance of the Operational Area's Law Enforcement Mutual Aid capability.

- The Coordinator should assess the mutual aid resources in the operational area, as well as the level of training related to mutual aid.

- The Coordinator should serve as a relay point for communication of threat, warning and preparedness information to all law enforcement agencies in the operational area.

- The Coordinator should ensure that links exist to share appropriate threat, warning and preparedness information with fire and emergency medical services agencies in the operational area as well.

- The Coordinator should organize and chair an operational area law enforcement coordinating group, composed of the police chiefs and law enforcement executives within the operational area. The group may include others as deemed necessary by the chair. This committee should meet at least once each year and hold additional meetings as necessary.

- This group should:
    - Aid and encourage the development of mutual aid protocols and uniform law enforcement response plans within the Area.

- Aid and encourage the development of countywide law enforcement communications networks. The communication nets should tie each law enforcement communications facility to the Operational Area Law Enforcement Dispatch Center, alternate dispatch centers, and allied agency centers, such as those for fire and EMS.

- Develop a dispatching procedure for mutual aid use of law enforcement resources, both for in-county and out-of-county response.

- The Coordinator is responsible for coordinating response of all law enforcement resources within the operational area on major mutual aid operations.

- The Coordinator also evaluates requests for assistance from local agencies; determines the resources within the operational area that can provide timely assistance, and initiates their response. This may consist of a response by any combination of Sheriff's personnel or local police from within the operational area. When resources within the operational area are insufficient, either for lack of timely response or the resource order is beyond operational area capability to fill, the request must be forwarded to the Region.

- Justifies the need for ordered resources and monitors the length of time the resources will be deployed. Periodically evaluates the justification and commitment to the local agency of these resources, and keeps the Region informed.

- The Operational Area Law Enforcement Mutual Aid Coordinator will advise the requesting jurisdiction of the origin of resources responding to the request for assistance.

- The Coordinator must keep the Regional Law Enforcement Mutual Aid Coordinator informed of all operations.

The Operational Area Law Enforcement Coordinator is not responsible for direction of emergency operations except those that occur within the coordinator's employing agency jurisdiction. The local official in whose jurisdiction the emergency exists shall remain in full charge of all resources, staffing, and equipment furnished for mutual aid operations.

THE ROLE OF THE REGIONAL LAW ENFORCEMENT MUTUAL AID COORDINATOR

Background

The Regional Law Enforcement Mutual Aid Coordinator is *de facto* a member of the California's Law Enforcement Mutual Aid System's "board of directors." Even more complex than the role of an Operational Area Law Enforcement Mutual Aid Coordinator, the Regional Coordinator's role balances the needs and resources of the employing agency, but also those of the Operational Area and the other Operational Areas in the Region. The coordinator is also asked to provide guidance to other agencies in the system when appropriate.

Duties and Responsibilities

- The Regional Coordinator has all the duties of an Operational Area Law Enforcement Mutual Aid Coordinator, as well as the following:

- One or more points-of-contact should be identified at the Coordinators employing agency in order to assist with coordination of the mutual aid activities of the region. The Coordinator should assess the region's law enforcement mutual aid capabilities, and communicate this information to the State Law Enforcement Mutual Aid Coordinator.

- The Regional Coordinator should serve as a relay point for communication of threat, warning and preparedness information to all law enforcement agencies in the region, and to the operational area.

- The Regional Coordinator should meet periodically with the Operational Area Law Enforcement Mutual Aid Coordinators in the Region, to exchange information that would enhance the efficiency and effectiveness of mutual aid operations.

- The Coordinator is responsible for coordinating response of all law enforcement resources within the region, with the assistance of operational area coordinators, on major mutual aid operations.

- The Coordinator evaluates requests for assistance from an operational area; determines the resources from that operational area(s) within the region that can provide assistance, and initiates an appropriate response. When resources within the region are insufficient, either for lack of timely response or when the resource order is beyond regional capability, the request must be made to the state.

- The Regional Coordinator must keep the State Law Enforcement Mutual Aid Coordinator informed regarding all region-level operations.

REGIONAL LAW ENFORCEMENT MUTUAL AID COORDINATOR ELECTION PROCESS

Background

Consistent with the Standardized Emergency Management System, California's Law Enforcement Mutual Aid System consists of inter-related layers, from field operations through state coordination. Key in this process are the roles of the Operational Area Law Enforcement Mutual Aid Coordinator and the Regional Law Enforcement Mutual Aid Coordinator.

The responsibility for monitoring law enforcement activities within each Operational Area is vested in an Operational Area Law Enforcement Mutual Aid Coordinator. Similarly, the Regional Law Enforcement Mutual Aid Coordinator has the responsibility to monitor events and incidents in the region's operational areas, and to ensure timely coordination and provision of law enforcement mutual aid resources in the region.

Much of the success of any system depends upon the capabilities of the individuals serving at the various levels in the chain of command, and acceptance of their expertise by their peers. This document outlines the process for the election of Regional Law Enforcement Mutual Aid Coordinators.

Term

Elections for Regional Law Enforcement Mutual Aid Coordinators should be conducted at least once every four years, to coincide with the Regional Law Enforcement Mutual Aid Coordinator's term of office as Sheriff. If a Regional Law Enforcement Mutual Aid Coordinator leaves office as Sheriff during an un-expired term, notification must be made to the State Law Enforcement Mutual Aid Coordinator so that a special election may be held. When such a vacancy occurs, the State Law Enforcement Mutual Aid Coordinator will appoint an "Acting" Regional Law Enforcement Coordinator to serve until the formal election process is completed.

Election Process

Regional Law Enforcement Coordinator elections will be conducted by mail ballot, or at a special regional law enforcement mutual aid meeting called by the State Law Enforcement Mutual Aid Coordinator. Nominations will be sought from the Operational Area Law Enforcement Mutual Aid Coordinators. If the majority of nominations are for the same individual, that person shall be declared elected. If there is no clear winner, a written or voice vote will take place. In the event of a tie the State Law Enforcement Mutual Aid Coordinator will cast the deciding vote. Note that elections will be documented with written records of the proceedings.

SELECTED LEGAL SECTIONS

8550 GC (Government Code) The state has long recognized its responsibility to mitigate the effects of natural, manmade, or war-caused emergencies which result in conditions of disaster or in extreme peril to life, property, and the resources of the state, and generally to protect the health and safety and preserve the lives and property of the people of the state. To insure that preparations within the state will be adequate to deal with such emergencies, it is hereby found and declared to be necessary:

(a) To confer upon the Governor and upon the chief executives and governing bodies of political subdivisions of this state the emergency powers provided herein; and to provide for state assistance in the organization and maintenance of the emergency programs of such political subdivisions;

(b) To provide for a state agency to be known and referred to as the California Office of Emergency Services, within the Governor's Office; and to prescribe the powers and duties of the director of that office;

(c) To provide for the assignment of functions to state agencies to be performed during an emergency and for the coordination and direction of the emergency actions of such agencies;

(d) To provide for the rendering of mutual aid by the state government and all its departments and agencies and by the political subdivisions of this state in carrying out the purposes of this chapter;

(e) To authorize the establishment of such organizations and the taking of such actions as are necessary and proper to carry out the provisions of this chapter.

It is further declared to be the purpose of this chapter and the policy of this state that all emergency services functions of this state be coordinated as far as possible with the comparable functions of its political subdivisions, of the federal government including its various departments and agencies, of other states, and of private agencies of every type, to the end that the most effective use may be made of all manpower, resources, and facilities for dealing with any emergency that may occur.

8558. Three conditions or degrees of emergency are established by this chapter:

(a) "State of War Emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.

(b) "State of Emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, complications resulting from the Year 2000 Problem, or other conditions, other than conditions resulting from a labor controversy or conditions causing a "state of war emergency," which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city

and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

(c) "Local Emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, complications resulting from the Year 2000 Problem, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

8560. (A) "Emergency Plans" means those official and approved documents which describe the principles and methods to be applied in carrying out emergency operations or rendering mutual aid during emergencies. These plans include such elements as continuity of government, the emergency services of governmental agencies, mobilization of resources, mutual aid, and public information.

(b) "State Emergency Plan" means the State of California Emergency Plan as approved by the Governor.

8568. The State Emergency Plan shall be in effect in each political subdivision of the state, and the governing body of each political subdivision shall take such action as may be necessary to carry out the provisions thereof.

8569. The Governor shall coordinate the State Emergency Plan and those programs necessary for the mitigation of the effects of an emergency in this state; and he shall coordinate the preparation of plans and programs for the mitigation of the effects of an emergency by the political subdivisions of this state, such plans and programs to be integrated into and coordinated with the State Emergency Plan and the plans and programs of the federal government and of other states to the fullest possible extent.

8607. (a) By December 1, 1993, the California Office of Emergency Services, in coordination with all interested state agencies with designated response roles in the state emergency plan and interested local emergency management agencies shall jointly establish by regulation a standardized emergency management system for use by all emergency response agencies. The public water systems identified in Section 8607.2 may review and comment on these regulations prior to adoption.

This system shall be applicable, but not limited to, those emergencies or disasters referenced in the state emergency plan. The standardized emergency management system shall include all of

the following systems as a framework for responding to and managing emergencies and disasters involving multiple jurisdictions or multiple agency responses:

(1) The Incident Command Systems adapted from the systems originally developed by the FIRESCOPE Program, including those currently in use by state agencies.

(2) The multi-agency coordination system as developed by the FIRESCOPE Program.

(3) The mutual aid agreement, as defined in Section 8561, and related mutual aid systems such as those used in law enforcement, fire service, and coroners operations.

(4) The operational area concept, as defined in Section 8559.

(b) Individual agencies' roles and responsibilities agreed upon and contained in existing laws or the state emergency plan are not superseded by this article.

(c) By December 1, 1994, the California Governor's Office of Emergency Services, in coordination with the State Fire Marshal's Office, the Department of the California Highway Patrol, the Commission on Peace Officer Standards and Training, the Emergency Medical Services Authority, and all other interested state agencies with designated response roles in the state emergency plan, shall jointly develop an approved course of instruction for use in training all emergency response personnel, consisting of the concepts and procedures associated with the standardized emergency management system described in subdivision (a).

(d) By December 1, 1996, all state agencies shall use the standardized emergency management system as adopted pursuant to subdivision (a), to coordinate multiple jurisdictions or multiple agency emergency and disaster operations.

(e) (1) By December 1, 1996, each local agency, in order to be eligible for any funding of response-related costs under disaster assistance programs, shall use the standardized emergency management system as adopted pursuant to subdivision (a) to coordinate multiple jurisdiction or multiple agency operations.

(2) Notwithstanding paragraph (1), local agencies shall be eligible for repair, renovation, or any other non-personnel costs resulting from an emergency.

(f) The office shall, in cooperation with involved state and local agencies, complete an after-action report within 120 days after each declared disaster. This report shall review public safety response and disaster recovery activities and shall be made available to all interested public safety and emergency management organizations.

8615. It is the purpose of the Legislature in enacting this article to facilitate the rendering of aid to areas stricken by an emergency and to make unnecessary the execution of written agreements customarily entered into by public agencies exercising joint powers. Emergency plans duly adopted and approved as provided by the Governor shall be effective as satisfying the requirement for mutual aid operational plans provided in the Master Mutual Aid Agreement.

8616. During any state of war emergency or state of emergency when the need arises for outside aid in any county, city and county, or city, such aid shall be rendered in accordance with approved emergency plans. It shall be the duty of public officials to cooperate to the fullest possible extent in carrying out such plans.

8617. In periods other than a state of war emergency, a state of emergency, or a local emergency, state agencies and political subdivisions have authority to exercise mutual aid powers in accordance with the Master Mutual Aid Agreement and local ordinances, resolutions, agreements, or plans therefore.

8618. Unless otherwise expressly provided by the parties, 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.

8619. The Governor may on behalf of this state enter into reciprocal aid agreements or compacts, mutual aid plans, or other interstate arrangements for the protection of life and property with other states and the federal government, either on a statewide basis or a political subdivision basis. Prior to committing the personnel, equipment, or facilities of any political subdivision of this state, the Governor shall consult with the chief executive or governing body of such political subdivision. Such mutual aid arrangements may include the furnishing or exchange, on such terms and conditions as are deemed necessary, of supplies, equipment, facilities, personnel, and services.

8620. During a state of war emergency the Governor shall have complete authority over all agencies of the state government and the right to exercise within the area or regions designated all police power vested in the state by the Constitution and laws of the State of California in order to effectuate the purposes of this chapter. In exercise thereof he shall promulgate, issue, and enforce such orders and regulations as he deems necessary for the protection of life and property, in accordance with the provisions of Section 8567.

8627. During a state of emergency the Governor shall, to the extent he deems necessary, have complete authority over all agencies of the state government and the right to exercise within the area designated all police power vested in the state by the Constitution and laws of the State of California in order to effectuate the purposes of this chapter. In exercise thereof, he shall promulgate, issue, and enforce such orders and regulations as he deems necessary, in accordance with the provisions of Section 8567.

8655. The state or its political subdivisions shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform a discretionary function or duty on the part of a state or local agency or any employee of the state or its political subdivisions in carrying out the provisions of this chapter.

8656. All of the privileges and immunities from liability; exemptions from laws, ordinances, and rules; all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any political subdivision when performing their respective functions within the territorial limits of their respective political subdivisions, shall

apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under this chapter.

8657. (a) Volunteers duly enrolled or registered with the California Governor's Office of Emergency Services or any disaster council of any political subdivision, or unregistered persons duly impressed into service during a state of war emergency, a state of emergency, or a local emergency, in carrying out, complying with, or attempting to comply with, any order or regulation issued or promulgated pursuant to the provisions of this chapter or any local ordinance, or performing any of their authorized functions or duties or training for the performance of their authorized functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work for their respective entities.

(b) No political subdivision or other public agency under any circumstances, nor the officers, employees, agents, or duly enrolled or registered volunteers thereof, or unregistered persons duly impressed into service during a state of war emergency, a state of emergency, or a local emergency, acting within the scope of their official duties under this chapter or any local ordinance shall be liable for personal injury or property damage sustained by any duly enrolled or registered volunteer engaged in or training for emergency preparedness or relief activity, or by any unregistered person duly impressed into service during a state of war emergency, a state of emergency, or a local emergency and engaged in such service. The foregoing shall not affect the right of any such person to receive benefits or compensation which may be specifically provided by the provisions of any federal or state statute nor shall it affect the right of any person to recover under the terms of any policy of insurance.

(c) The California Earthquake Prediction Evaluation Council, an advisory committee established pursuant to Section 8590 of this chapter, may advise the Governor of the existence of an earthquake or volcanic prediction having scientific validity. In its review, hearings, deliberations, or other validation procedures, members of the council, jointly and severally, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions engaged in similar work in their respective entities. Any person making a presentation to the council as part of the council's validation process, including presentation of a prediction for validation shall be deemed a member of the council until the council has found the prediction to have or not have scientific validity.

8658. In any case in which an emergency endangering the lives of inmates of a state, county, or city penal or correctional institution has occurred or is imminent, the person in charge of the institution may remove the inmates from the institution. He shall, if possible, remove them to a safe and convenient place and there confine them as long as may be necessary to avoid the danger, or, if that is not possible, may release them. Such person shall not be held liable, civilly or criminally, for acts performed pursuant to this section.

8660. No other state or its officers or employees rendering aid in this state pursuant to any interstate arrangement, agreement, or compact shall be liable on account of any act or omission in good faith on the part of such state or its officers or employees while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with an emergency.

8668. (a) Any disaster council previously accredited, the State Civil Defense and Disaster Plan, the State Emergency Resources Management Plan, the State Fire Disaster Plan, the State Law Enforcement Mutual Aid Plan, all previously approved civil defense and disaster plans, all mutual aid agreements, and all other documents and agreements existing as of the effective date of this chapter, shall remain in full force and effect until revised, amended, or revoked in accordance with the provisions of this chapter.

(b) Nothing in this chapter shall be construed to diminish or remove any authority of any city, county, or city and county granted by Section 7 of Article XI of the California Constitution.

26602. The sheriff shall prevent and suppress any affrays, breaches of the peace, riots, and insurrections which come to his knowledge, and investigate public offenses which have been committed.

19 CCR 2401 (California Code of Regulations) These regulations establish the Standardized Emergency Management System (SEMS) based upon the Incident Command System (ICS) adapted from the system originally developed by the Firefighting Resources of California Organized for Potential Emergencies (FIRESCOPE) program including those currently in use by state agencies, the Multi-Agency Coordination System (MACS) as developed by FIRESCOPE program, the operational area concept, and the Master Mutual Aid Agreement and related mutual aid systems.

SEMS is intended to standardize response to emergencies involving multiple jurisdictions or multiple agencies. SEMS is intended to be flexible and adaptable to the needs of all emergency responders in California. SEMS requires emergency response agencies use basic principles and components of emergency management including ICS, multi-agency or inter-agency coordination, the operational area concept, and established mutual aid systems. State agencies must use SEMS. Local government must use SEMS by December 1, 1996 in order to be eligible for state funding of response-related personnel costs pursuant to activities identified in California Code of Regulations, Title 19, §2920, §2925, and §2930. Individual agencies' roles and responsibilities contained in existing laws or the state emergency plan are not superseded by these regulations.

CALIFORNIA DISASTER AND CIVIL DEFENSE

MASTER MUTUAL AID AGREEMENT

This agreement made and entered into by and between the STATE OF CALIFORNIA, its various departments and agencies, and the various political subdivisions, municipal corporations, and other public agencies of the State of California;

WITNESSETH:

WHEREAS, it is necessary that all of the resources and facilities of the State, its various departments and agencies, and all its political subdivisions, municipal corporations, and other public agencies be made available to prevent and combat the effect of disasters which may result from such calamities as flood, fire, earthquake, pestilence, war, sabotage, and riot; and

WHEREAS, it is desirable that each of the parties hereto should voluntarily aid and assist each other in the event that a disaster should occur, by the interchange of services and facilities, including, but not limited to, fire, police, medical and health, communication, and transportation services and facilities, to cope with the problems of rescue, relief, evacuation, rehabilitation, and reconstruction which would arise in the event of a disaster; and

WHEREAS, it is necessary and desirable that a cooperative agreement be executed for the interchange of such mutual aid on a local, countywide, regional, statewide, and interstate basis;

NOW, THEREFORE, IT IS HEREBY AGREED by and between each and all of the parties hereto as follows:

1. Each party shall develop a plan providing for the effective mobilization of all its resources and facilities, both public and private, to cope with any type of disaster.

2. Each party agrees to furnish resources and facilities and to render services to each and every other party to this agreement to prevent and combat any type of disaster in accordance with duly adopted mutual aid operational plans, whether heretofore or hereafter adopted, detailing the method and manner by which such resources, facilities, and services are to be made available and furnished, which operational plans may include provisions for training and testing to make such mutual aid effective; provided, however, that no party shall be required to deplete unreasonably its own resources, facilities, and services in furnishing such mutual aid.

3. It is expressly understood that this agreement and the operational plans adopted pursuant thereto shall not supplant existing agreements between some of the parties hereto providing for the exchange or furnishing of certain types of facilities and services on a reimbursable, exchange, or other basis, but that the mutual aid extended under this agreement and the operational plans adopted pursuant thereto, shall be without reimbursement unless otherwise expressly provided for by the parties to this agreement or as provided in Sections 1541, 1586, and 1587, California Military and Veterans Code; and that such mutual aid is intended to be available in the event of a disaster of such magnitude that it is, or is likely to be, beyond the control of a single party and requires the combined forces of several or all of the parties to this agreement to combat.

4. It is expressly understood that the mutual aid extended under this agreement and the operational plans adopted pursuant thereto shall be available and furnished in all cases of local peril or emergency and in all cases in which a *STATE OF EXTREME EMERGENCY* has been proclaimed.

5. It is expressly understood that any mutual aid extended under this agreement and the operational plans adopted pursuant thereto, is furnished in accordance with the "California Disaster Act" and other applicable provisions of law, and except as otherwise provided by law 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 such personnel and equipment provided him through the operation of such mutual aid plans." (Section 1564, CA Military and Veterans Code.)

6. It is expressly understood that when and as the State of California enters into mutual aid agreements with other states and the Federal Government, the parties to this agreement shall abide by such mutual aid agreements in accordance with the law.

7. Upon approval or execution of this agreement by the parties hereto all mutual aid operational plans heretofore approved by the State Disaster Council, or its predecessors, and in effect as to some of the parties hereto, shall remain in full force and effect as to them until the same may be amended, revised, or modified. Additional mutual aid operational plans and amendments, revisions, or modifications of existing or hereafter adopted mutual aid operational plans, shall be adopted as follows:

a. Countywide and local mutual aid operational plans shall be developed by the parties thereto and are operative as between the parties thereto in accordance with the provisions of such operational plans. Such operational plans shall be submitted to the State Disaster Council for approval. The State Disaster Council shall notify each party to such operational plans of its approval, and shall also send copies of such operational plans to other parties to this agreement who did not participate in such operational plans and who are in the same area and affected by such operational plans. Such operational plans shall be operative as to such other parties 20 days after receipt thereof unless within that time the party by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, declines to participate in the particular operational plan.

b. Statewide and regional mutual aid operational plans shall be approved by the State Disaster Council and copies thereof shall forthwith be sent to each and every party affected by such operational plans. Such operational plans shall be operative as to the parties affected thereby 20 days after receipt thereof unless within that time the party by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, declines to participate in the particular operational plan.

c. The declination of one or more of the parties to participate in a particular operational plan or any amendment, revision or modification thereof, shall not affect the operation of this agreement and the other operational plans adopted pursuant thereto.

d. Any party may at any time by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, decline to participate in any particular operational plan, which declination shall become effective 20 days after filing with the State Disaster Council.

e. The State Disaster Council shall send copies of all operational plans to those state departments and agencies designated by the Governor. The Governor may, upon behalf of any department or agency, give notice that such department or agency declines to participate in a particular operational plan.

f. The State Disaster Council, in sending copies of operational plans and other notices and information to the parties to this agreement, shall send copies to the Governor and any department or agency head designated by him; the chairman of the board of supervisors, the clerk of the board of supervisors, the County Disaster Council, and any other officer designated by a county; the mayor, the clerk of the city council, the City Disaster Council, and any other officer designated by a city; the executive head, the clerk of the governing body, or other officer of other political subdivisions and public agencies as designated by such parties.

8. This agreement shall become effective as to each party when approved or executed by the party, and shall remain operative and effective as between each and every party that has heretofore or hereafter approved or executed this agreement, until participation in this agreement is terminated by the party. The termination by one or more of the parties of its participation in this agreement shall not affect the operation of this agreement as between the other parties thereto. Upon approval or execution of this agreement the State Disaster Council shall send copies of all approved and existing mutual aid operational plans affecting such party which shall become operative as to such party 20 days after receipt thereof unless within that time the party by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, declines to participate in any particular operational plan. The State Disaster Council shall keep every party currently advised of who the other parties to this agreement are and whether any of them has declined to participate in any particular operational plan.

9. Approval or execution of this agreement shall be as follows:

   a. The Governor shall execute a copy of this agreement on behalf of the State of California and the various departments and agencies thereof. Upon execution by the Governor a signed copy shall forthwith be filed with the State Disaster Council.

   b. Counties, cities, and other political subdivisions and public agencies having a legislative or governing body shall by resolution approve and agree to abide by this agreement, which may be designated as *"CALIFORNIA DISASTER AND CIVIL DEFENSE MASTER MUTUAL AID AGREEMENT."* Upon adoption of such a resolution, a certified copy thereof shall forthwith be filed with the State Disaster Council.

c. The executive head of those political subdivisions and public agencies having no legislative or governing body shall execute a copy of this agreement and forthwith file a signed copy with the State Disaster Council.

10. Termination of participation in this agreement may be effected by any party as follows:

    a. The Governor on behalf of the State and its various departments and agencies, and the executive head of those political subdivisions and public agencies having no legislative or governing body, shall file a written notice of termination of participation in this agreement with the State Disaster Council and this agreement is terminated as to such party 20 days after the filing of such notice.

    b. Counties, cities, and other political subdivisions and public agencies having a legislative or governing body shall by resolution give notice of termination of participation in this agreement and file a certified copy of such resolution with the State Disaster Council, and this agreement is terminated as to such party 20 days after the filing of such resolution.

IN WITNESS WHEREOF this agreement has been executed and approved and is effective and operative as to each of the parties as herein provided.

Signed by: EARL WARREN
GOVERNOR
On behalf of the State of California and all its Departments and Agencies

ATTEST:

November 15, 1950 Signed by: FRANK M. JORDAN
SECRETARY OF STATE

Note:

There are references in the foregoing agreement to the California Disaster Act, State Disaster Council, and various sections of the CA MILITARY and Veterans Code. Effective November 23, 1970, by enactment of Chapter 1454, Statutes 1970, the California Disaster Act (Sections 1500 ff., Military and Veterans Code) was superseded by the California Emergency Services Act (Sections 8550 ff., Government Code), and the State Disaster Council was superseded by the California Emergency Council.

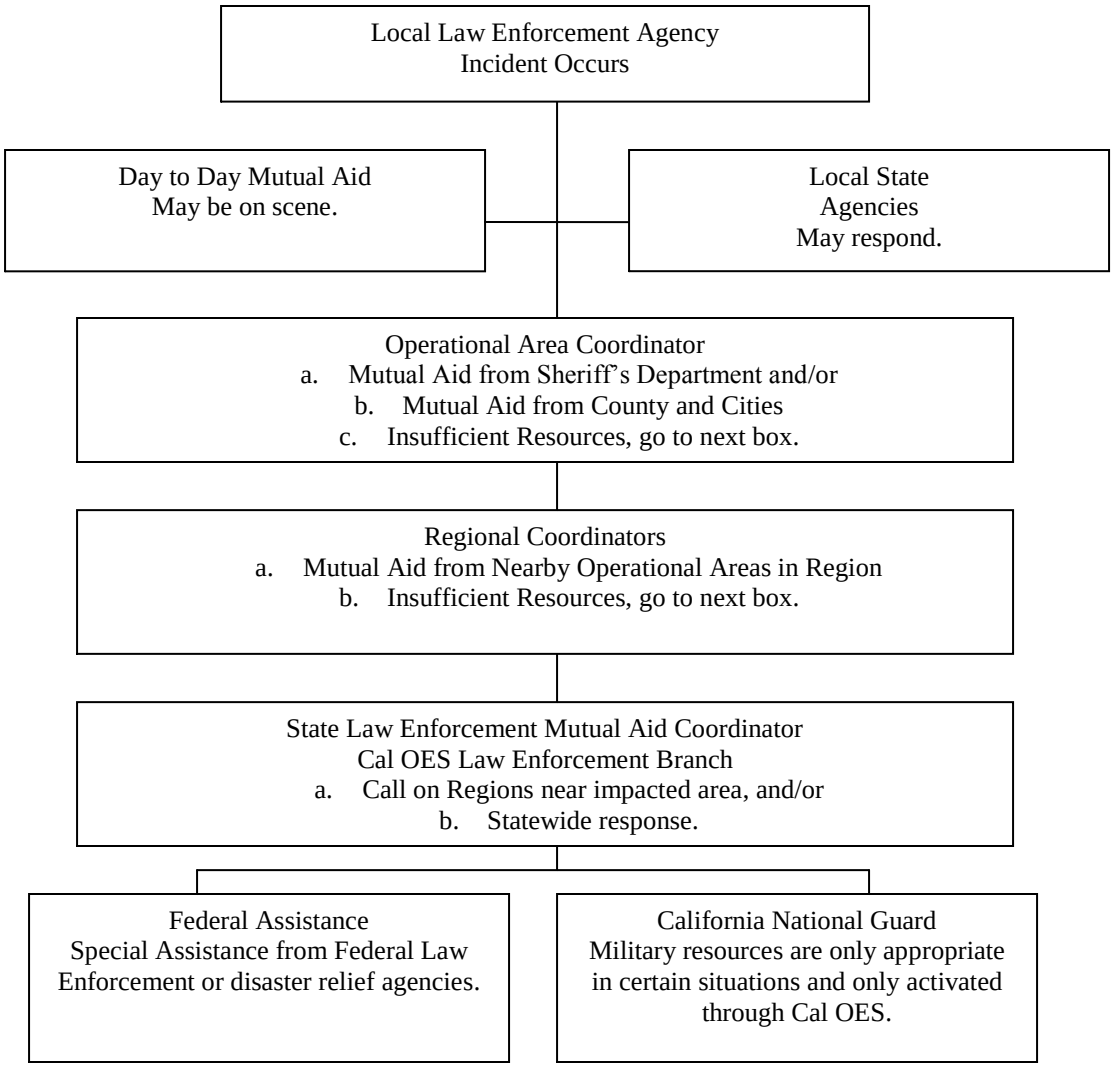
Section 8668 of the California Emergency Services Act provides:

(a) Any disaster council previously accredited, the State Civil Defense and Disaster Plan, the State Emergency Resources Management Plan, the State Fire Disaster Plan, the State Law Enforcement Mutual Aid Plan, all previously approved civil defense and disaster plans, all mutual aid agreements, and all documents and agreements existing as of the effective date of this chapter, shall remain in full force and effect until revised, amended, or revoked in accordance with the provisions of this chapter.

(b) In addition, Section 8561 of the new act specifically provides: "Master Mutual Aid Agreement" means the California Disaster and Civil Defense Master Mutual Aid Agreement, made and entered into by and between the State of California, its various departments and agencies, and the various political subdivisions of the state, to facilitate implementation of the purposes of this chapter.

Substantially the same provisions as previously contained in Section 1541, 1564, 1586 and 1587 of the CA Military and Veterans Code, referred to in the foregoing agreement, are now contained in Sections 8633, 8618, 8652 and 8643, respectively, of the Government Code.

Law Enforcement Mutual Aid Requests



Cal OES Law Enforcement Branch 24 Hours (916) 845-8700

Disaster Response Manual 2008 - 2017.pdf

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Commission on Peace Officer Standards and Training Hate Crimes Model Policy 2019.pdf

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1203 Zoning Map 2019.pdf

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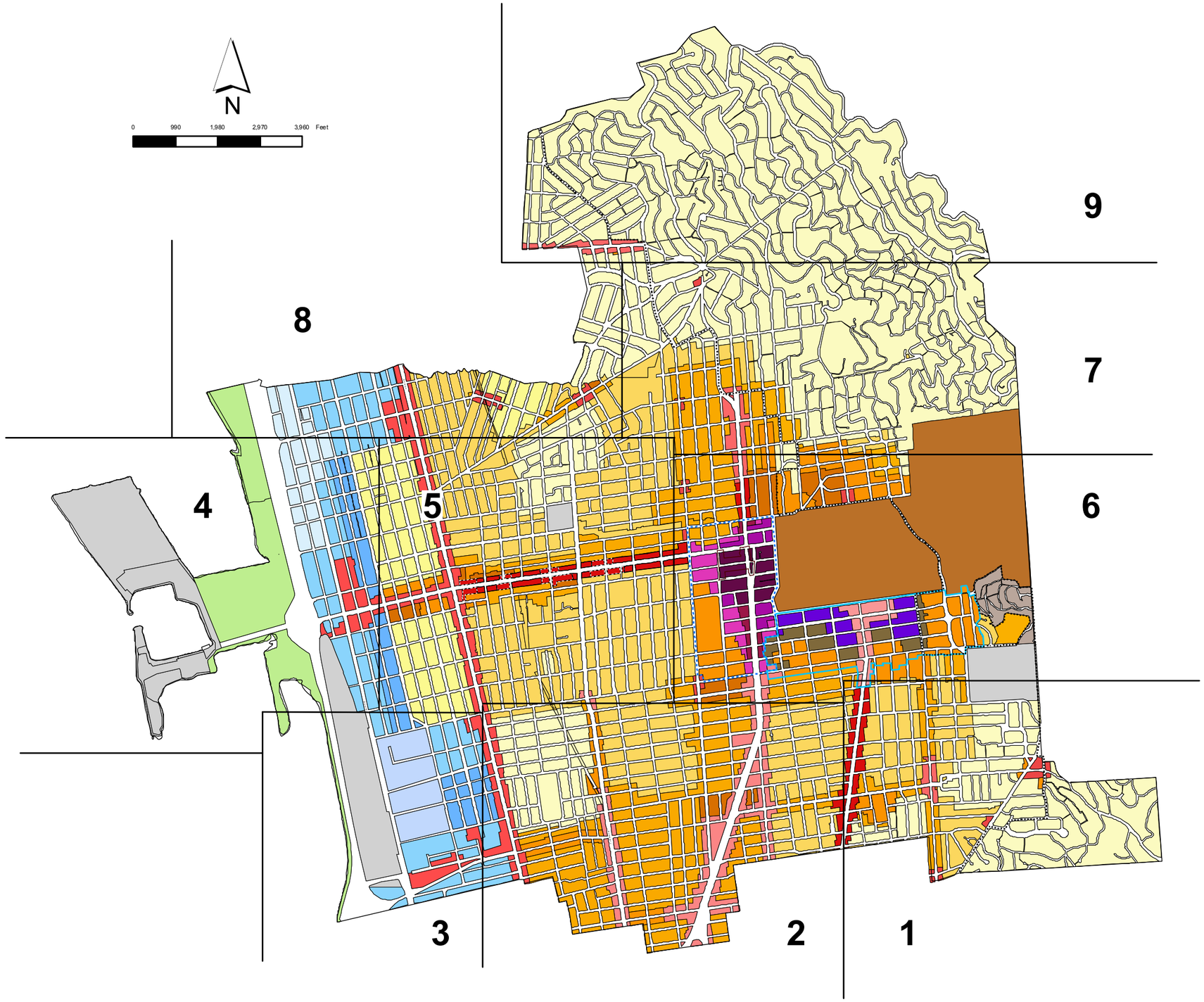


Official Zoning Map

of the

City of Berkeley, California

Adopted by the Berkeley City Council on March 18, 1999 - Ordinance No. 6478-N.S.

ZONING DISTRICTS

- R-1 Single Family Residential
- R-1A Limited Two-family Residential
- R-2 Restricted Two-family Residential
- R-2A Restricted Multiple-family Residential
- R-3 Multiple-family Residential
- R-4 Multi-family Residential
- R-5 High Density Residential
- ES-R Environmental Safety-Residential

- R-S Residential High Density Subarea
- R-SMU Residential Mixed Use Subarea

- C-DMU C-DMU Core
- C-DMU C-DMU Outer Core
- C-DMU C-DMU Corridor
- C-DMU C-DMU Buffer

- C-1 General Commercial
- C-E Elmwood Commercial
- C-N Neighborhood Commercial
- C-NS North Shattuck Commercial
- C-SA South Area Commercial
- C-SO Solano Avenue Commercial
- C-T Telegraph Avenue Commercial
- C-W West Berkeley Commercial

- M Manufacturing
- MM Mixed Manufacturing
- MULI Mixed Use-Light Industrial
- MUR Mixed Use-Residential

- SP Specific Plan
- U Unclassified

OTHER MAP SYMBOLS

- Hillside Overlay Boundary
- Arts District Overlay
- Southside Plan
- Downtown Area Plan

University Ave Strategic Plan

- Avenue Mixed Use
- UASP Node

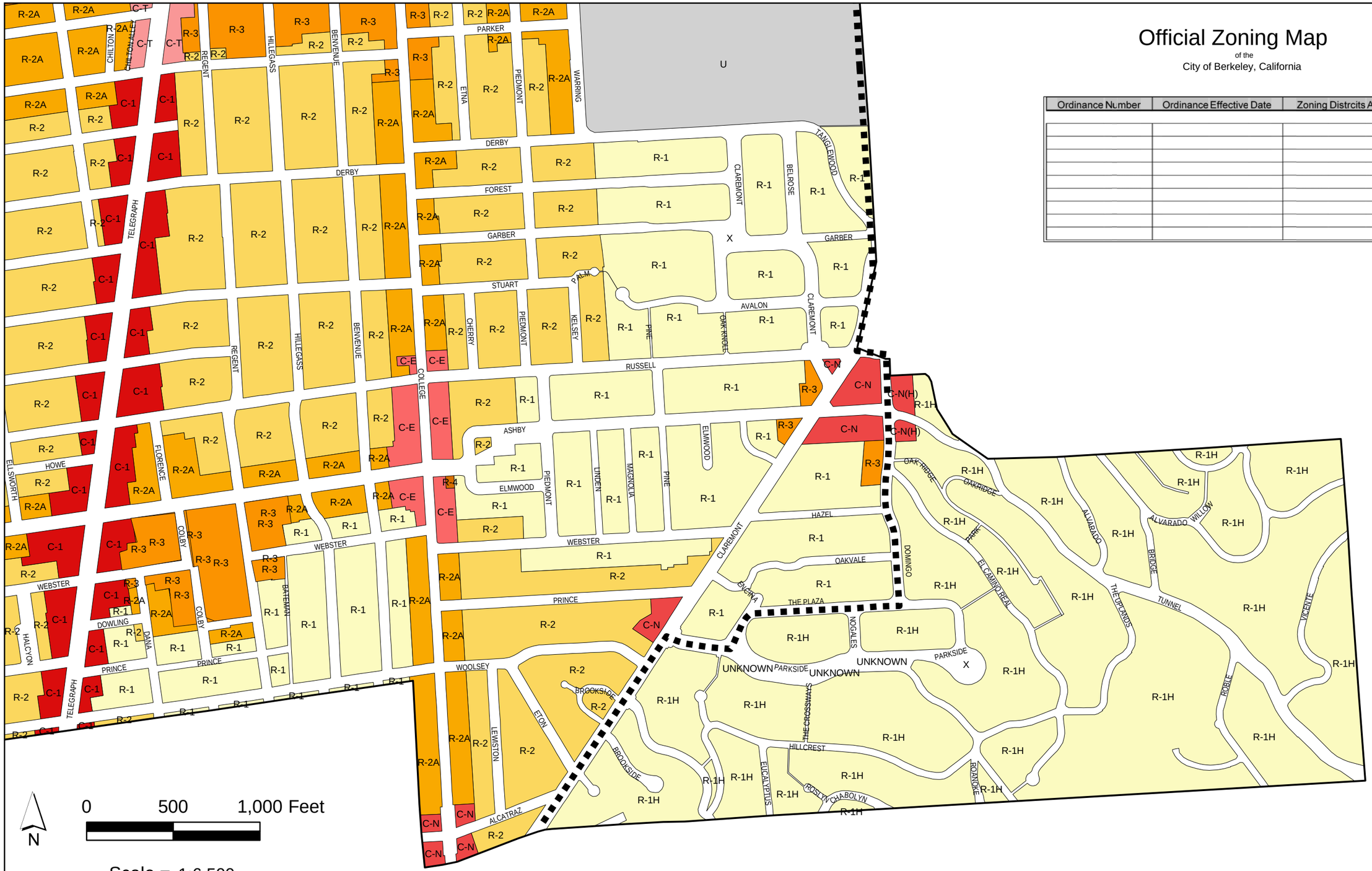
6

2

Official Zoning Map

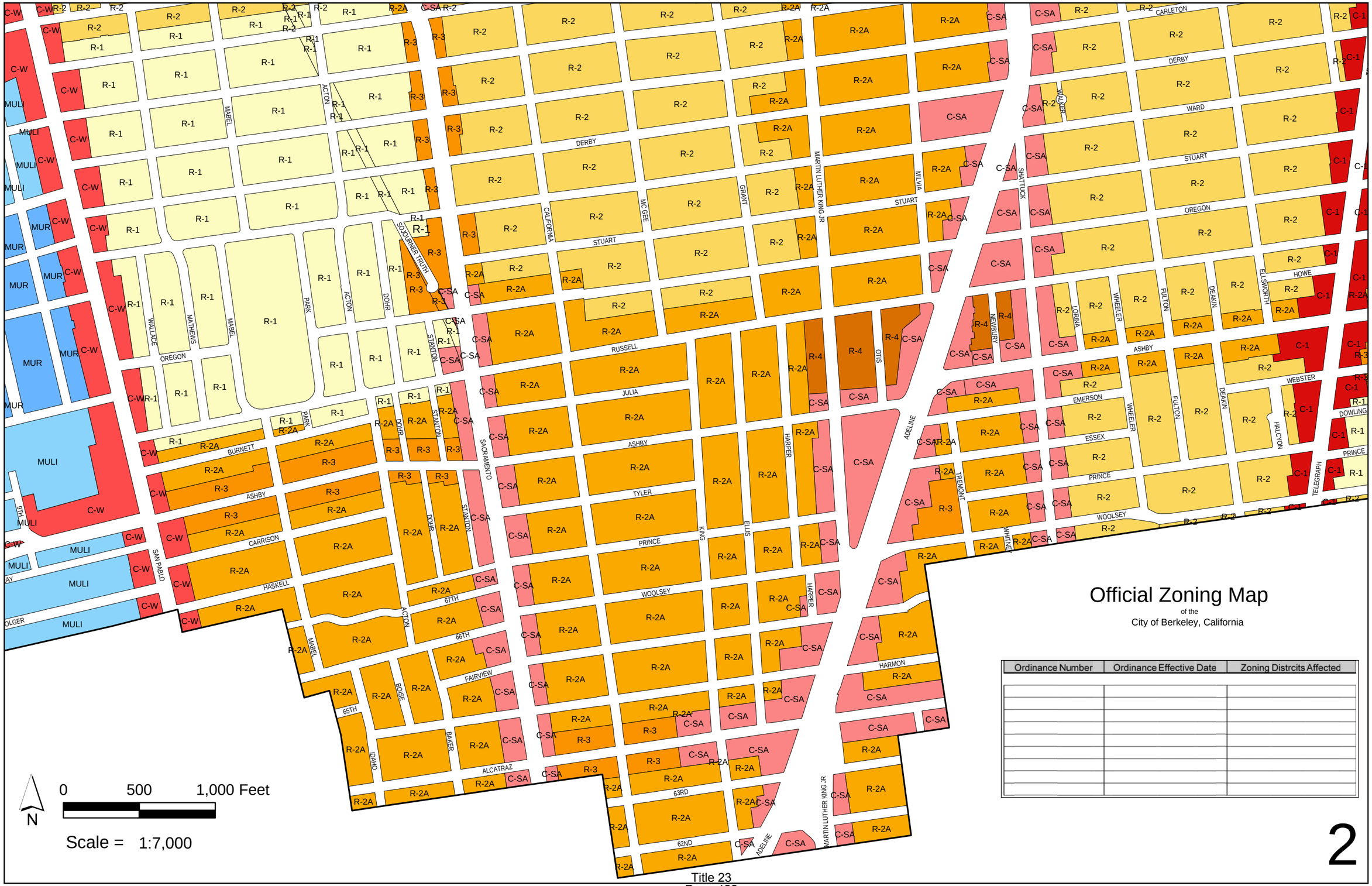
of the
City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Distrcits Affected



1

5 6


Official Zoning Map
of the
City of Berkeley, California
Ordinance Number
Ordinance Effective Date
Zoning Distrcits Affected
0 500 1,000 Feet
Scale = 1:7,000
N
CARLETON
DERBY
WARD
STUART
OREGON
HOWE
ASHBY
WEBSTER
EMERSON
ESSEX
PRINCE
WOOLSEY
DOWLING
HARMON
RUSSELL
JULIA
TYLER
BURNETT
CARRISON
HASKELL
67TH
66TH
FAIRVIEW
65TH
ALCATRAZ
63RD
62ND
MARTIN LUTHER KING JR
SOJOURNER TRUTH
ACTON
MABEL
PARK
WALLACE
MATHEWS
DOHR
STANTON
SACRAMENTO
CALIFORNIA
MC GEE
GRANT
MILVIA
SHATTUCK
WALKER
NEWBURY
LORINA
WHEELER
FULTON
DEAKIN
ELLSWORTH
HALCYON
TELEGRAPH
OTIS
ADELINE
HARPER
KING
ELLIS
TREMONT
WHITNEY
SAN PABLO
BOISE
BAKER
IDAHO
9TH
OLGER
R-1
R-2
R-2A
R-3
R-4
C-1
C-SA
C-W
MUR
MULI

1

2

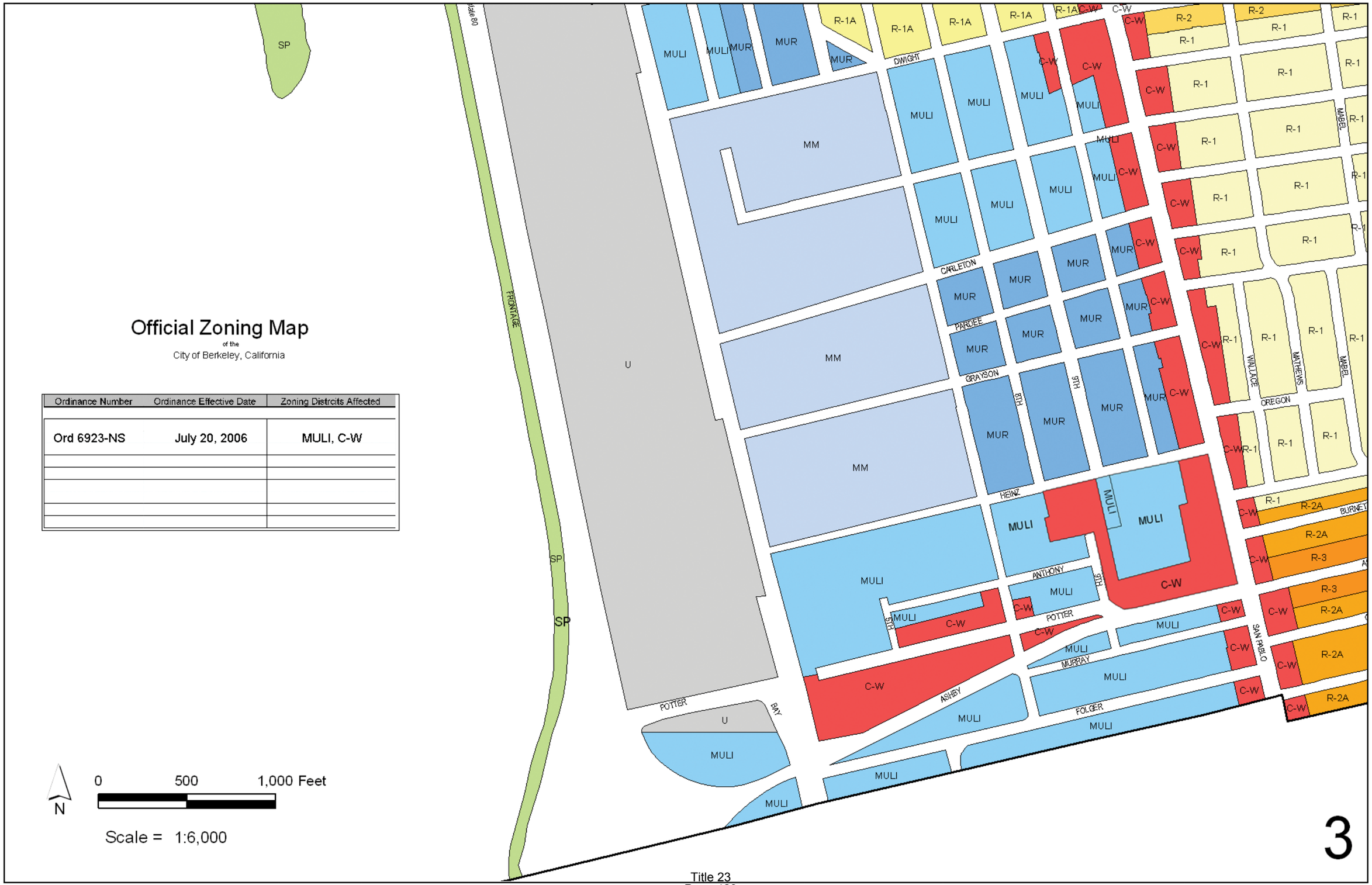
3

Official Zoning Map

of the

City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Distrcits Affected
Ord 6923-NS	July 20, 2006	MULI, C-W



Official Zoning Map

of the

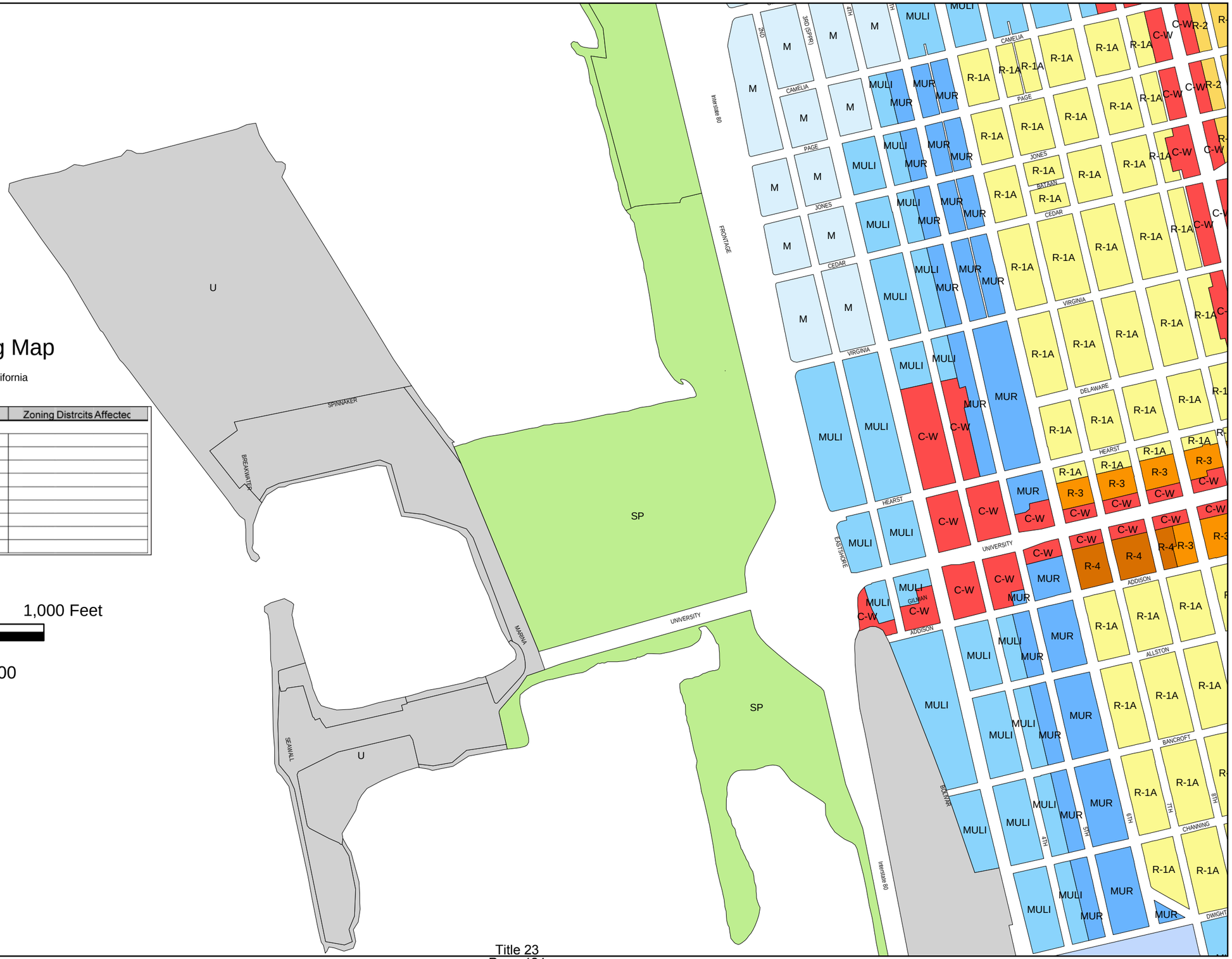
City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Distrcits Affectec

N

0 500 1,000 Feet

Scale = 1:8,500



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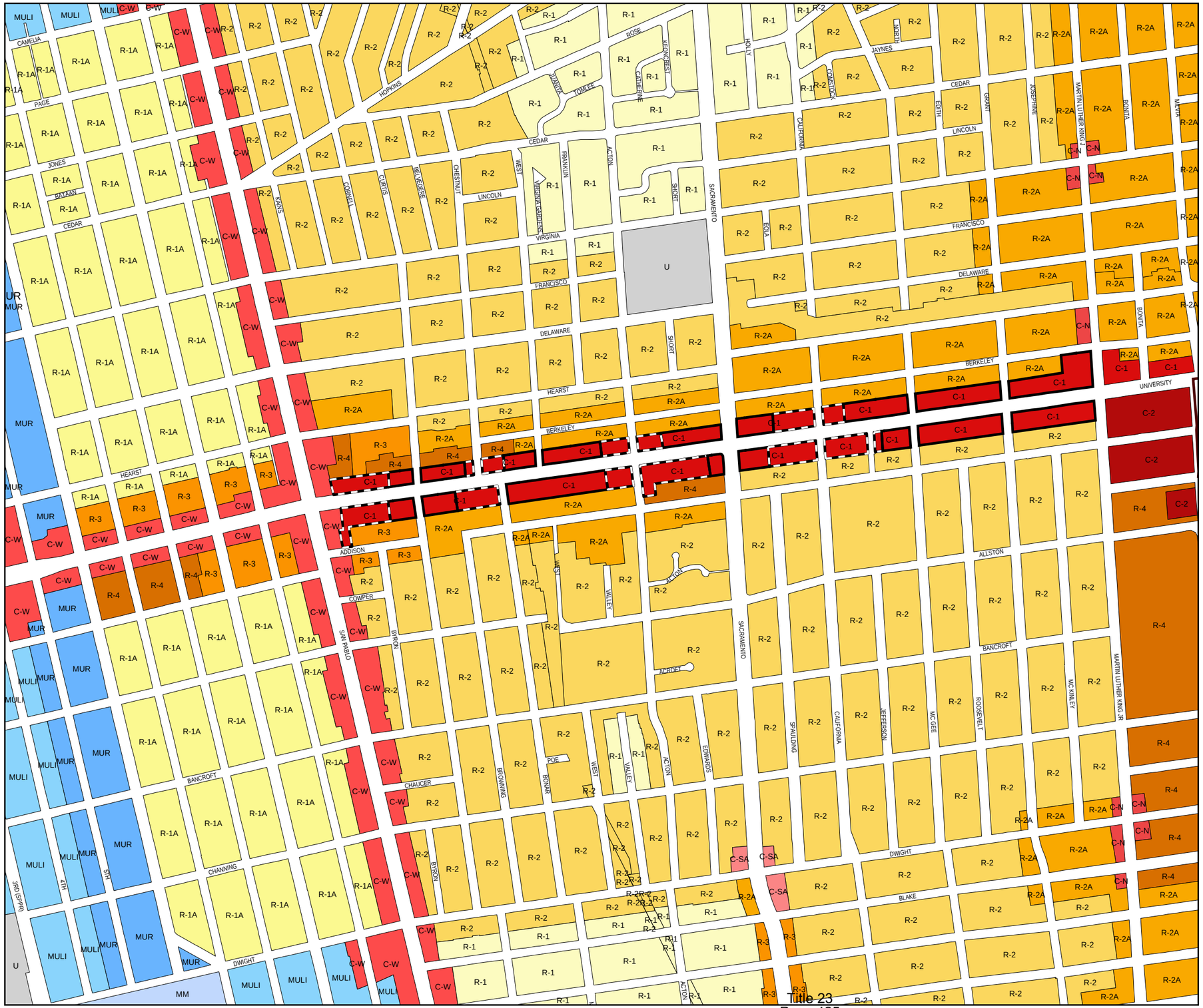
4

3

8 7



Official Zoning Map

of the
City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Distrcits Affected
6681-N.S.	April 18, 2002	R - 3
6830-N.S	January 6, 2005	C - 1

6

N

0 500 1,000 Feet

Scale = 1:8,500

4 3 2 5

Official Zoning Map

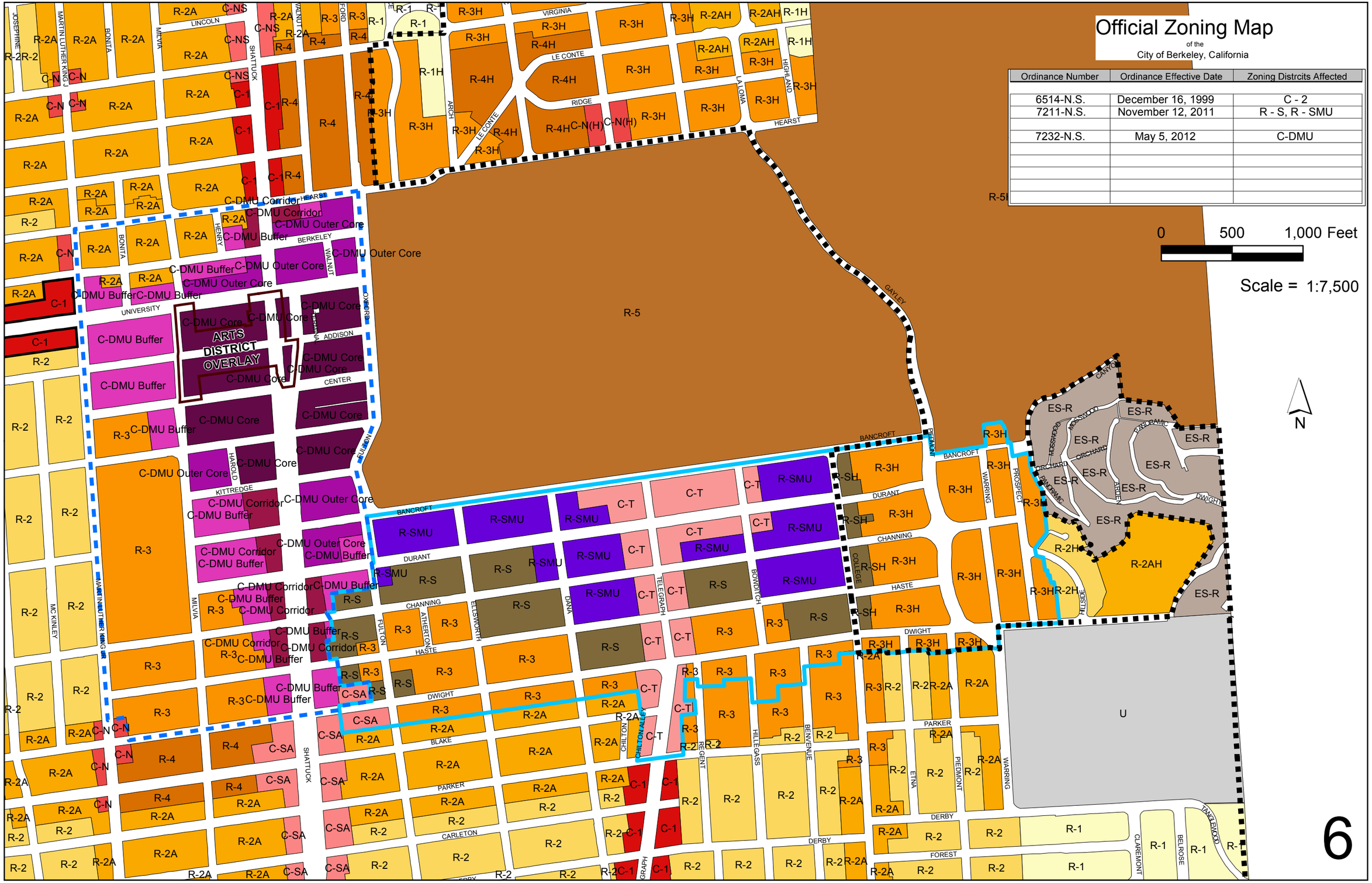
of the
City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Distrcits Affected
6514-N.S.	December 16, 1999	C - 2
7211-N.S.	November 12, 2011	R - S, R - SMU
7232-N.S.	May 5, 2012	C-DMU

0 500 1,000 Feet

Scale = 1:7,500

N



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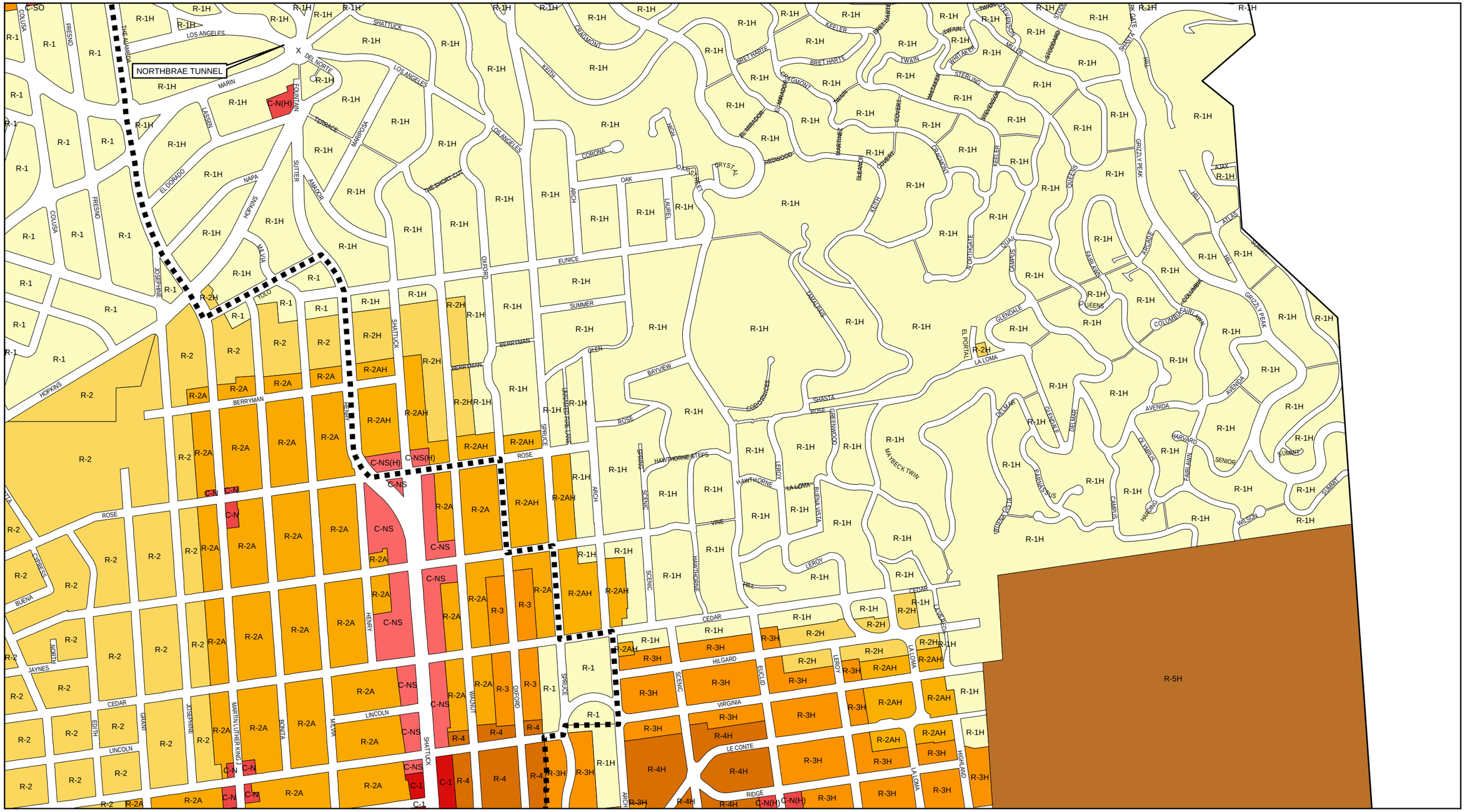
8



5

Official Zoning Map

of the

City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Distrcits Affected

6

N

0 500 1,000 Feet

Scale = 1:8,000

7

Official Zoning Map

of the

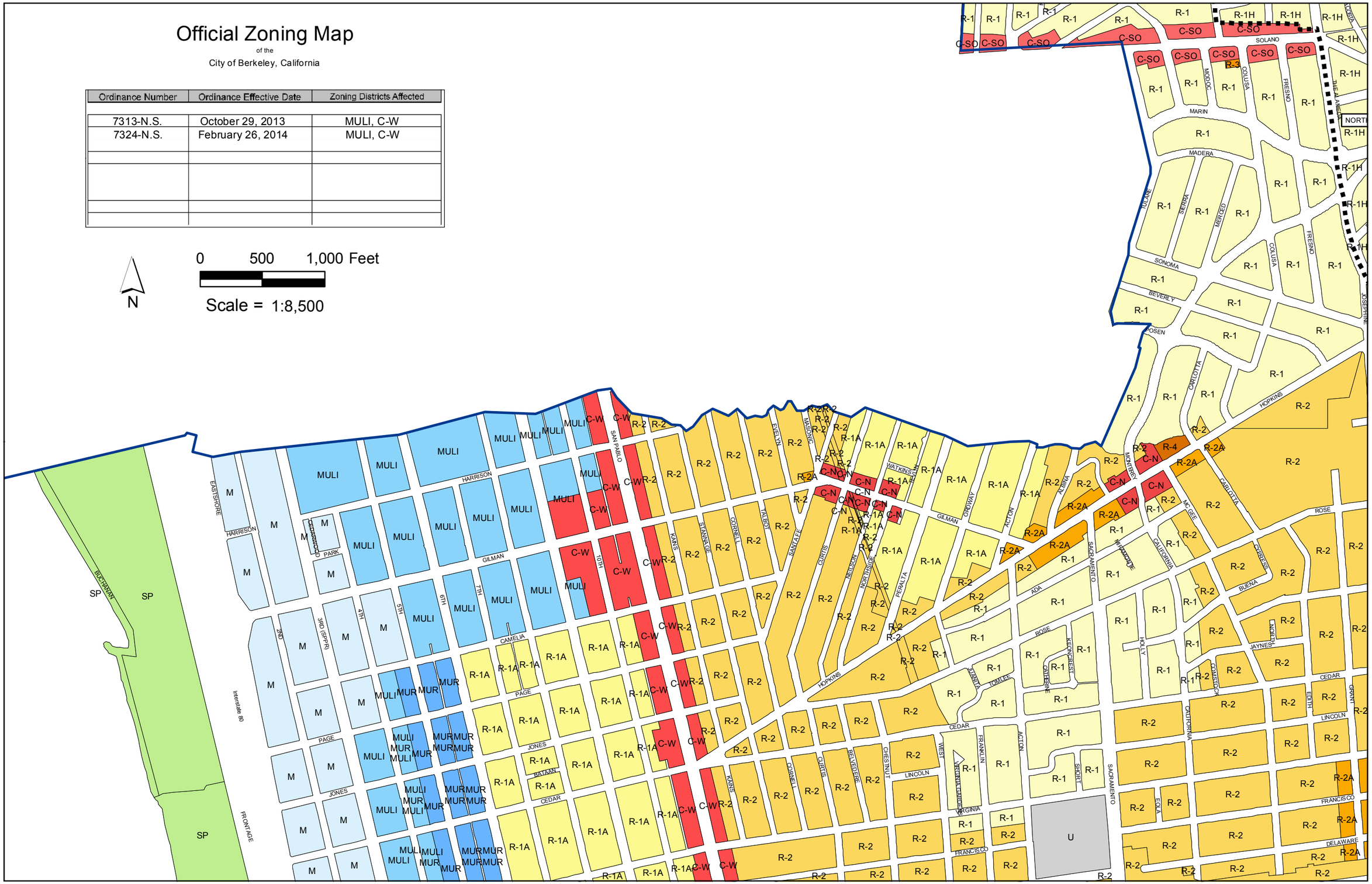
City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Districts Affected
7313-N.S.	October 29, 2013	MULI, C-W
7324-N.S.	February 26, 2014	MULI, C-W

N

0 500 1,000 Feet

Scale = 1:8,500

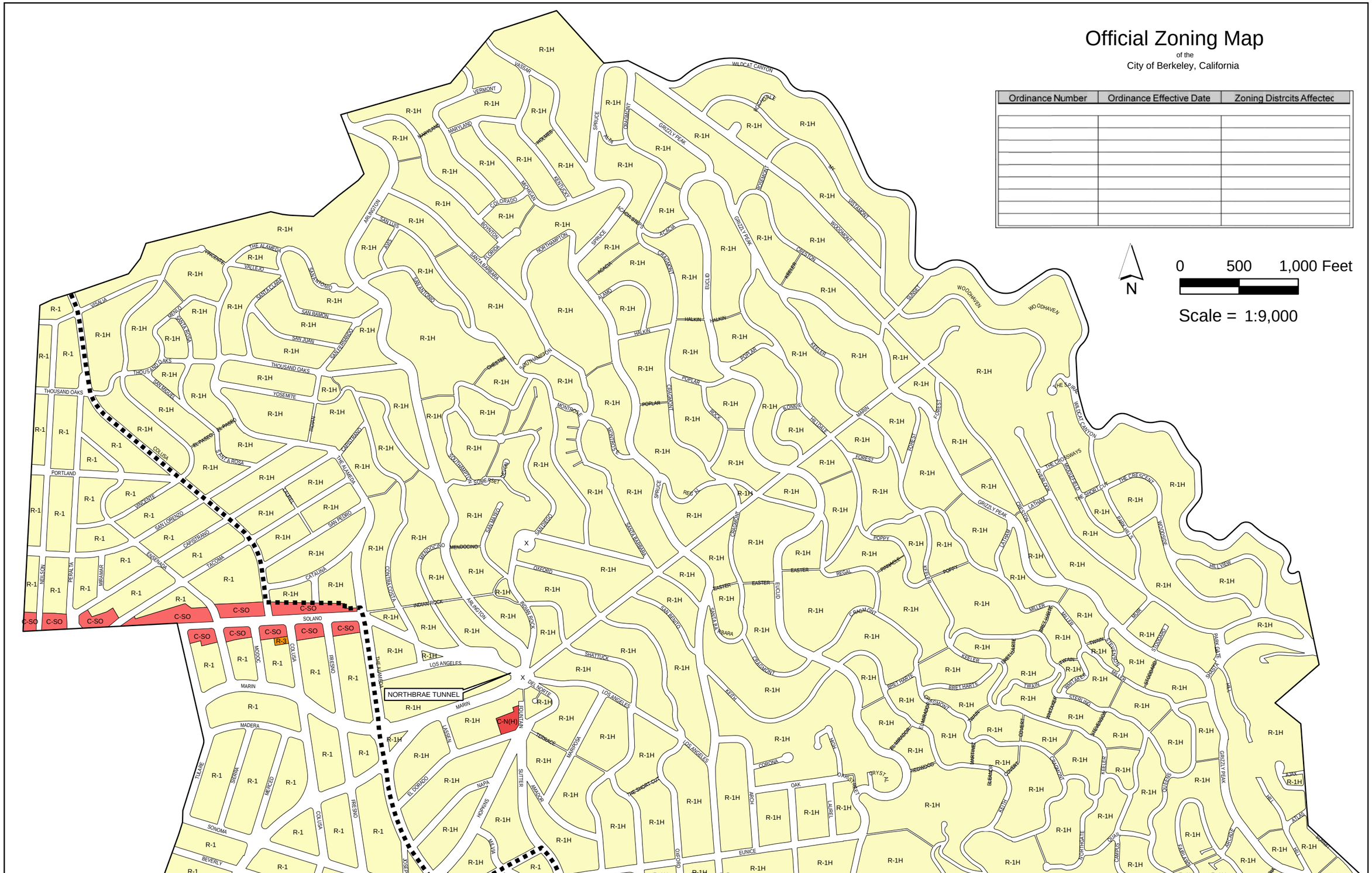


Official Zoning Map

of the

City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Distrcits Affectec



Statement of Expense.pdf

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Credit Record.pdf

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TRAINING TIME CREDIT REPORT

Name: _____ _____ _____ _____ _____ _____to_____ _____
(last) (initials) (badge#) (rank) (div/team) (reg duty hours) (days off)

Student/ Instructor (circle one) Course Title: _____ T.O. # _____

Date(s) of Attendance: _____ Instructor Initials: _____

Times attended: _____to_____ Training Sergeant: _____

Total hours: _____ (On-duty _____ Off-duty _____) Division Commander: _____

Prefer: Time/ $$$ (Training is for comp time unless 1- comp balance is at max, 2- Instructor option, 3- prior approval)
(circle one)

Attendee Signature _____Date _____Time _____

Off- Duty Time Credited

Budget Code: 1312
Activity Code: 7003 (7202 if CMT)

Total Hours OT: _____

Time / $$$ (circle one)

Project Code: _____

(HNT=XX3069) (DT=XX8P16) (RANGE=XX8P15)
(CMT=XX3910) (NEW WORLD=06PSTS)

Credited: _____
(Admin – Accounting)

APPROVED BY: _____

WHITE – Training Bureau CANARY – Admin Div / Accounting Revised August 2011

VEH_14602.7..pdf

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COB Statement of Expense.pdf

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A.R. 3.9
Rev Feb.08

City of Berkeley

STATEMENT OF EXPENSE FORM

NAME: _____ DEPT: _____

TITLE: _____ DATE: _____

THIS STATEMENT OF EXPENSE FORM MUST BE SUBMITTED WITHIN 60 CALENDAR DAYS FROM THE LAST DAY OF THE EVENT OR FORFEIT REIMBURSEMENT

DATE	DESCRIPTION OF EXPENSE		AIR/PLANE FARE 4061	HOTEL 4062	FOOD 4062	REG 4063	OTHER TRANS 4064	MISC	TOTAL
		TOTAL EXPENSES INCURRED							
		LESS THE FOLLOWING AMOUNTS:							LESS:
		AMOUNT PAID BY PURCHASE ORDER							
		ADVANCE AMTS RECEIVED BY EMPLOYEE							
		AMOUNT DUE TO (OR FROM) EMPLOYEE							

Note: See current version of AR 3.9 for meal reimbursement limits with and without receipts. Reimbursement will be based on per meal maximums (see AR 3.9) when meals are prepaid through registration, or for partial days attendance.

I certify that all expenses were incurred in the performance of official duties for the City of Berkeley. I further acknowledge that I am personally responsible for all costs incurred which are not consistent with City policy, and failure to submit reconciliation for a travel advance may be subject to disciplinary action.

Employee Signature ***Date***

Supervisor Signature ***Date***

Dept Head Signature ***Date***

*************APPROVAL OF PAYMENT EXCEPTION***********

Please Check:			Reason:
		A.R. 3.14- FN-024 Voucher Processing	
		A.R. 3.9- Policies and Procedures for Conferences	
Supervisor Signature		***Date***	***Dept Head Signature*** ***Date***

Finance Director or Designee Signature _____ Date _____

DOJ National Protocol.pdf

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Captain Instruction Collisions.pdf

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CAPTAIN'S INSTRUCTION

SPECIAL ORDER **DATE ISSUED: 03/10/22**

SUBJECT: TRAFFIC COLLISION REPORT REVIEW CHANGE

Effective immediately, the Traffic Analyst assigned to the Traffic Bureau will review and approve all collision reports. This change will relieve this responsibility from Operations Division Sergeants and ensure accurate reporting to SWITRS (State Wide Integrated Traffic Reporting System).

Captain Dave Reece
Investigations Division

cc: All BPD Personnel

DOJ Medical Release Form BCIA 4048 English.pdf

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Report Writing Manual Update 2019.pdf

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Police Equipment Community Safety Ordinance Impact Statements.pdf

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206 - Retiree Firearms Waiver (4).pdf

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206 - Retiree Firearms Waiver (5).pdf

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BERKELEY POLICE DEPARTMENT

RETIREE CONCEALED CARRY

QUALIFICATION AGREEMENT AND WAIVER OF LIABILITY

I am a retired peace officer of the Berkeley Police Department. I am eligible to attempt to qualify to carry a concealed firearm, pursuant to the Law Enforcement Officers Safety Act of 2004 and/or California Law (18 USC § 926C; Penal Code § 25455).

I understand that the Berkeley Police Department is not legally required to provide a firearms qualification course or provide me with firearms instruction.

I understand that to attempt to qualify to carry a concealed firearm, I may only fire my weapon under the direct supervision of a certified firearms instructor.

I agree to defend, indemnify, and hold harmless the City of Berkeley Police Department and/or its officers, agents and employees, for any injury caused by my participation in this qualification process. I further waive any claim for damages against the City of Berkeley Police Department and its officers, agents and employees, for any injury suffered by me while participating in this qualification process.

I agree to defend, indemnify, and hold harmless the City of Berkeley Police Department and/or its officer, agents and employees, from any and all liability resulting from my carrying and/or use of any weapon allowed under the Law Enforcement Officers Safety Act of 2004 or California Law, including, but not limited to, civil litigation.

Furthermore, I have read, understand, and agree to the following conditions under LEOSA or California Law.

BERKELEY POLICE DEPARTMENT

To the retiree - Choose either LEOSA or CALIFORNIA conditions below. LEOSA conditions require an annual qualification and allow for a nationwide CCW permit. CALIFORNIA conditions require a qualification every 5 years (per Department policy) and allow for a CCW permit within California. Please choose Option A or B.

OPTION A:

LEOSA CONDITIONS

I agree to qualify annually with the authorized firearm at a course approved by the Berkeley Police Department at my own expense. _____ (initial)

I understand that I am personally responsible for all acts taken related to carrying a concealed firearm and that these acts were not taken as an employee or former employee of the Berkeley Police Department. _____ (initial)

I understand that I remain subject to all applicable Berkeley Police Department policies and federal, state and local laws. _____ (initial)

I will demonstrate good judgment and character commensurate with carrying a loaded and concealed firearm. _____ (initial)

I understand that the Berkeley Police Department may run a criminal history background check to confirm my good character. _____ (initial)

OPTION B:

CALIFORNIA CCW CONDITIONS (Penal Code § 26305)

I agree to qualify at least every five years with the authorized firearm at a course approved by the Berkeley Police Department at my own expense. _____ (initial)

I understand that I remain subject to all applicable Berkeley Police Department policies and federal, state and local laws._____ (initial)

I will not engage in conduct that compromises public safety. _____ (initial)

I understand that I am only authorized to carry a concealed firearm inspected and approved by a certified firearms instructor. _____ (initial)

BERKELEY POLICE DEPARTMENT

To the retiree - Regardless of choice, please complete the remainder of the form.

Former officers of the Berkeley Police Department only: I shall immediately notify the Berkeley Police Department Communication Center of my arrest or conviction in any jurisdiction, or if I become the subject of a court order, and advise that I hold a CCW endorsement through the Berkeley Police Department. _____ (initial)

Failure to satisfy any of these conditions may result in denial, suspension, or revocation of a LEOSA or California CCW endorsement.

_____	_____	_____
Print Name	Signature	Date
_____	_____	_____
Name of Witness	Signature	Date

BPD Narcan Report.pdf

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Berkeley Police Department

Intranasal Narcan (Naloxone) Usage Report

Date:	**Police Department:**	**Time of Arrival:**	**Case Number:**

Location of Incident (Number, Street, Business):	**Name of Police Officer Administering:**

Name of Victim:	**Address:** *(no., street, city/town, state)*	**D.O.B:**	☐**Male** ☐**Female** ☐**Unk.**

Victim status prior to administering Intranasal Narcan: *(Check one in each section)*

Level of consciousness-*Victim responds to:* ☐Alert ☐Verbal Stimulus ☐Painful Stimulus ☐Unresponsive ☐Other:(specify)_____

Breathing: ☐Rapidly (>24 BPM) ☐Slowly (<10 BPM) ☐Normally (12-20 BPM) ☐Not Breathing

Pulse: ☐Rapid (>100) ☐Slow (<60) ☐Normal (60-100) ☐No Pulse ☐Did not check pulse

Constricted Pupils (Pinpoint): ☐ Yes ☐No

*Other Indicators:*_____

Evidence of Opioid Usage: ☐Yes ☐No If yes, specify below in comments	**If drug packages found at scene, describe stamp or marking:**

Victim overdosed on what drugs? *(Check all that apply)*

☐Heroin ☐Morphine ☐Codeine ☐Methadone ☐Suboxone ☐Unknown Pills ☐Unknown Injection

☐Fentanyl ☐Prescription Medication ☐Unknown ☐Other: (specify)_____

Time Intranasal Narcan was administered:	**Number of vials of Intranasal Narcan used:** ☐Half ☐One ☐Two

If Narcan worked, how long did Intranasal Narcan take to work?

☐Less than 1 minute ☐1-3 minute(s) ☐ 3-5 minutes ☐ more than 5 minutes ☐Unknown ☐Did not work

Victim's response to Intranasal Narcan being administered:

☐No Response to Narcan ☐Responsive but Sedated ☐Responsive and Alert ☐Responsive and Angry ☐Combative ☐Other:_____

Post-Intranasal Narcan responses: *(Check all that apply)*

☐None ☐Opiate Withdrawal (e.g. nauseated, muscle aches, runny nose and/or watery eyes, shivering, and sweating) ☐Respiratory Distress

☐Seizure ☐Vomiting ☐Other: (specify_____)

What else was done by the police officer? *(check all that apply)*

☐Verbal Stimulus ☐Tactile Stimulus ☐Recovery Position ☐Bag Valve Mask ☐Mouth to Mask ☐Mouth to Mouth

☐Defibrillator: (If checked, indicate status of shock) ☐Defibrillator - no shock ☐Defibrillator - shock administered

☐Chest Compressions ☐Oxygen ☐Other: (specify)_____

Was Intranasal Narcan administered by anyone else at the scene? ☐Yes *(If yes, check all that apply)* ☐No

☐EMS ☐Bystander ☐Other:(specify)_____

Disposition: *(check one)*

☐ Care transferred to EMS ☐Other (specify)_____

Was a paramedic on scene prior to being transported? ☐Yes ☐No

Did the person live? ☐ Yes ☐No ☐Unknown

Transported to which Hospital:	**Transporting Ambulance:**

Comments: ☐Cross-referenced related case number: _____

For Training Manager Use Only	
Lot Number:	***Expiration Date:***

Private Person Arrest Form.pdf

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1300 BWC APPENDIX A.pdf

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BODY WORN CAMERAS (BWCs)

A. DESCRIPTION

The BWC system consists of four main components: The camera, the docking station, and the Digital Information Management System (DIMS) and smartphone applications.

The first component, the Axon camera, is a system which incorporates an audio and video recording device. It is designed to record events in real time for secure storage, retrieval, and analysis. The camera is to be attached to an officer's uniform and is powered by an internal rechargeable battery. The camera features low-light performance, full-shift battery life, a capture rate of 30 frames per second with no dropped frames, HD video, pre-event buffering, multi-camera playback, and the ability to automatically categorize video using the police department's computer aided dispatch system. An officer can start and stop recording by pressing a button on the front of the camera. The camera does not contain a screen for footage review.

The second component of the system is the docking station. Once the Axon camera is placed in the docking station it recharges the camera's battery. The dock also triggers the uploading of data from the camera to a cloud based Digital Information Management System (DIMS) called Evidence.com. The dock does not directly provide functionality to view, modify or delete video data stored on Axon cameras.

The third component is the Digital Information Management System called Evidence.com. Evidence.com streamlines data management and sharing on one secure platform. The evidence management system is comprehensive, secure, and intuitive to use. The DIMS is located in a cloud-based data center for security, scalability, and ease of administration. Users can add

metadata to existing videos such as associated case numbers, incident type, incident dispositions, etc. to make the videos easier to find. However, the videos themselves cannot be altered by the user.

The fourth component of the system to be utilized are two Axon mobile applications, which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The applications are called Axon View and Axon Capture. Axon View allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannon be manipulated or deleted. Axon Capture allows officers to use their city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to Evidence.com. These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications use secure technology to add value and efficiency to the BWC program.

B. PURPOSE

The primary objective of the BWC system is to document officer contacts, arrests, and critical incidents. Video footage collected by the BWCs will be used as evidence in both criminal and administrative investigations. Video footage not relevant to any investigation will be discarded after a defined retention period.

In instances where the officer might be expected to take law enforcement action of any kind, the officer is expected to record the encounter for the benefit of both the officer and the member of the public.

1. The BWC shall be activated in any of the following situations:
    i. All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
    ii. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
    iii. Self-initiated field contacts in which a member would normally notify the Communications Center.
    iv. Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

v. Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
vi. Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is an officer expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the user can do so safely.

Officers should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Officers shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

2. Prohibited uses of the BWC system include:
   i. Officers shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.
   ii. Officers are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
   iii. Officers are prohibited from retaining BWC recordings.
   iv. Officers shall not duplicate or distribute such recordings, except for department business purposes.

C. LOCATION

Officers may use BWCs anywhere where officers have jurisdiction to operate as sworn officers, in accordance with BPD policy #425.

D. IMPACT

With the introduction of BWCs, officers record all enforcement contacts with the public. To that end, an officer could find themselves engaged in their lawful duties in both public and private areas. Additionally, due to the nature of law enforcement work, an officer may be required to engage in sensitive conversations with individuals of all ages, including children.

The right to maintain someone's anonymity versus the need to gain information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the

strictest requirements of both state and federal law concerning release of audio/video recordings.

E. MITIGATION

In order to minimize violations of privacy, BWC policy provides that:

1. Officers should record any incident they feel would be appropriate or valuable to document. The BWC policy shall require officers to activate the BWC under the criteria listed above.
2. Officers should not activate the BWC and/or use caution when entering a public locker room, changing room, restroom, doctor's or attorney's office, or other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy unless the officer is investigating criminal activity or responding to a call for service.
3. BWC use is limited to enforcement and investigative activates involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy.
4. BWC footage will be retained or released in accordance with applicable state and federal law. Criminal defendants will have access to relevant BWC footage via the court discovery process.
5. Officers are prohibited from retaining BWC recordings, Officers shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.
6. Officers are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Officers may request restriction and subsequent deletion of an accidental recording according to the BWC policy.
7. Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted by law and department policy. Department policy does not authorize release of investigative files or documents that would constitute an unwarranted invasions of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a “reasonable expectation of privacy

F. DATA TYPES AND SOURCES

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigations, and other proceedings protected by confidentiality laws and department policy.

The BWC collects video and audio recordings of events occurring in the user's presence. As each video is created, the system automatically stamps the video with the current date/time and the camera user's identity. The user has the option to add metadata manually to existing recordings after they are created. Such metadata may include but is not limited to:

1. Category of contact (from Department's defined list)
2. Disposition of contact (arrest, citation, etc.)
3. Associated case number

G. DATA SECURITY

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for transferring the data into the digital evidence management system. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.

Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code Section 832.18) (Ref. policy 425.14):

1. Establishing a system for uploading, storing and security of recordings.
2. Designating persons responsible for uploading recorded data.
3. Establishing a maintenance system to ensure availability of BWCs.
4. Establishing a system for tagging and categorizing data according to the type of incident captured.
5. Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
6. Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
7. Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file,

thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

H. FISCAL COST

In 2017, the Berkeley City Council approved a resolution authorizing a contract between BPD and Axon. Axon was chosen after a competitive Request for Proposal (RFP) process. The contract will not exceed $1,218,103 and includes the cost of 200 body worn cameras, charging stations, accessories, software licenses, training and unlimited storage for five years. The purchase also includes replacement cameras and charging stations during the third and fifth year of the contract.

There will be an annual cost of approximately $250,000 to the police department's budget for a staff person to administer the body worn camera program beginning in FY 2019.

I. THIRD PARTY DEPENDENCE AND ACCESS

All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

J. ALTERNATIVES

Officers rely primarily on traditional policing techniques to gather evidence related to criminal investigations such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of BWCs to document police activity.

BWC technology provides video and audio documentation of policing activity in addition to the oral and written statements of officers, victims, and witnesses. Alternatives to the use of BWCs would be vehicle-based cameras and/or not utilizing BWCs. However, BPD sees the use of BWCs as an integral strategy to strengthen police transparency, prevent and resolve complaints against the police by civilians, document police-public interaction, and promote the perceived legitimacy and sense of procedural justice that communities have about their departments. There is a broad consensus – among community leaders, the ACLU, the Department of Justice, the Berkeley Police Department, and elected officials – that body-worn cameras can be an important tool for improving the high-quality public service expected of police officers.

K. EXPERIENCE OF OTHER ENTITIES

Numerous police agencies have adopted BWCs as a tool to help combat crime, to reduce citizen complaints and to reduce use of force situations. Many departments have developed their own usage policies which may include standards for required officer use, supervisory review, storage and data retention standards, and internal and public access.

A report for the U.S. Bureau of Justice Administration, https://www.bja.gov/bwc/pdfs/14-005_Report_BODY_WORN_CAMERAS.pdf - pages 6-8, cites a 2013 Rialto, CA study that showed that the use of BWCs led to a 59 percent decrease in UOF and an 87.5 percent decrease in citizen complaints. Likewise, the Mesa, AZ report noted in "Impact" Section above also points to large decreases in UOF and citizen complaints.

The 2017 Police Body Worn Cameras: A Policy Scorecard, https://www.bwcscorecard.org/, provides an analysis of how scores of different police agencies have employed BWCs through a defined list of metrics.

Outside Employment AR2-10.pdf

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CITY OF BERKELEY
ADMINISTRATIVE REGULATIONS

SUBJECT: Outside Employment – All Employees Except the Deputy City Manager, Assistant City Managers and Department Directors

PURPOSE

The purpose of this policy is to:

1. Define outside employment; and

2. Identify who is affected by the policy; and

3. Outline the procedure to follow when a City of Berkeley employee seeks approval for outside employment.

POLICY

City Manager approval is required for all outside employment. Full-time City employees may not carry on, concurrently with their public service, any private business or undertaking, attention to which affects the time or quality of their work, or which casts discredit upon or creates embarrassment for the City government, including causing a perceived or real violation of internal controls. Written authorization to engage in any outside employment or gainful occupation must be approved, in advance, by the department director and City Manager, based upon written request of the employee.

Employees who engage in outside employment in violation of this administrative regulation may be disciplined, up to and including termination. This same standard also applies to other public service. Note: Policies affecting Department directors are to be found in Resolution Nos. 47,567, and 47,761 and A.R. 2.9.

DEFINITION OF OUTSIDE EMPLOYMENT

Outside employment includes self-employment and employment by others.

a. Self Employment
   Includes the offering for sale of goods or services on a regular or periodic basis or by contract as an independent contractor. Self-employment does not include the management of one's own investments.

b. Employment by Others
   Means the creation of an employer-employee relationship between the employee and an employer other than the City of Berkeley. An employer-employee relationship is considered to be established when the employee does not have individual control over

when, where, or how he/she works.

c. Exclusions from Outside Employment

Outside employment as defined above does not include those periodic services such as making speeches, which an employee may be called upon to perform by various outside groups for which an honorarium or expense is paid. Under normal circumstances, non-paid, voluntary involvement would not constitute employment under this policy. However, the City is under no obligation to honor volunteer commitments an employee may make prior to or during employment with the City.

d. Disclosure

Each City employee in the regular career service must, within 30 days of the effective date of this regulation, disclose to his or her supervisor whether he or she is employed outside of their City employment and seek approval by the City Manager, pursuant to this regulation. Any City employee hired after the effective date of this A.R. must disclose at the time of hire if he or she is, or expects to be, otherwise employed. Approval is required and employees may be directed to cease his or her outside employment, as a condition of continued employment with the City of Berkeley. Any City employee hired after the effective date of this A.R. must obtain written approval prior to engaging in any outside employment or gainful occupation by the department director and City Manager. Except that for the purpose of this A.R. an employee is not considered to be "otherwise employed" when hired, if he/she will cease the other employment within 30 days of beginning to work for the City.

e. Prohibited Outside Employment

The City will consider the following factors to determine whether an employee's proposed outside employment will be prohibited:

1) The employment involves the use for private gain or advantage of his/her City of Berkeley time, facilities, equipment and supplies, or badge, uniform, prestige, or influence of his or her position with the City; or

2) The employment involves receipt or acceptance by the employee of money or consideration from an employer, other than the City of Berkeley, for the performance of duties, which fall within the normal course of his/her assignment with the City; or

3) The employment involves the performance of an act in other than his/her capacity as a City of Berkeley employee, which act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by a representative of the City of Berkeley; or

4) The employment involves the time or other demands as would render performance of his/her duties as a City of Berkeley employee less efficient; or

5) The employment creates any real or perceived conflict of interest with his/her duties as a City of Berkeley employee, or in any way violates the internal controls of the

City government.

PROCEDURE

City employees engaged in outside employment, as defined above, are required to seek approval. Attachment 1 to this regulation is provided for that purpose.

Step 1. Complete the attached form and submit to your department director.

Step 2. Department director sends form to General Services Manager for determination of whether outside employer has business relationship with the City. General Services Manager signs and returns form to department director (should be completed within five (5) days).

Step 3. Upon receipt from General Services, the department director completes the Recommendation section and sends form to Human Resources Department for review. Human Resources forwards form to City Manager for approval or disapproval. (Should be completed by department head within five (5) days and by Human Resources/City Manager within five days)

Step 4. If approved or disapproved by City Manager, Human Resources Department files original copy of request form in the employee's personnel file.

Step 5. Employee is required to submit a revised request form if there are any changes in the conditions of the approved outside employment; or to notify the department director if the outside employment has been terminated.

Outside Employment for Sworn Police Personnel

In addition to the policies and procedures described above for all City employees, sworn police employees must obtain written permission of the Police Chief to work in any outside employment that makes use of the skills and knowledge accrued to the employee by benefit of being employed as a sworn police officer. Because of the potential liability exposure that may accrue to the City, the Police Chief, or its officers and employees, the Police Chief has the right to refuse/deny/revoke applications for employment by sworn police officers working in an extra-duty capacity.

Sworn Police employees interested in working in outside employment are required to submit a written memorandum, directed to the Police Chief via the Administrative Division Captain describing the following:

a. Full description of the outside employment, including terms and conditions of employment,

b. Expected duration of the outside employment,

c. The name, address and telephone number of the employer.

The Police Chief may deny any employment that may cause a conflict of interest for the City or the

Police Department, embarrassment to the City or the Police Department or conflict with the policy of the City for outside employment, as described above.

City Charter Provisions which bear upon outside employment:

Section 32 **Compensation of officers and employees.**

The Council shall fix the compensation of all officers and employees on recommendation of the City Manager, except as in this Charter otherwise provided. No officer or employee shall be allowed any fees, prerequisites, emoluments, rewards or compensation, aside from the salary or compensation as fixed by the Council, but all fees received by him or her in connection with his or her official duties shall be paid into the City Treasury.

Section 36 **Officers not to be interested in contracts or franchises.**

No officer or employee shall be directly or indirectly interested in any contract, work or business of the City or in the sale of any article, the expense, price or consideration of which is paid for from the treasury or by assessment levied by any act or ordinance; nor in the purchase or lease of any real estate or other property belonging to the City or which shall be sold for taxes or assessments or by virtue of legal process at the suit of the City. No officer shall be in the employ of any public service corporation in the City or of any person having any contract with the City or of any grantee of a franchise granted by the City.

Any contract or agreement made in contravention of this Section shall be void.

Any violation of the provisions of this Section shall be deemed a misdemeanor.

The Council shall enforce the provisions of this Section by appropriate legislation.

RESPONSIBLE DEPARTMENT: **Human Resources** **TO BE REVISED:** **Every year**	Approved by: Department Director City Manager

CITY OF BERKELEY
REQUEST TO ENGAGE IN OUTSIDE EMPLOYMENT

To: CITY MANAGER

Name_____ Date _____ Department _____

Original Request _____Position_____Change_____Termination
Permission is granted to engage in outside employment as follows:

Name of employer_____

Address_____ Telephone number _____

Nature and location of work
Schedule of hours _____ Total hours per week
Permanent/Temporary/Seasonal
Fringe benefits from outside employer
(Paid sick leave, vacation leave, health insurance, retirement benefits)

STATEMENT TO BE SIGNED BY EMPLOYEE

I have read the City Administrative Regulation (A.R. No. 2.10) and certify that my outside employment is not in violation of that regulation; and I agree that, if I terminate the above employment, or if the nature of the work described above changes, I shall immediately notify my department head and shall submit a supplemental request form.

_____
Employee signature

Department Director recommendation:

_____
Department head signature

Personnel for review and comment:

_____
Human Resources Director signature

Approved ( ) Disapproved ( )

If disapproved, reasons:

_____
City Manager signature

If approved, route both copies to:
____ Tax and License Administrator
____ Human Resources Department

Personnel: Forward completed original to department concerned.
File duplicate copy with employee's records.

Hate Crime Checklist.pdf

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HATE CRIME CHECKLIST

VICTIM

Victim Type:

☐ **Individual**
Legal name (Last, First): _____
Other Names used (AKA): _____

☐ **School, business or organization**
Name: _____
Type: _____
(e.g., non-profit, private, public school)
Address: _____

☐ **Faith-based organization**
Name: _____
Faith: _____
Address: _____

Target of Crime (Check all that apply):

☐ Person ☐ Private property ☐ Public property

☐ Other _____

Nature of Crime (Check all that apply):

☐ Bodily injury ☐ Threat of violence

☐ Property damage

☐ Other crime: _____

Property damage - estimated value _____

BIAS

Type of Bias
(Check all characteristics that apply):

☐ Disability
☐ Gender
☐ Gender identity/expression
☐ Sexual orientation
☐ Race
☐ Ethnicity
☐ Nationality
☐ Religion
☐ Significant day of offense
(e.g., 9/11, holy days)
☐ Other: _____

Specify disability (be specific):

_____

_____

Actual or Perceived Bias – Victim's Statement:

☐ Actual bias [Victim actually has the indicated characteristic(s)].

☐ Perceived bias [Suspect believed victim had the indicated characteristic(s)].

If perceived, explain the circumstances in narrative portion of Report.

Reason for Bias:

Do you feel you were targeted based on one of these characteristics?
☐ Yes ☐ No *Explain in narrative portion of Report.*

Do you know what motivated the suspect to commit this crime?
☐ Yes ☐ No *Explain in narrative portion of Report.*

Do you feel you were targeted because you associated yourself with an individual or a group?
☐ Yes ☐ No *Explain in narrative portion of Report.*

Are there indicators the suspect is affiliated with a Hate Group (i.e., literature/tattoos)?
☐ Yes ☐ No *Describe in narrative portion of Report.*

Are there Indicators the suspect is affiliated with a criminal street gang?
☐ Yes ☐ No *Describe in narrative portion of Report.*

Bias Indicators (Check all that apply):

☐ Hate speech ☐ Acts/gestures ☐ Property damage ☐ Symbol used
☐ Written/electronic communication ☐ Graffiti/spray paint ☐ Other: _____

Describe with exact detail in narrative portion of Report.

HISTORY

Relationship Between Suspect & Victim:

Suspect known to victim? ☐ Yes ☐ No
Nature of relationship: _____
Length of relationship: _____
If Yes, describe in narrative portion of Report

☐ Prior reported incidents with suspect? Total # _____
☐ Prior unreported incidents with suspect? Total # _____
Restraining orders? ☐ Yes ☐ No
If Yes, describe in narrative portion of Report
Type of order: _____ Order/Case# _____

WEAPONS

Weapon(s) used during incident? ☐ Yes ☐ No Type: _____
Weapon(s) booked as evidence? ☐ Yes ☐ No
Automated Firearms System (AFS) Inquiry attached to Report? ☐ Yes ☐ No

HATE CRIME CHECKLIST

EVIDENCE

Witnesses present during incident? ☐ Yes ☐ No Statements taken? ☐ Yes ☐ No

Evidence collected? ☐ Yes ☐ No

Photos taken? ☐ Yes ☐ No

Total # of photos: _____ D#: _____

Taken by: _____ Serial #: _____

Recordings: ☐ Video ☐ Audio ☐ Booked

Suspect identified: ☐ Field ID ☐ By photo ☐ Known to victim

OBSERVATIONS

VICTIM	SUSPECT
☐ Tattoos	☐ Tattoos
☐ Shaking	☐ Shaking
☐ Unresponsive	☐ Unresponsive
☐ Crying	☐ Crying
☐ Scared	☐ Scared
☐ Angry	☐ Angry
☐ Fearful	☐ Fearful
☐ Calm	☐ Calm
☐ Agitated	☐ Agitated
☐ Nervous	☐ Nervous
☐ Threatening	☐ Threatening
☐ Apologetic	☐ Apologetic
☐ Other observations: _____	☐ Other observations: _____

ADDITIONAL QUESTIONS (Explain all boxes marked "Yes" in narrative portion of report):

Has suspect ever threatened you? ☐ Yes ☐ No

Has suspect ever harmed you? ☐ Yes ☐ No

Does suspect possess or have access to a firearm? ☐ Yes ☐ No

Are you afraid for your safety? ☐ Yes ☐ No

Do you have any other information that may be helpful? ☐ Yes ☐ No

Resources offered at scene: ☐ Yes ☐ No Type: _____

MEDICAL

Victim	Suspect	
☐	☐	Declined medical treatment
☐	☐	Will seek own medical treatment
☐	☐	Received medical treatment

Authorization to Release Medical Information, Form 05.03.00, signed? ☐ Yes ☐ No

Paramedics at scene? ☐ Yes ☐ No Unit # _____

Name(s)/ID #: _____

Hospital: _____

Jail Dispensary: _____

Physician/Doctor: _____

Patient #: _____

Officer (Name/Rank)	Date
Officer (Name/Rank)	Date
Supervisor Approving (Name/Rank)	Date

Comm Center Manual 2018.pdf

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201 Admin Order.pdf

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DEPARTMENTAL ORDER

ADMINISTRATIVE ORDER #2010-001 **DATE ISSUED: 2/4/2010**

SUBJECT: ANNUAL PHYSICAL EXAMINATIONS

PURPOSE

The purpose of this Department Order is to direct the attendance and participation of specified employees in annual physical health examinations.

POLICY

Department employees shall attend and participate in work-related physical health examinations announced in this Order.

EFFECTIVE TERM

This Department Order shall remain in effect until this Order is rendered inoperative by the issuance of another order by the Chief of Police or, one year from the date of issuance.

PROCEDURES

Specified personnel are assigned to be present for and participate in an annual physical health examination at the medical facility designated by the Department.

Individual appointments have been made for assigned personnel based on work schedules and employee input. An employee who, for good reason, cannot participate as scheduled shall contact the Personnel and Training Bureau no later than 72 hours prior the appointment date to request rescheduling of the examination. An examination may be rescheduled only upon the approval of the Personnel and Training Bureau Lieutenant. Any employee not complying with this Administrative Order may be subject to discipline.

_____

Chief of Police

cc: All BPD Personnel

Police Equipment and Community Safety Ordinance Impact Statements

ACKNOWLEDGEMENTS

Thank you to the subject matter experts for helping author this report.

Officer Corey Bold –
Patrol Officer and chemical agent instructor

Officer Semir Muratovic –
Patrol Officer and Bomb Squad Technician

Officer Derek Radey –
Patrol Officer and less lethal coordinator/instructor

Lieutenant Kevin Reece –
Special Response Team Commander

Officer Scott Salas –
Patrol officer and Special Response Team high ground team leader

Lieutenant Jennifer Tate –
Traffic Lieutenant and defensive tactics instructor

Officer Jason Tillberg –
Department trainer and Department Armorer

Officer Sean Tinney –
Department trainer and Special Response Team member

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INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.020 of the ordinance mandates an impact statement for certain equipment that the Berkeley Police Department possesses. An impact statement is defined in section 2.100.020 (C) and is a publicly released written document that includes the following details for each equipment:

1) Description
2) Purpose
3) Fiscal cost
4) Impact
5) Mitigation
6) Alternatives
7) Third Party Dependence

An impact statement for each of the following equipment has been authored by subject matter experts in their respective fields:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM launcher
- Milkor LTL multi-launcher
- FN 303 Launcher & FN Pava rounds
- Oleoresin capsicum (OC spray)
- Chlorobenzylidene Malononitrile and Oleoresin capsicum (tear gas)
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/sound distraction device
- Long Range Acoustic Device (LRAD)
- 36” batons
- Mobile Command Vehicle
- Barret Model 99

The impact statements required by the City ordinance also fulfill the obligations set forth in Assembly Bill 481. Impact statements were compiled in this report in a

prioritized ranking for the Police Accountability Board to consider in determining the order in which to perform its review per the Police Equipment and Community Safety Ordinance.

M4 Rifle and Associated Ammunition

(1) **Description:**

A. **Background:**

The "M4" was developed and produced for the United States government by Colt Firearms and was based off of the original Armalite Rifle (AR) patent purchased by Colt in 1959. Although Colt owned the trademarked name of "M4", a number of other manufacturers offer M4-like firearms under various model names. The M4 and its variants fire 5.56×45mm NATO (and .223 Remington) ammunition, and are a gas-operated, magazine-fed firearm with a barrel length ranging from 11.5" to 16".

The current Berkeley Police Department (BPD) rifle ammunition used is the .223 Remington, a rimless, bottlenecked rifle cartridge. The round was developed in 1957 by Remington Arms and Fairchild Industries. The .223 Remington is considered one of the most popular cartridges and is currently used by a wide range of semi-automatic and manual-action rifles as well as handguns. While the military uses the similar 5.56x45 NATO cartridge, BPD uses the more common and often regarded civilian cartridge of .223 Remington for all training and duty uses.

Currently, BPD uses two different kinds of .223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. This is done for several reasons.

1. FMJ ammunition is cheaper to purchase. While many agencies use the same ammunition for training and duty use, the department saves a significant amount of money by using FMJ ammunition for training.
2. The observed performance between the two rounds is negligible for training purposes. Officers can use the FMJ ammunition in a training course and see no difference in operation and performance versus using 62 grain soft point duty ammunition.
3. The 62-grain soft point ammunition has been shown to have less over penetration and over travel compared to FMJ ammunition.

This means that rounds fired are less likely to hit unintended targets.

B. **Quantity:**
The Berkeley Department currently owns and maintains 96 rifles.

Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

C. **Capability:**
The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

D. **Lifespan:**
Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has

changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

E. **Use:**
Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

F. **How it Works:**
The M4 patterned rifle works the same as a majority of all modern firearms. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. As the bullet travels down the barrel, gas from the ignited powder also escapes from the muzzle. Some of that gas is recycled back into the chamber of the firearm which causes the firearm to cycle its action and load another bullet. From there the process repeats with each pull of the trigger.

The .223 Remington cartridge is made up of several parts, primarily the primer, casing, gunpowder, and bullet. The bullet is seated into the front or opening of the casing. Gunpowder is placed between the bullet and the interior of the casing and a primer is seated in the rear part of the casing. When the trigger of a firearm is pulled, it releases the hammer, which strikes the firing pin, driving it forward. The firing pin collides with the rear of the cartridge, where the primer is seated, which ignites the primer. The spark from the primer ignites the gunpowder. Gas converted from the burning powder rapidly expands in the cartridge. The expanding gas forces the bullet out of the cartridge and down the barrel with great speed. The rifling in the barrel causes the bullet to spin as it travels out of the barrel. The bullet's speed and escaping gases produce a "bang."

After the bullet exits the barrel, the spent casing which housed the bullet, gunpowder, and primer are ejected from the firearm.

(2) **<u>Purpose:</u>**
The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally

equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between $1,000 and $1,200 a piece, current rifles cost between $1,400 and $1,600. It should be expected that these prices will fluctuate and likely increase over time.

Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from $0.50 to $0.75 a round for training ammunition (55 grain) and $1.25 to $1.50 a round for duty ammunition (62 grain).

B. **Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See section B. above, these costs are determined based on the rifle's assignment.

E. **Training Costs:**

Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between $25 to $500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Typical round count for such classes range between 800 rounds and 1200 rounds per student. Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by a BPD firearm instructor which constitutes an additional 500 or so rounds per officer.

F. **Maintenance and Storage Costs:**
Maintenance costs vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between $3 and $30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between $150 and $300 per rifle.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. **Upgrade Costs:**
Upgrade costs and Maintenance cost are synonymous due to the consistent design and lack of changes of the rifle over the last 60 years. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing, those upgrade costs are unknown at this time.

(4) **Impact:**
The Berkeley Police Department is committed to preserving and protecting human life and welfare. The M4 patterned rifle, which fires the .223 Remington cartridge, is a superior firearm to stop a lethal threat compared to the issued pistols to police officers, in that officers equipped with this firearm shoot less rounds, fire more accurately, and are less likely to fire errant rounds. Highly volatile and violent incidents, such as a hostage situation, can be more safely and efficiently resolved with a rifle.

The M4 patterned rifle, and the accompanying .223 Remington cartridge it fires, is intended as a tool to increase the safety and welfare of citizens and officers alike. The M4 patterned rifle and .223 Remington cartridge, both inanimate objects, have zero impact on things such as civil rights or civil liberties of the public. Any abuses of authority or power would be the result of an individual who violates the Berkeley Police Department's policies, including state and federal laws.

(5) **Mitigations:**

Per Policy 300, "Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons."

(6) **Alternatives:**

There are no suitable alternatives to the M4 rifle for the intended purpose. The M4 rifle is a law enforcement standard across the US and other countries due to its reliability, ease of use, ease of maintenance, and increased accuracy over other options.

There are no suitable alternatives to the .223 Remington cartridge, as the current BPD M4 rifle is designed for that particular cartridge. The .223 Remington cartridge is a law enforcement standard across the US and other countries due to its reliability, availability, and increased accuracy over other options.

(7) **Third Party Dependence:**

Berkeley Police Department armorers are trained and capable to handle any and all issues related to the maintenance or repair of the M4 rifles. Additionally, BPD firearm instructors are fully certified by state and private training institutes to fully educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

All ammunition purchased by BPD, like all equipment, is dependent on Third Party vendors. Vendor stock and availability is outside BPD control or management. Once ammunition is purchased and in BPD custody there is no additional need for Third Party assistance.

Penn Arms 40mm Single Launcher

(1) **Description:**

A. **Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge

bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Penn Arms L-140 single shot launcher.

B. **Quantity:**
The Berkeley Police Department currently owns and maintains 20 Penn Arms less lethal launchers.

C. **Capability:**
The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

D. **Lifespan:**
The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

E. **Use:**
The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

F. **How it works:**
The Penn Arms 40mm single launcher is a double action, break open less lethal launcher. The launcher is capable of firing a single 40mm projectile. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than the FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The Penn Arms single launcher is a basic design making it easy to operate and maintain.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the

potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will almost always resolve a violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**
Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost $815.00 each.

B. **Cost of Use:**
Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. **Cost of Potential Adverse Effects:**
Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. **Annual and Ongoing Costs:**
See section B above

E. **Training Costs:**
Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

F. **Maintenance and Storage Costs:**
Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost $3 to $30.

G. **Upgrade Costs:**
There are no foreseeable upgrade costs. The Penn Arms single launcher has few working parts and is of a simple design.

(4) **Impact:**
The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but hopefully the minimal amount of force needed to safely resolve the incident.

The Penn Arms single launcher, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. This tool does not require officers to overcome a hostile crowd to stop a violent assault.

(5) **Mitigation:**
Per Policy 300, “In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.” All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, “Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved

projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

(6) **Alternative:**
This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) **Third Party Dependence:**
The Berkeley Police Department armorers are trained and capable of handling all issues related to the repair or maintenance of the Penn Arms single launcher. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

Milkor LTL Multi-launcher

(1) **Description:**

A. **Background:**
The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge

bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Milkor LTL multi-shot launcher.

B. **Quantity:**
The Berkeley Police Department currently owns and maintains 2 Milkor LTL less lethal launchers. One Milkor launcher is assigned to the Berkeley Special Response Team.

C. **Capability:**
The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

D. **Lifespan:**
The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

E. **Use:**
The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

F. **How it works:**
The Milkor LTL multi-shot launcher utilizes a spring actuated cylinder allowing it to fire 6 individual 40mm projectiles. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel. The spring assisted cylinder automatically turns and loads the next projectile.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The benefit to the Milkor LTL is its ability to provide a quick follow up less lethal application, if necessary. The Milkor holds 6 projectiles while the Penn Arms launcher only holds one. Reloading the Penn Arms single launcher can be time consuming and requires the officer to briefly change focus from the suspect to the reload procedure. The Milkor LTL on the other hand, allows the officer to maintain focus on the suspect and assess whether a follow up application is necessary. This ability is significant when the suspect is advancing, attempting to flee, or demonstrates a high pain compliance threshold.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer

time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will generally resolve the violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**
Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost $3950.00 each.

B. **Cost of Use:**
Cost for the Milkor LTL launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. **Cost of Potential Adverse Effects:**
Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. **Annual and Ongoing Costs:**
See section B above

E. **Training Costs:**
Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification

class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

F. **Maintenance and Storage Costs:**
Maintenance costs vary depending on use.

G. **Upgrade Costs:**
There are no foreseeable upgrade costs.

(4) **Impact:**
The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The Milkor LTL launcher, with its high level of accuracy and 6 projectile capacity, can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

(5) **Mitigation:**
Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons

and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

(6) **Alternative:**
This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) **Third Party Dependence:**
The Berkeley Police Department armorers are trained and capable of handling most issues related to the repair or maintenance of the Milkor LTL launcher. In the event of a catastrophic malfunction, the Milkor LTL will need to be sent to the manufacturer for repair. To date, there have been no significant repairs needed to the Milkor LTL. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for regular maintenance, repair, or instruction.

FN 303 and FN Pava Impact Projectile

(1) **Description:**

A. **Background:**
The FN 303 was developed in 2003 by Fabrique Nationale de Herstal as a less lethal option. The FN 303 is based on a concept developed by Monterey Bay Corporation. The development team consisted of designers and researchers from two paintball related companies. The FN 303 uses compressed air to propel a .68 caliber projectile similar to that of most manufactured paintball guns.

B. **Quantity:**
The Berkeley Police Department currently owns and maintains 8 FN 303 less lethal launchers.

C. **Capability:**
The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

D. **Lifespan:**
The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

E. **Use:**
The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

F. **How it works:**
An air reservoir attaches to the FN 303 through an air hose coupler and provides pressure through compressed air. When fired, the compressed air drives a piston that pushes the .68 caliber projectile through the barrel at approximately 280 feet per second. For comparison, the FN projectile is the size of a paintball and the velocity is the same as a commercially manufactured paintball gun.

The projectiles are 8.5 grams in weight and utilize a polystyrene fin stabilized body with a non-toxic forward payload to aid in stability and accuracy. The

projectile will deliver approximately 24-foot pounds of kinetic energy at the muzzle which is about double the kinetic energy of most paintball guns. Most paintballs have a mass of 3 grams while the FN 303 projectile has a mass of 8.5 grams which increases the kinetic energy produced.

Available projectiles are impact, impact + non-permanent marking, impact + permanent marking, and impact + PAVA (0.5% PAVA/Oleoresin Capsicum).

The impact + PAVA projectile is intended to be direct fired at an individual. In addition to delivering pain through kinetic energy upon impact, the PAVA projectile will deliver a secondary chemical irritant, which is the Oleoresin Capsicum (O.C.) payload. Oleoresin Capsicum generally causes irritation/burning at the application site, irritation to the eyes, and coughing. According to the National Institute of Health, the effects of O.C. power exposure tend to resolve on their own within 30 minutes.

Pain is highly subjective and other circumstances, such as heavy clothing, may render the impact ineffective. The application of a secondary chemical irritant may assist in gaining compliance and successfully resolving a potentially violent incident with the minimal amount of force necessary.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**
Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost $800.00 each.

B. **Cost of Use:**
Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. **Cost of Potential Adverse Effects:**
Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death. Only trained officers are authorized to use the FN 303.

D. **Annual and Ongoing Costs:**
See section B above

E. **Training Costs:**
Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the

venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

F. **Maintenance and Storage Costs:**
Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost $30 per kit.

G. **Upgrade Costs:**
The overall design of the FN 303 has changed little since its initial release in the early 2000s thus anticipated upgrade costs will be minimal.

(4) **Impact:**
The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The FN 303, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

(5) **Mitigation:**
Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of

these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

(6) **Alternative:**

This is the only piece of equipment that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the Berkeley Police Department.

Unlike the Penn Arms 40mm single shot and the Milkor LTL multi-shot launcher, the FN 303 is capable of propelling 15 projectiles before a reload is required. The 15 round magazine allows for a quick follow-up application should the situation warrant with an effective range of over 160 feet; compared to the Penn Arms 40mm single shot and the Milkor LTL multi-shot launcher's 100 feet. The FN303's smaller and faster projectiles also generally allow for a higher level of accuracy compared to the 40mm foam baton rounds. The FN 303 rounds is also capable of carrying payloads such as paint or PAVA (Oleoresin capsicum).

(7) **Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling regular maintenance and most repairs. In the event of a catastrophic failure, the device will be sent to the manufacturer for repair. To date there have been 2 devices that required manufacturer repair, both of which were under warranty.

Additionally, department firearm instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, most repairs, or instruction.

OC (oleoresin capsicum) Spray

(1) **Description:**

A. **Background:**

For the purposes of this portion of the Impact Statement, OC (Oleoresin capsicum) will be referred to in the spray form as opposed to the aerosol canister form. First Defense manufactures different sizes of OC sprays. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. Besides being effective on humans, OC based chemical agents usually work on animals as well. In a liquid form, OC can appear as a clear, amber, or heavy dark red solution depending on the manufacturer. It is mixed with several types of solutions which act as carriers.

B. **Quantity**:

Qty 23 – First Defense MK-9 OC spray (13- ounces)

Qty 178 – First Defense MK-3 OC spray (3 ounces)

Most of the MK-3 OC sprays are issued to and maintained by individual officers; however, a small amount of these sprays is stored in a secured equipment room as spares in case of damage or new personnel issue.

C. **Capability**:

The First Defense MK-3 OC sprays are standard issued to all police officers and are worn on the police officers' belt. It has an effective range of 10-12 feet. The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

D. **Lifespan**:
Aerosol products eventually lose pressure over time. The lifespan of both the MK-9 and MK-3 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

E. **Use**:
OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

F. **How it Works:**
A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, burning/stinging skin sensation, redness of the skin, irritation and burning of the nose, runny nose, salivation and burning sensation of the mouth, cough, gagging sensation, shortness of breath, temporary paralysis of the larynx (person unable to speak) and nausea (caused by shock, not the OC itself). A person may also feel disorientated, anxiety, and/or panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

(2) **Purpose:**
There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

(3) **Fiscal Cost:**

A. **Initial Cost**:
The MK-3 OC spray cost approx. $19 per unit and the MK-9 OC spray costs approx. $60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

B. **Cost of Use:**
The cost of each usage is unpredictable due to the unknown nature of crime, timelines of dangerous situations, and number of applications.

C. **Cost of Potential Adverse Effects:**
Adverse effects of improper use of OC spray are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**
See below cost of training.

E. **Training Cost:**
Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

F. **Maintenance and Storage Costs:**
The majority of the MK-3 OC sprays are either stored within the Police Department or with each sworn police officer while they conduct official duties. All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

G. **Upgrade Costs:**
No upgrades exist for this equipment as of this report.

(4) **Impact:**
The physical effects of being subjected to OC may significantly reduce an individual's aggressive behavior. Reports have shown that the use of OC can reduce the amount of officer and arrestee injuries due to its effectiveness. Chemists assigned to the FBI Forensic Science Research and Training Center report no long-term health risks associated with the use of OC. The use of the MK-3 or MK-9 OC spray can render a dangerous and violent situation safe without using a higher level of force.

(5) **Mitigations:**
Law Enforcement Officers attend a Police Officer Standard Training (POST) approved academy before they enter into a Field Training Program and continue their training. During this academy they are taught about OC, how to deploy it, its effects, and the decontamination process. They are also subjected to OC to physically feel the effects themselves. After the academy, each officer is issued a MK-3 OC spray which they

are to keep on their person while on duty. If deployed and when practical, medical personnel should be summoned for the affected person(s) per policy 303.
All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**
Alternatives to utilizing OC sprays are tools such as expandable batons, less lethal launchers, and/or physical body weapons. The rationale to use OC spray depends on the circumstances of each individual incident and the individual officer involved in the incident. As mentioned above, reports have shown that OC spray may significantly reduce an individual's aggressive behavior which can minimize the amount of force necessary to apprehend that subject. Per our Use of Force policy (Lexipol 300), we shall use the minimal amount of force possible during each incident, thus making OC spray a valuable option.

(7) **Third Party Dependence:**
There is no third-party dependence for the First Defense OC spray. Once they are purchased, they are secured in their designated locations within the Police Department or with sworn police officers while they conduct official duties.

Chlorobenzylidene Malononitrile and Oleoresin Capsicum

(1) **Description:**

A. **Background:**
Chlorobenzylidene malononitrile (CS):
Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily

temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

Oleoresin capsicum (OC):
For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

B. **Quantity:**
Inventory for CS canisters:
Qty 6 – 5230 CS Canisters
Qty 24 – 6230 CS Canisters
Qty 20 – 5230B CS Baffled Canister (flameless)
Qty 17 – 5231 CS Tri-Phaser Canisters
Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)
Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)
Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Inventory for OC canisters:
Qty 54 - 9440 OC Tear Ball
Qty 19 - 5440 OC Flameless
Qty 20 - 6340 OC Vaper

C. **Capability**:
CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

D. **Lifespan:**
CS and OC canisters expire in approximately 5 years.

E. **Use**:
Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

(2) **Purpose:**
There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

(3) **Fiscal Cost:**

A. **Initial Cost:**
The cost for CS canisters ranges from $20.00 to $39.00 per unit. The cost for OC canisters ranges from $36.00 to $44.00 per unit. The Berkeley Police Department prefers the use of the Combined Tactical Systems (CTS) chemical agents and we purchase them from LC Action Police Supply.

B. **Cost of Use:**
The cost of each proposed use is unpredictable due to the demand, unknown nature and timelines of dangerous crowd/riots situations, dangerous barricade situations, and hostage situations.

C. **Cost of Potential Adverse Effects:**
Adverse effects of improper use of OC and CS are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**
See below cost of training.

E. **Training Cost:**
When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor

the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

F. **Maintenance and Storage Costs:**
The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

G. **Upgrade Costs:**
No upgrades exist for this equipment as of this report.

(4) **Impact:**
BPD is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Law Enforcement, under Penal Code 12403.1, is able to lawfully purchase, possess, or use chemical agents in the discharge of their duties. CS and/or OC canisters have been prominently used to resolve dangerous barricaded suspect situations and violent crowd control/riot situations.

Berkeley Police officers are trained to utilize time and distance to de-escalate dangerous barricaded situations in order to resolve each incident with minimal the use of force (per Use of Force Policy 300). In some circumstances when all other options are exhausted, CS and/or OC can be inserted into the structure in which the barricaded suspect is, denying access to certain areas inside. Unless exigent circumstances arise, all attempts to evacuate the structure are made prior to any deployment. When CS and/or OC are deployed into a structure the suspect may be forced outside allowing the situation to resolve safely with no use further use of force.

CS and/or OC chemical agents can be utilized to create order in dangerous crowd control/riot situations that have demonstrated violence or destruction. During these incidents, typically a clear and direct warning has been given to the crowd to disperse before the chemical agents are deployed. The ability to disperse crowds from a distance limits injury to Police Officers as well as damage to critical structures.

(5) **Mitigations:**

Regarding the already mentioned impacts, the decision to utilize chemical agents (unless there are exigent circumstances) flows through the chain of command and ultimately makes its way to the Chief of Police and the City Manager. If there are exigent circumstances, the Field Commander makes the decision and then advises the Chief of Police as soon as practical. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

With these procedures incorporated in BPD's policies, this mitigates many potential negative impacts. Per Policy 428 – First Amendment Assemblies - The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agents, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed. Less-than-lethal munitions (40 mm CS impact rounds), chemical agents (including OC spray), and/or smoke shall only be deployed in crowd control situations as outlined in the Use of Force Policy. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

In addition to the mitigations in place, the Berkeley Police Special Response Team also receives annual training on the use of chemical agents, the effects, and the decontamination process. Per policy 303, when practical, medical personnel should be summoned for the affected person(s).

(6) **Alternatives:**

There are no direct alternatives for CS and OC. They are the industry's leading way to resolve barricaded suspects while reducing the likelihood of injury to the subject, community, and officers. Additionally, it is one of the only tools that allows officers to stop acts of violence or regain order during crowd control/riot situations. They are very distinct in nature and have direct purposes. The rationale to use CS or OC depends on the circumstances of each incident. The Berkeley Police Department shall use the minimal amount of force per our Use of Force Policy 300. The use of CS or OC allows the police personnel to maintain distance, giving officers more time to react and avoid a potential need for a higher level of force to safely resolve the situation.

(7) **Third Party Dependence:**
There is no third-party dependence for CS and OC chemical agents. Once they are purchased, they are secured in their designated areas and stay there until they are either used during incidents or training.

Remington 700 Rifle

(1) **Description:**

A. **Background**:
The Remington 700 is a series of bolt-action rifles designed in 1962 by the Remington Arms Company. The "700" designator is the generic name for multiple models of rifles with various parts, barrel lengths, stocks, etc. The Remington 700 rifle has long been used by law enforcement agencies and continues to be an industry standard for issued equipment. The Berkeley Police Department utilizes a custom Remington 700 action, chambered in the common .308-caliber round, with a 20" barrel and an Accuracy International chassis/stock. The rifle also includes a Nightforce 3-15x magnified optic and bipod.

BPD utilizes Hornady .308-caliber ammunition. This particular ammunition is specially designed for law enforcement applications due to its increased and consistent accuracy and performance.

B. **Quantity**:
The Berkeley Police Department Special Response Team (SRT) currently possesses six Remington 700 rifles, all configured in the same manner.

Currently, BPD has approximately 1,800 Hornady .308-caliber rounds. That quantity of ammunition fluctuates depending on supply from distributors and training schedules of those trained officers.

C. **Capability**:
The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

D. **Lifespan**:
The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

E. **Use:**
Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

F. **How it Works**:
The Remington 700 is a manually operated rifle. It requires the officer to physically maneuver a handle to expel a spent cartridge and to load another unspent round of ammunition in order to fire a second round. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The officer must then pull a handle attached to the bolt to the rear, ejecting the spent cartridge. The officer then pushes the bolt forward, which picks up another bullet from the magazine, and closes the chamber, making the rifle ready to fire again.

(2) **Purpose:**
This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

(3) **Fiscal Cost:**

A. **Initial Cost:**
The initial cost to purchase this rifle with its associated components is approximately $10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

B. **Cost of Use:**
Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on training.

C. **Cost of Adverse Effects:**
Adverse effects and improper usage of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**
If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

E. **Training Costs:**
The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately $20-dollars or $1 dollar per round.

F. **Maintenance and Storage Costs:**
Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. **Upgrade Costs:**
Upgrade costs and maintenance cost are synonymous due to the consistent design. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

(4) **<u>Impact:</u>**
The primary purpose of this rifle is to further SRT's goal of adding time and distance when dealing with a violent and dangerous individual(s). The rifle may allow SRT additional time by increasing the distance between law enforcement and the specific individual, thereby increasing the likelihood of a more peaceful resolution. Like all tools, it has a time and place for its intended operational efficacy.

(5) **Mitigations:**
Mitigating impacts from this tool's primary purpose is done through regular training. The training includes accuracy, decision making, scenarios, and various other training points. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**
The Remington 700 rifle is an industry standard tool used to deliver precision accuracy on an intended target. This tool can deliver accuracy and predictability through intermediate barriers like glass windows. It can be used at distances greater than any other tool currently possessed or authorized. No alternate tool or method would accomplish the same goal.

(7) **Third Party Dependence:**
These rifles are fairly simple in their design and operation. They do require regular maintenance which is commonly performed by each individual member. BPD Armorers are also capable of performing additional maintenance. If an issue arises which is beyond the scope of our Armorers we would seek professional assistance from the manufacturer. However, the need for this is very rare.

ReconRobotics Recon Scout XT

(1) **Description:**

A. **Background**:
The Recon Scout XT is a throwable micro-robot manufactured by ReconRobotics for use in law enforcement applications. The Recon Scout XT enables officers to obtain instantaneous video footage and audio within indoor or outdoor environments. Designed to withstand repeated drops onto concrete, the Recon Scout XT robot can be thrown into hazardous situations (hostage rescue, barricaded subjects, natural disasters, etc.) in order to allow officers to quickly and safely make informed decisions when seconds count.

B. **Quantity**:
The Berkeley Police Department has two Recon Scout XT throwable robots, both purchased in 2010.

C. **Capability**:
The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

D. **Lifespan**:
Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

E. **Use**:
The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

F. **How it Works:**
The Recon Scout XT robot has a cylindrical body with a finned-wheel at either end of its body, and is stabilized by a rubber "tail". It measures approximately 6 ½" wide, and each wheel is about 5" in diameter (fin to fin) and weights just over one pound (1.2 lbs.). The Recon Scout XT robot sends digital video and audio back to an Operator Control Unit (OCU; controller with a screen and joystick), which allows the officer to control the robot, which provides a live feedback containing audio and visual feeds. The Recon Scout XT robot does not record audio or video footage; there is no data storage capability.

(2) **<u>Purpose:</u>**
The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

(3) **<u>Fiscal Cost:</u>**

A. **Initial cost:**
The initial cost for the Recon Scout XT robot was about $12,500 per unit (2010 cost).

B. **Cost of Use:**
There is no "per use" cost of this equipment. The Recon Scout XT is powered by a rechargeable battery.

C. **Cost of Potential Adverse Impacts:**

The likelihood of adverse impacts due to the use of the Recon Scout XT robot is low – it is small, lightweight and is not likely to injure persons or damage personal property when deployed; however, there is a small chance that the Recon Scout XT robot might cause damage to personal property when deployed (thrown) into a structure. Due caution is used when it becomes necessary to throw, rather than place, the robot into a structure.

D. **Annual and Ongoing Cost**:
There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

E. **Training Cost:**
The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

F. **Maintenance and Storage Costs:**
There are no annual or storage costs.

G. **Upgrade Costs:**
There are no upgrades available at the time of this report.

(4) **<u>Impact:</u>**
The Recon Scout XT robot is used to safely gather information in situations where it may be dangerous to expose an officer, or officers, to gather the same information. Putting officers in such unknown, tense situations has the potential to create violent encounters, or otherwise place officers in unnecessary peril and danger that might otherwise be avoided by the use of a tool like the Recon Scout XT robot. The Recon Scout XT robot is not likely to have a negative impact on the welfare or safety of the public as its role is to gather real-time information during high-risk incidents such as hostage or potentially life-threatening situations. The Recon Scout XT robot is likely to improve the welfare and increase the safety of the public through its ability to gather real-time information and feed it back to police officers. The Recon Scout XT robot does not have the capability to record or store data.

(5) **<u>Mitigations:</u>**
The use of the Recon Scout XT robot is limited to sworn police officers, and guided by field supervisors (Lieutenants and Sergeants). Procedurally, the Recon Scout XT robot is used when exigent circumstances exist (hostage situation, barricaded subject, natural disaster

necessitating rescue, etc.) and real-time information is necessary to safely and effectively resolve the situation. The robot does not record or store data.

(6) **Alternatives:**
Unmanned aerial vehicles (UAV) are an alternative to robots such as the Recon Scout XT robot. However, the Berkeley City Council has prohibited the Berkeley Police Department from using UAVs. They are not constrained by obstacles on the ground and provide far superior perspective and situational awareness; at times, obstacles halt the Recon Scout XT robot's movement. There are several other robots on the market, however, the Recon Scout XT robot is compact, lightweight (weighing in at just over a pound), very maneuverable, and can easily be carried by an officer. It can also be introduced into structures by throwing it through any opening – an option not possible with other robot models.

(7) **Third Party Dependence:**
The Recon Scout XT robot does not currently rely on a third-party company or vendor for its use or maintenance. Should maintenance or parts be required beyond the scope of the members of the Berkeley Police Department, the robot would be sent to ReconRobotics for service.

Andros Remotec HD-1 Hazardous Duty Robot

(1) **Description:**

A. **Background:**
The Andros Remotec HD-1 Hazardous Duty Robot, hereinafter referred to as Remotec HD-1 robot, was designed to support a wide range of missions in demanding environments. The Remotec HD-1 robot is capable of lifting up to 125 pounds, tracked articulators stair climbing, and has an integrated Talisman radio system for a stronger radio wave connection between the controller and the robot.

Remotec has served explosive ordinance disposal units, hazardous materials units, and other first responders as a provider of mobile robotic systems for application into a variety of undesirable, hazardous and potentially life-threatening environments. The Remotec HD-1 robot allows individuals to approach hazardous devices to examine and manipulate the device without putting people in harm's way.

B. **Quantity:**
The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

C. **Capability:**
Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a

scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

1) A spike to break glass and access vehicles or homes with potential explosive devices inside
2) An X-ray mount in order to remotely X-ray suspected explosive devices.
3) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
4) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
5) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
6) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

D. **Lifespan:**
The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

E. **Use:**
Used to examine and possible destroy hazardous materials such as an explosive device.

F. **How it Works:**
The Remotec HD-1 robot is piloted by a bomb technician into a hazardous area to locate, examine, and render suspicious packages and explosive devices safe by utilizing a variety of attachable tools.

(2) **Purpose:**
The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

(3) **Fiscal Cost:**

A. **Initial Cost:**
Procured in 2008 for $214,496 including on-site training through a UASI Grant. (64,292-N.S.)

B. **Cost of Use**:
None. The robot is electric and operated through the City's electricity for charging.

C. **Cost of Potential Adverse Effects**:
The Remotec HD-1 robot interacts with inanimate objects. However, should it encounter a package that explodes, it could potentially destroy the robot and damage other property.

D. **Annual and Ongoing Costs**:
There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

E. **Training Costs**:
Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

F. **Maintenance and Storage Costs:**
Remotec offers occasional maintenance and upkeep workshops free of charge.

G. **Upgrade Costs:**
There are no costs for upgrades as the company has stopped manufacturing the robot and any applicable upgrades.

(4) **Impact:**
The Remotec HD-1 robot is used by the Berkeley Police Department Bomb Squad as a means to examine a potentially explosive device in order to keep the community safe. Since April 2020, the Berkeley Police Department Bomb Squad has responded to 14 incidents. The impact of the Remotec HD-1 robot has been to reduce and minimize the danger posed by calls of possible explosive devices to the Berkeley Police Department's Bomb Technicians.

(5) **Mitigations:**
The Remotec HD-1 robot is used in situations where a hazardous device exists. In these situations, the area is always evacuated in order to ensure community safety.

(6) **Alternatives:**
The Remotec HD-1 robot is 13 years old and there has been significant development in technology. There are several alternatives that are far superior than our current Remotec HD-1; Mark V-A1 robot developed by Remotec Andros, Caliber Flex developed by ICOR Technology, Digital Vanguard-S developed by Med-Eng and T7 and T4 developed by L3Harris Technologies. These are alternatives that have newer and better technology and capabilities than the Remotec HD-1 robot.

(7) **Third Party Dependence:**
Remotec representatives are the only ones used to diagnose and maintain complex issues on the robot that cannot be done in-house. Since it is proprietary technology, Remotec may void warranties on any repairs made by outside vendors or by untrained personnel. Therefore, all complex issues with the Remotec HD-1 robot must be repaired by Remotec.

Light/Sound Diversionary Device

(1) **Description:**

A. **Background**:
Light/Sound Diversionary devices also known as distraction device, flashbang, light/sound and noise/flash devices have been available for approximately 40 years and are a safe and effective tool for Law Enforcement (LE) to use during challenging tactical incidents. The device will be referred to a diversionary device throughout this document.

B. **Quantity:**
Qty 50 - CTS 7290 Diversionary Device

C. **Capability:**
When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

D. **Lifespan:**
The lifespan of the CTS 7290 Diversionary Device is 5 years.

E. **Use:**
The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

F. **How it Works:**
The main charge of a modern diversionary device typically contains flash powder which is sometimes called photoflash powder. Upon initiation, this chemical compound causes the device to deflagrate (not detonate). The powder mixture is

rapidly changed into gases that expand outward reaching upwards to 3,800 times the original volume of the charge itself. This process releases the desired effects of loud noise, bright light and the feeling of atmospheric pressure. Flash powder is typically made up of an oxidizer and some type of fuel. The oxidizer is needed to initiate and sustain the flash powder's rapid combustion. This is required since sufficient oxygen cannot be obtained from just the surrounding air.

(2) **Purpose:**

The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Diversionary Devices cost approximately $45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

B. **Cost of Use:**

The cost of each proposed use is unpredictable due to the unknown nature and timelines of dangerous barricade situations, critical incident, and hostage situations. The devices may be stored inside of the Police Department, in the Special Response Team Vehicle, or in the rescue vehicle. There are no additional storage costs. There are no associated costs for transporting, maintenance, training, or upgrades.

C. **Cost of Potential Advert Effects:**

Adverse effects of improper use of a diversionary device are not calculable. It could result in serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See below training cost.

E. **Training Cost:**
Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

F. **Maintenance and Storage Costs:**
The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

G. **Upgrade Costs:**
No upgrades exist for this equipment as of this report.

(4) **Impact:**
The Berkeley Police Department is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Diversionary Devices may be utilized in many situations to include potentially dangerous barricaded subject situations, hostage situations, and critical incidents. Some criteria considered prior to a deployment is dependent upon whether the suspect is a dangerous felon, causes a life-threatening situation and/or other unique incidents where it appears to be a reasonable method in which to resolve the situation. When deployed appropriately these devices can assist in safely apprehending suspects and resolving high risk critical incidents with minimal or no injuries to suspects and/or officers.

(5) **Mitigations:**
Since Diversionary Devices are considered low explosives, there are several protocols in place to mitigate possible negative results (i.e. minor or major injuries).

Only trained and qualified personnel are permitted to deploy diversionary devices; typically, members of the Special Response Team who receive constant training regarding the deployment, effects, and post deployment protocols.

Pre-deployment concerns are typically gathered and evaluated, such as:

- The number of people at a location and the individual location of suspects within the structure.

- Evaluation if there are children or elderly people present
- An evaluation of the suspect's mental and physical conditioning
- Evaluation of the building/room layout
- Possible combustible/flammable substances present
- Lighting conditions

When a diversionary device is deployed, the officer shall utilize a helmet, hearing protection, eye protection, body armor, and nomex (fire resistive) gloves.

If a diversionary device is used, a supervisor shall be notified, medical treatment/screening is conducted, and a collection of the deflagrated device is completed. Documentation utilizing the device serial number is recorded.

Per Policy 351 - Except in extreme emergencies (i.e., life-threatening situations), flash/sound diversionary devices shall not be used without prior authorization of the incident commander/on-scene supervisor. Whenever diversionary devices are carried by personnel in an actual situation or incident, that fact shall be noted in the after-action report or police report. In the event devices are deployed, the circumstances surrounding their deployment shall be fully described. The Chief of Police or his or her designee shall be responsible for reviewing any deployment of diversionary devices to ensure that policy was followed. Diversionary devices are registered by serial number with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Typically, the police department's purchase of new devices is reported directly (by case-lot serial numbers) to ATF by the device manufacturer via ATF Form 5. The National Firearms Act requires the police department to notify ATF upon the use/expenditure of diversionary devices. A Special Response Team member shall be responsible for submitting written notification to ATF when all devices listed on a single ATF form 5 have been used/expended.

(6) **Alternatives:**
A possible alternative to a diversionary device (flashbang) is the Tactical Electronic Distraction Device (T.E.D.D.) which emits 2600 lumen light and high pitched 120 decibel sound to disorientate subjects. This could be a good tool as it is not a low explosive however it has its negative aspects as well:

- There is no feeling of atmospheric pressure, limiting the desired momentary physiological effect.

- A suspect could pick up and throw the device at potential victims and at police officers. The currently used diversionary devices are too hot to attempt this.

- In certain circumstances, a suspect could potentially steal the device during an escape.

- The individual cost per unit is approx. $200 which is much more than a diversionary device

- This device is significantly less effective in disorienting subjects compared to a diversionary device.

(7) **Third Party Dependence:**
There is no third-party dependence for Diversionary Devices with the exception of communication with ATF of the purchase. Once they are purchased, they are secured within their designated locations where they are stored until they are either used during incidents or training.

Long Range Acoustic Device (LRAD)

(1) **Description:**

A. **Background:**
The Long-Range Acoustic Device (LRAD) is a high intensity directional acoustical array for long range, crystal clear notification system. The use of the LRAD is for communications.

B. **Quantity:**
The Berkeley Police Department possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

C. **Capability:**
Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It

has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

D. **Lifespan:**
The lifespan for both LRADs is 25 years.

E. **Use:**
The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

F. **How it Works:**
The LRADs are essentially a long-range speaker or long-range megaphone and operates as such.

(2) **Purpose:**
The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

(3) **Fiscal Cost:**

A. **Initial Cost:**
The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was $49,999.

B. **Cost of Use:**
There is no cost associated with each use of the LRADs. The systems run on batteries or can plug into a vehicle.

C. **Cost of Potential Adverse Effects:**
Adverse effects of improper use of the LRADs are not calculable. It could lead to hearing loss. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**
BPD has not incurred any additional cost to date for this equipment.

E. **Training Costs:**
Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

F. **Maintenance and Storage Costs:**
There are no maintenance or storage costs for this equipment.

G. **Upgrade Costs:**
No upgrades exist for this equipment as of this report.

(4) **Impact:**

The Berkeley Police Department is committed to ensuring the safety of our community. Having the ability to communicate efficiently and effectively in different situations is crucial in providing potentially life-saving information to the public. The LRAD provides BPD personnel the ability to communicate long distances to people that are in a given area, inside structures, or barricaded inside a structure. The LRAD is very effective any situation involving communicating information to large crowds, or entire communities.

(5) **Mitigations:**
The only potential negative impact of the LRAD's is that they are capable of producing a high pitched "deterrent tone" that is designed to disperse a potential threat. This "deterrent tone" does have the ability to cause hearing damage. BPD Policy 707 strictly prohibits any member of BPD from using the LRAD as a weapon. Additionally, the LRAD can only be deployed at the direction of a Watch Commander or Incident Commander and may only be used by personnel specifically trained in the use of the LRAD.

(6) **Alternatives:**
BPD is not aware of any other sound speakers that are able to clearly communicate over long distances of up to 1 mile.

(7) **Third Party Dependence:**
To date, BPD has not depended on any third party for the use or maintenance of this equipment.

36" Baton

(1) **Description:**

A. **Background:**
The Berkeley Police Department issues a knurled grip, polycarbonate, fixed-length straight baton for crowd control purposes. The baton is 36" long and 1.25" in diameter and weighs about 1.64 pounds. Polycarbonate is a thermoplastic, which means it is durable, resistant to splintering and heat.

B. **Quantity:**
In 2017, BPD purchased 175 polycarbonate 36" batons to replace aging wood batons of the same purpose. Additional polycarbonate batons were purchased over the past four years to ensure all sworn police officers as well as trained reserve police officers are equipped with the 36" baton. BPD possesses approximately 195 - 36" polycarbonate batons. Most of these batons are issued to and maintained by individuals. However, a small amount of these batons is stored in a secure equipment room as spares in case of damage or new personnel issue.

C. **Capabilities:**
The 36” baton is carried in a “baton ring” on an officer’s belt just as any other baton. It is used as a safety tool and is a means for officers to defend themselves in certain crowd control or riot situations. Trained officers may employ particular applications of force with their 36” batons when directed by their chain of command. The 36” baton is the desirable baton in a crowd control situation as it is 7” longer than the standard 29” baton. The longer baton creates more distance between the officer and others, which is critical when dealing with violent or aggressive crowds.

D. **Lifespan:**
The manufacturer provides a lifetime repair or replacement guarantee.

E. **Use:**
The 36” baton is a less-lethal force tool and is intended to be used in crowd control situations in close quarters, where officers may defend an attack, or when engaging in physical contact with combative or aggressive crowd members. The 36” baton is only used for crowd situations.

F. **How it Works:**
There are a number of appropriate blocking or striking techniques an officer may use when force is justified and the decision is made to use the 36” baton to effectively gain control of a person or situation. The use of the baton requires the officer to continually monitor and assess effectiveness of any delivered strikes. The reason this type of force is administered is to stop a person’s attack, threat or resistance, with the goal to place them under lawful arrest for their actions.

(2) **<u>Purpose:</u>**
The 36” baton is a less-lethal tool that may be used when a crowd becomes aggressive, hostile or violent. It is the most effective individual tool of choice when officers are in formation and engaged in crowd control duties.

When officers are deployed to maintain, disperse, or protect others from a violent crowd or civil disobedience, it is imperative that they have an adequate safety zone to protect themselves or others. The 36” baton provides officers additional distance from a potential threat than the standard issue 29” baton.

When the baton is used to strike a subject, kinetic energy transfer occurs. Kinetic energy is the energy of motion. The amount of translational kinetic energy which an object has depends upon two variables: the mass of the object and the speed of the

object. The desired effect is for the officer to apply a baton strike with the necessary energy to stop the threat as quickly and safely as possible. By targeting the large muscle areas of the arms or legs with sufficient kinetic energy, motor and sensory nerves can be affected. When the nerves are affected this will create momentary muscle dysfunction or pain, which will allow the officer the ability to gain control of the subject, while minimizing the possibility of long-term injury to the subject.

The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person as outlined in policy 303 and 300.

(3) **Fiscal Cost:**

A. **Initial Cost:**
The cost of the Monadnock MP36 2004 36" polycarbonate baton with knurled grip was $53.00 per baton in September 2017. After tax, $10,132.94 was spent for the purchase of 175 batons. The department placed an additional order for 20 batons in December 2019. It is anticipated that the cost of the baton will fluctuate a few dollars based on supply and demand over time.

B. **Cost of Use:**
The only cost associated with use that of ongoing departmental training to ensure officers are proficient in authorized baton techniques.

C. **Costs of Potential Adverse Impacts:**
Adverse effects from improper use of the 36" baton cannot be anticipated. Improper use could lead to serious bodily injury or death. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**
There is no additional annual or ongoing cost associated with the 36" baton.

E. **Training costs:**
Training on the applications of the batons are conducted at the police academy. Police Office Standard Training (POST) requires "arrest and control" training every 2 years which includes portions of baton training. This training is conducted in-house by POST certified defensive tactics instructors.

F. **Maintenance and Storage Costs:**
There are no associated costs to transporting, maintenance, or upgrades.

G. **Upgrade Costs:**
No upgrades exist for this equipment as of this report.

(4) **Impact:**
Per Policy 300, "The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. The Department is committed to accomplishing this mission with respect and minimal reliance of the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force."

At times, it may become necessary for police officers to use force in crowd control situations to move a crowd, stop violent behavior, overcome resistance or make a lawful arrest. Officers have been trained that they must do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public. When deemed necessary, use of the 36" baton may be used as a tool to strike a person, create a barrier or used in formation in order to move a crowd in a certain direction. The use of the baton may cause discomfort, pain, blunt trauma and has the potential to cause serious injury. Their use is subject to the totality of the circumstances, proper training, department policy, as well as federal and state law.

Officers who use the 36" baton are trained to continuously assess each situation where force is used and only use the force that is reasonably necessary and proportional to respond to the threat or resistance to effectively and safety resolve the incident.

(5) **Mitigations:**
Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict."
Per Policy 303, "Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device. Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices. When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets."

Every officer who carries a 36” baton has been trained how to properly carry the equipment, it’s intended use, target areas and non-target areas. Large muscle groups such as the upper legs or lower abdomen are approved target areas and areas to be avoided at the groin and head. When a baton strike is directed at an intended target area and the subject moves simultaneously, it is possible for the officer to unintentionally strike a non-target area. Officers are trained to consider the placement of baton strikes, and to immediately render medical aid to the subject as soon as it is safe to do so.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**
The alternatives to the 36” crowd control baton are the 29” standard issue baton and collapsible 26” Rapid Containment Baton (RCB). The standard issue baton and RCB are shorter in length and require officers to be closer to the person they are engaging, thereby increasing the risk of injury to the officer and the person. A longer baton provides an officer with more distance which creates a small safety zone and allows the officer time to react and access the situation before making use of force decisions.

(7) **Third Party Dependence:**
There is no requirement for a third-party service provider to issue the 36” crowd control baton. Berkeley Police Department Defensive Tactics Instructors provide in-house training on the proper use of the baton.

Mobile Command Vehicle

(1) **Description:**
A. **Background**
The Berkeley Police Department owns one Mobile Command Vehicle (MCV). Our MCV is a 2003 Freightliner MT55. This vehicle’s most common use is as a commercial delivery vehicle. Our 2003 Freightliner MT55 was converted into a MCV by adding desktop work stations, additional police radios and emergency lighting. The MCV is 30’ long and has a gross vehicle weight (GVW) of approximately 23,000 pounds.

B. **Quantity:**
The Berkeley Police Department owns 1 MCV.

C. **Capability**:
The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

D. **Lifespan:**
This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

E. **Use:**
This vehicle is used as a mobile command post for large scaled events.

F. **How it Works:**
This vehicle operates and drives like other vehicles.

(2) **Purpose:**
This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4th of July, critical incidents or natural disasters.

(3) **Fiscal Cost:**

A. **Initial cost:**
The initial cost of the MCV (2003 Freightliner MT55) was $230,800.

B. **Cost of Use:**
The cost of use is the cost of fuel from the City Corporation Yard.

C. **Cost of Potential Adverse Effects:**
Adverse effects of improper use of the MCV are not calculable, but is the same as improper use of any vehicles. The improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**
There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

E. **Training Costs:**
Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

F. **Maintenance and Storage Costs:**
There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

G. **Upgrade Cost:**
The MCV is almost 20 years old and upgrades would involve replacing different parts of the vehicle. This work would be conducted by the City of Berkeley's Corporation Yard. The cost would be staff time plus the cost of any necessary parts.

(4) **Impact:**
The MCV is used as a command post for any large scaled event. It works as a mobile central location where resources can stage and be deployed from. It provides the police department with on-site command, supplying a control and communications hub that is needed for large community events, or critical incidents such as natural disasters in order to maintain public safety.

(5) **Mitigations:**
The MCV shall only be operated by trained personnel that have demonstrated proficiency in the operations of this vehicle per Berkeley Police Department Policy 811.

(6) **Alternatives:**
The MCV is almost 20 years old. Current MCV from other agencies are large mobile homes converted into MCVs.

(7) **Third Party Dependence:**
All maintenance is completed through the Cities Corp Yard so there is no dependence on a third party.

Barrett Model 99 Rifle

(1) **Description:**

A. **Background:**
The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle first

introduced in 1999. It is intended to be used in emergency situations where there is a high potential for violence.

B. **Quantity**:
Berkeley Police Department Special Response Team (SRT) currently possess 1 (one) of these rifles and is not looking to purchase any others.

Currently BPD has approximately 100 Summit Ammunition .50-caliber BNG rounds.

C. **Capability:**
This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

D. **Lifespan**:
This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

E. **Use**:
This rifle is used primarily in emergency situations where a life-threatening situation exists, necessitating a vehicle to be disabled.

F. **How it Works:**
This is a bolt-action rifle that fires one round at a time and needs to be reloaded by hand after each round. The Barrett Model 99 rifle works similar to all modern bolt-action rifles. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The operator pulls the bolt back, ejecting the spent cartridge. The operator then loads another bullet into the breach, pushes the bolt forward, and closes the chamber, making the rifle ready to fired again.

(2) **<u>Purpose:</u>**
The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore,

these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

(3) **Fiscal Cost:**

A. **Initial Cost:**
The Barrett Model 99 50-caliber rifle has a retail cost of approximately $12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

B. **Cost of Use**:
The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately $6 dollars per bullet; $60 for a box of 10 and $600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

C. **Cost of Potential Adverse Effects:**
Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**
The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

E. **Training Costs**:
The cost associated with training is the staff time, range fees, and cost of spent ammunition.

F. **Maintenance and Storage Costs:**
Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. **Upgrade Costs:**
Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

(4) **Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The Barrett rifle is a firearm the department would primarily use to stop a vehicle which poses a lethal threat to the public or used to disable a vehicle that presents a threat to the safety of another person(s) by its continued use.

The Barrett rifle is intended as a tool to increase the safety and welfare of community members and officers alike.

The Barrett rifle has minimal or no impact on civil rights or civil liberties as it will only be deployed in very specific situations, by very select members of the SRT. This is not a piece of equipment that is carried by an officer on routine patrol, and is highly unlikely that any members of our community would ever see this equipment due to its very selective use in the most critical of instances.

(5) **Mitigations:**

Only four BPD members are authorized to utilize this rifle. Authorized members are trained in its use as well as the very specific and limited circumstances where this equipment would be utilized.

(6) **Alternatives:**

There is no other alternative tool or asset available that could accomplish the same goal of this rifle. An alternative rifle to the Barrett model 99 is a different rifle of equal capability, such as a Lapua .338 caliber rifle.

(7) **Third Party Dependence:**

These rifles are simple in their design and operation. They do require regular maintenance which is performed by an SRT Team Leader. If an issue arises which is beyond the scope of our Armorers we would seek manufacturer assistance. However, the need for this is expected to be very rare.

Appendix:

Applicable Lexipol Policies Respective to Each Equipment

M4 rifle/Patrol Rifle

- Policy 300 (Use of Force)
- Policy 349 (Tactical Rifle Operator Program)

Penn Arms 40MM launcher

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

Milkor LTL multi-launcher

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

FN 303 Launcher & FN Pava rounds

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

Remington 700 Rifle

- Policy 300 (Use of Force)
- Policy 354 (Precision Rifle)

ReconRobotics Recon Scout XT Robots & Andros Remotec HD-1 Hazardous Duty Robot

- Policy 708 (Robot Cameras)

Light/Sound Diversionary Device

- Policy 353 (Diversionary Device)

Long Range Acoustic Device

- Policy 707 (Long Range Acoustical Device)

36” batons

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)
- Policy 428 (First Amendment Assemblies)

Mobile Command Vehicle

- Policy 811 (Mobile Command Vehicle (MCV))

Barret Model 99

- Policy 300 (Use of Force)
- Policy 354 (Precision Rifle)

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