

Police Review Commission (PRC)

POLICE REVIEW COMMISSION REGULAR MEETING

Wednesday, March 24, 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 March 10, 2021.
 - b. Special meeting of March 13, 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.

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Email: prc@cityofberkeley.info Website: 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 16.

b. Outreach Subcommittee – March 13 webinar evaluation and debrief.

c. Lexipol Policies Subcommittee – next meeting March 26, 1:30 p.m.

9. OLD BUSINESS (discussion and action)

a. Update on transition to new Police Accountability Board and Office of Director of Police Accountability, including: (10 minutes)

i) Applications for Board members: due date March 29 at 5:00 p.m.

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.

b. Review and approve letter of thanks and commendation to former Chief Greenwood on the occasion of his retirement. (10 minutes)

10. NEW BUSINESS (discussion and action)

a. Police Review Commission involvement in hiring of new Chief of Police. (10 minutes)

From: Commissioner Calavita

b. Whether to participate in a scenario-based use-of-force training offered by the Police Department. (10 minutes)

c. Review Police Department issues in implementing of Policy 300, Use of Force, particularly regarding what constitutes a Level 1 UOF, and staff time needed for reporting UOF incidents. (15 minutes)

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.

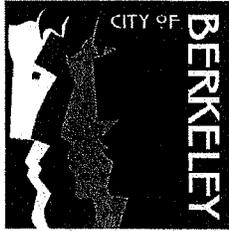
SB 343 Disclaimer

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.

**PRC REGULAR MEETING ATTACHMENTS
MARCH 24, 2021**

<u>MINUTES</u>	
March 10, 2021 Regular Meeting Draft Minutes.	Page 7
March 13, 2021 Special Meeting Draft Minutes	Page 13
<u>AGENDA-RELATED</u>	
Item 8. – PRC Subcommittees List, updated 3-11-21.	Page 15
Item 9.b. – Draft letter congratulating Chief Andrew Greenwood on his retirement.	Page 17
Item 10.c. – BPD Policy 300 re Use of Force.	Page 19
<u>COMMUNICATIONS</u>	
Request for Proposals (RFP), Specification No. 21-11442 for Director of Police Accountability Recruitment Services.	Page 37
3-18-21 Letter to Interim Police Chief Jennifer Louis re Police Review Commission recommendation regarding wording of Policy 311, Search and Seizure.	Page 47
3-16-21 Email from the NACOLE Director of Training & Education re DHS Seeking Candidates to Participate in Use of Force SIMEX.	Page 49
3-9-21 Article from The Daily Californian re BART independent police auditor shares progressive oversight practices.	Page 53
Police Review Commission Standing Rules, revised as of 3-11-21.	Page 55



Police Review Commission (PRC)

DRAFT

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

Wednesday, March 10, 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 7:08 p.m.)
Commissioner Gwen Allamby
Commissioner Kitty Calavita
Commissioner Juliet Leftwich
Commissioner Elisa Mikiten
Commissioner Nathan Mizell
Commissioner Hans Moore
Commissioner George Perezvelez

Absent: None

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Capt. Rico Rolleri, Lt. Robert Rittenhouse, Sgt. Jumaane Jones,
Ofc. Carlos Maldonado (BPA)

2. APPROVAL OF AGENDA

Motion to approve the agenda, with the removal of Item #10.a., Lexipol policies.

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

3. PUBLIC COMMENT

There was 1 speaker.

4. APPROVAL OF MINUTES

a. Regular meeting of February 24, 2021.

Motion to approve Regular Meeting minutes of February 24, 2021.
Moved/Second (Allamby/Perezvelez) **Motion Carried by general consent**

b. Special meeting of March 2, 2021

Motion to approve Special Meeting minutes of March 2, 2021.
Moved/Second (Calavita/Allamby) **Motion Carried by general consent**

5. CHAIR'S REPORT

Chair Ramsey reported:

- Still trying to get as much subcommittee work done as possible.
- Police Accountability Board applications due March 29.
- Recommendations from the Mayor's Working Group on Fair & Impartial Policing were approved by City Council. Next steps in implementation and role for PRC and PAB being developed.

Comm. Mizell reported on Reimagining Public Safety Task Force: Haven't met since last PRC meeting; next meeting tomorrow at 6 pm. On agenda are introduction of 3 at-large task force members and several presentations: Brown Act by City Attorney's Office; NICJR on their plan; City Manager re concurrent projects re public safety; City Auditor overview of calls for service audit.

6. PRC OFFICER'S REPORT

The PRC Officer reported:

- Following up re Mayor's Working Group, today's agenda packet includes annotated agenda with recommendations adopted by Council.
- Two new complaints filed since the last meeting. One filed by subject of the officer-involved shooting on Jan. 2. Per PRC Regulations, investigation cannot begin as long as criminal charges are still pending.
- Council's Public Safety Policy Committee met March 1; did not complete discussion on Controlled Equipment Ordinance. Will continue at special meeting of Committee on March 29 at 10:30 a.m.
- PRC Officer sat in on interviews for Special Response Team.

7. CHIEF OF POLICE'S REPORT

Captain Roller reported:

- Chief Greenwood announced retirement, as of Friday (March 12). Down to 158 sworn, as low as it's been in 26 years.
- Still grappling with budgetary issues. Constantly a difficult and moving target.
- Completed all Use of Force training last month.
- Responding to commissioner questions from last meeting:
 - Whether commissioners can attend future UOF scenario training? Yes; in fact BPD had already discussed presenting this idea to PRC and Council. Need at least 5 or more people to participate and put them through scenarios.

Why we're having problems hiring while BART and others are not? Untrue that other agencies aren't having problems. Oakland PD has 786 authorized positions but only have 718; in last decade averaged 1000s of applicants, now getting 100s. BART PD authorized for 244, but down 17 positions; offering \$15K signing bonus for laterals and dropped college requirement. Alameda PD -- 88 authorized but at 61. San Leandro PD -- 90 authorized but at 85.

Examples of problems with BPD with Policy 300? Many -- pages and pages. Majority of confusion is Level 1 -- grabbing and handcuffing, as lots of ambiguity in the way policy worded. Additional time needed by Blue Team to investigate every single UOF; becoming problematic.

Why in revised Police 311 is certain language dropped ("However, under Berkeley policy, . . .")? Chief didn't feel pertinent.

Capt. Rolleri 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 -- Met March 2.
- b. Outreach Subcommittee -- Co-Chair Mikiten reported: Have established agenda for special meeting / webinar for public to be held March 13, 4 - 5 p.m. Goal is to increase applicant pool for the Police Accountability Board.
- c. Lexipol Policies Subcommittee -- Meeting tomorrow, March 12, at 2:00 p.m.
- d. Use of Force Policy Subcommittee

Motion to disband the Use of Force Policy Subcommittee with the understanding that the Police Accountability Board should form a new subcommittee when the time comes to review the UOF policy.

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

Ayes: Allamby, Chang, Leftwich, Mizell, Moore, Perezvelez, and Ramsey.

Noes: None

Abstain: Mikiten

Absent: Calavita

(Commissioner Calavita absent 7:54 -- 8:02 p.m.)

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.

Motion to recommend to the Police Department to add "However," before "Officers shall not detain" in section 311.6 of Policy 311, Search and Seizure.

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

Ayes: Allamby, Calavita, Chang, Leftwich, Mizell, Moore.

Noes: None
Absent: None

Abstain: Mikiten Perezvelez, Ramsey

- 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 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.

PRC Officer gave an update and answered questions.

- c. Review commendations of BPD employees and consider additional commendations from the PRC.
 - i) Re-review commendations on pp. 25 - 27 (of Feb. 24, 2021 packet), in light of additional information obtained about officers' roles.

No action taken.

- ii) New nominations for commendations

Motion to commend Officer Geoffrey Mitchell, Student Resource Officer at Berkeley High School, for going above and beyond official duties, by mentoring, counseling, and tutoring students, especially students of color, including in football study hall; mentoring foster children; and for donating 8 – 10 hours per week on these activities.

Moved/Second (Chang/Mikiten) Motion Carried

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

Noes: Allamby

Abstain: Mizell, Moore, Ramsey

Absent: None

10. NEW BUSINESS (discussion and action)

- a. Lexipol Policies for review and approval:

Withdrawn by PRC Officer.

- b. Consider amending the PRC Standing Rules, Section P, regarding Commendations of Berkeley Police Department Personnel.
 - i) Add a new criterion in Subsection 4 for issuing commendations, to read as follows:

d) Extraordinary compassion, empathy or kindness.

Motion to add a new criterion in subsection 4 of Section P of the PRC Standing Rules to read as follows: "d) Extraordinary compassion, empathy or kindness."

Moved/Second (Leftwich/Calavita) Motion Carried

Ayes: Allamby, Calavita, Chang, Leftwich, Mikiten, Moore, Perezvelez, and Ramsey.

Noes: None

Abstain: Mizell

Absent: None

- 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.

Motion to insert language [indicated by brackets] into subsection 6 of Section P of the Standing Rules, so that it reads, "Following the meeting, the commission secretary shall communicate the PRC's action in writing [to the City Council, and shall also forward the commendation] to the Chief of Police, with a request that the commendation or other honor replaced in the personnel file of each sworn officer or civilian employee commended."

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

Ayes: Allamby, Chang, Leftwich, Mikiten, Moore, Perezvelez, and Ramsey.

Noes: None

Abstain: Calavita, Mizell

Absent: None

- c. Consider sending a letter of thanks and commendation to Chief Andrew Greenwood on the occasion of his retirement.

Motion to direct the PRC Officer and the PRC Chair to write, on behalf of the Commission, a letter of thanks and commendation to Chief Greenwood on the occasion of his retirement.

Moved/Second (Chang/Perezvelez)

Friendly amendment: that a draft letter of the letter be returned to the PRC for review and possible revisions.

Moved by Mizell; Accepted by Chang and Perezvelez

Motion, as amended, Carried by general consent

11. PUBLIC COMMENT

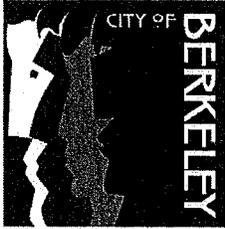
There were no speakers.

12. ADJOURNMENT

Motion to adjourn

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

The meeting was adjourned at 8:55 p.m.



Police Review Commission (PRC)

DRAFT

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

Saturday, March 13, 2021, 4:00 P.M.

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

1. CALL TO ORDER & ROLL CALL BY CHAIR RAMSEY AT 4:05 P.M.

Present: Commissioner Ismail Ramsey (Chair)
Commissioner Michael Chang (Vice-Chair)
Commissioner Gwen Allamby
Commissioner Kitty Calavita
Commissioner Juliet Leftwich
Commissioner Elisa Mikiten
Commissioner Nathan Mizell
Commissioner Hans Moore (left 4:45 p.m.)
Commissioner George Perezvelez

Absent: None

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

2. COMMUNITY OVERSIGHT OF POLICING IN BERKELEY

Informational session regarding the Police Review Commission (PRC), Police Accountability Board (PAB), and applying for the PAB.

Presentations made and question-and-answer session held.

3. PUBLIC COMMENT

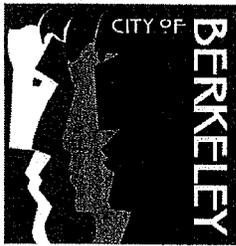
There were 7 speakers.

4. CLOSING REMARKS AND ADJOURNMENT

By general consent, the meeting was adjourned at 5:33 p.m.

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST**
Updated 3-11-21

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



Police Review Commission (PRC)

March 18, 2021

Chief Andrew Greenwood (ret.)
c/o Berkeley Police Department
2100 Martin Luther King, Jr. Way
Berkeley, CA 94704

Dear Chief Greenwood,

The Berkeley Police Review Commission thanks you for your 35 years of dedicated service to the Berkeley Police Department and to the people of the City of Berkeley.

Your willingness to engage with the Commission with thoughtful, candid, and sometimes difficult discussions about departmental operations and policies have been invaluable to our work and to improving policing in the City over the years. Despite a myriad of demands on your time, the Commission received your focused attention on a variety of issues. By committing command staff and other members of your department to work with the Commission, you made clear the importance of civilian oversight of the Department.

The City was lucky to have a native Berkeleyan at the helm of its police force, one who was both inherently committed to this community and also well-prepared to tackle the challenges of dealing with highly involved and vocal residents.

Congratulations and best wishes on a well-deserved retirement.

Sincerely,

Ismail Ramsey
Chair, Berkeley Police Review Commission

cc: PRC Commissioners

Use of Force

300.1 SANCTITY OF LIFE

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

300.1.1 PURPOSE AND SCOPE

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

300.1.2 USE OF FORCE STANDARD

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

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

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

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

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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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

Berkeley Police Department

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

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

- (a) The apparent immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer.
- (e) The effects of drugs or alcohol.
- (f) The individual's apparent mental state or capacity.
- (g) The individual's apparent ability to understand and comply with officer commands.
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness.

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- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

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

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

300.3.2 USE OF FORCE CONTINUUM

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

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

Continuum of Force

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

300.3.3 USE OF FORCE TO SEIZE EVIDENCE

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

300.3.4 DE-ESCALATION TACTICS

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

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

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

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

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

- (a) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; "waiting out" subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
- (b) Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
- (c) Officers should consider a variety of options, including lesser force or no force options.
- (d) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.
- (e) A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
- (f) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use of force.
- (g) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.

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- (h) Establishing communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.
- (i) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

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

- (a) Make a tactical approach to the scene.
- (b) Maintain a safe distance.
- (c) Use available cover or concealment and identify escape routes.
- (d) Stage Berkeley Fire Department.
- (e) Control vehicle and pedestrian traffic.
- (f) Establish communication, preferably with one officer.
- (g) Create an emergency plan and a deliberate plan with contingencies.
- (h) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

300.3.5 PAIN COMPLIANCE TECHNIQUES

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

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.

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

300.3.6 USE OF NON-LETHAL FORCE

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

- (a) To protect themselves or another person from physical injury;
- (b) To restrain or subdue a resistant individual; or
- (c) To bring an unlawful situation safely and effectively under control.

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300.3.7 RESTRAINT AND CONTROL DEVICES

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

300.3.8 CHOKEHOLD PROHIBITION

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

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

300.4 USE OF DEADLY FORCE

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

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

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

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

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

300.4.1 DRAWING AND POINTING FIREARMS

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

- (a) If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- (b) If it is objectively reasonable that a significant threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward said threat until the officer no longer perceives such threat.

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

300.4.2 DIRECTED FIRE

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

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

300.4.3 SHOOTING AT OR FROM MOVING VEHICLES

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

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

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

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

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

- (a) The availability and use of cover, distance and/or tactical relocation
- (b) Incident command and personnel placement
- (c) Tactical approach
- (d) Regard for viable target acquisition and background including location, other traffic, the presence of innocent persons, and police officers.

300.5 USE OF VEHICLES

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

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

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

300.6 REPORTING REQUIREMENTS

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

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

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300.6.1 SUPERVISOR RESPONSIBILITY

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

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports.
- (f) Review body worn camera footage related to the incident.

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

300.6.2 USE OF FORCE REPORTING LEVELS

Level 1

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

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

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

Level 2

- (a) No suspect injury or complaint of continuing pain due to interaction with officer.
- (b) Officer's use of force was limited to the following:

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1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual, and/or pointed at an individual. For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.
2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

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

Level 3

- (a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.
- (b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.
- (c) The officer used any of the following force options:
 1. Chemical Agents/Munitions
 2. Impact Weapon Strikes
 3. Personal Body Weapons

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

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

Level 4

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

300.6.3 EMPLOYEE USE OF FORCE

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

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- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.
- (b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

300.6.4 PUBLIC RECORDS

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

300.7 MEDICAL CONSIDERATION

When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer 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 medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

300.8 USE OF FORCE ADMINISTRATIVE REVIEW

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

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

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

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

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

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

300.9 WATCH COMMANDER RESPONSIBILITY

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

300.10 TRAINING

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

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

Training should also include:

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- (b) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

300.11 USE OF FORCE ANALYSIS

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

- (a) An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.
- (b) All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2)
- (c) The identification of any trends in the use of force by members.
- (d) Training needs recommendations.
- (e) Equipment needs recommendations.
- (f) Policy revisions recommendations.

300.11.1 REPORTING FREQUENCY

- (a) On a quarterly basis via the City's Open Data Portal website;
- (b) On a quarterly basis to the Police Review Commission; and
- (c) On a yearly basis as part of the Police Department's Annual Crime Report to Council

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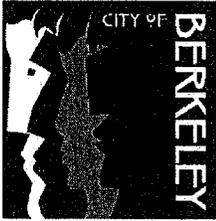
300.12 CIVILIAN COMPLAINTS

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

300.13 POLICY REVIEW AND UPDATES

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

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



Finance Department
General Services Division

REQUEST FOR PROPOSALS (RFP)
Specification No. 21-11442
FOR
Director of Police Accountability Recruitment Services
PROPOSALS WILL NOT BE OPENED AND READ PUBLICLY

Dear Proposer:

The City of Berkeley is soliciting written proposals from qualified firms or individuals to provide recruitment services for the newly established Director of Police Accountability. As a Request for Proposal (RFP) this is not an invitation to bid and although price is very important, other factors will be taken into consideration.

The project scope, content of proposal, and vendor selection process are summarized in the RFP (attached). **Proposals must be received no later than 2:00 pm, on Tuesday, April 6, 2021**. Proposals are to be sent via email with the “**Director of Police Accountability Recruitment Services**” and **Specification No. 21-11442** clearly indicated in the subject line of the email. Please submit one (1) PDF of the technical proposal. Corresponding pricing proposal shall be submitted as a separate document.

Email Proposals to:

City of Berkeley
Finance Department/General Services Division
purchasing@cityofberkeley.info

Proposals will not be accepted after the date and time stated above. Incomplete proposal or proposals that do not conform to the requirements specified herein will not be considered. Issuance of the RFP does not obligate the City to award a contract, nor is the City liable for any costs incurred by the proposer in the preparation and submittal of proposals for the subject work. The City retains the right to award all or parts of this contract to several bidders, to not select any bidders, and/or to re-solicit proposals. The act of submitting a proposal is a declaration that the proposer has read the RFP and understands all the requirements and conditions.

For questions concerning the anticipated work, or scope of the project, please **contact David White, Deputy City Manager**, via email at dwhite@cityofberkeley.info no later than **March 18, 2021**. Answers to questions will **not** be provided by telephone or email. Answers to all questions or any addenda will be **posted** on the City of Berkeley’s site at <http://www.cityofberkeley.info/ContentDisplay.aspx?id=7128>. It is the vendor’s responsibility to check this site. For general questions concerning the submittal process, contact purchasing at 510-981-7320.

We look forward to receiving and reviewing your proposal.

Sincerely,

Darryl Sweet
General Services Manager

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7320 TDD: 510.981.6903
E-mail: purchasing@cityofberkeley.info Website: cityofberkeley.info/finance/

I. BACKGROUND /SUMMARY/or INTRODUCTION

The City of Berkeley is seeking proposals for services from a qualified recruitment firm to assist the City in the selection of a Director of Police Accountability. The Director of Police Accountability is a newly established executive position that resulted from the adoption of Measure II¹ on November 3, 2020.

Measure II established a Police Accountability Board consisting of nine (9) members and also established the position of Director of Police Accountability. The purpose of the Police Accountability Board and Director of Police Accountability is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department. Both the Police Accountability Board and Director of Police Accountability are independent of the City Manager and report to the Mayor and City Council.

Measure II outlines the responsibilities of the newly created Director of Police Accountability, which includes, but is not limited to the following:

- Carrying out the work of the Police Board that includes the day-to-day operations of the Board office and staff.
- Ensuring a timely, thorough, complete, objective and fair investigation into the complaints from members of the public against sworn employees of the Police Department. The Director of Police Accountability is also responsible for preparing findings and recommendations for Police Board consideration.
- Performing community outreach and soliciting input on the work of the Police Board and Office of the Director of Police Accountability.
- Make policy recommendations regarding police practices and conduct periodic audits of the Berkeley Police Department.
- Preparing annual reports to the City Council that shall be presented at a City Council meeting. Annual reports shall consist of a summary of the Police Board's activities over the course of a year, training and/or policy issues that arise during investigations, trends and patterns in vehicle and pedestrian stops of complaints, and trends and patterns regarding police misconduct, use of force and officer-involved shootings.

The City is in the process of soliciting applications from members of the community for the Police Accountability Board and strives to fill the Director of Police Accountability as soon as possible.

II. SCOPE OF SERVICES

The successful recruitment firm will be expected to work closely with city staff, to perform at a minimum, the following:

- Meet with the City Council and solicit the input of stakeholder groups and the community to facilitate the development of an appropriate candidate profile and list of qualifications and priorities for the new Director of Police Accountability.
- Validate desirable candidate characteristics through discussions with the City Council.

¹ <https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/Police%20Charter%20Question%20and%20Text.pdf>.

- Develop and execute an inclusive plan for a nation-wide search for the Director of Police Accountability recruitment (print, web, social media, targeted calls, etc.)
- Identify specific strategies to encourage highly qualified applicants from diverse backgrounds to apply.
- Acknowledge receipt of candidates' application materials and maintain communication with all candidates throughout the recruitment process.
- Answer questions from candidates and collect application materials.
- Review the applications received, comparing them to the desired candidate profile.
- Advise the City Council on the qualifications of the candidates, develop a list of recommended candidates for interviews, provide a written report summarizing the overall candidate pool and the qualifications of those selected to be interviewed.
- Perform initial screening interviews with the most qualified candidates.
- Advise the City on interview strategies, appropriate questions, and evaluation tools.
- Attend the interview sessions for candidates.
- Assist the City in selection of finalists.
- Conduct complete background and reference checks on finalist candidates, including public records searches and credit checks.
- Prepare and present a confidential reference report on each finalist candidate.
- Facilitate the final interview process and be available to assist the City as it makes a selection.
- Present Final Candidate at the City Council meeting approving appointment
- Provide progress reports at least bi-weekly to the City's project manager. Periodic on-site/telephonic meetings may be required to discuss ongoing progress.
- Assist the City with employment contract negotiations, as necessary.
- Maintain all correspondence and record-keeping throughout the process.
- Compile search documentation and prepare a final written summary of all work performed and outreach taken related to developing, conducting, and completing the search.

Project Term

This work will commence immediately upon execution of a contract with the City of Berkeley and the City strives to fill the position as soon as possible but no later than with six (6) months of issuing a Notice to Proceed.

III. SUBMISSION REQUIREMENTS

All proposals shall include the following information, organized as separate sections of the proposal. The proposal should be concise and to the point.

1. Contractor Identification:

Provide the name of the firm, the firm's principal place of business, the name and telephone number of the contact person and company tax identification number.

2. Scope of Work:

Discuss in detail each item in the RFP and how you intend to address each.

3. Stakeholder / Community Engagement:

The firm that is selected for this assignment will be expected to devise and lead a well-organized and structured community engagement process. Provide a clear and inclusive plan to solicit the input of stakeholder groups / community members in development of the recruitment brochure.

4. Firm Background and Project Team:

Background information on the firm, including details of the firm's experience with similar executive recruitments; a brief resume of the individual(s) assigned to this project; and sample work products including recruiting brochures, candidate questionnaires, candidate reference reports, etc. The proposal should include information about the firm's current engagements and an affirmation of the firm's ability to focus on this project.

5. Timeline and Project Schedule:

A detailed timeline for the completion of all the services described in the Scope of Work. The timeline should include a proposed schedule for each phase of the process, including development of the recruitment profile, search, background evaluations, interviews, and selection.

6. Client References:

Provide a minimum of *three (3)* client references. References should be California cities or other large public sector entities. Provide the designated person's name, title, organization, address, telephone number, and the project(s) that were completed under that client's direction.

7. Price Proposal:

The proposal shall include a "not to exceed" fee for all the professional services and tasks described in the Scope of Work. Pricing shall be all inclusive unless indicated otherwise. Pricing proposals shall be a separate document. The Proposal shall itemize all services, including hourly rates for all professional, technical and support personnel, and all other charges related to completion of the work shall be itemized. The hourly rate at which the City would be billed for any services that the City might request outside the scope of the items in the RFP shall also be provided.

8. Contract Terminations:

If your organization has had a contract terminated in the last five (5) years, describe such incident. Termination for default is defined as notice to stop performance due to the vendor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the vendor, or (b) litigated and such litigation determined that the vendor was in default.

Submit full details of the terms for default including the other party's name, address, and phone number. Present the vendor's position on the matter. The City will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience.

If the firm has not experienced any such termination for default or early termination in the past five (5) years, so indicate.

9. Other

- Information about the firm's approach in the event of a recruitment that does not produce a viable candidate or the premature dismissal or resignation of the selected candidate.
- A list of any additional activities and/or techniques that might be helpful to incorporate into the recruitment and selection process and the specific cost for adding such services.

IV. SELECTION CRITERIA

The following criteria will be considered, although not exclusively, in determining which firm is hired.

1. Responsiveness to this Request for Proposal (15 points)
2. Approach to community engagement / soliciting the input of stakeholder groups (20 points)
2. Qualifications and experience of the individuals assigned to this project (15 points)
3. Prior successful recruitments, especially for executive level positions (i.e., City Manager / Chief Executive, City Attorney or Department Head) (20 points)
4. Schedule and availability (10 points)
5. References (10 points)
6. Cost of services (10 points)

A selection panel will be convened to review proposals submitted to the City.

V. PAYMENT

Invoices: Invoices must be fully itemized, and provide sufficient information for approving payment and audit. Invoices must be accompanied by receipt for services in order for payment to be processed. Mail invoices to the Project Manager and reference the contract number.

City of Berkeley
Accounts Payable
PO Box 700
Berkeley, CA 94701
Attn: **David White, City Manager's Office (Fifth Floor)**

Payments: The City will make payment to the vendor within 30 days of receipt of a correct and complete invoice.

VI. CITY REQUIREMENTS

A. Non-Discrimination Requirements:

Ordinance No. 5876-N.S. codified in B.M.C. Chapter 13.26 states that, for contracts worth more than \$3,000 bids for supplies or bids or proposals for services shall include a completed Workforce Composition Form. Businesses with fewer than five employees are exempt from submitting this form. (See B.M.C. 13.26.030)

Under B.M.C. section 13.26.060, the City may require any bidder or vendor it believes may have discriminated to submit a Non-Discrimination Program. The Contract Compliance Officer will make this determination. This applies to all contracts and all consultants (contractors). Berkeley Municipal Code section 13.26.070 requires that all contracts with the City contain a non-discrimination clause, in which the contractor agrees not to discriminate and allows the City access to records necessary to monitor compliance. This section also applies to all contracts and all consultants. **Bidders must submit the attached Non-Discrimination Disclosure Form with their proposal**

B. Nuclear Free Berkeley Disclosure Form:

Berkeley Municipal Code section 12.90.070 prohibits the City from granting contracts to companies that knowingly engage in work for nuclear weapons. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that engages in nuclear weapons work. If your company engages in work for nuclear weapons, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Nuclear Free Disclosure Form with their proposal.**

C. Oppressive States:

The City of Berkeley prohibits granting of contracts to firms that knowingly provide personal services to specified Countries. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that is covered by City Council Resolution No. 59,853-N.S. If your company or any subsidiary is covered, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Oppressive States Disclosure Form with their proposal.**

D. Sanctuary City Contracting Ordinance:

Chapter 13.105 of the Berkeley Municipal Code prohibits the City from granting and or retaining contracts with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and

Customs Enforcement Division of the United States Department of Homeland Security (“ICE”). **Bidders must submit the attached Sanctuary City Compliance Statement with their proposal.**

E. Conflict of Interest:

In the sole judgment of the City, any and all proposals are subject to disqualification on the basis of a conflict of interest. The City may not contract with a vendor if the vendor or an employee, officer or director of the proposer's firm, or any immediate family member of the preceding, has served as an elected official, employee, board or commission member of the City who influences the making of the contract or has a direct or indirect interest in the contract.

Furthermore, the City may not contract with any vendor whose income, investment, or real property interest may be affected by the contract. The City, at its sole option, may disqualify any proposal on the basis of such a conflict of interest. **Please identify any person associated with the firm that has a potential conflict of interest.**

F. Berkeley Living Wage Ordinance:

Chapter 13.27 of the Berkeley Municipal Code requires that contractors offer all eligible employees with City mandated minimum compensation during the term of any contract that may be awarded by the City. If the Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts with the City within a one-year period may subject Contractor to the requirements under B.M.C. Chapter 13.27. A certification of compliance with this ordinance will be required upon execution of a contract. The current Living Wage rate can be found here: https://www.cityofberkeley.info/Finance/Home/Vendors_Living_Wage_Ordinance.aspx. The Living Wage rate is adjusted automatically effective June 30th of each year commensurate with the corresponding increase in the Consumer Price Index published in April of each year. If the Living Wage rate is adjusted during the term of your agreement, you must pay the new adjusted rate to all eligible employees, regardless of what the rate was when the contract was executed.

G. Berkeley Equal Benefits Ordinance:

Chapter 13.29 of the Berkeley Municipal Code requires that contractors offer domestic partners the same access to benefits that are available to spouses. A certification of compliance with this ordinance will be required upon execution of a contract.

H. Statement of Economic Interest:

The City's Conflict of Interest Code designates “consultants” as a category of persons who must complete Form 700, Statement of Economic Interest, at the beginning of the contract period and again at the termination of the contract. The selected contractor will be required to complete the Form 700 before work may begin.

VII. OTHER REQUIREMENTS

A. Insurance

The selected contractor will be required to maintain general liability insurance in the minimum amount of \$2,000,000, automobile liability insurance in the minimum amount of \$1,000,000 and a professional liability insurance policy in the amount of \$2,000,000 to cover any claims arising out of the performance of the contract. The general liability and automobile insurance must name the City, its officers, agents, volunteers and employees as additional insureds.

B. Worker's Compensation Insurance:

A selected contractor who employs any person shall maintain workers' compensation insurance in accordance with state requirements. Sole proprietors with no employees are not required to carry Worker's Compensation Insurance.

C. Business License

Virtually every contractor that does business with the City must obtain a City business license as mandated by B.M.C. Ch. 9.04. The business license requirement applies whether or not the contractor has an office within the City limits. However, a "casual" or "isolated" business transaction (B.M.C. section 9.04.010) does not subject the contractor to the license tax. Warehousing businesses and charitable organizations are the only entities specifically exempted in the code from the license requirement (see B.M.C. sections, 9.04.295 and 9.04.300). Non-profit organizations are granted partial exemptions (see B.M.C. section 9.04.305). Persons who, by reason of physical infirmity, unavoidable misfortune, or unavoidable poverty, may be granted an exemption of one annual free license at the discretion of the Director of Finance. (see B.M.C. sections 9.04.290).

Vendor must apply for a City business license and show proof of application to Purchasing Manager within seven days of being selected as intended contractor.

The Customer Service Division of the Finance Department located at 1947 Center Street, Berkeley, CA 94704, issues business licenses. Contractors should contact this division for questions and/or information on obtaining a City business license, in person, or by calling 510-981-7200.

D. Recycled Paper

Any printed reports for the City required during the performance of the work shall be on 100% recycled paper, and shall be *printed on both sides of the page* whenever practical.

E. State Prevailing Wage:

Certain labor categories under this project may be subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et. seq. These labor categories, when employed for any "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," constitute a "Public Work" within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages.

Wage information is available through the California Division of Industrial Relations web site at:
http://www.dir.ca.gov/OPRL/statistics_and_databases.html

VIII. SCHEDULE (dates are subject to change)

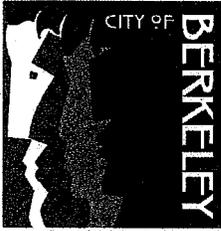
- | | |
|---|----------------|
| <input type="checkbox"/> Issue RFP to Potential Bidders: | March 9, 2021 |
| <input type="checkbox"/> Questions Due | March 18, 2021 |
| <input type="checkbox"/> Proposals Due from Potential Bidders | April 6, 2021 |
| <input type="checkbox"/> Complete Selection Process | May 7, 2021 |
| <input type="checkbox"/> Council Approval of Contract (if over \$50k) | May 25, 2021 |
| <input type="checkbox"/> Award of Contract | May 26, 2021 |
| <input type="checkbox"/> Sign and Process Contract | June 18, 2021 |
| <input type="checkbox"/> Notice to Proceed | June 21, 2021 |

Thank you for your interest in working with the City of Berkeley for this service. We look forward to receiving your proposal.

Attachments: *(Not included in PRC packet)*

- | | |
|---|--------------|
| • Check List of Required items for Submittal | Attachment A |
| • Non-Discrimination/Workforce Composition Form | Attachment B |
| • Nuclear Free Disclosure Form | Attachment C |
| • Oppressive States Form | Attachment D |
| • Sanctuary City Compliance Statement | Attachment E |
| • Living Wage Form | Attachment F |
| • Equal Benefits Certification of Compliance | Attachment G |
| • Right to Audit Form | Attachment H |
| • Insurance Endorsement | Attachment I |

Handwritten text, possibly a signature or name, located in the center of the page.



Police Review Commission

March 18, 2021

To: Interim Police Chief Jennifer Louis
From: Katherine J. Lee, ^{KJL} Police Review Commission Officer
Re: Police Review Commission recommendation regarding wording of Policy 311, Search and Seizure

As you know, Policy 311, Search and Seizure, was recently revised to include language recommended by the Police Review Commission and agreed upon by former Chief Greenwood. This was the culmination of the efforts of the PRC to: 1) stop the police practice of asking detainees if they are on probation or parole; and 2) narrow the permissible circumstances for conducting warrantless searches of those under supervised release.

Berkeley Police Department staff participated in PRC Probation and Parole Searches Subcommittee meetings to discuss possible policy changes, and Chief Greenwood was involved when the Subcommittee's recommendations were brought before the full Commission. Final policy language was settled upon at the PRC's September 23, 2020 and October 28, 2020 meetings.

The PRC subsequently asked Chief Greenwood how the policy would be memorialized, and he advised the language would be inserted into Policy 311. However, upon reviewing the revised policy (issued February 10, 2021), the PRC noted, that certain words were omitted. Section 311.6, second paragraph, currently begins:

Officers shall not detain and search a person on probation or parole solely because the officer is aware of the person's probation or parole status.

Chief Greenwood had originally agreed that the sentence would begin with the phrase, "However, under Berkeley policy, . . ." The explanation that Captain Rolleri gave the PRC for excluding this language is that it is unnecessary. A majority of the PRC believes, however, that it is important to signal that that portion of the policy is specific to Berkeley and more stringent than what state law requires, especially as the preceding paragraph of that section references California law.

Accordingly, at its March 10, 2021 meeting, the PRC voted to recommend that the word "However" be inserted at the beginning of the sentence quoted above, in

Police Review Commission

Police Review Commission recommendation regarding wording of Policy 311, Search and Seizure

March 18, 2021

p. 2 of 2

Section 311.6. The vote was as follows: Moved/Seconded (Calavita/Allamby):
Ayes – Allamby, Calavita, Chang, Leftwich, Mizell, Moore; Noes – None; Abstain:
Mikiten, Perezvelez, Ramsey; Absent – None.

cc: Police Review Commissioners

Lee, Katherine

From: NACOLE Director of Training & Education <mcellhiney@nacole.org>
Sent: Tuesday, March 16, 2021 9:01 AM
To: Lee, Katherine
Subject: DHS Seeking Candidates to Participate in Use of Force SIMEX.

WARNING: This email originated outside of City of Berkeley.
DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

[View this email in your browser](#)



The Department of Homeland Security is seeking input and participation from the NACOLE community on its Law Enforcement Use of Force Simulator Experiment. Please read below for information on ways in which you may be able to participate. If you are interested, a response is required by MARCH 18, 2021.

The Law Enforcement Use of Force Simulation Experiment (LE UoF SIMEX), sponsored by The Department of Homeland Security (DHS), will use virtual reality (VR) to emulate encounters between officer and civilian within a simulated urban outdoor setting to better understand factors which may deter or greatly reduce UoF-related fatalities. DHS needs your support. **We are now seeking candidates from the civilian oversight community to participate as scenario evaluators in the LE UoF SIMEX.**

If you are interested in participating or have any questions regarding the

project, please contact NACOLE by March 18, 2021. DHS is in need of a minimum of two (2) scenario evaluators for the full duration of the project, April 4-16, 2021. More information about the project and the process you will follow to participate can be found below.

If you are interested, your name and contact information will be forwarded to Lori Sims, SIMEX Federal Project Lead. All interested individuals submitted will be contacted by George Mason University (GMU) to complete a consent form along with three pre-screening activities: a psychosocial questionnaire (10-15 minutes); a brief interview (10-15 minutes); and, if local to the Washington, DC area, a VR suitability screening (30-60 minutes). This three phased process allows for different levels of experience, training, and geography to be represented and supports participant safety and well-being during the simulation. The screening questionnaire can be taken online and, in addition to basic demographic information, inquires about experience, training, VR use, and mental and physical health. The second component of the prescreening process, the interview, will be conducted by a member of the GMU research team using Zoom. The interview will explain study procedures, answer questions, and ask additional questions regarding experience and health. Information provided on the questionnaire and during the interview will not be disclosed to any parties outside of the GMU research team. Mandated reporting requirements are the exception. During this phase candidates will select a pseudonym which candidates will use throughout the study to protect their identity. No one outside of the GMU research team will be able to link candidates identity with the pseudonym provided. Finally, for individuals who live within the Washington, DC metropolitan area, a screening for VR suitability will be conducted by MITRE staff at least 14 days prior to the start of the SIMEX.

Candidates selected may be asked to participate for week one, week two, or both weeks depending on their role. The UoF SIMEX will take place at the MITRE National Security Experimentation Lab (NSEL) in McLean, VA during the weeks of April 5 – 9, 2021 and April 12 – 16, 2021. **Lodging and travel are**

available for those outside of the commutable area while funding lasts.

Please be mindful that in order to maintain the objectivity of the experiment, role operators cannot have any knowledge of the experiment design details, to include the factors we will be testing. Any discussions of or documentation related to the experimental design (Concept of Operations, Data Collection Analysis Plan, SIMEX Executive Overview) should not be distributed to interested candidates. **Upon request, there is an executive summary on the SIMEX effort for your agency leaderships to review.**



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THE DAILY CALIFORNIAN

NEWS

TUESDAY, MARCH 9, 2021

BART independent police auditor shares progressive oversight practices

BY JULIE MADSEN | SENIOR STAFF

LAST UPDATED MARCH 9, 2021

Growing up in a family involved in criminal defense law, Russell Bloom learned how important the role of the police is in the criminal justice system — if police work is broken, it hurts the entire system.

Now as BART's independent police auditor, Bloom oversees BART police, making sure the interactions between officers and community members do not harm the criminal justice system he learned about while growing up.

Bloom joined the Office of the Independent Police Auditor, or OIPA, in 2014, first serving as an investigator. He was then appointed auditor in 2016. According to Bloom, his work entails investigating allegations of misconduct, reviewing all investigations conducted by BART police, creating police recommendations, monitoring internal affairs and other general audit authority.

OIPA's goal is to provide "preventative medicine" — it wants to see in advance what might go wrong instead of coming in after the fact, Bloom said. In order to do this type of preventative work, Bloom added that addressing nonfatal misconduct allegations is key.

"By addressing less harmful misconduct and understanding root causes we're better able to see systemic problems relating to training (and) policy before it evolves into something more tragic or horrible," Bloom said. "On some level, we're taking steps every day to undermine something that could end in a tragedy."

The office also serves as a resource for the general public. Bloom said the office is a place where people can share their experiences and feel heard. He added he makes sure every complaint is taken seriously and is not "falling in a black hole."

Since George Floyd's death in May 2020, OIPA has "reinvigorated" its focus on providing equitable access, including racial equity.

Part of these efforts includes eliminating any ambiguity about when body cameras need to be activated on officers, according to Bloom. The office is also looking at fare evasion violations and how those citations impact racial disparities.

Prior to Bloom's work at OIPA, he served on Berkeley's Police Review Commission, or PRC, alongside PRC investigator Byron Norris, who said Bloom is a "great representative of police oversight." Norris added he was impressed by Bloom's knowledge of and commitment to oversight work.

Following the COVID-19 pandemic, BART has experienced an increase in the presence of unhoused individuals. Bloom said he and his office are taking extra steps to help navigate police relations with this community. Ensuring constitutional liberties, such as protection from unreasonable intrusions, is a priority for Bloom.

“I make sure the training is appropriate (and that) officers understand it’s not a crime to be unhoused,” Bloom said.

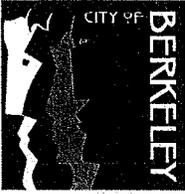
Moving forward, Bloom said his immediate goal is increasing OIPA’s staff. Including himself, there are three people on staff in the office. The office is on the precipice of hiring an additional investigator and creating a new role, which Bloom has tentatively titled the director of stakeholder engagement.

Increasing staffing will help the turnaround of addressing complaints, providing a level of closure in a more prompt way, Bloom said.

Community engagement, according to Bloom, is the driving force behind the office’s goals.

“Understand(ing) what the community expects from me is critical,” Bloom said. “We serve the people in the BART district and people beyond that and I need to know what they want in a real way.”

Contact Julie Madsen at jmadsen@dailycal.org and follow her on Twitter at [@Julie_Madsen](https://twitter.com/Julie_Madsen).



Police Review Commission

Standing Rules

(As of March 11, 2021)

A. PURPOSE

These Standing Rules are established by the Police Review Commission to ensure transparency and efficiency of our operations.

B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Police Review Commission, except that the Commission may not adopt rules that conflict with the enabling Ordinance, Commissioners' Manual, or Regulations for Handling Complaints Against Members of the Police Department.

C. AGENDA ITEMS – REGULAR MEETINGS

1. Individual commissioners shall submit agenda items to the commission secretary by 12:00 noon one week before the meeting date. (This will almost always be a Wednesday.)
2. A commissioner may place only one item on the agenda per meeting, and may not add items to the agenda unless prior agenda items from that commissioner have been cleared. "Cleared" means that the Commission has either completed its consideration of the item, or agreed to move forward with the item by, for instance, forming a subcommittee or considering the issue as a whole commission, in which case the item belongs to the Commission, not the individual commissioner.

D. COMMUNICATIONS

Individual commissioners shall submit communications to be included in the agenda packet to the commission secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed in hard copy at the meeting, and may also be distributed to commissioners via email. If communications are received after 3:00 p.m. on the meeting day, the commission secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

E. MEETING PROCEDURES

1. items shall be introduced by the commission member or staff member who proposed the item. The Chair shall then allow an initial period for discussion by recognizing commissioners in rotation to ensure that each commissioner has the opportunity to speak before a commissioner is allowed to speak again.

Commissioners are allowed a maximum of two minutes to speak each time they are given the floor.

2. After a motion on the item is made and seconded, the Chair will recognize the maker of the motion, and then the seconder, to speak. After that, the Chair will recognize commissioners in rotation, giving each commissioner the opportunity to speak before a commissioner is allowed to speak again. Commissioners are allowed a maximum of one minute to speak each time they are given the floor, and must confine their remarks to the merits of the motion. The Chair may give the maker of the motion an additional minute to speak before putting the matter to a vote.
3. A pending motion may be modified by a "friendly amendment"; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall ask the commission secretary to repeat the motion before the action.
5. Guest speakers who are not on the agenda may address the commission only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert's Rules of Order.

F. PUBLIC COMMENT

1. The Chair, subject to the consent of the commission, may determine the time limit for each speaker and the total number of speakers.
2. Before an agenda item is heard, the Chair or Vice-Chair may poll members of the public present to determine if a significant number of them wish to speak on a particular agenda item. If so, the Chair or Vice-Chair may move that public comment on that item can be heard just before the item.

G. POLICY COMPLAINTS AND REVIEWS

1. An inquiry into a policy, when initiated by a civilian filing a policy complaint form, is a "policy complaint."
 - a) The procedures for handling a policy complaint are set forth in Section II.A.4.b. of the Regulations for Handling Complaints Against Members of the Police Department.
 - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Commissioners may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the commission.
2. A commission-initiated policy review may commence upon a majority vote of the commissioners.

- a) Commissioners shall then determine how to proceed. Possible actions include, but are not limited to: considering the issue as whole commission, assigning a commissioner to research the issue, asking staff to investigate or research, or establishing a subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full commission.
- b) The full commission may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action.

H. REGULAR MEETINGS

Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The commission shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.

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

I. ELECTIONS

1. Annual elections for PRC Chair and Vice-Chair will be agendaized for the second regular meeting in January and, whenever possible, this item will be agendaized as the final item under New Business.
2. The election of the Chair will precede the election of the Vice-Chair, and the following nomination and election process will be followed for each office:
 - a) The presiding Chair declares the nomination process open.
 - b) A commissioner nominates another commissioner or him/herself. A commissioner must be present in order to be nominated.
 - c) The nomination is seconded (the nomination fails if there is no second)
 - d) The presiding Chair declares the nomination process closed, when there are no further nominations.
 - e) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
 - f) Commissioners pose questions to each candidate.
 - g) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
 - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
 - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.

- iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The PRC Secretary will assign "heads" and "tails."
3. The PRC Secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

1. In accordance with the PRC Ordinance, the Chair may appoint members of the public to subcommittees in which they have expressed an interest, subject to approval of the commission. Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; and b) present themselves at a commission meeting before or at the time of the appointment and speak on the public record on intent to serve and what they will bring to the subcommittee work and deliberations.
2. Members of the public appointed to subcommittees shall enjoy the same voting rights and privileges on the subcommittee, as that of PRC commissioners appointed to the subcommittee, except that public members may not be selected to be the subcommittee Chair.
3. Commission members must constitute a majority of the membership of any subcommittee, but a subcommittee may convene and conduct business even if commissioners are not a majority of subcommittee members present
4. The term of appointment for members of the public appointed to subcommittees shall not exceed the life of the subcommittee. If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the Chair, subject to the approval of the commission.
5. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
6. The Chair, subject to the approval of the commission, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
7. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a commission meeting.

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 agendize 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;
 - d) Extraordinary compassion, empathy, or kindness.
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 City Council, and shall also forward the commendation 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.

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