

Police Review Commission (PRC)

## POLICE REVIEW COMMISSION REGULAR MEETING

**Wednesday, March 10, 2021, 7:00 P.M.**

### **PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting of the City of Berkeley Police Review Commission will be conducted exclusively through teleconference and Zoom videoconference and there will not be a physical meeting location available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/87070468124>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial 1 669 900 6833 and enter Meeting ID 870 7046 8124. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized.

### **AGENDA**

1. **CALL TO ORDER & ROLL CALL** (5 minutes)
2. **APPROVAL OF AGENDA** (5 minutes)
3. **PUBLIC COMMENT** (time TBD)

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the PRC's jurisdiction at this time.)*

4. **APPROVAL OF MINUTES** (5 minutes)
  - a. Regular meeting of February 24, 2021.
  - b. Special meeting of March 2, 2021

The Police Review Commission (PRC) was created to provide independent civilian oversight of the Berkeley Police Department. It reviews and makes recommendations on police department policies, and investigates complaints made by members of the public against police officers. For more information, contact the PRC Office.

1947 Center Street, 1st Floor, Berkeley, CA 94704 • Tel: (510) 981-4950 • TDD: (510) 981-6903 • Fax: (510) 981-4955  
Email: [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info) Website: [www.cityofberkeley.info/prc/](http://www.cityofberkeley.info/prc/)

**5. CHAIR'S REPORT**

Report from Chair Ramsey. (5 minutes)

Update from Comm. Mizell on Reimagining Public Safety Task Force. (2 minutes)

**6. PRC OFFICER'S REPORT (3 minutes)**

Status of complaints; other items.

**7. CHIEF OF POLICE'S REPORT (10 minutes)**

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

**8. SUBCOMMITTEE REPORTS (discussion and action) (5 minutes)**

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

- a. Warrant Service Policy Subcommittee – met March 2.
- b. Outreach Subcommittee – report on webinar for public, March 13 at 4:00 p.m.
- c. Lexipol Policies Subcommittee – update.
- d. Use of Force Policy Subcommittee – consider dissolving subcommittee.

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

- a. Police Department response to request to memorialize in a written policy the instructions agreed to on inquiring about supervised release status of detainees, and when searches of such persons are allowed: review revised Policy 311. (10 minutes)
- b. Update on transition to new Police Accountability Board and Office of Director of Police Accountability, including: (10 minutes)
  - i) Applications for Board members now available; due date extended to March 29.
  - ii) Continue discussion about development of rules and regulations governing the operation of the incoming Police Accountability Board, with input from the PRC and the community.
- c. Review commendations of BPD employees and consider additional commendations from the PRC. (15 minutes)
  - i) Re-review commendations on pp. 25 - 27 (of Feb. 24, 2021 packet), in light of additional information obtained about officers' roles.
  - ii) New nominations for commendations  
(See materials in Feb. 24, 2021 packet, pp. 25 – 162.)

**10. NEW BUSINESS (discussion and action)**

a. Lexipol Policies for review and approval: (10 minutes)

| Lexipol # | G.O. (if any) | Title                    |
|-----------|---------------|--------------------------|
| 431       |               | Medical Aid and Response |
| 434       | A-31,<br>A-32 | Animal Control           |

From: Lexipol Subcommittee

b. Consider amending the PRC Standing Rules, Section P, regarding Commendations of Berkeley Police Department Personnel. (20 minutes)

i) Add a new criterion in Subsection 4 for issuing commendations, to read as follows:

d) *Extraordinary compassion, empathy or kindness.*

From: Commissioner Leftwich

ii) In Subsection 6, regarding handling of PRC's actions, add language to the effect that the PRC's letters of commendation be forwarded to the City Council as communications.

From: Commissioner Ramsey

**11. PUBLIC COMMENT (time TBD)**

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)*

**12. ADJOURNMENT (1 minute)**

**Communications Disclaimer**

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary via email for further information. City offices are currently closed and cannot accept written communications in person.

**Communication Access Information (A.R. 1.12)**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

**SB 343 Disclaimer**

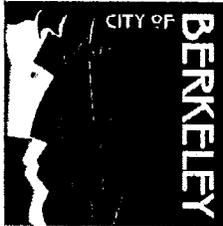
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public by being posted on the Police Review Commission's web page within three business days of the meeting.

Contact the Police Review Commission at [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info).

**PRC REGULAR MEETING ATTACHMENTS  
MARCH 10, 2021**

|   |         |
|---|---------|
| <b><u>MINUTES</u></b>   |         |
| February 24, 2021 Regular Meeting Draft Minutes.  | Page 7  |
| March 2, 2021 Special Draft Minutes   | Page 13 |
| <b><u>AGENDA-RELATED</u></b>  |         |
| <b>Item 8.</b> – PRC Subcommittees List, updated 2-16-21.   | Page 17 |
| <b>Item 9.a.</b> – 3-2-21 Email from the PRC Officer to the BPD Chief re Policy 311, Search and Seizure.  | Page 19 |
| <b>Item 10.a.</b> – BPD Policy 431, Medical Aid and Response.   | Page 21 |
| <b>Item 10.a.</b> – BPD Policy 434, Animal Control.   | Page 27 |
| <b>Item 10.a.</b> – 4-28-06 BPD General Order A-31, Animal Bite Investigations.   | Page 31 |
| <b>Item 10.a.</b> – 4-28-06 BPD General Order A-32, Lost and Found Animal Reports.  | Page 33 |
| <b>Item 10.b.</b> – Standing Rules, Section P. Commendations of Berkeley Police Department Personnel.   | Page 41 |
| <b><u>COMMUNICATIONS</u></b>  |         |
| BPD Policy 300, Use of Force, dated 2-22-2021.  | Page 43 |
| 2-23-21 Annotated Agenda-Special Meeting of the Berkeley City Council. Report and Recommendations from Mayor’s Fair and Impartial Policing Working Group. | Page 61 |
| BPD PowerPoint Presentation to City Council at Feb. 23, 2021 Special Meeting.   | Page 67 |
| 2-24-21 New York Times article: Berkeley moves Closer to Ending police Traffic Stops.   | Page 77 |
| 3-1-21 Revised Agenda Material submitted by Councilmember Harrison re Police Equipment and Community Safety Ordinance.                                    | Page 79 |
| 2-26-21 Letter from Captain J. Louis to PRC Officer Katherine Lee re: Public Records Act Request Received Feb. 26, 2021.                                  | Page 89 |





Police Review Commission (PRC)

DRAFT

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

**Wednesday, February 24, 2021, 7:00 P.M**

**No physical location; meeting held exclusively through videoconference and teleconference.**

**1. CALL TO ORDER & ROLL CALL BY CHAIR RAMSEY AT 7:00 P.M.**

**Present:** Commissioner Ismail Ramsey (Chair)  
Commissioner Michael Chang (Vice-Chair) (arrived 7:06 p.m.)  
Commissioner Gwen Allamby  
Commissioner Kitty Calavita  
Commissioner Juliet Leftwich  
Commissioner Elisa Mikiten  
Commissioner Nathan Mizell  
Commissioner George Perezvelez

**Absent:** Commissioner Hans Moore

**PRC Staff:** Katherine J. Lee, PRC Officer

**BPD Staff:** Lt. Robert Rittenhouse

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda.**

**Moved/Second (Calavita/Allamby) Motion Carried by general consent**

**3. PUBLIC COMMENT**

There was 1 speaker.

**4. APPROVAL OF MINUTES**

**Motion to approve Regular Meeting minutes of February 10, 2021**

**Moved/Second (Allamby/Calavita) Motion Carried by general consent.**

## 5. CHAIR'S REPORT

Chair Ramsey reported:

-- Mayor's Working Group on Fair and Impartial Policing: He and Comms. Calavita and Mizell, who were members of the group, along with Mansour Id-Deen, made a presentation to City Council yesterday. The Working Group's recommendations to address disparities in stops, use of force, and searches were approved unanimously. Press coverage in NY Times (Comm. Mizell quoted), SF Chronicle; and Daily Cal. Culmination of 18 months of work which included the BPD. While BPA issued a statement opposing the recommendations; they declined a seat on the Working Group and did not attend its meetings.

-- Comm. Mizell reported on the Reimagining Public Safety Task Force. First meeting was Feb. 18; he was selected temporary chairperson. Primary tasks of first meeting was introductions and choosing 3 people from 18 applicants to recommend to Council for at-large positions. Selected Alex Diaz, Frances Ho, and Liza Lutzker. At next meeting (date to be determined); Auditor will present on 911 analysis; Public Works Director to report on BerkDOT, and will go over contract with NICJR.

## 6. PRC OFFICER'S REPORT

The PRC Officer reported:

-- No new complaints filed since the last meeting. Mediation in one case concluded last Friday. Last active case scheduled for a Board of Inquiry a week from Friday.

-- Congratulations to Chair Ramsey and Comms. Calavita and Mizell for their work on the Working Group. Impressed by depth and breadth of report. Will send annotated agenda with recommendations when ready. Several items referred to PRC and/or Police Accountability Board. (Chair Ramsey added thanks to Mayor's aide, Tano Trachtenberg, for his work in organizing the Working Group.)

-- Council Public Safety Policy Committee will meet March 1, and Controlled Equipment Ordinance should be on agenda.

## 7. CHIEF OF POLICE'S REPORT

Lt. Rittenhouse reported on behalf of Chief Greenwood:

-- Policy 300 [Use of Force] went into effect 6:00 a.m. Monday. BPD's webpage of policies has been updated to include Policy 300, and General Order U-2 removed. Responding to staff concerns, trainers formulated full-day scenario trainings with role-playing, preceded by 2-hour refresher trainings via Zoom. Establishing process to address concerns in future. Incorporating policy review in force training, like defensive tactics and firearms training. Also capturing time spent by supervisors in using new software to report UOF, to better examine impact of policy on supervisors' time.

-- Staffing remains dire at 159 sworn officers. Anticipate further losses to come. Do have working group addressing this.

- Chief was busy preparing for Special Council meeting on fair & impartial policing. He can share his PowerPoint presentation.
- Currently focused on the departmental budget and meeting budgetary goals.

Lt. Rittenhouse answered questions from Commissioners.

## **8. SUBCOMMITTEE REPORTS (discussion and action)**

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

- a. Warrant Service Policy Subcommittee – Subcommittee Chair Ramsey reported: Met Feb. 22, when Prof. Christy Lopez spoke and answered questions. Have now heard from 3 experts. Will now move into discussing policy and drafting recommendations.
- b. Outreach Subcommittee – Subcommittee co-chair Calavita reported they just met. Primary goal to help increase the width and depth of Police Accountability Board membership. Hector Malvido idea to host a webinar. Have compiled lengthy list of community groups to invite. May involve the Mayor. Possible date Sat., March 13. Co-chair Mikiten reported she has developed spreadsheet of organizations. Investigator Norris to circulate to commissioners so they can add others, Next meeting Monday, March 1.
- c. Lexipol Policies Subcommittee – (Discussed following Item 9.a.) Currently no chair. Comm. Mikiten has studied the list: about 184 policies; PRC has approved 112. Of remaining 72, 20+ are in the BPD's court. 48 remaining for Subcommittee; 3 ready for PRC. Propose subcommittee have 4 more meetings and review 12 each meeting. PRC Officer to schedule.

## **9. OLD BUSINESS (discussion and action)**

- a. Police Department response to request to memorialize in a written policy the instructions agreed to on inquiring about supervised release status of detainees, and when searches of such persons are allowed: review revised Policy 311.

(Discussion begun and to be continued when Chief Greenwood is able to attend.)

- b. Update on transition to new Police Accountability Board and Office of Director of Police Accountability, including:
  - i) Applications for Board members now available; due date March 22.
  - ii) Continue discussion about development of rules and regulations governing the operation of the incoming Police Accountability Board, with input from the PRC and the community.

PRC Officer gave an update and answered questions.

## 10. NEW BUSINESS (discussion and action)

- a. Review commendations of BPD employees and consider additional commendations from the PRC.

(All references to page numbers are to the agenda packet.)

**Motion to commend Officer Ruff for exception valor in saving the life of a man who had overdosed on suspected fentanyl. (p. 29.)**

Moved/Second (Allamby/Ramsey) **Motion Carried by general consent.**

**Motion to commend Officer Turney for heroism, in using his intuition to discern why the father, whose child was the subject of an attempted kidnapping, did not wish to re-contact the police after making an initial report. (pp. 35-36.)**

Moved/Second (Mikiten/Perezvelez) **Motion Carried**

Ayes: Calavita, Chang, Leftwich, Mikiten, and Perezvelez.

Noes: Allamby, Ramsey, Mizell Abstain: None Absent: Moore

**Motion to commend Officer Melowitz for bravery and heroism in advancing towards where he heard shots fired and managing to detain 7 suspects by himself, and for his follow-up in the investigation. (pp. 39-40.)**

Moved/Second (Mikiten/Calavita) **Motion Carried by general consent.**

**Motion to commend Officer Ludovico for heroism, as he followed trail of blood to locate a stabbing victim and saved his life; also for superior handling of a difficult situation, as he calmed the victim's traumatized son. (p. 51)**

Moved/Second (Mikiten/Allamby) **Motion Carried by general consent**

**Motion to commend Officers Ren, Ramsey, and Gordon for actions going beyond the call of duty in saving the life of a man suffering from a drug overdose. (pp. 83-84.)**

Moved/Second (Allamby/Perezvelez) **Motion Carried by general consent.**

**Motion to commend Officers Waggoner and White for exceptional bravery in responding to a burglary in-progress, seeing 15 suspects flee, and engaging in a struggle in an attempt to physically detain a suspect. (p. 88.)**

Moved/Second (Mikiten/Perezvelez) **Motion Carried by general consent**

**Motion to commend Officer Perry for actions above and beyond typical duties in diligently pursuing a hate crime investigation; she conducted extensive interviews and followed up with the victim numerous times. Diligence. (p. 105)**

Moved/Second (Chang/Mikiten) **Motion Failed**

Ayes: Chang, Mikiten, Perezvelez.

Noes: Allamby, Calavita, Leftwich, Mizell, Ramsey

Abstain: None Absent: Moore

**Motion to commend Officer DeBruin for going above and beyond typical duties with his exceptional management of a violent person in an active mental health crisis at Alta Bates hospital. (p. 109.)**

**Moved/Second (Chang/Allamby) Motion Carried**

**Ayes: Allamby, Calavita, Chang, Mikiten, Perezvelez.**

**Noes: Leftwich, Mizell, Ramsey Abstain: None Absent: Moore**

**Motion to commend Officer Turney for actions above and beyond the call of duty, as well as heroism, in bringing a person in severe mental health distress to safety, avoiding harm to himself and the subject, and following up with the man's parents and District Attorney's office. (p. 115.)**

**Moved/Second (Leftwich/Mikiten) Motion Carried by general consent**

**Motion to commend Officer Abdoulmawla for exceptional valor and heroism in saving a baby's life; and for superior handling of a difficult day, as it had begun with a response to a fatal train vs. pedestrian collision and, following his life-saving effort, he helped the CHP in a pursuit and eventually detained the suspect. (p. 152.)**

**Moved/Second (Leftwich/Perezvelez) Motion Carried by general consent**

## **11. PUBLIC COMMENT**

There were 2 speakers.

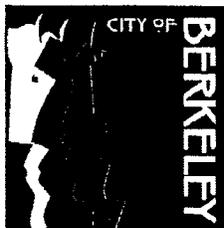
## **12. ADJOURNMENT**

**Motion to adjourn the meeting.**

**Moved/Seconded (Perezvelez/Calavita) Motion Carried by general consent.**

**The meeting was adjourned at 9:04 p.m.**





Police Review Commission (PRC)

DRAFT

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

**Tuesday, March 2, 2021, 6:00 P.M.**

**No physical location; meeting held exclusively through videoconference and teleconference.**

**1. CALL TO ORDER & ROLL CALL BY CHAIR RAMSEY AT 6:04 P.M.**

**Present:** Commissioner Ismail Ramsey (Chair)  
Commissioner Michael Chang (Vice-Chair)  
Commissioner Kitty Calavita  
Commissioner Juliet Leftwich  
Commissioner Elisa Mikiten  
Commissioner Nathan Mizell  
Commissioner George Perezvelez

**Absent:** Commissioners Gwen Allamby, Hans Moore

**PRC Staff:** Katherine J. Lee, PRC Officer, Byron Norris, PRC Investigator

**BPD Staff:** Lt Robert Rittenhouse

**2. PUBLIC COMMENT**

There was 1 speaker

**3. NEW BUSINESS (discussion and action)**

Review and approve the Outreach Subcommittee's plan for a webinar to publicize the Police Review Commission and the new Police Accountability Board (PAB), with an emphasis on the opportunity to apply for a seat on the PAB.

**Motion to accept the Outreach Subcommittee's plan for a webinar [as attached] and to hold a special meeting for this purpose.**

**Moved/Second (Perezvelez/Calavita) Motion Carried by general consent.**

**4. PUBLIC COMMENT**

There were no speakers

**5. ADJOURNMENT**

**Motion to adjourn**

Moved/Second (Calavita/Mizell) **Motion Carried by general consent.**

**The meeting was adjourned at 6:20 p.m.**

Outreach Subcommittee's Webinar Plan

**Event:** public informational webinar on the mission of the Police Review Commission and the Police Accountability Board with an emphasis on the application process to the Board

---

**Host:** Police Review Commission (PRC)

---

**Event Name:** Community Oversight of Policing in Berkeley  
You can help make it work.

---

**Event Type:** special commission meeting via webinar

---

**Date:** Saturday, March 13, 2021

---

**Time:** 4:00 p.m. to 5:00 p.m.

---

**Invitees:** everyone

---

**Advertisements:** press release, flyers, emails

---

**Format:** oral presentations and brief powerpoint; Q&A

---

**Presenters:** Mayor Arreguin  
Councilmember Kate Harrison  
Nathan Mizell, PRC Commissioner  
Kathy Lee, PRC Officer  
Hector Malvido, ORS Public Member (Event Moderator)

---

**Agenda:** Welcome & Introductions (PRC Chair & Event Moderator)  
Oral Presentations  
-- brief history of PRC (Nathan)  
-- mission of the PRC, PAB, & Dir. of Police Accountability (Nathan)  
-- application and appointment process to PBA (Kathy)  
Questions & Answers and Public Comments (all presenters)  
Closing Remarks (Event Moderator)

ATTACHMENT TO PRC  
SPECIAL MEETING MINUTES  
MARCH 2, 2021



**POLICE REVIEW COMMISSION  
SUBCOMMITTEES LIST  
Updated 2-16-21**

| <b>Subcommittee</b>   | <b>Commissioners</b>   | <b>Chair</b>                | <b>BPD Reps</b>  |
|---|--|-----------------------------|--|
| <b>Lexipol Policies</b><br>Formed 5-23-18<br>Renewed 5-22-19<br>Renewed 6-10-20       | Juliet Leftwich<br>Elisa Mikiten<br>George Perezvelez<br>Ismail Ramsey   |                             | Capt. Rico Rolleri<br>Sgt. Joseph LeDoux   |
| <b>Use of Force Policy</b><br>Formed 7-10-19<br>Renewed 7-22-20                       | Michael Chang<br>Juliet Leftwich<br>George Perezvelez<br>Ismail Ramsey   | <b>Perezvelez</b>           | Chief Andy Greenwood<br>Capt. Rico Rolleri<br>Lt. Joe Okies<br>Lt. Spencer Fomby |
| <b>Outreach</b><br>Formed 6-10-20   | Gwen Allamby<br>Kitty Calavita<br>Elisa Mikiten<br>Nathan Mizell<br><br><u><b>Public</b></u><br>George Lippman<br>Hector Malvido | <b>Calavita<br/>Mikiten</b> |  |
| <b>Police Acquisition and Use of Controlled Equipment Ordinance</b><br>Formed 7-22-20 | Juliet Leftwich<br>Elisa Mikiten<br>Nathan Mizell  | <b>Mizell</b>               | Chief Andy Greenwood<br>Capt. Rico Rolleri                                       |
| <b>Warrant Service Policy</b><br>Formed 10-14-2020                                    | Kitty Calavita<br>Michael Chang<br>Hans Moore<br>Ismail Ramsey<br><br><u><b>Public</b></u><br>Kitt Saginor                       | <b>Ramsey</b>               | Lt. Daniel Montgomery<br>Lt. Melanie Turner                                      |



Lee, Katherine

---

**From:** Lee, Katherine  
**Sent:** Tuesday, March 2, 2021 3:31 PM  
**To:** Greenwood, Andrew; Rolleri, Rico  
**Cc:** Kitty Calavita  
**Subject:** Policy 311, Search and Seizure

Dear Chief Greenwood,

I understand you are out of the office until March 15, so I am including Capt. Rolleri on this email.

As you know, newly-revised Policy 311 was agendized for review at the Feb. 24 PRC meeting. Commissioner Calavita made an observation about the policy, which I asked her to write up to pass along to you; here it is:

Regarding Policy 311: The PRC is pleased that the new supervised release inquiry/search practice has been inserted in this Search and Seizure policy as Sections 311.5 and 311.6. We note though that the words "However, under Berkeley policy", which had been approved unanimously by the PRC, are omitted from the beginning of the second paragraph of Section 311.6.

Because the preceding paragraph discusses the California law that states that detainees on supervised release may be subject to warrantless search, the next paragraph needs to mark the distinction between the broader California law and the restriction that this new Berkeley policy places on such searches. That is the reason that the PRC voted to state "However, under Berkley policy...". Without this "However" preface, there is some confusion as to how the first paragraph about California law relates to the second paragraph.

The PRC continued the agenda item until its next (March 10) meeting, in order to hear a response from you. If you are unable to attend that meeting and a member of your command staff cannot address this, I believe the PRC will again continue this topic for a future meeting.

Sincerely,  
Kathy

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



## Medical Aid and Response

### 431.1 PURPOSE AND SCOPE

This policy recognizes that members often encounter persons who appear to be 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 and 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.

#### **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 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.

##### **431.5.1 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.

#### **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.

#### **~~435.6 AIR AMBULANCE~~**

~~Generally, when on-scene, EMS personnel will be responsible for determining whether an air ambulance response should be requested. An air ambulance may be appropriate when there are victims with life-threatening injuries or who require specialized treatment (e.g., gunshot wounds, burns, obstetrical cases), and distance or other known delays will affect the EMS response.~~

~~The Operations Division Commander should develop guidelines for air ambulance landings or enter into local operating agreements for the use of air ambulances, as applicable. In creating those guidelines, the Department should identify:~~

- ~~• Responsibility and authority for designating a landing zone and determining the size of the landing zone.~~
- ~~• Responsibility for securing the area and maintaining that security once the landing zone is identified.~~
- ~~• Consideration of the air ambulance provider's minimum standards for proximity to vertical obstructions and surface composition (e.g., dirt, gravel, pavement, concrete, grass).~~
- ~~• Consideration of the air ambulance provider's minimum standards for horizontal clearance from structures, fences, power poles, antennas or roadways.~~
- ~~• Responsibility for notifying the appropriate highway or transportation agencies if a roadway is selected as a landing zone.~~
- ~~• Procedures for ground personnel to communicate with flight personnel during the operation.~~

~~One department member at the scene should be designated as the air ambulance communications contact. Headlights, spotlights and flashlights should not be aimed upward at the air ambulance. Members should direct vehicle and pedestrian traffic away from the landing zone.~~

~~Members should follow these cautions when near an air ambulance:~~

- ~~• Never approach the aircraft until signaled by the flight crew.~~
- ~~• Always approach the aircraft from the front.~~
- ~~• Avoid the aircraft's tail rotor area.~~
- ~~• Wear eye protection during landing and take-off.~~
- ~~• Do not carry or hold items, such as IV bags, above the head.~~
- ~~• Ensure that no one smokes near the aircraft.~~

#### **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).

#### ~~435.6.1 AED USER RESPONSIBILITY~~

~~Members who are issued AEDs for use in department vehicles should check the AED at the beginning of the shift to ensure it is properly charged and functioning. Any AED that is not functioning properly will be taken out of service and given to the Personnel and Training Sergeant who is responsible for ensuring appropriate maintenance.~~

~~Following use of an AED, the device shall be cleaned and/or decontaminated as required. The electrodes and/or pads will be replaced as recommended by the AED manufacturer.~~

~~Any member who uses an AED should contact the Communications Center as soon as possible and request response by EMS.~~

#### 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).

~~The Personnel and Training Sergeant is responsible for ensuring AED devices are appropriately maintained and will retain records of all maintenance in accordance with the established records retention schedule (22 CCR 100021).~~

#### ~~435.9 ADMINISTRATION OF OPIOID OVERDOSE MEDICATION~~

~~Members may administer opioid overdose medication in accordance with protocol specified by the licensed health care provider who prescribed the overdose medication for use by the member and (Civil Code § 1714.22; 22 CCR 100019).~~

~~(a) When trained and tested to demonstrate competence following initial instruction.~~

~~(b) When authorized by the medical director of the LEMSAs.~~

~~(c) In accordance with California Peace Officer Standards and Training (POST) standards.~~

#### ~~435.9.1 OPIOID OVERDOSE MEDICATION USER RESPONSIBILITIES~~

~~Members who are qualified to administer opioid overdose medication, such as naloxone, should handle, store and administer the medication consistent with their training. Members should check the medication and associated administration equipment at the beginning of their shift to ensure they are serviceable and not expired. Any expired medication or unserviceable administration equipment should be removed from service and given to the Personnel and Training Sergeant.~~

~~Any member who administers an opioid overdose medication should contact the Communications Center as soon as possible and request response by EMS.~~

---

#### ~~435.9.2 OPIOID OVERDOSE MEDICATION REPORTING~~

~~Any member administering opioid overdose medication should detail its use in an appropriate report.~~

~~The Personnel and Training Sergeant will ensure that the Public Safety Business Manager is provided enough information to meet applicable state reporting requirements.~~

#### ~~435.9.3 OPIOID OVERDOSE MEDICATION TRAINING~~

~~The Personnel and Training Sergeant should ensure initial and refresher is provided to members authorized to administer opioid overdose medication. Training should be coordinated with the local health department and comply with the requirements in 22 CCR 100019 and any applicable POST standards (Civil Code § 1714.22).~~

### **435.10 ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS**

~~The Operations Division Commander may authorize the acquisition of epinephrine auto injectors for use by Department members as provided by Health and Safety Code § 1797.197a. The Personnel and Training Sergeant shall create and maintain an operations plan for the storage, maintenance, use and disposal of epinephrine auto injectors as required by Health and Safety Code § 1797.197a(f). Trained members who possess valid certification may administer an epinephrine auto injector for suspected anaphylaxis (Health and Safety Code § 1797.197a(b); 22 CCR 100019).~~

#### ~~435.10.1 EPINEPHRINE USER RESPONSIBILITIES~~

~~Members should handle, store and administer epinephrine auto injectors consistent with their training and the Department operations plan. Members should check the auto injectors at the beginning of their shift to ensure the medication is not expired. Any expired medication should be removed from service in accordance with the Department Operations Plan.~~

~~Any member who administers an epinephrine auto injector medication should contact the Communications Center as soon as possible and request response by EMS (Health and Safety Code § 1797.197a(b)).~~

#### ~~435.10.2 EPINEPHRINE AUTO-INJECTOR REPORTING~~

~~Any member who administers an epinephrine auto injector should detail its use in an appropriate report.~~

~~The Personnel and Training Sergeant should ensure that the Public Safety Business Manager is provided enough information for required reporting to the EMS Authority within 30 days after each use (Health and Safety Code § 1797.197a(f)).~~

~~Records regarding the acquisition and disposition of epinephrine auto injectors shall be maintained pursuant to the Department established records retention schedule but no less than three years (Business and Professions Code § 4119.4(d)).~~

#### ~~435.9.1 EPINEPHRINE AUTO-INJECTOR TRAINING~~

##### **Best Practice**

~~The Personnel and Training Sergeant should ensure that members authorized to administer epinephrine auto injectors are provided with initial and refresher training that meets the~~

---

~~requirements of Health and Safety Code § 1797.197a(c) and 22 CCR 100019.~~

**431.8 OPIOD OVERDOSE MEDICATION**

See the Use of Narcan (Naloxone) Policy.

## 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.

~~Due to the hazards of handling animals without proper training and equipment, responding members generally should not attempt to capture or pick up any animal, but should keep the animal under observation until the arrival of appropriate assistance.~~

Members may consider acting ~~before the arrival of such assistance~~ 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.

#### **~~434.5 DECEASED ANIMALS~~**

~~When a member becomes aware of a deceased animal, all reasonable attempts should be made to preliminarily determine if the death of the animal is related to criminal activity.~~

~~Deceased animals on public property should be removed, sealed in a plastic bag, and properly disposed of by the responding member.~~

~~Members should not climb onto or under any privately owned structure for the purpose of removing a deceased animal.~~

~~When handling deceased animals, members should attempt to identify and notify the owner of the final disposition of the animal.~~

#### **~~434.6~~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).

- (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 a 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 staff. ACS staff shall be requested to respond to the scene and impound the animal.

#### 434.9434.8 STRAY DOGSANIMALS

If a stray animal~~dog~~ has a license or can otherwise be identified, the owner should be contacted, if possible. If the owner is contacted, the animal~~dog~~ should be released to the owner and a citation may be issued, if appropriate. ~~If a dog is taken into custody, it shall be transported to the appropriate animal care facility.~~

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 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.

**434.10434.11 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.

**434.11434.12 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.

**434.12434.13 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.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: April 28, 2006

GENERAL ORDER A-31

SUBJECT: ANIMAL BITE INVESTIGATIONS

PURPOSE

- 1 - The purpose of this General Order is to outline policies and procedures regarding the handling of animal bite investigations.

POLICY

- 2 - City of Berkeley Animal Care Services shall have primary responsibility to investigate reports of animal bites. Officers shall assist Animal Care Services as needed or requested.

INVESTIGATION AND REPORTS

- 3 - Animal Care Services personnel are responsible for initial investigation of animal bite reports during their regular hours, Monday – Saturday, 0800 to 1600.
  - (a) Officers shall conduct initial animal bite investigations and set any necessary follow up for Animal Care Services in the following situations:
    - (1) When the incident occurs and is reported outside of the normal business hours of Animal Care Services.
    - (2) Whenever a serious injury of fatality occurs as a result of an animal bite, regardless of the time of occurrence.
- 4 - In all cases of animal bites the investigating officer shall prepare the initial "Animal Bite Report" form and other reports as necessary.
  - (a) All reports shall be routed as follows:
    - (1) Original to Report Review.
    - (2) Duplicate to the Animal Care Services.
- 5 - Every effort will be made to identify, locate and impound the responsible animal with its owner or other responsible person provided that the animal will be kept inside a structure.
  - (a) The person in whose care the animal is left will be directed to contact Animal Care Services the next working day at 981-6600.
- 6 - The identification and/or apprehension of the responsible animal is of critical importance to the health and safety of the bite victim. The animal must be located within ten days of the bite; therefore, all requests for assistance from Animal Care Services personnel shall be honored.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: April 28, 2006

GENERAL ORDER A-31

- (a) **Supplemental** Reports describing **additional** investigative work completed **by officers** shall be forwarded in the same manner as listed in paragraph 4.
  
- 7 - **If an animal responsible for a 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 staff. Animal Care Services staff shall be requested to respond to the scene and impound the animal.**

References: Berkeley Municipal Code 10.04

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: April 28, 2006

GENERAL ORDER A-32

SUBJECT: LOST AND FOUND ANIMAL REPORTS

### PURPOSE

- 1 - The purpose of this General Order is to establish policy and procedures regarding lost and found animals.

### POLICY

- 2 - Lost and found animals are the responsibility of **Animal Care Services, 2013 Second St, Berkeley, 981-6600. Business hours are generally 0800 to 1600 hours Monday thru Friday, and Saturday from 1000 to 1600 hrs.**

### PROCEDURES

- 3 - Police officers have the responsibility to assist the **Animal Care Services** by being alert for lost animals. **If animals are found, officers shall contact on-duty Animal Care Services staff for assistance.** If staff is unavailable, officers shall ensure animals are taken to the **Animal Care Services** deposit box located near the entrance.
- 4 - **Officers responding to a found animal call shall complete the small form available near the shelter entrance when storing a found animal. The officer shall also complete a Miscellaneous Service Complaint (MSC) or Computer Aided Dispatch (CAD) entry.** The animal shall be placed in an available secured storage box located near the facility entrance.
- 5 - **Animals found to be in the possession of an arrestee are often secured at Animal Care Services. In these situations, officers shall leave Animal Care Services a note containing this information, and also listing the arrestee's name, address, phone and the corresponding Berkeley Police Department case number.**





COMMITMENT • INTEGRITY  
• LEADERSHIP



[View full PDF report](#)

[View Selected Abbreviations](#)

## Automated License Plate Readers

To Better Protect Individuals' Privacy, Law Enforcement Must Increase Its Safeguards for the Data It Collects

Report Number: 2019-118

---

[Public Letter](#)   [Summary](#)   [Introduction](#)   [Audit Results](#)   [Appendices](#)   [Responses](#)  
[Interactive Graphics](#)   [Survey Responses](#)

## Summary

### Audit Highlights . . .

Our audit of the use of automated license plate readers (ALPR) at four local law enforcement agencies highlighted the following:

- » Local law enforcement agencies did not always follow practices that adequately consider the individual's privacy in handling and retaining the ALPR images and associated data.
- » All four agencies have accumulated a large number of images in their ALPR systems, yet most of the images do not relate to their criminal investigations—99.9 percent of the 320 million images Los Angeles stores are for vehicles that were not on a hot list when the image was made.
  - o None of the agencies have an ALPR usage and privacy policy that implements all the legally mandated—since 2016—requirements.
  - o Three agencies did not completely or clearly specify who has system access, who has system oversight, or how to destroy ALPR data, and the remaining agency has not developed a policy at all.
  - o Two of the agencies add and store names, addresses, dates of birth, and criminal charges to their systems—some of these data may be categorized as criminal justice information and may originate from a system maintained and protected by the Department of Justice.
  - o Three agencies use a cloud storage vendor to hold their many images and associated data, yet the agencies lack contract guarantees that the cloud vendor will appropriately

protect the data.

- Three agencies share their images with hundreds of entities across the U.S. but could not provide evidence that they had determined whether those entities have a right or a need to access the images.
- » Agencies may be retaining the images longer than necessary and thus increasing the risk to individuals' privacy.
- » The agencies have few safeguards for creating ALPR user accounts and have not audited the use of their systems.

## Results in Brief

To better protect the privacy of residents, local law enforcement agencies must improve their policies, procedures, and monitoring for the use and retention of license plate images and corresponding data. The majority of California law enforcement agencies (agencies) collect and use images captured by automated license plate reader (ALPR) cameras. The ALPR system is both a real-time tool for these agencies and an archive of historical images. Fixed cameras mounted to stationary objects, such as light poles, and mobile cameras mounted to law enforcement vehicles, capture ALPR images. Software extracts the license plate number from the image and stores it, with the date, time, and location of the scan and sometimes a partial image of the vehicle, in a searchable database. The software also automatically compares the plate number to stored lists of vehicles of interest, called *hot lists* then issues alerts, called *hits* if the plate number matches an entry on the hot list. Agencies compile these hot lists based on vehicles sought in crime investigations and vehicles connected to people of interest—for example, a list of stolen vehicles or of missing persons. We use the term *ALPR data* to describe all the information stored in an ALPR system, including license plate images and hot lists.

Because an ALPR system stores the plate number and image in a database even if the plate number does not match one on a hot list, the American Civil Liberties Union (ACLU) raised concerns in a 2013 report about law enforcement collecting and storing ALPR images related to individuals not suspected of crimes. The ACLU noted that law enforcement officers could inappropriately monitor the movements of individuals such as ex-spouses, neighbors, and other associates—actions that do not respect individuals' privacy. Although ALPR supporters contend that the images are collected in public places where there is no reasonable expectation of privacy, state law has made privacy a consideration when operating or using an ALPR system. Nonetheless, we found that the handling and retention of ALPR images and associated data did not always follow practices that adequately consider an individual's privacy.

Although law enforcement agencies collect ALPR images in public view, and there is no reasonable expectation of privacy regarding a license plate, the use and retention of those images raises privacy concerns. The four local law enforcement agencies we reviewed—Fresno Police Department (Fresno), Los Angeles Police Department (Los Angeles), Marin County Sheriff's Office (Marin), and Sacramento County Sheriff's Office (Sacramento)—have accumulated a large number of images in their ALPR systems, yet most of these images are unrelated to their criminal investigations. For example, at Los Angeles only 400,000 of the 320 million images it has accumulated over several years and stores in its database generated an immediate match against its hot lists. In other words, 99.9 percent of the ALPR images Los Angeles stores are for vehicles that were not on a hot list at the time the image was made. Nevertheless, the stored images provide value beyond immediate hit alerts, as law enforcement

personnel can search the accumulated images to determine the vehicles present at particular locations and to track vehicles' movements at particular times in order to gather or resolve leads in investigations.

Technology gives governments the ability to accumulate volumes of information about people, raising a reasonable question: How is an individual's privacy to be preserved? Effective in 2016 the California Legislature addressed privacy with respect to ALPR systems through Senate Bill 34 (Statutes of 2015, Chapter 532) (SB 34) by establishing requirements for these systems, including requiring detailed usage and privacy policies that describe the system's purpose, who may use it, how the agency will share data, how the agency will protect and monitor the system, and how long the agency will keep the data. Yet the agencies we reviewed have not implemented all of the requirements in that law.

Law enforcement agencies must first create policies that set clear guidelines for how they will use ALPR data. Setting certain expectations in writing through an ALPR usage and privacy policy helps ensure that agencies operate their ALPR programs in a manner that better protects individuals' privacy. However, none of the four agencies have an ALPR policy that contains all of the required information. In fact, Los Angeles has not developed an ALPR policy at all. The other three agencies did not completely or clearly specify who has system access, who has system oversight, or how to destroy ALPR data. Their poorly developed and incomplete policies contributed to the agencies' failure to implement ALPR programs that reflect the privacy principles in SB 34.

ALPR systems may contain data beyond license plate images. For example, we found that Sacramento and Los Angeles are adding names, addresses, dates of birth, and criminal charges to their ALPR systems, which are then stored in those systems. Some of these data may be categorized as criminal justice information; in addition, the data may originate from the California Law Enforcement Telecommunications System (CLETS), which the California Department of Justice (Justice) maintains. These various types of data require different levels of protection under the law. State law requires these agencies to maintain reasonable security procedures and practices to protect ALPR data from unauthorized access, destruction, use, modification, or disclosure. In addition, we believe that policy from the Criminal Justice Information Services Division (CJIS) of the U.S. Federal Bureau of Investigation (FBI) models reasonable security measures for law enforcement agencies' ALPR data. CJIS policy specifies operational, administrative, technical, and physical safeguards for each of the areas specified in state law.

Fresno, Marin, and Sacramento use a cloud storage solution to hold their many ALPR images and associated data. Although the three agencies told us their systems comply with CJIS policy, none of them could demonstrate the vetting they performed to confirm that their cloud storage vendor did, in fact, meet the CJIS policy standards. Moreover, none of the contracts these three agencies have with their cloud storage vendors include all necessary data security safeguards. Thus, the agencies lack guarantees that the cloud vendor will provide appropriate protection of their data.

Law enforcement agencies of all types may benefit from guidance to improve their policies and data security practices. We surveyed 391 police and sheriff departments statewide, and of those using an ALPR system, 96 percent stated that they have ALPR policies, and nearly all reported that their ALPR data storage solution complies with CJIS policy. However, it is likely that many of the survey respondents have the same problems we identified at the four agencies we visited. Justice has experience guiding law enforcement agencies to help them adhere to state law and to improve their administrative practices. By developing guidance for local agencies on needed ALPR policy elements, Justice could help them improve the quality and completeness of their policies.

State law allows law enforcement agencies to share ALPR images only with public agencies, and it requires such sharing to be consistent with respect for individuals' privacy. Three of the reviewed agencies share their ALPR images widely using features in the ALPR systems that enable convenient sharing of images with minimal effort. Fresno and Marin have each arranged to share their ALPR images with hundreds of entities and Sacramento with over a thousand entities across the United States. However, we did not find evidence that the agencies had always determined whether an entity receiving shared images had a right and a need to access the images or even that the entity was a public agency. We are concerned that unless an agency conducts verifying research, it will not know who is actually using the ALPR images and for what purpose.

In addition, the agencies have not based their decisions regarding how long to retain their ALPR images on the documented usefulness of those images to investigators, and they may be retaining the images longer than necessary, increasing the risk to individuals' privacy. Fresno's policy is to retain ALPR images for one year; Sacramento's and Marin's policies specify two years. Los Angeles does not have an ALPR policy, and the lieutenant who administers the ALPR program stated that its protocol is to retain the images for at least five years. However, when we reviewed the agencies' ALPR searches over a six-month period in 2019, we found that personnel for three of the four agencies typically searched for images zero to six months old. Nonetheless, the agencies keep the images far longer.

The agencies we reviewed have few safeguards for the creation of ALPR user accounts and have also failed to audit the use of their ALPR systems. Instead of ensuring that only authorized users access ALPR data for appropriate purposes, the agencies have left their systems open to abuse by neglecting to institute sufficient oversight. Over the years, the media has reported that some individuals within law enforcement used or could use data systems—and sometimes ALPR systems—to obtain information about individuals for their personal use, including to locate places they regularly visit, to determine their acquaintances, and to blackmail them based on this information. ALPR systems should be accessible only to employees who need the data, and accounts should be promptly disabled otherwise. However, the agencies often neglected to limit ALPR system access and have allowed accounts that should be disabled to remain active longer than is prudent. To further ensure that individuals with access do not misuse the ALPR systems, the agencies should be auditing the license plate searches that users perform, along with conducting other monitoring activities. Instead, the agencies have conducted little to no auditing and monitoring and thus have no assurance that misuse has not occurred.

## Recommendations

### *Legislature*

To better protect individuals' privacy and to help ensure that local law enforcement agencies structure their ALPR programs in a manner that supports accountability for proper database use, the Legislature should amend state law to do the following:

- Require Justice to draft and make available on its website a policy template that local law enforcement agencies can use as a model for their ALPR policies.
- Require Justice to develop and issue guidance to help local law enforcement agencies identify and evaluate the types of data they are currently storing in their ALPR systems. The

guidance should include the necessary security requirements agencies should follow to protect the data in their ALPR systems.

- Establish a maximum data retention period for ALPR images.
- Specify how frequently ALPR system use must be audited and that the audits must include assessing user searches.

## ***Law Enforcement Agencies***

To address the shortcomings this audit identified, Fresno, Los Angeles, Marin, and Sacramento should do the following:

- Improve their ALPR policies.
- Implement needed ALPR data security.
- Update vendor contracts with necessary data safeguards.
- Ensure that sharing of ALPR images is done appropriately.
- Evaluate and reestablish data retention periods.
- Develop and implement procedures for granting and managing user accounts.
- Develop and implement ALPR system oversight.

## **Agency Comments**

The four law enforcement agencies we reviewed responded to the draft audit report. Fresno responded that it will use the audit to work to achieve its goal of building trust in its community. Los Angeles responded that it respects individuals' privacy and believes it has policies in place to safeguard information. Nonetheless, it is working on an ALPR policy as required by state law and will perform periodic audits of users' searches. Marin stated it is committed to improvement and will consider the recommendations we made, although it disagreed with several of them. Sacramento stated that it had already begun implementing many of the recommendations, but that it did not agree with how we characterized some of the findings. Justice and the Sacramento County Department of Human Assistance also responded by acknowledging the draft report, although we did not have recommendations directed to either entity.

[Back to top](#)



#### *K. MUTUAL AID AGREEMENTS*

The commission shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the pacts between the BPD and other law enforcement entities.

#### *L. SUBCOMMITTEE NOTES*

Each PRC subcommittee must produce written notes of what occurred at each subcommittee meeting. These notes must be forwarded to the PRC Officer, who will post the notes to the PRC's website

#### *M. ANNUAL REPORT*

The commission secretary shall endeavor to present the annual report for the commission's approval no later than June 1 of each year. The Foreword shall be written by the commissioner who served as Chair in the year of the report.

#### *N. FAMILIARITY WITH BERKELEY POLICE DEPARTMENT*

Within the first 6 months of their appointment, newly-appointed commissioners shall endeavor to:

- 1) complete a ride-along with a sworn police officer, and
- 2) meet with Chief of Police and his/her command staff.

#### *O. KNOWLEDGE OF APPLICABLE LAWS AND RULES*

Commissioners should be generally knowledgeable of the Police Review Commission's enabling Ordinance (Ordinance No. 4644-N.S.; B.M.C. Chapter 3.32), the Regulations for Handling Complaints Against Members of the Police Department, and these Standing Rules. They should also bring copies of these documents to all commission meetings.



#### *P. COMMENDATIONS OF BERKELEY POLICE DEPARTMENT PERSONNEL*

1. The PRC regularly receives copies of communications praising Berkeley Police Department (BPD) personnel for noteworthy service; these commendations are both external (from members of the public) and internal (from fellow BPD or City of Berkeley employees). This process shall be used when the PRC desires to bestow additional recognition upon those BPD personnel, or when a commissioner on his or her own initiative wants the PRC to recognize BPD personnel.
2. The PRC may commend or otherwise honor with a special award or recognition an individual sworn officer or civilian employee of the BPD, or a group of officers and/or employees of the BPD, such as a team or division.
3. The commission secretary shall agendaize commendations the PRC receives from the BPD periodically, as received. A commissioner wishing to initiate a commendation or other honor from the PRC shall submit the proposal to the commission secretary for placement on the PRC agenda in accordance with

Section C of these rules. The proposal shall include the name of the person or group to be honored, and a description of the noteworthy action.

4. For the PRC to issue a commendation or other honor, the BPD officer, employee, or group must be found to have performed an extraordinary service or performed in an extraordinary manner that meets one or more of the following criteria:
  - a) Exceptional valor, bravery, or heroism;
  - b) Superior handling of a difficult situation;
  - c) An action or performance that is above and beyond typical duties.
5. A motion to commend or otherwise honor BPD personnel shall include the act or incident giving rise to the honor and describe how it meets the above criteria. The motion must receive a majority of affirmative votes of commissioners present at the meeting to pass.
6. Following the meeting, the commission secretary shall communicate the PRC's action in writing to the Chief of Police, with a request that the commendation or other honor be placed in the personnel file of each sworn officer or civilian employee commended.

###

## 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.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Use of Force*

---

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:

*Use of Force*

---

**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.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Use of Force*

---

**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.

*Use of Force*

---

**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 USE OF FORCE TO SEIZE EVIDENCE**

In general, officers may use objectively reasonable, objectively necessary, and proportional force to lawfully seize evidence and to prevent the destruction of evidence. In the instance when force is used an officer shall not 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 department for the specific purpose of collecting evidence.

**300.3.2 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.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Use of Force*

---

- (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.
- (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.

## *Use of 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.

### 300.3.3 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 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.**

### 300.3.4 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

# Berkeley Police Department

## Law Enforcement Services Manual

### *Use of Force*

---

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.

*Use of Force*

---

- (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.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Use of Force*

---

#### **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.

### *Use of Force*

---

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.

## *Use of Force*

---

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 MEDICAL CONSIDERATION**

When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officers or 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

### *Use of Force*

---

medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

#### **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.

##### **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

*Use of Force*

---

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:
  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.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Use of Force*

---

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.

- (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 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2.

#### **300.6.5 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.

#### **300.8 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.

#### **300.9 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.

## *Use of Force*

---

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, 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

### **300.10 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

### *Use of Force*

---

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

#### **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.



ANNOTATED AGENDA  
SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL

Tuesday, February 23, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – RIGEL ROBINSON  
DISTRICT 8 – LORI DROSTE

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.*

*Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81676274736>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and enter Meeting ID: **816 7627 4736**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Preliminary Matters

**Roll Call:** 4:06 p.m.

**Present:** Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Kesarwani

Councilmember Kesarwani present at 4:13 p.m.

**Action:** M/S/C (Arreguin/Wengraf) to adopt a special rule for this meeting to limit public comment to one minute per speaker, with the option to yield time up to a total of four minutes.

**Vote:** Ayes – Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent - Kesarwani

## Action Calendar – New Business

### 1. Report and Recommendations From Mayor's Fair and Impartial Policing Working Group

**From:** Mayor Arreguin (Author), Councilmember Harrison (Author)

**Recommendation:**

1. Accept and acknowledge the report from the Fair and Impartial Working Group (Attachment 1).
2. Direct the City Manager to implement the following recommendations summarized below and detailed in full in Attachment 1, with at minimum, quarterly progress updates to the Police Accountability Board (PAB) and/or the Working Group.
  - Focus traffic stops on safety
  - Use a clear, evidence-based definition for stops of criminal suspects
  - Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
  - Eliminate stops for low-level offenses
  - Implement an Early Intervention System (EIS) and a risk-management structure
  - Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group
  - Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole
  - Require written consent for all consent searches
  - Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)
  - Fire racist police officers identified through social media and other media screens
  - Address Profiling by Proxy (Council develop & pass CAREN policy)
  - Require regular analysis of BPD stop, search, and use of force data
  - Make resources on police-civilian encounters more publicly available such as RAHEEM.org
  - Adopt Compliance and Accountability Mechanisms; -Hire consultant to develop implementation plan
  - For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complaint process with PAB
3. Refer the following recommendations summarized below and detailed in full in Attachment 1 to be included in the process to reimagine public safety:

## Action Calendar – New Business

-Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins

-Conduct a baseline community survey

4. Refer the following recommendations summarized below and detailed in full in Attachment 1 to the Police Review Commission, to be taken up by the Police Accountability Board when it is established

-Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4

-Require enhanced annual implicit bias training for police

-Accelerate Crisis Intervention Team (CIT) activity

5. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway:

-Fund and implement a specialized care unit for mental health crises

-Conduct a Capacity Study of police calls and responses and use of officer time outside of case work

6. Refer \$50,000 to the FY 2022 budget process for a consultant to develop an implementation plan as described in Attachment 1 and other minor costs the Department may confer

**Financial Implications:** See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

**Action:** 40 speakers. M/S/C (Arreguin/Harrison) to:

1. Accept and acknowledge the report from the Mayor's Fair and Impartial Policing Working Group;
2. Acknowledge and appreciate the work already completed or underway by the City Manager's Office and Police Department to implement policing reforms including:
  - Adoption and implementation of Policy 401, Fair and Impartial Policing
  - Public reporting of stop data on the BPD Open Data Portal
  - Initiation of the Center for Policing Equity study
  - Implementation of the Body Worn Camera Program
  - Early adoption of Racial and Identity Profiling Act (RIPA) data collection and reporting
  - Updates to the Use of Force Policy, Policy 300
  - Development and passage of Measure II to create a new Police Accountability Board
  - Launching of the Public Safety Reimagining process
3. Refer to the City Manager to implement the following recommendations summarized below, with quarterly progress updates to the City Council and Police Review Commission/Police Accountability Board (when established):

**Implement a new evidence-based Traffic Enforcement Model**

  - Focusing the basis for traffic stops on safety and not low-level offenses;
  - Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects;
  - Reaffirming and clarifying that the Berkeley Police Department will use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
  - Minimize or de-emphasize as a lowest priority stops for low-level offenses.

## Action Calendar – New Business

### Implement Procedural Justice Reforms

- Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops;
- Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback;
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole;
- Address Profiling by Proxy (PAB Policy Development, Dispatcher Training);
- Fire racist police officers identified through social media and other media screens;
- Require regular analysis of BPD stop, search, and use of force data;
- Make resources on police-civilian encounters publicly available such as through RAHEEM.org;
- For any individual detained, BPD officers shall provide a business card with info on the commendation and complaint process with PAB and Berkeley Police Department.

Request that the City Manager report back at a Council Work Session in three months with budget estimates for implementation (to be considered along with the FY 22 budget process), information on legal and operational considerations, and a short-term action plan of recommendations which can be implemented without the hiring of a consultant, and those that will require the assistance of a consultant and additional resources.

### Compliance and Accountability Mechanisms

- The City Manager will create an implementation plan with the assistance of a consultant that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group's policy proposal. Long-term monitoring and assessments will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
  - The implementation plan will be presented to the Berkeley City Council for approval. Once the plan is approved by the City Council, the consultant's work is finished. Long-term monitoring and assessment will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
4. Refer the following recommendations summarized below to the Reimagine Public Safety process:
    - Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins
    - Conduct a baseline community survey.
  5. Refer the following training recommendations summarized below to the Police Review Commission, to be taken up by the Police Accountability Board when it is established, and consider the resources required to implement this expanded training:
    - Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4
    - Require enhanced annual implicit bias training for police
    - Accelerate Crisis Intervention Team (CIT) activity

## Action Calendar – New Business

- Refer to the PRC/PAB to consider a departmental policy on requiring written consent for person searches and report back in 6 months.
6. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway and have been completed:
    - BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;
    - Fund and implement a specialized care unit for mental health crises;
    - Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.
  7. Refer \$50,000 to the FY 2022 budget process for a consultant to assist the City Manager/Police Department in the implementation of these recommendations and other minor costs the Department may confer; and also refer to the FY 2022 budget process a line item for police training for the new evidence-based stop program (costs to be determined by BPD).

**Vote:** All Ayes.

## Adjournment

**Action:** M/S/C (Robinson/Taplin) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 7:07 p.m.

## Communications

- None

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

**Item #1: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group**

1. Elizabeth Ferguson

## Supplemental Communications and Reports 3

**Item #1: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group**

2. Material, submitted by Mayor Arreguin
3. Presentation, submitted by the Police Department
4. Janice Schroeder
5. Thomas Luce
6. Ben Gerhardstein, on behalf of Walk Bike Berkeley
7. Diana Bohn
8. Sivan Orr
9. Ali Lafferty

10. Allegra Mayer
11. Chimey Lee
12. Moni Law

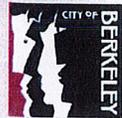
# Fair and Impartial Policing Response to Working Group Recommendations

February 23, 2021

Chief Andrew Greenwood  
Capt. Rico Rolleri

BERKELEY  POLICE

BERKELEY  POLICE



## Workgroup Recommendations:

- Focus traffic stops on safety
- Eliminate stops for low-level offenses

**Develop and implement Precision Policing strategy  
for traffic safety and investigative stops**

**Minimize non-safety related enforcement**

BERKELEY  POLICE

BERKELEY  POLICE



# BERKELEY POLICE

INTEGRITY SAFETY RESPECT DIVERSITY PROFESSIONALISM

## Workgroup Recommendations:

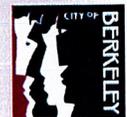
- Use a clear, evidence-base definition for stops of criminal suspects
- Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria

## BPD Policy and Law

Policy 401 Fair and Impartial Policing  
PC 13519.4 Racial Profiling

BERKELEY POLICE

BERKELEY POLICE



# BERKELEY POLICE

INTEGRITY SAFETY RESPECT DIVERSITY PROFESSIONALISM

## Workgroup Recommendations

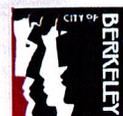
- Implement an Early intervention System (EIS) and a risk-management structure
- Require regular analysis of BPD stop, search, and use of force data

## BPD Policy E-13 Early Warning System Implemented

BPD will review E-13 to incorporate RIPA data.

BERKELEY POLICE

BERKELEY POLICE



# BERKELEY POLICE

INTEGRITY SAFETY RESPECT DIVERSITY PROFESSIONALISM

## Workgroup Recommendations

- Implement an Early intervention System (EIS) and a risk-management structure
- Require regular analysis of BPD stop, search, and use of force data

**BPD to develop and implement an on-going analysis structure for RIPA data**

BERKELEY POLICE

BERKELEY POLICE



# BERKELEY POLICE

INTEGRITY SAFETY RESPECT DIVERSITY PROFESSIONALISM

## Workgroup Recommendation

- Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group

**Completed**

**Data released December 2020**

BERKELEY POLICE

BERKELEY POLICE



**Workgroup Recommendation**

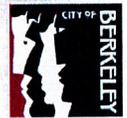
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation or parole

**Completed**

**Policy 311 Search and Seizure  
Amended following PRC Process  
February 2021**

BERKELEY POLICE

BERKELEY POLICE



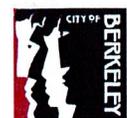
**Workgroup Recommendation**

- Require written consent for all consent searches

**BPD will develop a policy on requiring  
written consent  
for search of a vehicle,  
and capturing the consent request on BWC**

BERKELEY POLICE

BERKELEY POLICE



# BERKELEY POLICE

INTEGRITY SAFETY RESPECT DIVERSITY PROFESSIONALISM

## Workgroup Recommendation

- Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)

## Operational

**Calls Evaluated at all times**  
**Staff filter calls on all levels**  
**Dispatcher-Officer-Supervisor authority**

BERKELEY POLICE

BERKELEY POLICE



# BERKELEY POLICE

INTEGRITY SAFETY RESPECT DIVERSITY PROFESSIONALISM

## Workgroup Recommendation

- Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)

## Policy 401 Fair and Impartial Policing

**Focus on behaviors, not on appearance**

**Department will add specific language cautioning against racism by proxy**

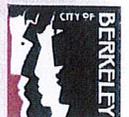
**-Captain's Instruction**

**-Communications Center Manual**

**-Field Training Manual**

BERKELEY POLICE

BERKELEY POLICE



# BERKELEY POLICE

INTEGRITY SAFETY RESPECT DIVERSITY PROFESSIONALISM

## Workgroup Recommendation

- Fire racist police officers identified through social media and other media screens

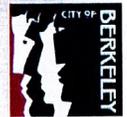
## Screening for Racial Animus

## Background Investigation

## Policy 1000 Recruitment and Selection

BERKELEY POLICE

BERKELEY POLICE



# BERKELEY POLICE

INTEGRITY SAFETY RESPECT DIVERSITY PROFESSIONALISM

## Workgroup Recommendation

- Fire racist police officers identified through social media and other media screens

## California Labor Code 980

Prohibits employers from requiring  
employee or applicant  
Social Media account information

BERKELEY POLICE

BERKELEY POLICE



## Workgroup Recommendation

- Fire racist police officers identified through social media and other media screens

## Existing Policies

### Providing for Accountability

Policy 1029 Employee Speech, Expression & Social Networking

Police Regulation 232 Controversial Discussion

Police Regulation 235 Acts-Statements-By Employees

Police Regulation 238 Organizational Membership

Police Regulation 250 Enforcement of Law, Impartiality

BERKELEY POLICE

BERKELEY POLICE



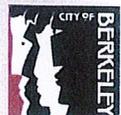
## Workgroup Recommendation

- Make resources on police-civilian encounters more publicly available such as RAHEEM.org
- For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complaint process with PAB

**Develop a Business card and policy with information on how to report positive feedback or voice a concern or make a complaint to BPD and/or to the PRC or PAB**

BERKELEY POLICE

BERKELEY POLICE

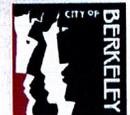


Summary

**Develop and Implement  
Precision Policing Strategy  
Risk Management Structure**

BERKELEY POLICE

BERKELEY POLICE



Summary

**Develop and/or Amend Policies  
General Order E-13  
Policy 311  
Field Training Manual  
Communications Center Manual  
Provision of Business Card**

BERKELEY POLICE

BERKELEY POLICE



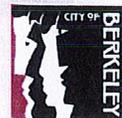
## Summary

### Rely on Proven Policies

- Policy 401 Fair and Impartial Policing
- Policy 1000 Recruitment and Selection
- Policy 1029 Employee Speech
- Police Regulations 232, 235, 238, 250

BERKELEY  POLICE

BERKELEY  POLICE



## Questions?

BERKELEY  POLICE

BERKELEY  POLICE





## NEW YORK TIMES

### CALIFORNIA TODAY

#### ***Berkeley Moves Closer to Ending Police Traffic Stops***

*Wednesday: A look at one city's effort to remake policing. Also: Xavier Becerra's confirmation hearings; and remembering Lawrence Ferlinghetti.*

***By Jill Cowan***

• Feb. 24, 2021

*Good morning.*

After Californians poured into the streets of cities across the state to protest police brutality and racism last summer, elected leaders pledged to implement reforms.

Los Angeles's mayor, Eric Garcetti, pledged to move \$250 million from city departments — including a \$150 million cut from the Police Department — to go toward communities of color. San Francisco's mayor, London Breed, in June unveiled a four-point blueprint for dealing with racism and how the city's Police Department addresses mental health and homelessness.

But progress on those goals has been varied in the months since, not just within California, but across the country. And different jurisdictions have taken different approaches.

Amid widespread calls to defund the police, for instance, school leaders in some cities have moved to reduce the presence of armed police officers in hallways. This month, the Los Angeles Unified School District voted to cut its police force and instead invest millions of the dollars it would have spent on armed security in programs for students of color and other measures, after student activists led a push to defund the department.

But in Berkeley, known for its progressive politics, city officials this week moved ahead with what they described as meaningful changes they hope will make the city a model in addressing racial disparities in policing — without the explicit focus on slashing the Police Department budget.

"I think using the word 'defund' is a mistake," Berkeley's mayor, Jesse Arreguín, told me on Tuesday. "What we're focusing on is transforming our approach to public safety and that's part of the whole broader effort to figure out, what is the role of police in our community and how can they best be deployed?"

In July, as my colleague Kellen Browning reported, Berkeley became what was believed to be the first city in the nation to plan to prohibit police officers from conducting traffic stops and shift that responsibility to unarmed members of a department of transportation.

On Tuesday evening, the Berkeley City Council unanimously approved a package of reforms that city officials — including Chief Andrew Greenwood of the Berkeley Police Department, who spoke at the special meeting — said were possible in the near term, while they figure out how to make broader changes.

The reforms require city officials to implement a ban on stopping drivers for offenses that aren't safety related, such as for broken taillights or even rolling through a stop sign if no one's around, and would stop police officers from asking about parole and probation status in most circumstances.

The reforms also include requiring written consent for searches in cases where consent is necessary, and building in more transparency measures in police interactions with members of the public.

*[Find the [recommendations in more detail here.](#)]*

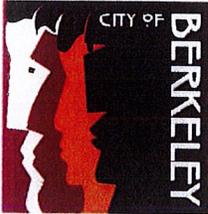
Experts have long said that traffic stops, the most common interaction Americans have with the police, disproportionately affect Black drivers. And police officers often have broad discretion to pull people over in "pretext stops," meaning they might stop a driver for a minor infraction so they can ask other questions.

A report by the Center for Policing Equity found that Black people are 6.5 times more likely than white people to be stopped by the Berkeley Police Department while driving and 4.5 times more likely to be stopped on foot.

Mr. Arreguín said that directing officers to spend less time stopping people for violations that don't affect broader public safety and more time investigating more serious crimes will build trust and make the department run more efficiently.

Now, the city's elected leaders must hold officials accountable for acting on the changes, said Nathan Mizell, a student at U.C. Berkeley who has served on the city's police review commission and on the mayor's working group that developed the recommendations approved on Tuesday.

"I feel it is truly an important step," Mr. Mizell said. "It's one that is long overdue."



Kate Harrison  
Councilmember District 4

## REVISED AGENDA MATERIAL

**Meeting Date:** March 1, 2021

**Item Number:** 4

**Item Description:** Police Equipment and Community Safety Ordinance

**Submitted by:** Councilmember Harrison

The item has been amended to:

- Clarify syntax in Section 2.100.040 (C) p. 4;
- Clarify in Section 2.100.040 (D) p.4 that the City Council will receive notice of Exigent Circumstance within 30 days *unless* such information is confidential or privileged under local, state or federal law;
- Cross reference sections appropriately - 2.100.050 Reports on the Use of Controlled Equipment (B)(2) p. 6;
- Clarify in Section 2.100.050 (A) (b) page 6 that reports on “use” of controlled equipment is only triggered when the equipment is publicly displayed or deployed during an operation or critical response (not merely visible).

ORDINANCE NO. -N.S.

ADDING A NEW CHAPTER 2.100 TO THE BERKELEY MUNICIPAL CODE  
REGULATING POLICE ACQUISITION AND USE OF CONTROLLED  
EQUIPMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Berkeley Municipal Code Chapter 2.100 is amended to read as follows:

**Chapter 2.100**  
**POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE**

**Sections:**

- 2.100.010 Name of Ordinance**
- 2.100.020 Definitions**
- 2.100.030 Controlled Equipment Use Policy Requirement**
- 2.100.040 Acquisition and Use of Controlled Equipment**
- 2.100.050 Reports on the Use of Controlled Equipment**
- 2.100.060 Enforcement**
- 2.100.070 Transparency**
- 2.100.080 Whistleblower Protections**
- 2.100.090 Severability**

**2.100.010 Name of Ordinance**

(A) This Ordinance shall be known as the Police Equipment and Community Safety Ordinance.

**2.100.020 Definitions**

(A) "Controlled Equipment" includes, but is not limited to, all of the following:

(1) Vehicles that are built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.

(a) Police versions of standard passenger vehicles are specifically excluded from this section.

(2) Multi-purpose wheeled vehicles that are: built to operate both on-road and off- road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck; or built or modified to use a breaching or entry apparatus as an attachment.

(a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.

(3) Tracked vehicles that are built or modified to provide ballistic protection to their

occupants and utilize a tracked system instead of wheels for forward motion.

(4) Aircraft, vessels, or vehicles of any kind, whether manned or unmanned, with attached or mounted weapons.

(5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive in nature. Items designed to remove a lock, such as bolt cutters, small gauge frangible rounds, or a handheld ram, are excluded from this policy.

(6) Firearms of .50 caliber or greater.

(7) Ammunition of .50 caliber or greater.

(8) Specialized firearms, including the Colt M4, and associated ammunition of less than .50 caliber, as defined in Sections 30510 and 30515 of the California Penal Code.

(9) Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, "bean bag," rubber bullet, or specialty impact munition (SIM) weapons, and equipment used to disperse chemical agents.

(10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.

(11) Explosives, pyrotechnics, such as "flashbang" grenades, and chemical weapons such as "teargas," CS gas, pepper spray, and "pepperballs".

(12) Batons 30 inches or longer in length.

(13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, and water cannons and the Long Range Acoustic Device (LRAD).

(a) Only LRAD as an area denial tool shall trigger the reporting requirements of this ordinance.

(14) Any other equipment as determined by a majority of the City Council to require additional oversight.

(B) "City" means any department, agency, bureau, and/or subordinate division of the City of Berkeley.

(C) "Controlled Equipment Impact Statement" means a publicly released, written document that includes, at a minimum, all of the following:

(1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.

(2) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.

(3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.

(4) Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public.

(5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.

(6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, and rationale for selection over alternative methods.

(7) Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third party service providers.

(D) "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires the use of unapproved Controlled Equipment.

### **2.100.030 Controlled Equipment Use Policy Requirement**

Controlled Equipment requires a publicly available use policy that identifies the purpose, any prohibited uses, training requirements, and any process required prior to use.

### **2.100.040 Acquisition and Use of Controlled Equipment.**

#### **(A) Restrictions Prior to Submission and Approval**

(1) The Police Department shall not engage in any of the following activities regarding a piece of Controlled Equipment before the Berkeley Police Review Commission ("Police Review Commission"), or any successive agency, reviews and recommends, and the City Council approves, a Controlled Equipment Impact Report and a Controlled Equipment Use Policy for that equipment in compliance with this section.

(a) Requesting the transfer of Controlled Equipment pursuant to Section 2576a of Title 10 of the United States Code.

(b) Seeking funds for Controlled 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 Controlled Equipment either permanently or temporarily, including by borrowing or leasing.

(d) Using any new Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the City Council pursuant to this Ordinance.

(e) 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, Controlled Equipment.

#### **(B) Submission to Police Review Commission**

(1) At least 15 days prior to any public meeting to consider the adoption of any Controlled

Equipment Use Policy or Controlled Equipment Impact Report, the Use Policy and Impact report shall be published for public review.

(2) The final Controlled Equipment Impact Report and Controlled Equipment Use Policy shall be made publicly available on the Department's website for as long as the Controlled Equipment is available for use.

(3) The Police Review Commission shall consider Controlled Equipment Impact Reports and Controlled Equipment Use Policies as an agenda item for review at an open session of a meeting.

(C) Criteria for Police Review Commission Recommendations

(1) The Police Review Commission shall recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter only if it determines all of the following:

(a) The Controlled Equipment is needed and there is no practicably available alternative equipment which is not Controlled Equipment that is sufficient for the purposes despite available alternatives.

(b) The proposed Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(c) The ~~use of~~ Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.

(2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, the Police Review Commission's recommendation for approval for the funding, acquisition, or use of the Controlled Equipment shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need for the Police Department to take proactive steps to minimize those effects~~them proactively.~~

(D) Temporary Use in Exigent Circumstances

(1) Notwithstanding the provisions of this Chapter, the Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the requirements in Section 2.100.040. However, if the Department does so, it must take all of the following actions:

(a) Provide written notice of that acquisition 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 receive approval, as applicable, from the City Council pursuant to Section 2.100.040; and

(c) Include the Controlled Equipment in the Department's next annual Controlled

Equipment Report.

(E) Police Review Commission Review Required Before City Council Consideration of Approval.

- (1) The Police Review Commission shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy, and notify the Police Department of its recommendations.
- (2) The Police Review Commission shall present its recommendations to City Council.
- (3) Failure by the Police Review Commission to make its recommendation on a proposal within ninety (90) days of submission shall enable City Staff to proceed to the City Council for approval of the proposal.

(F) Police Review Commission Review of Prior Recommendations

- (1) The Police Review Commission shall determine, as part of its annual Work Plan, whether to include the review of any Controlled Equipment use policy in the coming year.
- (2) A Police Review Commission recommendation to City Council that a prior approval be revoked shall be presented to Council. If City Council does not act on such a recommendation within four (4) City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment.

(G) Review Process for Previously-Acquired Equipment

- (1) The Police Department shall have one year from the date of passage of this Ordinance to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval if the Department wishes to continue the use of Controlled Equipment acquired prior to the passage of this Ordinance. If the Department fails to do so, it must cease use of such equipment.
- (2) To ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of such Controlled Equipment, and the Police Review Commission shall consider this ranking in determining the order in which to perform its review.

(H) City Council Approval Process

- (1) After the Police Review Commission review requirements have been met, the Police Department shall schedule for City Council consideration the proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy, and include Police Review Commission recommendations, at least fifteen (15) days prior to a public meeting.
- (2) If the City Council does not approve such item within four (4) regular City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment until such review and approval occurs.

## 2.100.050 Reports on the Use of Controlled Equipment.

### (A) Annual Report on Controlled Equipment

(1) The Police Department shall submit a report on Controlled Equipment to the Police Review Commission within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use. The report shall be provided no later than March 15<sup>th</sup> of each year, unless the Police Review Commission advises the Department that an alternate date is preferred. The Department shall also make each annual report publicly available on its website for as long as the Controlled Equipment is available for use. The annual report shall, at a minimum, include the following information for the immediately preceding calendar year:

(a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.

(b) A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to deployments in which equipment is publicly displayed, or ~~visible, or~~ is deployed in an operation or critical response, not to transfers of location or placement of equipment inside Department vehicles.

(c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.

(d) A summary of any complaints or concerns received concerning Controlled Equipment.

(e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

### (B) Compliance or Revocation of Approval

(1) Within 60 days of the Police Department submitting an annual report, the Police Review Commission shall place the report as an agenda item for an open session of a regular meeting. The Police Review Commission shall determine, based on the report, whether each piece of Controlled Equipment reported on has complied with the standards for approval set forth in Section 2.100.040.

(2) If the Police Review Commission determines that any Controlled Equipment has not complied with the ~~these~~ standards for approval set forth in Section 2.100.040, it shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations shall be forwarded to City Council in accordance with the approval process in Section 2.100.040.

(3) After review by the Police Review Commission, the Police Department shall submit the annual report to City Council, indicating its approval or lack of compliance for each piece of Controlled Equipment.

## **2.100.060 Enforcement.**

### **(A) Remedies for Violations of this Ordinance**

This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if they are personally obligated to pay such fees.

## **2.100.070 Transparency**

### **(A) Disclosure Requirements**

- (1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.
- (2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary.

## **2.100.080 Whistleblower Protections.**

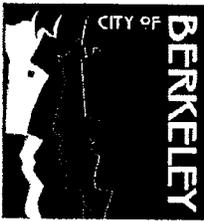
All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016, and including any updates or replacements thereto, shall apply.

## **2.100.090-Severability**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Berkeley Police Department

February 26, 2021

Katherine Lee  
klee@cityofberkeley.info

**RE: Public Records Act Request Received February 26, 2021**

Dear Katherine Lee:

This letter is in response to your February 26, 2021 Public Records Act request for:

*Records and body-worn video of the January 2 officer involved shooting.*

Please click on the link below to access the Community Briefing Video of the incident:

<https://youtu.be/2TjRx5yl6iQ>

Please click the following link to access the body worn camera footage of the incident as well as additional video evidence from the incident:

<https://bit.ly/2P41CvZ>

Please note that your access to this link will expire on March 10, 2021. You can view and download materials at any time prior to this date. Afterwards, you will need to contact me to request additional access.

In addition to video evidence, BPD has identified additional records that will be subject to disclosure under Penal Code section 832.7(b)(1). BPD will release these records once they are completed and reviewed pursuant to statutory requirements. Further, the criminal investigation as well as the administrative review of the use of force are currently ongoing. (See Penal Code § 832.7(b)(7)(C).)

If you have any questions concerning your request, please feel free to contact me at [JLouis@cityofberkeley.info](mailto:JLouis@cityofberkeley.info)

Sincerely,

A handwritten signature in black ink, appearing to read "J. Louis".

J. Louis

Captain, Support Services Division

