

Police Review Commission (PRC)

POLICE REVIEW COMMISSION REGULAR MEETING

Wednesday, April 14, 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. **ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON** (5 minutes)
5. **APPROVAL OF MINUTES** (5 minutes)
 - a. Regular meeting of March 24, 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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6. CHAIR'S REPORT

Report from Chair. (5 minutes)

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

7. PRC OFFICER'S REPORT (3 minutes)

Status of complaints; other items.

8. CHIEF OF POLICE'S REPORT (10 minutes)

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

9. SUBCOMMITTEE REPORTS (discussion and action) (10 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 April 6.

b. Outreach Subcommittee – Met April 7. Approve proposed online poll regarding the PRC complaint process, and submission to City Council for permission to distribute. *(To be delivered.)*

c. Lexipol Policies Subcommittee – Met April 8.

d. Police Acquisition & Use of Controlled Equipment Subcommittee – Consider dissolving.

10. 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 – deadline closed; next steps.

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 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)
(Policy 300 in March 24, 2021 agenda packet, p. 19.)

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

11. NEW BUSINESS (discussion and action)

a. Whether Commissioners may be allowed to observe police officers being trained. (5 minutes)

From: Commissioner Calavita

- b. Review and approve PRC 2020 Annual Report (10 minutes)
From: PRC Officer
- c. Lexipol Policies for review and approval. (10 minutes)

Policy	G.O., if any	Title
337	D-21	Biological Samples
431		Medical Aid and Response
502	V-02	Vehicle Towing & Release
503	V-02	Tow Hearings

From: Lexipol Subcommittee

12. 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.)

13. ADJOURNMENT (1 minute)

Communications Disclaimer

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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

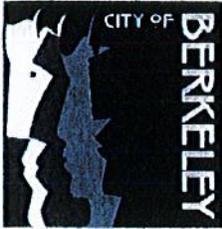
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public by being posted on the Police Review Commission's web page within three business days of the meeting.

Contact the Police Review Commission at prc@cityofberkeley.info.

**PRC REGULAR MEETING ATTACHMENTS
APRIL 14, 2021**

<u>MINUTES</u>	
March 24, 2021 Regular Meeting Draft Minutes.	Page 7
<u>AGENDA-RELATED</u>	
Item 9. – PRC Subcommittees List, updated 3-19-21.	Page 11
Item 10.a. – Applicants to the Police Accountability Board.	Page 13
Item 11.b. – Draft PRC 2020 Annual Report.	Included separately
Item 11.c. – BPD Policy 337, Biological Samples.	Page 15
Item 11.c. – BPD General Order D-21, DNA Sample Collection.	Page 19
Item 11.c. – BPD Policy 431, Medical Aid and Response.	Page 23
Item 11.c. – BPD Policy 502, Vehicle Towing and Release.	Page 29
Item 11.c. – BPD Policy 503, Tow Hearings.	Page 37
Item 11.c. – BPD General Order V-2, Custody and Disposition of Motor Vehicles.	Page 39
<u>COMMUNICATIONS</u>	
3-31-21 Appreciation letter to former Chief Andrew Greenwood.	Page 47
4-1-21 Letter to the City Manager from the PRC Chairperson re Hiring of new Chief of Police.	Page 49
Consent Calendar, Item 3: Police Accountability Board – Ordinance Amendment for Leaves of Absence and Alternate Commissioner; Amending BMC Chapter 3.02.	Page 51
Q&A from PRC Special Meeting / Webinar on Community Oversight of Policing in Berkeley, March 13, 2021.	Page 59
Berkeley City Council Public Safety Committee Special Meeting Minutes. (See Item #2 – Police Acquisition and Use of Controlled Equipment.)	Page 69
3-25-21 Memo to the Budget & Finance Policy Committee from the City Manager, re Police Department Quarterly Overtime Update.	Page 73
3-29-21 Email re COB April 21, 2021 Notice of Virtual Public Hearing: CSBG DRAFT 2022/23 Community Action Plan.	Page 91
3-23-21 Email re Racial and Identity Profiling (RIPA) Board Subcommittee Meetings.	Page 93

3-18-21 Email re Applications for San Francisco's new Sheriff's Dept. Oversight Board.	Page 95
3-21-21 Email re interesting op ed from Washington Post on police reform.	Page 97
3-21-21 Article from the San Francisco Examiner: SB 271 would bring meaningful reform to sheriffs' offices.	Page 99



Police Review Commission (PRC)

DRAFT

POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(draft)

Wednesday, March 24, 2021, 7:00 P.M.

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

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

Present: Commissioner Ismail Ramsey (Chair)
Commissioner Michael Chang (Vice-Chair)
Commissioner Gwen Allamby
Commissioner Kitty Calavita
Commissioner Juliet Leftwich
Commissioner Elisa Mikiten
Commissioner Hans Moore
Commissioner George Perezvelez

Absent: Commissioner Nathan Mizell

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Interim Chief Jennifer Louis, Lt. Robert Rittenhouse, Sgt. Jumaane Jones, Ofc. Carlos Maldonado (BPA)

2. APPROVAL OF AGENDA

Motion to approve the agenda.

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

3. PUBLIC COMMENT

There was 1 speaker.

4. APPROVAL OF MINUTES

a. Regular meeting of March 10, 2021.

The Regular Meeting minutes of March 10, 2021, with two corrections: 1) in Item #1, correct the spelling of Ofc. Maldonado's name; and 2) in the motion under Item #10.b.ii), substitute "be placed" for "replaced," were approved by general consent.

b. Special meeting of March 13, 2021.

The Special Meeting minutes of March 13, 2021, were approved by general consent.

5. CHAIR'S REPORT

Chair Ramsey reported:

- Mayor's Working Group on Fair & Impartial continues to meet with the Mayor and Council to make sure the recommendations for accountability measures are implemented.
- Reminder that applications for Police Accountability Board are due March 29.

6. PRC OFFICER'S REPORT

The PRC Officer reported:

- No new complaints filed since the last meeting.
- Council's Public Safety Policy Committee will meet March 29 at 10:30 a.m. and continue consideration of the Controlled Equipment Ordinance.
- Reminder to Chair and Vice-Chair to complete their mandatory training for commission officers.
- Next meeting in 3 weeks.

7. CHIEF OF POLICE'S REPORT

Interim Chief Louis was welcomed, and she introduced herself:

- Born and raised in Bay Area. With BPD over 22 years; came up through ranks in many divisions: investigations, support services, jail, comm center, patrol; has worked on budget and sat on labor tables. Don't take this responsibility lightly. Intend to continue interactions and partnerships with PRC and other City departments. Aware of amount of BPD's ongoing work with Fair & Impartial Policing Working Group recommendations, Reimagining Task Force, and PRC subcommittees.

Chief Louis 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:

- 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.

Discussion begun and to continue at next meeting.

11. PUBLIC COMMENT

There were no speakers.

12. ADJOURNMENT

Motion to adjourn.

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

The meeting was adjourned at 8:23 p.m.

- a. Warrant Service Policy Subcommittee – Met March 16. One more meeting before bringing to full Commission.
- b. Outreach Subcommittee – March 13 webinar evaluation and debrief: Co-Chair Mikiten said all very pleased with the event. Subcommittee discussing plans for future outreach; perhaps leaving recommendations for the PAB.
- 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:
 - 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.

The PRC Officer gave a report and answered questions.

- b. Review and approve letter of thanks and commendation to former Chief Greenwood on the occasion of his retirement.

Motion to send the draft letter as amended in three places.

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

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

Noes: None

Abstain: None

Absent: Mizell

10. NEW BUSINESS (discussion and action)

- a. Police Review Commission involvement in hiring of new Chief of Police.

Motion to send the letter to the City Manager as drafted by Commissioner Calavita, with an additional sentence regarding the value of PRC involvement to the applicants themselves; and to send copies of the letter to the City Council, the Mayor’s Working Group on Fair and Impartial Policing, and the Reimagining Public Safety Task Force.

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

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

Noes: None

Abstain: None

Absent: Mizell

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

Discussion begun and to continue at the next meeting, with another agenda item on observing police as they are trained.

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 3-19-21**

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	Mikiten	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

Applicants to the Police Accountability Board

1. Alexander Acuna
2. Katrina Bauer
3. David Beausoleil
4. Diana Bersohn
5. Nathan Brooks
6. Kitty Calavita
7. Michael Chang
8. Christina Chen
9. Brenda Clark
10. Porsche Combash
11. Jamie Crook
12. Michael Fox
13. Frank Frasier
14. Aviva Gilbert
15. Bradley Harger
16. Vincent Harrington, Jr.
17. Regina Harris
18. Wendy Hood (Neufeld)
19. Matthew Hurley
20. Arshad Khan
21. Sharon Kidd
22. Tim Kingston
23. Harvey Kletz
24. Julie Leftwich
25. Deborah Levine
26. Simma Lieberman
27. Tamara Manik-Perlman
28. Nathan Mizell
29. John Moore III
30. Cheryl Owens
31. George Perezvelez
32. Ismail Ramsey
33. Justin Randall
34. Christine Schwartz
35. Leonard Sturkey
36. Martin Vogt
37. Allen Wagner

Biological Samples

337.1 PURPOSE AND SCOPE

This policy provides guidelines for the collection of biological samples from those individuals required to provide samples upon conviction or arrest for certain offenses. This policy does not apply to biological samples collected at a crime scene or taken from a person in conjunction with a criminal investigation. Nor does it apply to biological samples from those required to register, for example, sex offenders.

337.2 POLICY

The Berkeley Police Department will assist in the expeditious collection of required biological samples from offenders in accordance with the laws of this state. Should force be necessary in order to obtain a sample, officers should only use the minimum amount of force necessary, and with as little reliance on force as practicable.

Commented [L1]: From 3/26/21 PRC subcommittee mtg.

337.3 PERSONS SUBJECT TO DNA COLLECTION

Those who must submit a biological sample include (Penal Code § 296):

- (a) A person, including a juvenile, upon conviction or other adjudication of any felony offense.
- (b) A person, including a juvenile, upon conviction or other adjudication of any offense if the person has a prior felony on record.
- (c) An adult arrested or charged with any felony.

337.4 PROCEDURE

When an individual is required to provide a biological sample, a trained employee shall obtain the sample in accordance with this policy.

337.4.1 COLLECTION

The following steps should be taken to collect a sample:

- (a) Verify that the individual is required to provide a sample pursuant to Penal Code § 296; Penal Code § 296.1.
- (b) Verify that a biological sample has not been previously collected from the offender by querying the individual's criminal history record for a DNA collection flag or, during regular business hours, calling the California Department of Justice (DOJ) designated DNA laboratory. There is no need to obtain a biological sample if one has been previously obtained.
- (c) Use a DNA buccal swab collection kit provided by the California DOJ to perform the collection and take steps to avoid cross contamination.

337.5 INVOLUNTARY DNA COLLECTION USE OF FORCE TO OBTAIN SAMPLES

If a person refuses to cooperate with the sample collection process, officers should attempt to identify the reason for refusal and seek voluntary compliance without resorting to using force. Force will not be used in the collection of samples except as authorized by a court order ~~and only with the approval of the Watch Commander~~ a supervisor. ~~Methods to consider when seeking voluntary compliance include contacting:~~

~~The person's parole or probation officer when applicable.~~

~~The prosecuting attorney to seek additional charges against the person for failure to comply or to otherwise bring the refusal before a judge.~~

~~The judge at the person's next court appearance.~~

~~The person's attorney.~~

~~A chaplain.~~

~~Another custody facility with additional resources, where an arrestee can be transferred to better facilitate sample collection.~~

~~A supervisor who may be able to authorize custodial disciplinary actions to compel compliance, if any are available.~~

~~The supervisor shall review and approve any plan to use force and be present to document the process. The following employees shall be involved in the administration of an involuntary DNA collection procedure:~~

~~(a) A sworn supervisor.~~

~~(b) An assigned officer and~~

~~(c) An assisting employee~~

~~The incident supervisor shall involve as many assisting employees as may be required to ensure the restraint of the individual and to accomplish the DNA collection. The incident supervisor shall explain to the individual that their refusal will result in his/her physical restraint, and that reasonable force may be employed to promote the safety of all involved parties during the impending collection.~~

337.5.1 RESTRAINT EQUIPMENT

~~When available and practical, restraint equipment should be employed if its use would enhance the safety of persons involved in an involuntary DNA collection process.~~

~~"Restraint equipment", as used in this pPolicy, may include, but is not limited to, a padded phlebotomy chair, a hospital gurney equipped with soft-restraints and "The Wrap" restraint device. The use of restraint equipment shall not preclude the physical restraint of an individual's person by an employee if such action is necessary to mitigate the potential for injury.~~

~~The incident supervisor shall monitor the restraint process to ensure only reasonable force is employed. If confronted with violent resistance, the incident supervisor may elect to terminate the~~

procedure, and develop an alternate plan for the DNA collection.

Should employees use physical force to overcome an individual's violent resistance to the DNA collection process, the incident supervisor shall adhere to the reporting protocols in the Use of Force Policy. The arresting officer shall document the conduct of the individual during the DNA collection procedure in his/her report.

In the event an individual is injured, or complains of injury, as a result of police action, the incident supervisor shall ensure the medical service protocols are followed.

337.5.2 VIDEO RECORDING

A video recording ~~shall~~ be made anytime force is used to obtain a biological sample. The recording should document all staff participating in the process, in addition to the methods and all force used during the collection. The recording should be part of the investigation file, if any, or otherwise retained in accordance with the department's records retention schedule (15 CCR 1059).

337.5.3 CELL EXTRACTIONS

If the use of force includes a cell extraction, the extraction shall be video recorded, including audio. Video shall be directed at the cell extraction event. The video recording shall be retained by the Department for the length of time required by statute. Notwithstanding the use of the video as evidence in a criminal proceeding, the tape shall be retained administratively (15 CCR 1059).

337.6 LEGAL MANDATES AND RELEVANT LAWS

California law provides for the following:

337.6.1 DOCUMENTATION RELATED TO FORCE

The Watch Commander shall prepare prior written authorization for the use of any force (15 CCR 1059). The written authorization (the BPD "Upgraded Search and DNA Collection Request" form) shall include information that the individual/subject was asked to provide the requisite specimen, sample or impression and refused, and if applicable, as well as the related court order authorizing the force.

337.6.2 BLOOD SAMPLES

A blood sample should only be obtained under this policy when:

- (a) The California DOJ requests a blood sample and the individual/subject consents, or
- (b) A court orders a blood sample following a refusal.

The withdrawal of blood may only be performed in a medically approved manner by health care providers trained and qualified to draw blood. A California DOJ collection kit shall be used for this purpose (Penal Code § 298(a); Penal Code § 298(b)(2)).

337.6.3 LITIGATION

The Chief of Police or authorized designee should notify the California DOJ's DNA Legal Unit in

the event this department is named in a lawsuit involving the DNA Data Bank sample collection, sample use or any aspect of the state's DNA Data Bank Program.

337.7 EXPUNGEMENT FROM CAL-DNA DATA BANK

California Penal Code § 299 sets forth the criteria for DNA Database sample expungement. Expungement can be accomplished easily and quickly when a DNA sample qualifies for removal from the State database and a person provides sufficient documentation of his/ her identity, legal status and criminal history to the California Department of Justice, DNA Database Program (CAL-DNA). A petitioner whose sample qualifies for DNA database sample expungement and who provides appropriate documentation can expedite the process so that neither a court hearing, nor a 180-day waiting period permitted by Section 299, likely will be necessary.

If CAL-DNA receives sufficient documentation showing that an individual meets the criteria for expungement of his or her DNA sample, CAL-DNA will review and research the request and issue a response to the petitioner indicating that the expungement was completed and the sample destroyed, or notify the petitioner of the legal reason the Department is required to retain the sample and profile.

A form to request CAL-DNA to expunge a DNA database sample and profile can be obtained by contacting the California Office of the Attorney General. The Attorney General's website is <https://oag.ca.gov> or a petitioner can call 800-952-5225. The form to request the expungement is the "Streamlined DNA Expungement Application Form" (State of California DLE 244). Expungement of a DNA sample and profile are the responsibility of the Department of Justice. The Berkeley Police Department has no influence on this decision.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 22, 2018

GENERAL ORDER D-21

SUBJECT: DNA SAMPLE COLLECTION

PURPOSE

1. The purpose of this policy is to provide guidelines for the collection of DNA evidence from those individuals required to provide such samples under the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, and the State of California DNA Data Bank Program (Penal Code § 295, et seq.).

POLICY

2. Upon a determination that any individual is qualified and required to provide DNA samples under the Act, the arresting officer, jail staff, or other employee designated by a supervisor shall obtain DNA samples in accordance with this policy.

PERSONS SUBJECT TO DNA COLLECTION

3. While the courts may order DNA samples taken in a variety of circumstances under the Act, members of this department are only authorized to obtain DNA samples from the following individuals absent other lawful means (e.g., consent or a search warrant). Only those qualifying individuals whose DNA sample is not currently on file with the Department of Justice may be required to provide samples. Verification of DNA samples on file may be determined by a DNA collection flag on the individual's criminal history record or, during regular business hours, by calling the Department of Justice designated DNA laboratory at (510) 620-3300.
4. All DNA collection flags should be verified by contacting DOJ prior to the collection of the sample (Penal Code § 298(b)(5)).
5. It is a misdemeanor for any qualified individual to refuse to give any or all required DNA samples following written notice of the requirement to do so (Penal Code § 298.1(a)).

ARRESTEES

6. Any adult arrested or charged with any felony offense is required to provide DNA samples. DNA samples should be collected immediately following arrest, or during the booking process, or as soon as administratively practicable after arrest but in any case prior to release on bail or other physical release from custody (Penal Code § 296.1(a)(1)(A)).

SEX AND ARSON REGISTRANTS

7. Any adult or juvenile who is required to register as a sex offender under Penal Code §290 or arsonist under Penal Code § 457.1, including those whose

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 22, 2018

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registration resulted from a qualifying misdemeanor crime is required to submit a DNA sample. (Penal Code § 296(a)(3)). At the time that any such registrant registers, updates registration, or is notified by the Department of Justice or other law enforcement officer, an appointment shall be made designating the time and place for the collection of DNA samples if no such sample has already been provided (Penal Code § 296.2(c)).

BUCCAL SWABS

8. Buccal swab samples (taken from the inside of the mouth) may only be procured by employees who have successfully completed departmentally approved training in the collection of buccal swabs and with the use of Department of Justice buccal swab collectors. (Penal Code § 298(a) and (b)(3)). A right thumbprint shall be placed on the collector along with other required identifying information.

USE OF FORCE TO OBTAIN SAMPLES

9. If, after a written or oral request, a qualified individual refuses to provide any or all of the required DNA samples, a sworn member of this department may use reasonable force to obtain such sample(s).
10. *For the purpose of this section, the "use of reasonable force" shall be defined as the force that an objective, trained and competent officer faced with similar facts and circumstances would consider necessary and reasonable to gain compliance. (Penal Code § 298.1(c)(1)(A)).*
11. The following conditions must be met prior to proceeding with an involuntary DNA collection procedure:
 - (a) Prior to the use of reasonable force, the officer(s) shall take and document reasonable steps to secure voluntary compliance (Penal Code § 298.1(c)(1)(C)).
 - (b) Prior to the use of reasonable force, the assigned officer shall obtain written authorization from a supervisor using the "Upgraded Search and DNA Collection Request" Form. The narrative on the form shall minimally include that the individual was asked to provide the sample(s) and refused (Penal Code § 298.1(c)(1)(B)).
 - (c) If the authorized use of reasonable force includes an extraction from a jail cell, such extraction shall be videotaped (Penal Code § 298.1(c)(1)(D)).
12. The following employees shall be involved in the administration of an involuntary DNA collection procedure:
 - (a) A sworn supervisor.

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- (b) An assigned officer.
 - (c) An assisting employee.
13. The incident supervisor shall involve as many assisting employees as may be required to ensure the restraint of a qualified individual and to accomplish the DNA collection.
 14. Prior to conducting the DNA collection, the assigned officer shall seek the consent of the qualified individual. The assigned officer will document the refusal in writing, and obtain a sworn supervisor's written authorization before proceeding.
 15. Should the qualified individual refuse the assigned officer's request for consent to collect DNA, the incident supervisor shall explain to the individual that their refusal will result in his/her physical restraint, and that reasonable force may be employed to promote the safety of all involved parties during the impending collection.
 16. Upon authorization of the incident supervisor, employees may employ physical force to restrain a qualified individual who refuses to participate in the DNA collection process.
 17. The incident supervisor shall monitor the restraint process to ensure only reasonable force is employed.
 18. If confronted with violent resistance, the incident supervisor may elect to terminate the procedure, and develop an alternate plan for the DNA collection. This section does not negate employees' duty to respond appropriately to physical assaults, or to prevent injury to involved parties if assaulted by the qualified individual.
 19. When available and practical, restraint equipment should be employed, if its use would enhance the safety of persons involved in an involuntary DNA collection process.
 20. "Restraint equipment", as used in this Order, may include, but is not limited to, a padded phlebotomy chair, a hospital gurney equipped with soft-restraints, and "The Wrap" restraint device.
 21. The use of restraint equipment shall not preclude the physical restraint of a qualified individual's person by an employee(s) if such action is necessary to mitigate the potential for injury.
 22. Should employees employ physical force to overcome a qualified individual's violent resistance to the DNA collection process, the incident supervisor shall adhere to "Use of Force" reporting protocols described in General Order U-2.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 22, 2018

GENERAL ORDER D-21

23. The arresting officer shall document in the criminal investigation report the conduct of a qualified individual during the DNA collection procedure.
24. In the event a qualified individual is injured, or complains of injury, as a result of police action, the incident supervisor shall ensure the medical service protocols described in General Order A-17 are followed.

EXPUNGEMENT FROM CAL-DNA DATA BANK

25. **California Penal Code section 299 sets forth the criteria for DNA Database sample expungement. Expungement can be accomplished easily and quickly when a DNA sample qualifies for removal from the State database and a person provides sufficient documentation of his/ her identity, legal status and criminal history to the California Department of Justice, DNA Database Program (CAL-DNA). A petitioner whose sample qualifies for DNA database sample expungement and who provides appropriate documentation can expedite the process so that neither a court hearing, nor a 180-day waiting period permitted by Section 299, likely will be necessary.**
26. **If CAL-DNA receives sufficient documentation showing that an individual meets the criteria for expungement of his or her DNA sample, CAL-DNA will review and research the request and issue a response to the petitioner indicating that the expungement was completed and the sample destroyed, or notify the petitioner of the legal reason the Department is required to retain the sample and profile.**
27. **A form to request CAL-DNA to expunge a DNA database sample and profile can be obtained by contacting the California Office of the Attorney General. The Attorney General's website is <https://oag.ca.gov> or a petitioner can call 800-952-5225. The form to request the expungement is the "Streamlined DNA Expungement Application Form" (State of California DLE 244). Expungement of a DNA sample and profile are the responsibility of the Department of Justice. The Berkeley Police Department has no influence on this decision.**

References:

California Penal Code §§ 290, 295, 296(a), 296.1, 296.2, 298, 298.1, 299, 457.1
General Orders A-17, P-65, U-2

Medical Aid and Response

431.1 PURPOSE AND SCOPE

This policy recognizes that members often encounter persons who appear to be in need of medical aid and establishes a law enforcement response to such situations.

431.2 POLICY

It is the policy of the Berkeley Police Department that all officers and other designated members be trained to the level required by law to provide emergency medical aid and to facilitate an emergency medical response.

431.3 FIRST RESPONDING MEMBER RESPONSIBILITIES

Whenever practicable, members should take appropriate steps to provide initial medical aid (e.g., first aid, CPR and use of an automated external defibrillator (AED)) in accordance with their training and current certification levels. This should be done for those in need of immediate care and only when the member can safely do so.

Prior to initiating medical aid, the member should contact the Communications Center and request response by emergency medical services (EMS) as the member deems appropriate.

Members should follow universal precautions when providing medical aid, such as wearing gloves and avoiding contact with bodily fluids, consistent with the Communicable Diseases Policy. Members should use a barrier or bag device to perform rescue breathing.

When requesting EMS, the member should provide the Communications Center with information for relay to EMS personnel in order to enable an appropriate response, including:

- (a) The location where EMS is needed.
- (b) The nature of the incident.
- (c) Any known scene hazards.
- (d) Information on the person in need of EMS, such as:
 1. Signs and symptoms as observed by the member.
 2. Changes in apparent condition.
 3. Number of patients, sex and age, if known.
 4. Whether the person is conscious, breathing and alert, or is believed to have consumed drugs or alcohol.
 5. Whether the person is showing signs or symptoms of excited delirium or other agitated chaotic behavior.

Members should stabilize the scene whenever practicable while awaiting the arrival of EMS.

Members should not direct EMS personnel whether to transport the person for treatment.

431.4 TRANSPORTING ILL AND INJURED PERSONS

Except in extraordinary cases where alternatives are not reasonably available, members should not transport persons who are unconscious, who have serious injuries or who may be seriously ill. EMS personnel should be called to handle patient transportation.

Officers should search any person who is in custody before releasing that person to EMS for transport.

An officer should accompany any person in custody during transport in an ambulance when requested by EMS personnel, when it reasonably appears necessary to provide security, when it is necessary for investigative purposes or when so directed by a supervisor.

Members should not provide emergency escort for medical transport or civilian vehicles. _

431.5 PERSONS REFUSING EMS CARE

If a person who is not in custody refuses EMS care or refuses to be transported to a medical facility, an officer shall not force that person to receive care or be transported. However, members may assist EMS personnel when EMS personnel determine the person lacks mental capacity to understand the consequences of refusing medical care or to make an informed decision and the lack of immediate medical attention may result in serious bodily injury or the death of the person.

In cases where mental illness may be a factor, the officer should consider proceeding with a 72-hour treatment and evaluation commitment (5150 commitment) process in accordance with the Mental Illness Commitments Policy.

If an officer believes that a person who is in custody requires EMS care and the person refuses, he/she should encourage the person to receive medical treatment. The officer may also consider contacting a family member to help persuade the person to agree to treatment or who may be able to authorize treatment for the person.

If the person still refuses, the officer will require the person to be transported to the nearest medical facility. In such cases, the officer should consult with a supervisor prior to the transport.

Members shall not sign refusal-for-treatment forms or forms accepting financial responsibility for treatment.

431.5.1 SICK OR INJURED ARRESTEE

If an arrestee appears ill or injured, or claims illness or injury, he/she should be medically cleared prior to booking. If the officer has reason to believe the arrestee is feigning injury or illness, the officer should contact a supervisor, who will determine whether medical clearance will be obtained prior to booking.

If the jail or detention facility refuses to accept custody of an arrestee based on medical screening, the officer should note the name of the facility person refusing to accept custody and the reason for refusal, and should notify a supervisor to determine the appropriate action.

Arrestees who appear to have a serious medical issue should be transported by ambulance. Officers shall not transport an arrestee to a hospital without a supervisor's approval.

431.6 MEDICAL ATTENTION RELATED TO USE OF FORCE

Specific guidelines for medical attention for injuries sustained from a use of force may be found in the Use of Force, Handcuffing and Restraints, Control Devices and Techniques, and Conducted Energy Device policies.

~~435.6 AIR AMBULANCE~~

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

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

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

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

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

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

431.7 AUTOMATED EXTERNAL DEFIBRILLATOR (AED) USE

A member may use an AED only after receiving appropriate training from an approved public safety first aid and CPR course (22 CCR 100014; 22 CCR 100017; 22 CCR 100018).

~~435.6.1 AED USER RESPONSIBILITY~~

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

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

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

431.7.1 AED REPORTING

Any member using an AED will complete an incident report detailing its use.

431.7.2 AED TRAINING AND MAINTENANCE

The Personnel and Training Sergeant should ensure appropriate training and refresher training is provided to members authorized to use an AED. A list of authorized members and training records shall be made available for inspection by the local EMS agency (LEMSA) or EMS authority upon request (22 CCR 100021; 22 CCR 100022; 22 CCR 100029).

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

~~435.9 ADMINISTRATION OF OPIOID OVERDOSE MEDICATION~~

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

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

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

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

~~435.9.1 OPIOID OVERDOSE MEDICATION USER RESPONSIBILITIES~~

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

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

~~435.9.2 OPIOID OVERDOSE MEDICATION REPORTING~~

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

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

~~435.9.3 OPIOID OVERDOSE MEDICATION TRAINING~~

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

435.10 ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS

~~The Operations Division Commander may authorize the acquisition of epinephrine auto-injectors for use by Department members as provided by Health and Safety Code § 1797.197a.~~

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

~~435.10.1 EPINEPHRINE USER RESPONSIBILITIES~~

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

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

~~435.10.2 EPINEPHRINE AUTO-INJECTOR REPORTING~~

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

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

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

~~435.9.1 EPINEPHRINE AUTO-INJECTOR TRAINING~~

Best Practice

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

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

431.8 OPIOD OVERDOSE MEDICATION

See the Use of Narcan (Naloxone) Policy.

Vehicle Towing and Release

502.1 PURPOSE AND SCOPE

This policy provides the procedures for towing a vehicle by or at the direction of the Berkeley Police Department. Nothing in this policy shall require the Department to tow a vehicle.

502.2 STORAGE AND IMPOUNDS

~~When circumstances permit, for example when towing a vehicle for parking or registration violations, the handling employee should, prior to having the vehicle towed, make a good faith effort to notify the owner of the vehicle that it is subject to removal. This may be accomplished by personal contact, telephone or by leaving a notice attached to the vehicle at least 24 hours prior to removal. If a vehicle presents a hazard, such as being abandoned on the roadway, it may be towed immediately.~~

The responsibilities of those employees towing, storing or impounding a vehicle are listed below.

502.3 VEHICLE STORAGE REPORT

Department members requesting towing, storage or impound of a vehicle shall complete a storage report form (CHP 180) and accurately record the mileage and a description of property within the vehicle (Vehicle Code § 22850). Any "holds" on the vehicle should be written on the storage report and communicated to the tow truck operator. A copy of the storage report should be given to the tow truck operator. If the driver or vehicle owner are on scene, the short carbon copy of the storage report should be provided, along with a verbal explanation of the vehicle release process. The -and the original storage reportf shall be submitted to ~~the~~ Records Management as soon as practicable after the vehicle is stored.

502.4 REQUESTING A TOW

The employee ordering a tow shall provide the following information to DispatchDispatch:

- (a) The location from where the vehicle will be towed;
- (b) The towing authority;
- (c) The Color, Year, Make, Body Style, and License plate or VIN (CYMBL) of the vehicle; and
- (d) Any "holds" restricting the vehicle's release.

502.5 COMMUNICATION CENTER PROCEDURES

- (a) Upon receipt of a tow request, the dispatcher shall promptly telephone the appropriate towing service. The employee ordering the tow shall be advised when the request has been made and shall be advised of the assigned towing service's ETA.
- (b) The Communications Center employee ordering the tow shall enter required information into the Communications Center "Tow Log."

-
- (c) Communications Center personnel shall ensure that accurate tow authority and vehicle disposition information is included in the Computer-Aided Dispatch system (CAD) incident event associated with a vehicle tow.
 - (d) A "non-criminal incident" or "criminal investigation" CAD report type shall be used for incidents involving the tow and storage of a vehicle.
 - (e) A "miscellaneous service call" CAD report type shall be used for incidents where the reported vehicle could not be located or was ineligible for tow.
 - (f) When notified of a completed vehicle tow by a towing contractor, the Communications Center Telecommunications dispatcher will enter the vehicle's description, date of tow, correct tow authority, and accurate custody status (e.g., "Towed/Stored", "Impounded, etc.) into the California Law Enforcement Telecommunications System (CLETS.)
 - (g) The Telecommunications dispatcher shall obtain Department of Motor Vehicles (DMV) registration information on every vehicle taken into police custody, and will compare the license plate and vehicle identification number (VIN) to the information provided by the towing contractor to ensure accuracy.
 - (h) The Telecommunications dispatcher shall determine if the vehicle has been reported as stolen to CLETS A Vehicle System.
 - (i) The Telecommunications dispatcher shall forward the completed "Towed/Stored Vehicle" entry form, DMV registration print-out, and tow contractor towing sheet to the Traffic Bureau prior to the conclusion of their duty shift.
 - (j) Communication Center personnel shall promptly enter pertinent data from the completed storage report into the Stolen Vehicle System and return the form to a Patrol Sergeant for approval (Vehicle Code § 22651.5(b); Vehicle Code § 22851.3(b); Vehicle Code § 22854.5).
 - (k) Approved storage reports shall be promptly routed to Records Management.

(a) —

502.6 TOWS AT SPECIAL EVENTS

If a vehicle is towed in association with a special event or enforcement activity, a single report number may be used to document the event and tow(s).

When several vehicles are towed in association with a special event (i.e., a UC football game), a tow log listing the vehicles' descriptions and locations of tow may be used instead of individual storage reports.

The employee responsible for maintaining a special event tow log shall route the original tow log to Records Management and forward copies of the tow log to the Communications Center and Traffic Bureau.**AUTHORITIES**

502.7 "NO TOW" SITUATIONS

(a) Vehicle Operation on Private Property: If the vehicle has been driven onto the owner's private

property and the owner is present and has a valid license, the vehicle cannot be towed for a driver's license violation committed by someone other than the owner.

(a)(b) Planned Non-Operation: Unless prior warning of a tow is given, employees shall not direct the seizure of a vehicle parked on a highway, public land, or off-street parking facility for an expired registration violation (ref. Vehicle Code § 22651(o)) if the owner has a valid "Planned Non-Operation" certificate on file at the DMV. Prior warning of a tow may be accomplished via common means of verifiable communication, to include, but not be limited to, issuance of a citation for an expired registration violation.

502.5502.8 TOWS FOR DRIVERS LICENSE VIOLATIONS

Determination of tow authority for towing a vehicle based on a driver's license status offense shall be based on the particular circumstances of the violation.

- (a) Tow authority VC § 22651(p) allows the vehicle to be released to the owner or owner's agent as soon as possible with proof of a valid DL and current registration. This tow authority shall be used when an individual is cited for:
1. VC § 12500(a) Driving without a license (never issued or expired)
- (b) Tow authority VC § 14602.6 requires a 30 day impound of the vehicle and the storage fees to be paid prior to its release. This tow authority shall be used when an individual is cited for:
1. Driving with a suspended or revoked license;
 2. Driving in violation of license restriction(s) imposed under Vehicle Code §13352 or 23575 and when the vehicle is not equipped with a functioning, certified interlock device.
 3. Based on articulable extenuating circumstance(s), a supervisor may authorize the use of Vehicle Code § 22651(p) in situations where Vehicle Code § 14602.6 may be prescribed.
- (c) If the only violation is that the operator is an unlicensed driver (Vehicle Code § 12500 (a)) the officer shall make a reasonable attempt to identify the registered owner of the vehicle (Vehicle Code § 2814.2). The officer shall release the vehicle to the registered owner if the person is a licensed driver, or to another licensed driver authorized by the registered owner, provided the vehicle is claimed in a reasonable amount of time. If the vehicle is released, the officer should list in the CAD report or on his/her copy of the notice to appear the name and driver's license number of the person to whom the vehicle is released.

502.6502.9 TOWS FROM REMOVAL FROM TRAFFIC COLLISION SCENES

When a vehicle has been involved in a traffic collision and must be removed from the scene, the officer shall have the driver select a towing company (such as a "AAA tow"), if possible, and shall relay the request for the specified towing company to the dispatcher. When there is no preferred company requested, a "non-preference tow" company will be selected from the rotational list of towing companies in the Communications Center.

If the owner of the vehicle is incapacitated, and their vehicle must be removed from the scene, the officer will need to complete a storage reportf. The officer should notify the owner of where the vehicle was stored. This can be accomplished by leaving the short carbon copy of the storage reportf with their property (if they are transported to the hospital), or by notifying a friend or family member. or for any reason it is necessary for the Department to assume responsibility for a vehicle involved in a collision, the officer shall request the dispatcher to call the official towing garage for the City of Berkeley. The officer will then store the vehicle using a CHP Form 180.

502.7502.10 TOWSED FOR INVESTIGATIVE PURPOSES / EVIDENCE

- (a) Employees shall tow a vehicle for investigative purpose (i.e., is or contains evidence of a public offense) pursuant to Vehicle Code §22655.5 only with approval of a sergeant or command officer.
1. If evidence can be legally obtained from a vehicle under investigation without towing it, this shall be the preferred procedure; supervisors should exercise discretion in approving the towing of such vehicles.
 2. Whenever a vehicle is towed as evidence, an Evidence Receipt form shall be completed and a copy delivered to the vehicle's owner or agent.
- (a)(b) If towed in connection with a crime under investigation, the report number assigned to the tow shall be different from the criminal case number.
- (c) The employee or detail/unit responsible for investigative follow-up of the matter related to a tow shall have primary responsibility for the custody of the vehicle stored as evidence or for investigative purposes.
- (d) If the vehicle is held in custody in excess of 72 hours, the responsible employee or detail/unit shall consult with the District Attorney's Office regarding the need for continued custody of the vehicle.
- (e) If required to be maintained in custody, the responsible employee or detail/unit shall make reasonable efforts to transfer physical custody, or financial responsibility for commercial storage services, of the vehicle to the District Attorney's Office, or relocate the vehicle to a City-controlled storage facility.
- (f) The employee or detail/unit responsible for investigative follow-up of the matter related to a tow shall notify the person authorized to receive custody of the stored vehicle (i.e., registered owner, agent of owner, etc.) as soon as practical after the police hold on the vehicle has ended.
- (g) The Traffic Bureau shall maintain a log of all vehicles towed for investigative purposes.
1. A designated Traffic Bureau employee will monitor investigations resulting in an impound and take reasonable measures to ensure a vehicle is held in custody no longer than is necessary to accomplish required law enforcement activities.
 2. Contents of a vehicle having no evidentiary value may be released to its owner or his/her agent, and shall be listed in a written report.

502.8502.11 TOWS FROM ARREST SCENES

Whenever a person in charge or in control of a vehicle is arrested, it is the policy of this department to provide reasonable safekeeping of by storing an the arrestee's vehicle, subject to the exceptions described below. The \vehicles, however, shall be stored whenever it is needed for

the furtherance of the investigation or prosecution of the case, or when the community caretaker doctrine would reasonably suggest that the vehicle should be stored (e.g., traffic hazard, high crime area).

The following are examples of situations where consideration should be given to leaving a vehicle at the scene in lieu of towing for Vehicle Code § 22651(h)-storing, provided the vehicle can be lawfully parked and left in a reasonably secured and safe condition:

- Traffic related warrant arrest.
- Situations where the vehicle was not used to further the offense for which the driver was arrested.
- Whenever the licensed owner of the vehicle is present, willing, and able to take control of any vehicle not involved in criminal activity.
- Whenever the vehicle otherwise does not need to be stored and the owner requests that it be left at the scene. In such cases the owner should shall be informed that the Department will not be responsible for theft or damages.

502.9502.12 TOWS IMPOUNDMENT FROM AT SOBRIETY CHECKPOINTS

Whenever a driver is stopped at a sobriety checkpoint and the only violation is that the operator is an unlicensed driver (Vehicle Code § -12500 (a)) driving without a valid driver's license, the officer shall make a reasonable attempt to identify the registered owner of the vehicle (Vehicle Code § 2814.2). The officer shall hould hall release the vehicle to the registered owner if the person is a licensed driver, or to another licensed driver authorized by the registered owner, provided the vehicle is claimed prior to the conclusion of the checkpoint operation.

If the vehicle is released at the checkpoint in the case of Vehicle Code § -12500(a), the officer should not in the CAD report or all list on his/her copy of the notice to appear the name and driver's license number of the person to whom the vehicle is released.

When a vehicle cannot be released at the checkpoint, it shall be towed (Vehicle Code § 22651(p)). When a vehicle is removed at the checkpoint, it shall be released during the normal business hours of the storage facility to the registered owner or his/her agent upon presentation of a valid driver's license and current vehicle registration.

502.10502.13 DRIVING A NON-CITY VEHICLE

Vehicles which have been towed by or at the direction of the Department should not be driven by police personnel unless it is necessary to move a vehicle a short distance to eliminate a hazard, prevent the obstruction of a fire hydrant or to comply with posted signs.

502.11 DISPATCHER'S RESPONSIBILITIES

502.12 Upon receiving a request for towing, the dispatcher shall promptly telephone the specified authorized towing service. The officer shall be advised when the request has been made and shall be advised of the assigned tow' ETA and the towing service has been dispatched. When there is no preferred company requested, the dispatcher shall call the next firm in rotation from the list of approved towing companies and shall make appropriate entries on that form to ensure the following firm is called on

~~the next request.~~

~~502.13 RECORDS MANAGEMENT RESPONSIBILITY~~

~~502.14 Records Communication Center personnel shall promptly enter pertinent data from the completed storage form (CHP form 180) into the Stolen Vehicle System and return the form to the a Watch Commander Patrol Supervisor for approval (Vehicle Code § 22651.5(b); Vehicle Code § 22851.3(b); Vehicle Code § 22854.5).~~

~~502.15 Approved storage forms shall be promptly routed to the Records Management Unit placed into the auto file so that they are immediately available for release or review should inquiries be made.~~

502.14 NOTIFICATIONS

Within 48 hours, excluding weekends and holidays, of the storage of any such vehicle it shall be the responsibility of the Traffic Bureau Records Management to determine the names and addresses of any individuals having an interest in the vehicle through DMV or CLETS computers. By way of the Traffic Bureau, notice shall be sent to all such individuals by first-class mail (Vehicle Code § 22851.3(d); Vehicle Code § 22852(a); Vehicle Code § 14602.6(a)(2)). The notice shall include the following (Vehicle Code § 22852(b)):

- (a) The name, address, and telephone number of this Department.
- (b) The location of the place of storage and description of the vehicle, which shall include, if available, the name or make, the manufacturer, and the license plate number or VIN. ~~and the mileage.~~
- (c) The authority and purpose for the removal of the vehicle.
- (d) A statement that, in order to receive their post-storage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within 10 days of the date appearing on the notice.

~~502.16~~502.15 TOWING SERVICES

The City of Berkeley's current tow contracts provide guidelines for prompt and safe towing services under the Berkeley Police Department's Rotation Tow Program. ~~periodically selects a firm to act as the official tow service and awards a contract to that firm.~~ Towing services This firm will be used in the following situations:

- (a) When it is necessary to safeguard a vehicle due to the inability of the owner or operator to take the required action.
- (b) When a vehicle is being held as evidence in connection with an investigation.
- (c) When it is otherwise necessary to store a motor vehicle. This would include situations involving the recovery of stolen or abandoned vehicles, and the removal from the streets of vehicles obstructing traffic in violation of state or local regulations.

~~502.17~~502.16 VEHICLE INVENTORY

All property in a stored or impounded vehicle shall be inventoried and listed on the vehicle storage report form. This includes the trunk and any compartments or containers, even if closed and/or locked. Members conducting inventory searches should be as thorough and accurate as practical in preparing an itemized inventory. These inventory procedures are for the purpose of protecting

an owner's property while in police custody, to provide for the safety of officers, and to protect the Department against fraudulent claims of lost, stolen, or damaged property.

502.18502.17 SECURITY OF VEHICLES AND PROPERTY

Unless it would cause an unreasonable delay in the completion of a vehicle impound/storage or create an issue of officer safety, officers should make reasonable accommodations to permit a driver/owner to retrieve small items of value or personal need (e.g., cash, jewelry, cell phone, prescriptions) which are not considered evidence or contraband.

If a search of a vehicle leaves the vehicle or any property contained therein vulnerable to unauthorized entry, theft or damage, personnel conducting the search shall take such steps as are reasonably necessary to secure and/or preserve the vehicle or property from such hazards.

502.19502.18 RELEASE OF VEHICLE

~~The Department will maintain a listed, 24-hour telephone number to provide information regarding~~ The Communication Center will maintain an up-to-date tow log and provide information regarding impoundment of vehicles and the right of the registered owner to request a storage hearing. Releases for towed vehicles will be made available during regular, non-emergency business hours (Vehicle Code § 14602.6). After normal business hours

- (a) ~~Towed vehicles~~Vehicles removed pursuant to Vehicle Code § 22850 shall be released after proof of current registration is provided by the owner or the person in control of the vehicle and after all applicable fees are paid (Vehicle Code § 22850.3; ~~and~~ Vehicle Code § 22850.5).
- (b) Vehicles removed that require payment of parking fines or proof of valid driver's license (foreign or domestic) shall only be released upon presentation of proof of compliance, proof of payment, completion of affidavit and payment of applicable fees related to the removal (Vehicle Code § 22651 et seq., Vehicle Code § 22652 et seq., Vehicle Code § 22850.3; ~~and~~ Vehicle Code § 22850.5).
- (c) A vehicle removed pursuant to Vehicle Code § 14602.6(a) shall be released to the registered owner or his/her agent with proof of current registration, proof of a valid driver's license (foreign or domestic) and applicable fees paid prior to the end of the 30-day impoundment period under any of the following circumstances:
 - 1. The vehicle was stolen.
 - 2. If the driver reinstates his/her driver's license or acquires a license and provides proof of proper insurance.
 - 3. Any other circumstance as set forth in Vehicle Code § 14602.6.
 - 4. When there is no remaining community caretaking need to continue ~~the~~ impound of the vehicle or the continued impound would not otherwise comply with the Fourth Amendment.

~~(e)~~(d) A vehicle removed pursuant to an investigation with a "hold" on it may not be released until the hold has been rescinded.

Personnel whose duties include releasing towed vehicles should consult the Vehicle Code under which the vehicle was towed or impounded for any specific requirements prior to release.

Any sworn Eemployees who suspects that a vehicle was impounded in error should promptly advise a supervisor. On-duty sSupervisors should approve, when appropriate and without delay, the release of the vehicle without requiring the registered owner or his/her agent to request a hearing, as described in the Vehicle Impound Hearings Policy.

Written authorization received from an owner's agent and a copy of the agent's proof of identity shall be attached to the original vehicle release form and routed to Records Management for incorporation into the report file.

502.19 TOW PROGRAM MONITORING

The Traffic Bureau will regularly monitor vehicle tows accomplished pursuant to this policy, as represented in tow reports, to ensure adherence to established policy and procedure.

The Traffic Bureau will be responsible for the periodic review of this policy and related tow program to assess the currency, applicability and effectiveness of related policy and procedure, and any identifiable impacts this Department's tow program has on traffic safety.

Vehicle Impound Tow Hearings

Commented [SSM1]: Relates to GO V-2

503.1 PURPOSE AND SCOPE

This policy establishes a procedure for the requirement to provide vehicle storage or impound hearings pursuant to Vehicle Code § 22852.

Feb 2019 - Sent to PRC

Sep 2019 - Sent version 20 to PRC
Mar 2021 - PRC Sub

503.2 STORED OR IMPOUND HEARING

When a vehicle is stored or impounded by any member of the Berkeley Police Department, a hearing will be conducted upon the request of the registered or legal owner of the vehicle or his/her agent (Vehicle Code § 22650(a); Vehicle Code § 22852(a)).

The hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The hearing officer must be a person other than the person who directed the storage or impound of the vehicle (Vehicle Code § 22852(c)).

503.3 HEARING PROCEDURES

The vehicle storage hearing is an informal process to evaluate the validity of an order to store or impound a vehicle. The employee who caused the storage or removal of the vehicle does not need to be present for this hearing.

All requests for a hearing on a stored or impounded vehicle shall be submitted in person, in writing or by telephone within 10 days of the date appearing on the notice (Vehicle Code § 22852(b)). The Traffic Bureau Lieutenant, or his/her designee, will generally serve as the hearing officer. The person requesting the hearing may record the hearing at his/her own expense.

The failure of either the registered or legal owner or interested person or his/her agent to request a hearing in a timely manner or to attend a scheduled hearing shall be considered a waiver of and satisfaction of the post-storage hearing requirement (Vehicle Code § 22851.3(e)(2); Vehicle Code § 22852(d)). In addition, if the person requesting the hearing or his/her /agent If the citizen is fifteen thirty or more minutes late, or fails to appear for their scheduled hearing, the statutory requirement for a hearing will be satisfied.

Commented [LJ2]: Agreed upon at PRC sub on 03/26/21

503.4 EVIDENCE

Any relevant evidence may be submitted and reviewed by the hearing officer to determine if reasonable grounds have been established for the storage or impound of the vehicle. The initial burden of proof established by a preponderance of the evidence that the storage/impound was based on probable cause rests with the Department.

After consideration of all information, the hearing officer shall determine the validity of the storage or impound of the vehicle in question and then render a decision. The hearing officer shall also consider any mitigating circumstances attendant to the storage that reasonably would warrant the release of the vehicle or a modification or reduction of the period the vehicle is impounded (Vehicle Code § 14602.6(b); Vehicle Code § 14602.8(b)).

Aside from those mitigating circumstances enumerated in the Vehicle Code, the registered owner's lack of actual knowledge that the driver to whom the vehicle was loaned was not validly licensed may constitute a mitigating circumstance under Vehicle Code § 14602.6(b) or 14602.8(b), warranting release of the vehicle. This mitigating circumstance exception is not limited to situations where the owner made a reasonable inquiry as to the licensed status of the driver before lending the vehicle.

503.5 DECISION

The legislative intent and this department's policy is to prevent unlicensed driving pursuant to Vehicle Code §14602.6. If this purpose is not furthered by the continued impoundment of a vehicle, release is most often appropriate.

- (a) If a decision is made that reasonable grounds for storage or impound have been established, the hearing officer shall advise the inquiring party of the decision and that the inquiring party may pursue further civil remedies if desired.

~~If mitigating circumstances are found to be relevant, the hearing officer shall make reasonable adjustments to the impound period, storage or assessment of fees as warranted.~~

- (b) If a decision is made that reasonable grounds for storage or impound have not been established or sufficient mitigating circumstances exist, the vehicle in storage shall be released immediately. Towing and storage fees will be paid at the Department's expense (Vehicle Code § 22852(e)).

~~If a decision is made that reasonable grounds for storage have not been established or sufficient mitigating circumstances exist, and the vehicle has been released with fees having been paid, the receipt for such fees will be forwarded with a letter to the appropriate Division Commander. The hearing officer will recommend to the appropriate Division Commander that the fees paid by the registered or legal owner of the vehicle in question or their agent be reimbursed by the Department.~~

503.6 HEARING EXCEPTIONS

The right to a post-storage hearing applies to all tows except:

- ~~(a) Vehicles impounded for investigation of a hit-and-run collision pursuant to Vehicle Code § 22655;~~
- ~~(b) Vehicles removed from private property pursuant to Vehicle Code § 22658;~~
- ~~(c) Abandoned or hazardous vehicles removed pursuant to Vehicle Code § 22669 determined to have an estimated value of five hundred dollars (\$500.00) or less; and,~~
- ~~(a)(d) Vehicles or vehicle parts removed from private property by authority of a City or County ordinance pursuant to Vehicle Code §§ 22660 to 22668, inclusive, and § 22710.~~

BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 12, 2010

GENERAL ORDER V-2

SUBJECT: CUSTODY AND DISPOSITION OF MOTOR VEHICLES

PURPOSE

- 1 - This order sets forth policy and procedures regarding the towing, storage and disposition of motor vehicles.

POLICY

- 2 - It shall be the policy of the Berkeley Police Department to tow vehicles when necessary for lawful investigative purposes or when authorized by law.
- 3 - A numbered report shall document when a vehicle is taken into custody.
 - (a) If **seized** in connection with a crime under investigation, the report number assigned to the **tow shall be different from the criminal case number.**
 - (b) If **seized in association with a special event**, a single report number may be used to document the event and tow.
 - (c) **The seizure of multiple vehicles in association with a particular event or enforcement activity may be documented under a single report number.**

PROCEDURE

- 4 - A tow report form (e.g., CHP 180 form) shall be submitted by the responsible employee whenever a vehicle is taken into custody.
 - (a) The description of known valuable property or evidence contained in a vehicle taken into custody shall be included in the written report.
 - (b) When several vehicles are impounded in the course of a special event (i.e., a UC football game tow), a tow log listing the vehicles' descriptions and locations of tow may be used instead of individual tow report forms.
 - (1) The employee responsible for maintaining a special event tow log shall route the original log form to the Support Services Division Records **Detail**, to be filed under the event's assigned report number, and forward copies to the Communications Center and Traffic Bureau.
- 5 - The employee ordering a vehicle into custody shall notify the assigned tow company of all "holds" restricting the vehicle's release.
- 6 - The employee ordering a vehicle into custody shall provide the following information to Communications Center personnel when making a tow request:

*Highlighted text is new.

BERKELEY POLICE DEPARTMENT

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GENERAL ORDER V-2

- (a) The location from where the vehicle will be towed;
 - (b) The statutory authority; and,
 - (c) The description and identifying number of the vehicle, either license plate or vehicle identification number (VIN.)
- 7 - **Whenever possible, the employee who completes the tow report form will:**
- (a) **Request the signature of the driver of the vehicle being towed on the tow report form;**
 - (b) **Provide a copy of the tow report to the driver of the vehicle being towed; and,**
 - (c) **Provide the driver of the vehicle being towed information explaining the vehicle release process.**
- 8 - **Determination of tow authority for vehicle seizures based on a driver's license status offense (i.e., no license, expired, suspended, driving outside of restriction) shall be based on the particular circumstances of the violation.**
- (a) **VC §14602.6 shall only be used in cases of a serious license status violation:**
 - (1) **Driving with a suspended or revoked license; or,**
 - (2) **Driving in violation of license restriction(s) imposed under VC §§13352 or 23575 and when the vehicle is not equipped with a functioning, certified interlock device.**
 - (b) **VC §22651(p) shall be used in instances other than a serious license status violation.**
 - (c) **Based on articulable extenuating circumstance(s), a supervisor may authorize the use of VC 22651(p) in situations where VC §14602.6 may be prescribed (ref. paragraph 8(a) of this Order).**
- 9 - **A vehicle shall not be seized pursuant to tow authorities associated with invalid driver's license status if driven onto the owner's private property by a person (other than the owner) not having a valid license, and the vehicle's owner is present and properly licensed.**
- 10 - **Unless prior warning of a tow is given, employees shall not direct the seizure of a vehicle parked on a highway, public land, or offstreet parking facility for an expired registration violation (ref. VC §22651(o)) if the owner has a valid "Planned Non-Operation" certificate on file at the DMV.**

*Highlighted text is new.

BERKELEY POLICE DEPARTMENT

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- (a) Prior warning of a tow may be accomplished via common means of verifiable communication, to include, but not be limited to, issuance of a citation for an expired registration violation.
- 11 - An employee may direct the seizure of a vehicle pursuant to a custodial arrest unrelated to a driver's license violation (ref. VC §22651(h)(1)) only:
- (a) If the vehicle is illegally parked; or,
 - (b) If left unattended, the vehicle will either pose a hazard to others or be a high-risk target for vandalism or theft.

ABANDONED VEHICLES

- 12 - A CAD entry shall be generated and a report number assigned when the Communications Center receives a report of a vehicle parked in excess of 72 hours (i.e., "abandoned") in violation of Berkeley Municipal Code §14.36.050.
- 13 - The employee assigned to investigate a 72 hour parking violation shall make a reasonable effort to locate and appropriately mark the subject vehicle.
- (a) If located, the vehicle shall be "marked" (e.g., corresponding yellow crayon marks on a tire and roadway, object atop a tire, etc.) in a manner that will indicate at the time of follow-up investigation if the vehicle has moved.
 - (1) The marking employee will report how the vehicle was marked to a Communications Center dispatcher, who shall enter that information into the associated CAD event.
 - (b) The marking employee should place a courtesy 'warning' notice on the subject vehicle.
- 14 - The employee conducting the initial investigation shall make a reasonable effort to determine the name and address of the registered owner, or the person in control of the subject vehicle, and if the address is in reasonable proximity to the vehicle request that person remove it from the street.
- 15 - If, by evidence and/or reliable citizen statement, it is determined a vehicle has been abandoned (i.e., is inoperable as defined in Vehicle Code §22669(d) and/or has not been moved in a significant period), the employee may forego the 'initial mark/72-hour follow-up' procedure described herein and proceed as in paragraph 17(a) of this Order.
- 16 - The investigating employee shall complete a written report (e.g., NCIR or MDT report) documenting: the location of the vehicle; date, time and manner in which the reported vehicle was marked; and, date at least 72 hours from the date of initial mark for follow-up action.

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- (a) Enforcement action taken pursuant to paragraph 15 of this Order shall be substantiated by the investigating employee in his/her written report.
- 17 - If required, the primary investigating officer, or in his/her absence another assigned officer, shall accomplish a follow-up investigation after a period of 72 hours to determine the status of the marked vehicle.
- (a) If the vehicle is present and without indication of significant movement, the officer shall issue a citation for the appropriate Vehicle Code or City Ordinance violation, request a tow via the Communication Center, and document the removal on a **tow** report form.
 - (1) "Significant movement" means a vehicle has been moved from the associated parking location by at least one car length.
 - (b) If the vehicle has been moved, the officer shall ensure the associated CAD event is updated to indicate the outcome of the follow-up investigation.

COMMUNICATION CENTER PROCEDURES

- 18 - Subsequent to request from the investigating officer, a Communications Center employee shall call the appropriate towing contractor and request the subject vehicle be towed.
- (a) The Communications Center employee ordering the tow shall enter required information into the Communications Center "Tow Log."
- 19 - Communications Center personnel shall ensure that **accurate tow authority and vehicle** disposition information is **included** in the Computer-Aided Dispatch system (CAD) incident event associated with a vehicle tow.
- (a) A "non-criminal incident" or "criminal investigation" **CAD report type** shall be used for incidents involving the tow and storage of a vehicle.
 - (b) A "miscellaneous service call" **CAD report type** shall be used for incidents where the reported vehicle could not be located or was ineligible for tow.
- 20 - When notified of a completed vehicle tow by a towing contractor, the Communications Center Telecommunications dispatcher will enter the vehicle's description, date of tow, **correct** tow authority, and **accurate custody status** (e.g., "Towed/Stored", "Impounded, etc.) into the California Law Enforcement Telecommunications System (CLETS.)
- 21 - The Telecommunications dispatcher shall obtain Department of Motor Vehicles (DMV) registration information on every vehicle taken into police custody, and will compare the license plate and vehicle identification number (VIN) to the information provided by the towing contractor to ensure accuracy.

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- 22 - The Telecommunications dispatcher shall determine if the vehicle has been reported as stolen to CLETS Stolen Vehicle System.
- 23 - The Telecommunications dispatcher shall forward the **completed** "Towed/Stored Vehicle" entry form, DMV registration print-out, and tow contractor towing sheet to the Traffic Bureau prior to the conclusion of their duty shift.

RELEASING VEHICLES

- 24 - This Department is responsible for authorizing the release of all vehicles towed and stored by its employees.
- 25 - Persons who want to regain custody of a towed or impounded vehicle during normal business hours shall be referred to the Support Services Division Records Detail for a vehicle release form.
 - (a) **Assisting employees will provide information which explains the reason a vehicle was towed/impounded and describes the vehicle release process.**
 - (b) After normal business hours, owners or their authorized agents should be referred to the Jail's public counter for vehicle release assistance.
- 26 - No vehicle may be authorized for release if there is an investigative "hold" on it.
 - (a) The employee assisting a citizen with a vehicle release request will determine if the "hold" has been rescinded prior to issuing a vehicle release form.
- 27 - A vehicle may be released to its owner or, upon presentation of written authorization, his/her agent.
 - (a) Sufficient proof of identity, valid vehicle registration, and valid driver's license (**domestic or foreign issued**) shall be required prior to release of a towed/stored vehicle.
 - (1) **A vehicle's owner or his/her agent will not be required to present proof of insurance to facilitate a vehicle release unless expressly required by law.**
 - (b) Written authorization received from an owner's agent and a copy of their proof of identity shall be attached to the original vehicle release form and routed to Records Detail for incorporation into the report file.
- 28 - All applicable laws and relevant administrative requirements not presented in this Order shall be followed prior to the release of towed/stored vehicles.

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MAILING REQUIRED NOTICE

- 29 - The designated Traffic **Bureau** employee shall ensure a formal notice is mailed to the registered and legal owners advising them of the vehicle's tow and storage.
- (a) Notice to owners of vehicles towed pursuant to Vehicle Code §14602.6 must be mailed by "certified/return receipt requested" post within 48 hours of the vehicle's tow/storage.

VEHICLES IMPOUNDED FOR INVESTIGATIVE PURPOSE, STORAGE OF

- 30 - Employees shall tow a vehicle for investigative purpose (i.e., is or contains evidence of a public offense) pursuant to Vehicle Code §22655.5 only with approval of a sergeant or command officer.
- (a) If evidence can be legally obtained from a vehicle under investigation without towing it, this shall be the preferred procedure; supervisors should exercise discretion in approving the towing of such vehicles.
- (b) Whenever a vehicle is towed as evidence, an Evidence Receipt form shall be completed and a copy delivered to the vehicle's owner or agent.
- 31 - The employee or detail/unit responsible for investigative follow-up of the matter related to a tow shall have primary responsibility for the custody of the vehicle stored as evidence or for investigative purposes.
- (a) If the vehicle is held in custody in excess of 72 hours, the responsible employee or detail/unit shall consult with the District Attorney's Office regarding the need for continued custody of the vehicle.
- (b) If required to be maintained in custody, the responsible employee or detail/unit shall make reasonable efforts to transfer physical custody, or financial responsibility for commercial storage services, of the vehicle to the District Attorney's Office, or relocate the vehicle to a City-controlled storage facility.
- (c) The employee or detail/unit responsible for investigative follow-up of the matter related to a tow shall notify the person authorized to receive custody of the stored vehicle (i.e., registered owner, agent of owner, etc.) as soon as practical after the police hold on the vehicle has ended.
- 32 - The Traffic **Bureau** shall maintain a log of all vehicles towed for investigative purposes.
- (a) A designated Traffic **Bureau** employee will monitor investigations resulting in an impound and take reasonable measures to ensure a vehicle is held in custody no longer than is necessary to accomplish required law

*Highlighted text is new.

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enforcement activities.

- 33 - Contents of a vehicle having no evidentiary value may be released to its owner or his/her agent, and shall be listed in a written report.

TOW/STORAGE HEARINGS

- 34 - The Vehicle Code requires a hearing be provided to a vehicle owner, or his/her agent, within ten (10) days of mailing of the "Notice of Stored Vehicle" form to determine the validity of a vehicle's tow/storage.
- (a) The right to a post-storage hearing applies to all tows except:
- (1) Vehicles impounded for investigation of a hit-and-run collision pursuant to Vehicle Code §22655;
 - (2) Vehicles removed from private property pursuant to Vehicle Code §22658;
 - (3) Abandoned or hazardous vehicles removed pursuant to Vehicle Code §22669 determined to have an estimated value of five hundred dollars (\$500.00) or less; and,
 - (4) Vehicles or vehicle parts removed from private property by authority of a City or County ordinance pursuant to Vehicle Code §§22660 to 22668, inclusive, and §22710.
- 35 - A request for a tow hearing may be submitted in person, telephonically or in writing to the Traffic Bureau.
- 36 - Tow hearings shall be conducted by a designated Traffic Bureau employee within 48 hours of the request, excluding weekends and holidays.
- (a) The hearing employee shall not be the person who directed the storage of the vehicle.
- (b) If the citizen is fifteen (15) or more minutes late, or fails to appear for their scheduled hearing, the statutory requirement for a hearing will be satisfied.
- (1) While not required by law, missed tow hearings may be rescheduled as Traffic Bureau staffing permits.
- (c) A log documenting the date, time, requesting citizen information, and outcome of tow hearings shall be maintained by the Traffic Bureau.
- 37 - The hearing employee shall arrange for the release of a vehicle if it is determined to be eligible for release.

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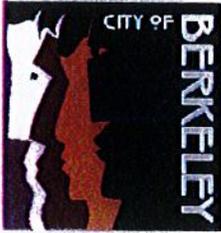
GENERAL ORDER V-2

- 38 - A citizen disputing their financial responsibility for tow/storage fees should be referred to the City Attorney's Office to file a civil claim.
- (a) Upon request, the Traffic **Bureau commander**, or his/her designee, shall research the claim, render a judgment, and submit a report of findings to the City Attorney's Office.

TOW PROGRAM MONITORING

- 39 - The Traffic Bureau will regularly monitor vehicle tows accomplished pursuant to this Order, as represented in tow reports, to ensure adherence to established policy and procedure.
- 40 - The Traffic Bureau will be responsible for the periodic review of this General Order and related tow program to assess the currency, applicability and effectiveness of related policy and procedure, and any identifiable impacts this Department's tow program has on traffic safety.

References: Vehicle Code §§14602.6, 22523, **22651**, 22655, 22655.5, 22658, 22660 (et seq.), 22669, 22710, 22852, and 22853
Miranda v. Cornelius, 429 F.3d 858, 864 (9th Cir. 2005)
Clement v. Glendale, 518 F.3d 1090 (9th Cir. 2008)
U.S. v. Ceseares, 533 F.3d 1064, 1074-75 (9th Cir. 2008)
People v. Williams, 145 Cal.App.4th 756, 762-63 (2006)
Berkeley Municipal Code Chapter 14.36
General Orders C-2, 0-7, P-65, R-18, R-24, R-31, T-1, and V-5
Training and Information Bulletin 235



Police Review Commission (PRC)

March 31, 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 would like to express its heartfelt thanks and commends 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, at times, difficult discussions about departmental operations and policies have proven 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 embraced and understood the importance of civilian oversight of the Department.

The City was fortunate to have a native Berkeleyan at the helm of its police force, one who was inherently committed to this community and to interacting with its engaged and vocal residents.

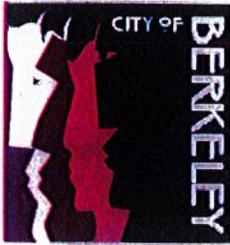
Congratulations and best wishes on a well-deserved retirement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ismail Ramsey".

Ismail Ramsey
Chair, Berkeley Police Review Commission

cc: PRC Commissioners



Police Review Commission (PRC)

April 1, 2021

To: Dee Williams-Ridley, City Manager
From: Izzy Ramsey, Chairperson, Police Review Commission
Re: Hiring of new Chief of Police

Thank you for your commitment to an inclusive and collaborative search for a new Chief of Police, as expressed in your March 16 memo to the Mayor and City Councilmembers. This is a critical moment for transformative policing in Berkeley, and it comes at a time of transition from the Police Review Commission (PRC) to the new Police Accountability Board (PAB), to be seated by July 1, 2021.

The Charter Amendment that passed overwhelmingly by Berkeley voters states that ". . . upon the notice of vacancy of the position of Chief of Police, the City Manager shall consult with the Police Accountability Board . . . on the job requirements, application process, and evaluations of candidates for the Chief of Police." (Section 22.) This provision is no doubt in recognition of the importance of community participation in the hiring of what is one of the most impactful positions in the City and in community/City relations.

While membership of the PAB will not be fully constituted until July 1, 2021, it is in the spirit of the Charter Amendment that the police oversight body have a meaningful seat at the table when a new Police Chief is hired. Accordingly, we ask that the PRC collaborate with you and with other city staff in the recruitment firm selection, the nomination of candidate finalists, the interview process, and final recommendations.

Community input in this hiring process of a new Chief of Police for Berkeley is key to trust, transparency, and inclusivity. The PRC, as the police oversight body representing the interests of all community stakeholders, must be a central vehicle for community participation in this collaborative process. Not only would it benefit the community as a whole, but including the PRC in the hiring and interview process would be advantageous to Police Chief candidates, in giving them the opportunity to become acquainted with the oversight body.

Dee Williams-Ridley
Hiring of new Chief of Police
April 1, 2021
P. 2

The principal purpose of this memo is to urge you to include the PRC in decisions regarding the hiring of the new Police Chief. We would add, however, that a collaborative – and efficient – process also would require that City Council be presented not with the final selection to endorse or not (in the latter case, presumably going back to the drawing board), but with several candidates from which to recommend a finalist to you.

Thank you again for your dedication to the City, to fair and impartial policing, and to a collaborative process in hiring the new Police Chief.

The PRC unanimously agreed to send you this letter at its March 24, 2021 meeting (one Commissioner absent).

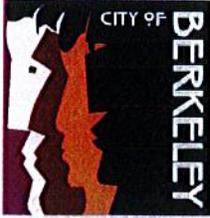
cc: Honorable Mayor and Members of the City Council
Mayor's Working Group on Fair and Impartial Policing (via Tano Trachtenberg)
Reimagining Public Safety Task Force (via David White)
PRC Commissioners

Consent Calendar

1. **Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**
From: City Manager
Recommendation: Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020 and February 9, 2021.
Financial Implications: See report
Contact: Farimah Brown, City Attorney, (510) 981-6950
Action: Adopted Resolution No. 69,767–N.S.

2. **Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the council meetings of February 2, 2021 (closed), February 9, 2021 (closed and regular), February 16, 2021 (closed and special), February 23, 2021 (special and regular) and February 25, 2021 (closed).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Approved the minutes as submitted.

3. **Police Accountability Board – Ordinance Amendment for Leaves of Absence and Alternate Commissioner; Amending BMC Chapter 3.02**
From: City Manager
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 3.02.030 to provide for leaves of absence for members of the Police Accountability Board and Berkeley Municipal Code Section 3.02.035 to provide for a designated council-approved alternate to serve when a regular member is on a leave of absence.
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Adopt first reading of Ordinance No. 7,757–N.S. Second reading scheduled for April 20, 2021.



Office of the City Manager

CONSENT CALENDAR

March 30, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Police Accountability Board – Ordinance Amendment for Leaves of Absence and Alternate Commissioner; Amending BMC Chapter 3.02

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 3.02.030 to provide for leaves of absence for members of the Police Accountability Board and Berkeley Municipal Code Section 3.02.035 to provide for a designated council-approved alternate to serve when a regular member is on a leave of absence.

FISCAL IMPACTS OF RECOMMENDATION

A direct cost to the General Fund \$800 to pay the stipend to the alternate commissioner for the time spent on the required 40 hours of training.

CURRENT SITUATION AND ITS EFFECTS

Measure II was adopted on November 3, 2020 by the voters of Berkeley to create a new Police Accountability Board (hereafter "Board"). The members of the Board are approved by vote of the full Council. The Charter amendment also provided for termination for lack of attendance, leaves of absence, and alternate commissioners pursuant to Berkeley Municipal Code Section 3.02.020, Section 3.02.030, and Section 3.02.035 respectively.

Leaves of absence are an important tool for commissioners to be able to miss a meeting due to illness, unavoidable travel, or other significant conflicting obligations without the absence counting against their attendance record. For commissions appointed by the Council as a whole, Section 3.02.030 requires that the leave of absence be granted by the full Council. This requires an item to be placed on the Council agenda at least four weeks prior to the date of absence (or much longer depending on Council recess periods). This process makes it very difficult to obtain a leave of absence and may lead to commissioners being terminated for attendance due to unforeseen circumstances.

The current process for alternate commissioners involves the Mayor and each Councilmember having up to five alternates that can serve on certain designated commissions. The alternate process provides an efficient method to fill a vacancy due

to a leave of absence without requiring the temporary commissioner to take the oath of office and file a Form 700 for every instance of service as an alternate on a commission. This process is complicated by the Charter requirement that all appointees to the Board be approved by the full Council. The same long lead times and onerous requirement of submitting a council item for the leave of absence would apply to designating an alternate commissioner to serve.

In order to remedy these issues and maintain the integrity of the Charter requirements for approval by the full Council for any member serving on the Board, staff is proposing code amendments to create specific provisions enabling leaves of absence to be granted without approval of the full Council and the use of a single alternate commissioner who will be pre-approved by the full council to serve when another Board member is on a leave of absence. Should City Council adopt the proposed Ordinance, at the time that City Council appoints the initial nine (9) commissioners to the Board, City Council will also be asked to approve an alternate commissioner. This alternate will be required to undergo the same 40-hour training requirement as the regular Board members.

BACKGROUND

The Berkeley Municipal Code provides for leaves of absence for city commissioners and for the use of alternate commissioners on certain commissions. There are additional layers of complexity for boards and commissions that are appointed by the Council as a whole due to the requirement that the leave be granted by the entity that made the appointment.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable effects on sustainability or the environment associated with the recommendation in this report.

RATIONALE FOR RECOMMENDATION

These amendments will allow the Board to have greater continuity in its membership by reducing the number of members that could be terminated for attendance due to the difficulty of obtaining leaves of absence in advance of board meetings. In addition, vacancies on a commission reduce the effectiveness of the body to deliberate and conduct business. Finally, the work of the Board will be enhanced by an alternate Board member who will receive the extensive training provided to the regular Board members.

ALTERNATIVE ACTIONS CONSIDERED

The Council may wish to not adopt the proposed Ordinance and adhere to the current wording of the Berkeley Municipal Code that requires all leaves of absence to be granted by submitting an agenda item to be approved by the full Council for each leave of absence requested by a board member. The Council may also wish to make changes to the proposed Ordinance such as designating who may nominate an alternate commissioner for City Council approval.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Dave White, Deputy City Manager, (510) 981-7000

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

LEAVES OF ABSENCE AND ALTERNATE COMMISSIONER FOR THE POLICE ACCOUNTABILITY BOARD; AMENDING BERKELEY MUNICIPAL CODE CHAPTER 3.02

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

Section 1. That Berkeley Municipal Code Section 3.02.030 is amended to read as follows:

3.02.030 Leaves of absence.

The following circumstances shall not count as absences for the purposes of Section 3.02.020:

A. A member of a board, commission or committee may be granted a leave of absence not to exceed three months by the appointing Councilmember, the appointing Commission, or the Council, when the appointment is made by the Council as a whole, and a temporary vacancy shall thereupon exist for the period of such leave of absence. Notice of the leave of absence must be filed with the City Clerk prior to the absence.

1. During the period of such temporary vacancy, the appointing Councilmember, the appointing Commission, or the Council, when the appointment is made by the Council as a whole, may fill such vacancy by a temporary appointment to said commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a leave of absence so granted, the member shall automatically resume full membership on the board, commission or committee.

2. Alternatively, the appointing Councilmember or Mayor may select one of their Alternate Commissioners to serve temporarily as provided for in Section 3.02.030.A.1 when a leave of absence is granted for one of their appointees.

B. Commissioners may request that an absence be excused due to a conflict between the date of a scheduled commission meeting on which the commissioner sits and a religious or cultural holiday. Such a request shall be made in writing on a form provided by the City and submitted to the secretary prior to the meeting for which the commissioner's absence is to be excused. The request shall not be subject to the approval of the commission but shall be accepted upon request. The secretary shall then excuse that absence and exclude it from the attendance report sent semi-annually to the City Clerk.

The definition of a religious or cultural holiday shall be left to the individual commissioner. However, the following list may be considered illustrative of the religious and cultural holidays for which a commissioner may seek an excused absence: Al Hijrah New Year, Ash Wednesday, Chinese New Year, Diwali, Easter Sunday, Eid Al Fitr, Eid Al Adha,

Good Friday, Hanukkah, Holi, Kwanzaa, Palm Sunday, Passover, Rosh Hashanah, St. Patrick's Day and Yom Kippur.

C. Members of the Police Accountability Board may be granted a leave of absence upon the filing of a notice for leave of absence with the City Clerk by the nominating Councilmember or the Mayor for their nominee. All other conditions and regulations for leaves of absence in this Code and adopted by resolution, that are not inconsistent with the City Charter, shall apply.

Section 2. That Berkeley Municipal Code Section 3.02.035 is amended to read as follows:

3.02.035 Additional provisions pertaining to Alternate Commissioners.

A. Each Councilmember and the Mayor may select up to five individuals to serve as their Alternate Commissioners. Alternate Commissioners shall be qualified and appointed as provided for in the Municipal Code and supplemental regulations adopted by resolution.

B. Alternate Commissioners shall be eligible to serve in such capacity only when a vacancy on a designated commission is the result of an approved leave of absence and the Councilmember or Mayor has delivered written notification to the City Clerk Department for temporary appointment of the selected Alternate Commissioner.

C. A Councilmember or the Mayor may, but is not required to, appoint an Alternate Commissioner to fill a temporary vacancy.

D. Appointment as an Alternate Commissioner does not prevent a Councilmember or the Mayor from appointing that Alternate Commissioner to sit as a Commissioner on any commission as provided for in Article 2 of Chapter 2.04.

E. All regulations and requirements of the BMC that apply to a Commissioner as defined in 3.02.010.A. also apply to Alternate Commissioners except Section 3.02.040.

F. Councilmembers or the Mayor may dismiss an Alternate Commissioner without appointing a replacement provided that the Alternate Commissioner has served the term minimum described in Section 2.04.075. Dismissal of an Alternate Commissioner must be submitted by the appointing Councilmember in writing to the City Clerk Department.

G. The Police Accountability Board shall have one alternate commissioner, approved by the full council by majority vote, and subject to all membership, service, and training requirements of the City Charter for regular members of the Board. All other conditions and regulations for alternate commissioners in this Code and adopted by resolution, that are not inconsistent with the City Charter, shall apply.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Q A from PRC Special Meeting / Webinar on Community Oversight of Policing in Berkeley, March 13, 2021

Topic	Webinar ID	# Question
Community	869 0814 7095	43
Question Details		
#	Question	Answer(s)
1	Can you provide information on the time commitment expected and term of service, if any?	live answered
2	Age and experience requirements to apply?	live answered
3	How can we make sure that a city which was once close to 30% african american (and is now 7%) will have a PAB with the diversity that represents those who are truly impacted by the police and the criminal justice system? Will there been any directed community outreach? To unhoused community members? Those currently being served/ not served by the mental health department, etc... Will board members be paid? Will they be supported in having internet access?	live answered
4	If Council can add duties and powers to the Board, can they also take them away?	The Council can only take away 'additional' powers that it grants to the Board. The Council cannot remove any of the Board's powers granted through the charter amendment that established it.
5	what does "involved in" hiring the police chief mean? From my understanding the reinvisioning community safety task force thought they would be "involved" in the work by consultants (RDA) but that seems to now be in question. They feel very closely entwined	"the City Manager shall consult with the PAB on the job requirements, application process, and evaluation of candidates for the Chief of Police." Section 21 of Measure II.
6	How will citizens be able to communicate with and provide feedback to/oversight of the PAB?	live answered
7	Much each district have a representative on the board?	No, though each district's Councilmember will nominate one member.
8	one must be nominated by the mayor or councilmember??	Yes. They must be nominated
9	Will you open the elibility for community providers that work in the city of Berkeley to join the board?	The voter approved ballot measure says Berkeley residents.
10	Must each (not "much each")	
11	How will this board interact with the school board/school community given there are times when BPD have to be called in compliance with ed code. Thanks!	I assume that relationship would develop after the PAB members are seated. It's not specified in the voter approved measure.

12	Does the new PAB include additional trained investigators to assist the PAB and director ? Will the current staff remain and be supplemented ? Will PAB subcommittees be staffed by PAB staff ?	I will ask about the number of investigators and get back to you. I'm not sure it's been determined. Unknown whether current staff will remain. Yes, I believe subcommittees of the PAB will be staffed, just as PRC subcommittees typically are.
13	In other words, what is the PAB's accountability to the public? I am very interested in the mission and work -- is there a way citizens can have a voice in the work of the PAB?	The primary and most important way for the public to be involved, other than being appointed to the Board itself, is to attend the public meetings of the Board and its subcommittees.
14	How many can each councilmember nominate?	1
15	Also, thank you for this progress!	You're more than welcome.
16	How many can the mayor nominate?	1
17	Do you anticipate avenues for ordinary citizens to participate? Working groups? Focus Groups?	Hi Don. One potential avenue of involvement for citizens not serving on the Board is serving a subcommittee of the Police Accountability board or the city's re-imagining public safety Task Force (Task Force will likely consider subcommittee appointments at the next meeting). If there is a subcommittee covering a topic you are interested in, you can voice your interest at a meeting and potentially be appointed.
18	Does the complainant have the right to sit in the officer's interview (or does the Police Officer's Bill of Rights prohibit that?) Now the officer and their attorney sits in on the complainant's interview but complainant not allowed to hear what officer says -	Moni, I don't think so. Also, officers don't have the right to sit in on comp's interview
19	Sounds like with meetings time to meet, read materials and stay current would be 10 to 20 hours per month would that be close in time commitment?	Yes, in my experience on the PRC, that's about right. In 2020, I would say it has been closer to 20 hours.
20	Will those committees be paid? we need unhouseed folks in these committees	Yes, members will be paid for subcommittee meetings.
21	do yo have a ongoing path for letting us know of the several committees	Committees will be established after the PAB members are seated late this summer.

22	So you if the council can add on duties and powers, can they also remove them?	I will ask. Please reach out to me via PRC staff.
23	Is this board going to be established soon enough to participate in hiring of new police chief	The city intends to conduct a nationwide search. I assume that search and background checks will take more than 3 months.
24	Can you say whether you expect current PRC members to apply to the PAB?	It is expected that one or more PRC commissioners will apply to the PAB.
25	For the citizens on committees / are they not required to be a Berkeley resident? - and do they qualify for any stipends if low income community members want to participate ? Can 'residence' include prior resident in last 10 years, OR attend a faith community in city OR work in the city (other than city employee?) many in the Black and Brown community meet the expanded definition of resident (but have been displaced by gentrification)	Moni, please email this question to prcmailbox@cityofberkeley.info. Staff will answer next week.
26	Since council can add responsibilities through ordinance can responsibilities be taken away or limited that were given in the new ii charter?	Good question. I will ask and get back to you.
27	It would be nice if more people have an opportunity to speak and not have this be a debate...	Yes. Sorry.
28	Why do we not know who in the community speaking?	Community members have the option of anonymity.
29	Don't know how many are on. If 20 hours is about right maybe that could be said out loud into recording	Kelly, I can't speak during public comment, but you can raise your hand and relay that information.
30	that is unfortunate	
31	Will the PAB be involed in the chief selection process? If so, how many more meetings will be added & at what stipend rate?	To first question, see response to Rebecca Fink above. Don't know how many more meetings it will take. Rate depends on whether meeting of full commission or subcommittee.
32	That certainly eliminates a lot of displaced Black residents.	
33	yes mama ayanna.	
34	how many people are on this call?	Over 40
35	how will the questions in the chat be addressed since they all were not answered?	Answers are being typed now. If your question is not answered today, please reach out to PRC staff next week.
36	Next one: invite the youth of Color from BHS, BcC and cal to next forum - and BTech and other youth programs and churches etc	Thank you. I think we did reach out to most of those groups for this one.

37	How are we assured police records will no longer be redacted?	Please reach out to PRC staff next week for a detailed answer.
38	Thank you George - in response to being clubbed in the back by Officer no. 60 - my attorney Jim Chanin recommended that I not file a PRC complaint - but I did naively I guess - and it was like a second beating - two of the commissioners on the board of inquiry siled the attorney who verbally attacked me with questions like - if I was injured, why did I not take pictures of my back? One PRC commissioner started to walk out he was so troubled by the aggressive counsel-	
39	Then to add insult to injury, I was not allowed to sit in the officer's interview by the BOI, but he sat in my interview a couple of feet from me in uniform that was very triggering - I broke down crying years later when I saw the same officer arresting a Black man	
40	How will the new PAB address police brutality against other marginalized groups (beyond the Black community)?	
41	Is it possible to have certain training accessible to the public who would potentially apply in the future?	Any training that is given to more than a majority of the Board will have to take place as a public meeting.
42	just a note: I don't understand why city employees can live anywhere but not board members?	
43	Thank you Councilmember Harrison who helped on passing Measure ii - !! And the community	

<p>12. The Director can request additional staff. The budget is reviewed and approved by the Council.</p>			
		<p>18. I think the point of Moni's question may have been missed. I believe she is not asking about the private interview of the complainant by the investigator, but of the complainant's public testimony. That imbalance is a long-standing grievance by complainants, is humiliating and disrespectful, and a big reason that so few people bother to file complaints.</p>	<p>George you're right; I misunderstood Moni's Q. The answer is, the current practice probably won't change due to POBRA.</p>

**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
SPECIAL MEETING MINUTES**

**Monday, March 29, 2021
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Susan Wengraf, and Ben Bartlett
Alternate: Councilmember Terry Taplin

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

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

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://us02web.zoom.us/j/88131245345>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and Enter Meeting ID: **881 3124 5345**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Public Safety Policy Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

MINUTES

Roll Call: 10:34 a.m. All present.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. **Minutes - March 1, 2021**

Action: M/S/C (Bartlett/Wengraf) to approve the March 1, 2021 minutes as presented.

Vote: All Ayes

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

 2. **Adopt an Ordinance Adding Chapter 2.64.170 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment (Supplemental Material Received)**

From: Councilmember Harrison (Author) and Councilmember Bartlett (Co-Sponsor)

Referred: July 13, 2020

Due: March 19, 2021

Recommendation: 1. Refer draft Ordinance to the Police Review Commission for further consideration and policy development and submit recommendations to the Public Safety Committee and author within 60 days; and
2. Adopt an Ordinance Adding Chapter 2.64.170 to the Berkeley Municipal Code to Regulate Police Acquisition and Use of Controlled Equipment.

Financial Implications: Staff time

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action: 13 speakers. Discussion held. M/S/C (Kesarwani/Bartlett) to send the item with a qualified positive recommendation, removing definition #13 (LRAD) and a further recommending that Council deliberate on definitions for #8, #9 (40 mm projectile only), and #12 due to concern about duplication with the Use of Force policy.

- Council may consider possible amendments to the Use of Force policy to ensure that all controlled equipment specified in #8, the 40 mm projectile in definition #9, and #12 are covered and reported by our City's Use of Force

Committee Action Items

policy, including reporting on police beat areas in quarterly use of force reporting to Council.

- Consider possible replacement of "display" in Controlled Equipment Ordinance to "deploy" defined as "to utilize for a deliberate purpose in the presence of members of the public."

Vote: All Ayes

Items for Future Agendas

- None

Adjournment: 12:56 p.m.

Action: M/S/C (Bartlett/Wengraf) to adjourn the meeting.

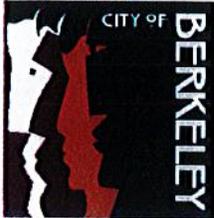
Vote: All Ayes

I hereby certify that this is a true and correct record of Public Safety Policy Committee meeting held on March 29, 2021.

Michael MacDonald, Assistant City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@cityofberkeley.info.



Office of the City Manager

Date: March 25, 2021
To: Budget & Finance Policy Committee
From: Dee Williams-Ridley, City Manager
Submitted by: David White, Deputy City Manager
Jennifer Louis, Interim Chief of Police
Subject: Police Department Quarterly Overtime Update

RECOMMENDATION

Receive an update from city staff on the Police Department's use of overtime through the first six months of Fiscal Year 2021 (July 1, 2020 to December 31, 2020).

BACKGROUND

The purpose of this memorandum is to provide the Budget and Finance Policy Committee with a quarterly update on the Police Department's use of overtime. The chart below identifies the amount of overtime expensed by the Police Department from July 1, 2020 through December 31, 2020.

**Police Department Overtime Expenditures (Sworn and Non-Sworn)
Fiscal Year 2021
July 1, 2020 – December 31, 2020**



Through the first six months of Fiscal Year 2021, the Police Department has total overtime expenditures of \$3,459,236. The table below provides an overview of the total amount of resources allocated to the Police Department for overtime and amounts available to spend for the rest of Fiscal Year 2021.

Amount Allocated to Police Department (FY 21 Adopted Budget)	\$1,764,641
Amount Allocated to Police Department (December 2020)	3,500,000
Reserve Allocation: Downtown Bike Patrol (7 Days/Week)	180,000
Total Amounts Allocated for Police Department Overtime	\$5,444,641
Total Amount Allocated to Overtime (Excluding Reserve)	\$5,264,641
Less: Total Overtime Incurred through December 2020	3,459,236
Remaining Budget For FY 21	\$1,805,405
<i>Overtime Reserve</i>	
Amount Reserved for Overtime	\$1,000,000
Less: Amount Allocated to Downtown Bike Patrol (7 Days/Week)	180,000
Remaining Overtime Reserve Allocation	\$820,000

As indicated in the Table above, excluding amounts allocated to the Police Department in Reserve (\$1,000,000), the Police Department has spent approximately 66% of the total amount of resources allocated to the Department for overtime¹. In addition to that, the Police Department has spent approximately 18% of the amounts set aside in a reserve for Police Department Overtime.

In looking more closely at the level of overtime that is being generated by the Police Department through the first six months of Fiscal Year 2021, there are a number of factors to consider:

- **COVID-19.** The Police Department incurred significant overtime due to the number of employees that have either contracted COVID-19 or have been forced to isolate and quarantine due to exposure to COVID-19. To date, 26 employees in the Police Department have been quarantined due to testing positive for Covid-19, and 95 have been quarantined due to possible exposure to Covid-19. With the Police Department having largely been vaccinated by the end of February 2021, it is anticipated that overtime attributed to COVID-19 will decrease. Further, it is not yet clear the extent to which the City will be able to pursue FEMA reimbursement for overtime attributable to COVID-19.
- **Staffing levels.** Due to the budget reductions that were implemented as part of the FY 21 Adopted Budget, the Police Department has not been able to fill positions as individuals have separated from the organization. At the moment, the Police Department has 158 sworn full-time equivalent positions and the Police Department should be at 157 sworn full-time equivalent positions by the end of the Fiscal Year. As a result, overtime has been utilized to ensure minimum staffing levels in the Patrol Division and maintain staffing levels in other divisions and special assignments.
- **Communications Center.** Through the first six months of Fiscal Year 2021, overtime attributable to the Communications Center appears to be in line with historical trends. This is largely attributable to the need to fill shifts to maintain minimum staffing levels that arise from vacancies. There are currently four (4) vacant positions in the Communications Center. While these vacancies are immediately attributable to the Fiscal Year 2021 deferrals, they are also the result of profession wide challenges hiring qualified dispatcher candidates that can successfully pass the training program to become a dispatcher.
- In taking a closer look at overtime expenditures, December 2020 was an exceptionally high month. This is attributed to several COVID-19 related

¹ This estimate is prior to adjustments to overtime expenditures discussed below.

quarantines, workers compensation injuries, scheduled vacation and holidays, and unplanned retirements.

- Reimbursable activities. Through the first six months of Fiscal Year 2021, the number of overtime hours assigned to Reimbursable activities is more than all that was incurred in Fiscal Year 2020. As a result, through the first six months of Fiscal Year 2021, the Police Department has generated revenues of \$478,247, which is \$171,185 above what was budgeted for Fiscal Year 2021. Due to anticipated reimbursement from the Police Department's response to the Napa fires and work that will be reimbursable by third-parties, it is anticipated that the Police Department will recognize revenue in the range of \$800,000 to \$1,000,000 for Fiscal Year 2021.

To provide additional detail on overtime that has been incurred by the Police Department, attached to this memorandum are the following exhibits:

- Breakdown of Police Department overtime by division.
- For sworn and non-sworn employees of the Police Department, a breakdown of overtime hours by Object Code (i.e., Regular Overtime, Holiday Pay, Training, etc.).
- For sworn employees of the Police Department, a breakdown of overtime hours by Rank (i.e., Police Captain, Police Lieutenant, Police Sergeant, and Police Officer).

CONCLUSION

Give the level of overtime that the Police Department has incurred through the first six months of Fiscal Year 2021, the Police Department and staff from the City Manager's Office have been meeting regularly to devise alternatives to control overtime expenditures. Discussions to date have resulted in the following outcomes:

- The Police Department is scrutinizing overtime expenditures and has determined that there are amounts that can be charged to Special Funds. For example, the Police Department incurred overtime expenditures connected to the implementation of Policy 300 (Use of Force). Rather than allocating these overtime expenditures to the General Fund, asset forfeiture funds will be used as they are an appropriate and allowable use. In addition to that, the Police Department has identified \$1.2 million in Special Funds that can be used to offset overtime expenses.
- Evaluate staffing levels in the Communications Center. In an audit that was completed in 2019, the City Auditor determined that the Communications Center relies on overtime to meet minimum staffing requirements². The auditor noted that low morale in the Center results from chronic vacancy and not being well staffed.

² https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Dispatch%20Workload_Fiscal%20Year%202018.pdf.

Revisiting the Fiscal Year 2021 deferrals and taking a fresh look at staffing levels in the Communications Center could have the dual benefit of not only reducing overtime but strengthening the workplace.

- As mentioned above, a significant driver of overtime is a result of maintaining minimum staffing levels in the Patrol Division. This is especially the case as the Police Department has attempted to maintain staffing levels in a number of Divisions and Special Assignments and assigned staff to deploy the Downtown / Telegraph Bike Patrol Team. In order to reduce overtime expenditures in Patrol, a number of service adjustments outlined below were considered:
 - Suspending the bike patrol team and assigning the Police Sergeant and Police Officers that work in this unit to the Patrol Division. If this service were eliminated for the remainder of the fiscal year, it would result in increased workload for the Patrol Division and the loss of a service that has been embraced by business associations such as the Downtown Business Association and Telegraph Business Improvement District.
 - Reassigning the Police Sergeant that is overseeing Neighborhood Services to the Police Department. This would impact the City's ability to provide outreach and services to our unhoused, respond to community complaints in a timely manner, and provide adequate oversight of code enforcement and animal control.
 - Suspending the Community Services Bureau and assigning the Police Sergeant and Police Officers to the Patrol Division. While this service adjustment bears consideration, if sworn staff assigned to the Community Services Bureau are reassigned to the Patrol Division, community outreach and coordination would be significantly curtailed. The Community Services Bureau handles many citywide homeless encampment issues and cleanups, including coordination with City Manager's Office, Public Works and Parks, Recreation, and Waterfront. In addition, police officers assigned to the Community Services Bureau are a single point of contact for community members to seek advice/direction on a wide variety of issues and are responsible for community engagement and special event coordination.
 - Service adjustments were also considered in the Traffic Bureau and Detective Division. The impact of this move would include an increased burden on patrol operations having to respond to accidents. The Traffic Bureau currently handles all significant traffic collisions (including those that require laser scene reconstruction), completes data analysis on traffic safety for the State, conducts tow hearings, manages tow company contracts, and manages and staffs traffic safety grants that equate yearly to roughly \$350,000 that is spent on motorist safety, impaired driving and car seat programs. This is not an inclusive list and

suspending the Traffic Bureau completely could create administrative and procedural challenges.

The Detective Bureau is currently functioning well below normal staffing levels, and has been reduced to personnel levels that often do not allow for follow up investigations and critical investigative functions to continue. Any further reductions to the personnel in the Detective Bureau would render the Police Department's investigative functions largely ineffective and not able to devote the resources to identify and apprehend serious offenders.

While none of the items listed above is ideal, they are potential options which, if implemented, would help to control Police Department overtime expenditures.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with receiving an update on the Police Department's use of overtime.

CONTACT PERSON

David White, Deputy City Manager, City Manager's Office, 981-7012
Jennifer Louis, Acting Chief of Police, Police Department, 981-5815

ATTACHMENTS

1. Police Department Overtime by Division
2. Sworn employee overtime hours by object code
3. Non-sworn employee overtime hours by object code
4. Sworn employee overtime hours by rank

Exhibit 1
Police Department Actual Overtime Expenses
General Fund
FY 16 - FY 21 YTD (1)

	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21 YTD	FY 21 Proj. (2)	3-Year	Average	5-Year
Police Administration	\$0	\$107	\$112	\$469	\$1,288	\$0	\$0	\$623	\$395	\$395
Internal Affairs	7,770	8,934	2,932	8,669	9,155	2,535	5,070	6,919	7,492	7,492
Patrol Operations	2,258,768	2,829,033	3,575,284	3,412,283	4,933,982	2,362,657	4,725,315	3,973,850	3,401,870	3,401,870
Public Information	1,215	0	357	0	0	438	876	119	314	314
Investigations: Detective / SEU / Crime Analysis / Crime Scene Unit	551,257	583,569	582,325	605,071	635,581	255,475	510,951	607,659	591,561	591,561
Investigations: Traffic / Parking	66,575	81,560	83,264	161,532	144,260	29,558	59,117	129,685	107,438	107,438
Professional Standards: Policy / Accreditation	33,377	19,049	11,662	14,573	14,659	6,206	12,412	13,631	18,664	18,664
Professional Standards: Personnel and Training	469,117	415,615	447,313	400,953	326,559	146,384	292,768	391,608	411,911	411,911
Police Services	10,447	10,997	94,514	109,217	117,340	61,046	122,092	107,024	68,503	68,503
Communications Center	807,202	1,021,419	1,102,813	1,147,088	1,155,139	472,453	944,906	1,135,013	1,046,732	1,046,732
Jail Operations	406,120	485,439	509,756	362,672	281,525	122,483	244,965	384,651	409,102	409,102
Total Overtime Expenses	\$4,611,848	\$5,455,722	\$6,410,332	\$6,222,527	\$7,619,489	\$3,459,236	\$6,918,472	\$6,750,783	\$6,063,984	\$6,063,984

Allocated to Police Department - FY 21 - Adopted \$1,764,641
 Allocated to Police Department - FY 21 - Adjusted (Excludes \$1.0M Reserve) 3,500,000
 Reserve Allocation: Downtown Bike Patrol (7 Days/Week) 180,000
 Total Budgeted Overtime - FY 21 \$5,444,641

Memo Remaining Adopted and Adjusted Overtime Budget - FY 21 1,805,405

Overtime Reserve Allocation \$1,000,000
 Reserve Allocation: Downtown Bike Patrol (7 Days/Week) 180,000
 Remaining Overtime Reserve Allocation \$820,000

Sworn Staffing Levels Staffing	Max	Min	Average
Max	174	165	166
Min	166	153	154
Average	169	159	160

General Fund Revenue Associated with Overtime (3)
 Reimbursable Services - Patrol \$139,080
 Reimbursable Services - Traffic 165,165

	FY 21 YTD	FY 21 Proj. (2)	3-Year	Average	5-Year
General Fund Revenue Associated with Overtime (3)	\$478,247	\$1,434,741	\$337,648	\$277,577	\$277,577
Reimbursable Services - Patrol	8,309	24,928	36,950	68,104	68,104

- (1) FY 21 YTD through December 2021.
 - (2) FY 21 Projected assumes amounts spent through December represent annual requirements.
 - (3) Revenues associated with overtime are recognized in the General Fund.
- Source: Finance Department Second Closing Reports for Fiscal Year End results.

Exhibit 2
 Police Department - Sworn Employee Overtime Hours By Object Code
 General Fund
 FY 18-FY 21 YTD (Thru December 2020)

		FY 18	FY 19	FY 20	FY 21 YTD
Regular Overtime	1301	24,317	25,544	29,348	13,668
Unnamed Overtime Category (1)	1302	0	0	0	0
Hourly Overtime	1303	0	25	0	0
Holiday	1305	5,753	6,319	6,347	4,107
Coding Error (Should be 1301)	1310	0	0	43	(6)
Special Events	1311	3,437	1,642	6,707	72
Training	1312	4,664	5,679	4,163	2,048
Vacation Relief	1313	4,373	4,427	3,481	2,861
Miscellaneous	1315	30	34	37	35
Sick Time Relief	1316	3,257	2,728	1,781	1,846
Court / PRC	1317	1,330	897	1,317	547
Overtime / FLSA Fire (2)	1319	(69)	0	0	0
Reimbursable Services (3)	1338	3,121	1,198	5,425	6,269
Total Overtime Hours		50,212	48,492	58,648	31,448
Total Holiday, Training, Vacation & Sick Overtime Hours		18,047	19,153	15,772	10,863
As a % of Total Overtime Hours		35.9%	39.5%	26.9%	34.5%

(1) This was a coding error and the time should not have been coded here.

(2) Hours should not have been coded to Police and were reversed.

(3) Overtime hours are generally reimbursable by third-parties.

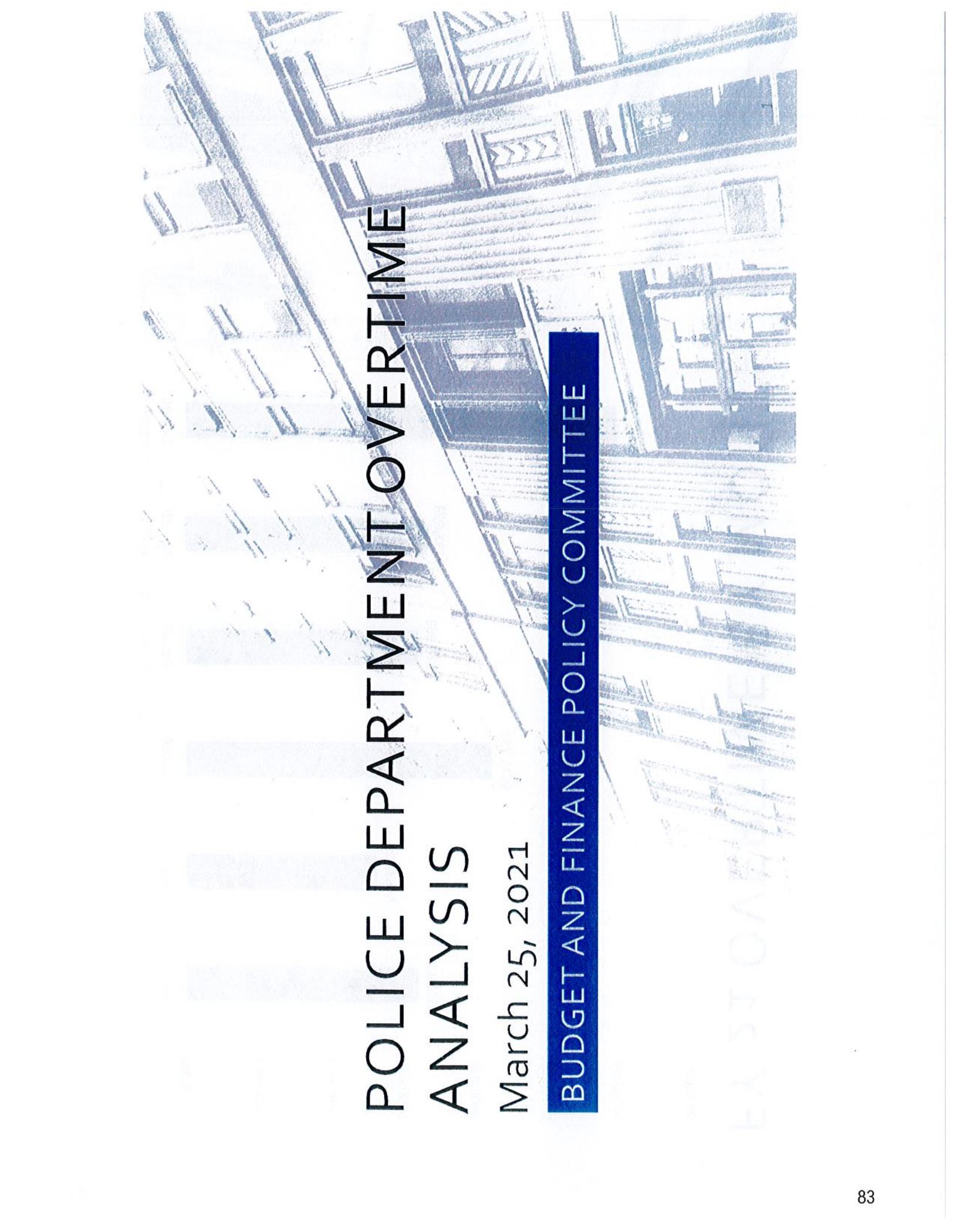
Exhibit 3
 Police Department - Non Sworn Employee Overtime Hours By Object Code
 General Fund
 FY 18-FY 21 YTD (Thru December 2020)

	FY 18	FY 19	FY 20	FY 21 YTD
Regular Overtime	17,700	15,031	13,555	5,577
Hourly Overtime	0	0	0	0
Holiday	1,426	1,587	1,545	1,346
Coding Error (Should be 1301)	0	0	0	76
Special Events	648	848	1,577	0
Training	1,080	800	1,077	539
Vacation Relief	3,737	2,544	3,097	2,915
Miscellaneous	94	66	125	18
Sick Time Relief	1,162	1,311	1,266	2,359
Court / PRC	30	34	18	0
Reimbursable Services (1)	819	736	653	74
Total Overtime Hours	26,696	22,956	22,912	12,904
Total Holiday, Training, Vacation & Sick Overtime Hours	7,405	6,241	6,984	7,159
As a % of Total Overtime Hours	27.7%	27.2%	30.5%	55.5%

(1) Overtime hours are generally reimbursable by third-parties.

Exhibit 4
Police Department - Sworn Employee Overtime Hours By Rank
General Fund
FY 21 YTD (Thru December 2020)

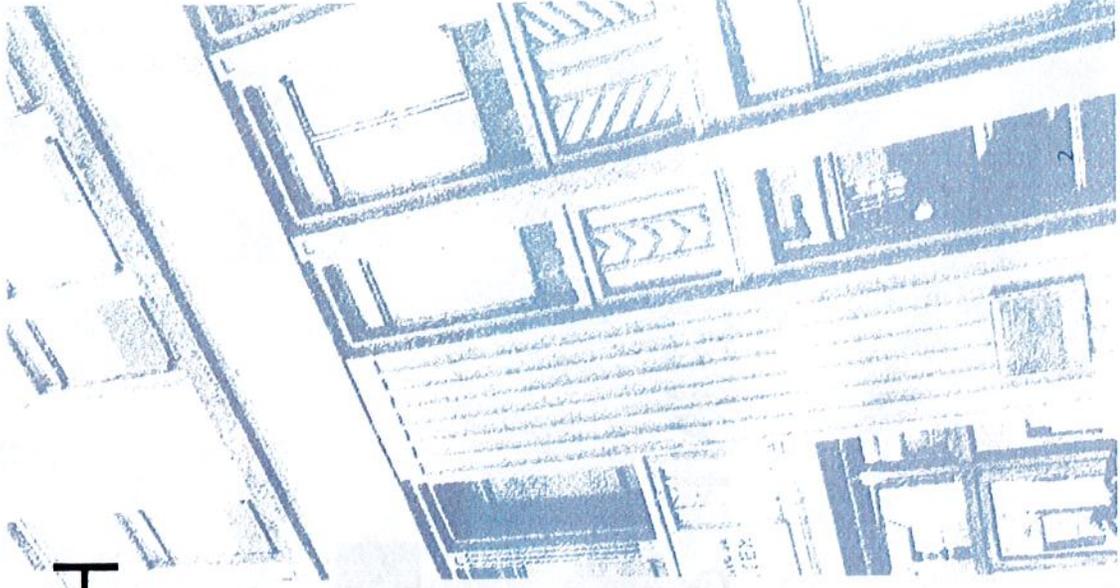
	Hours	% of Total
Police Captain	411	1.3%
Police Lieutenant	2,991	9.5%
Police Sergeant	6,944	22.1%
Police Officer	21,102	67.1%
Total	31,448	100.0%



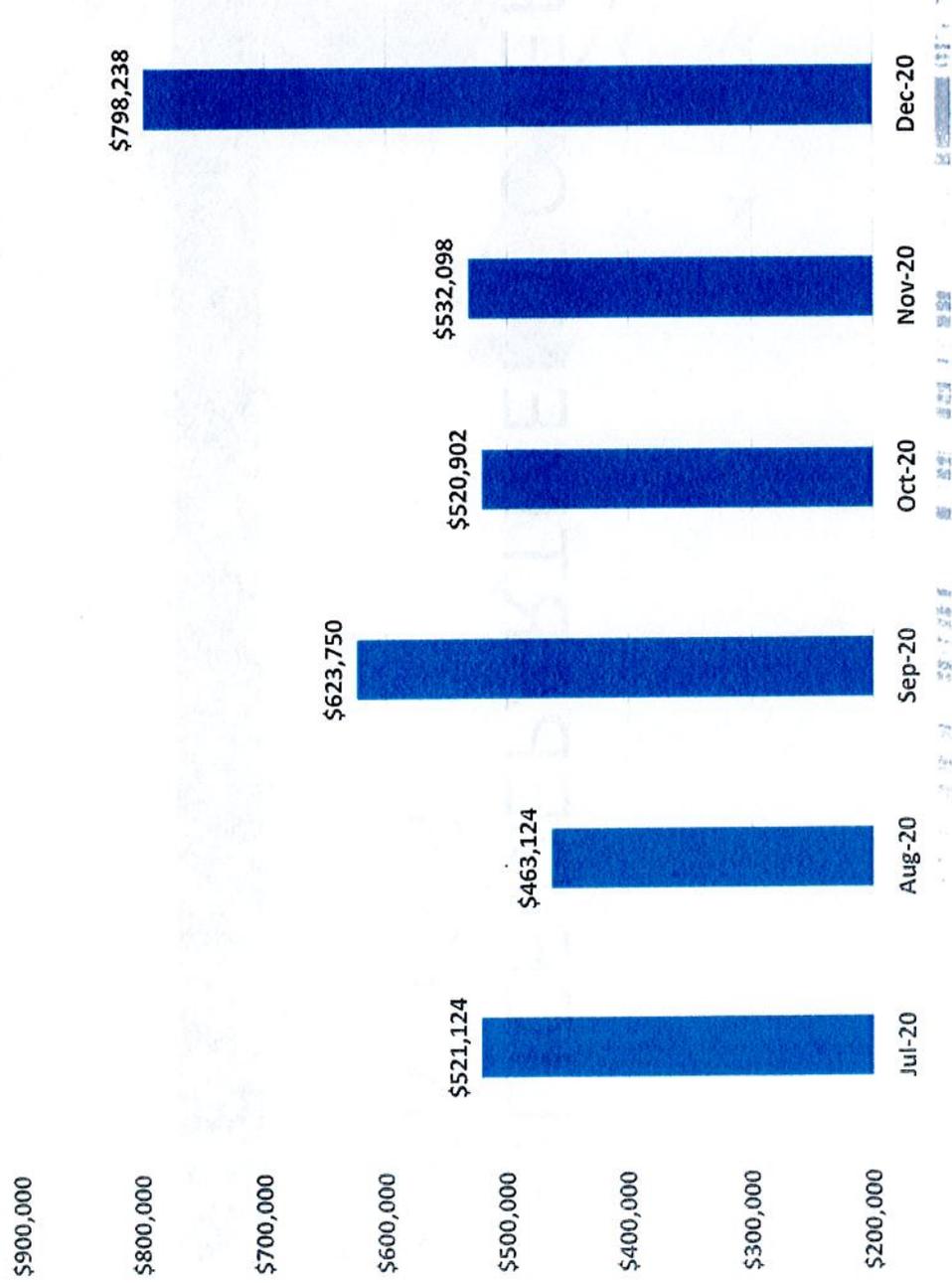
POLICE DEPARTMENT OVERTIME ANALYSIS

March 25, 2021

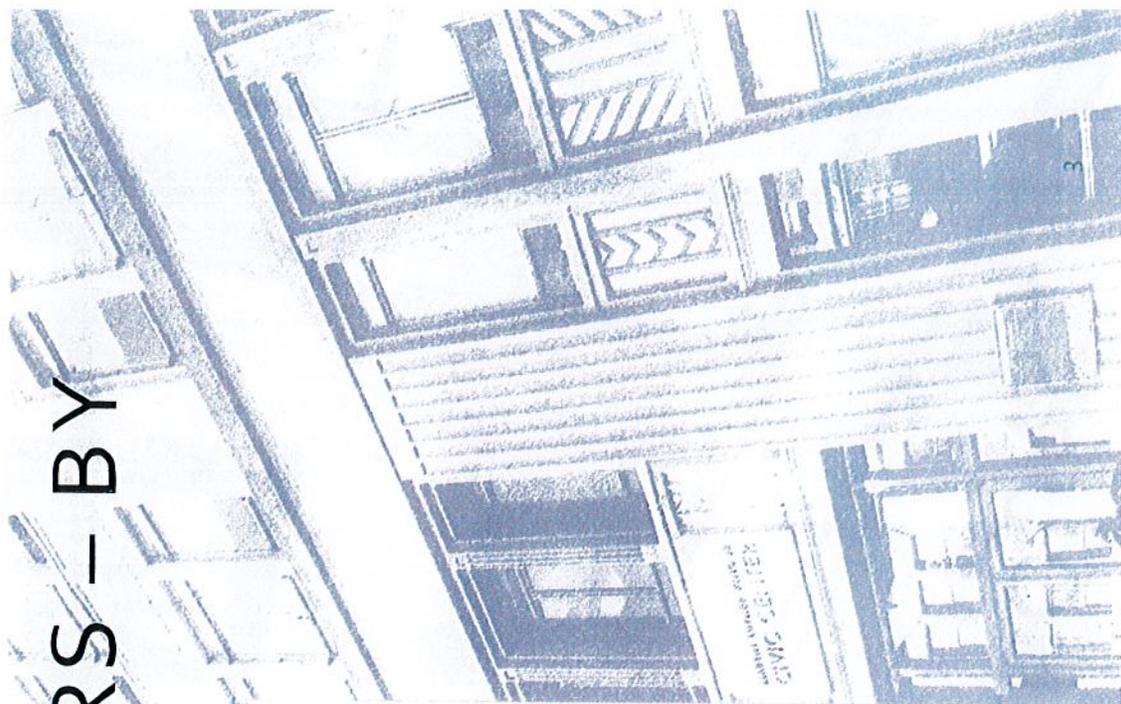
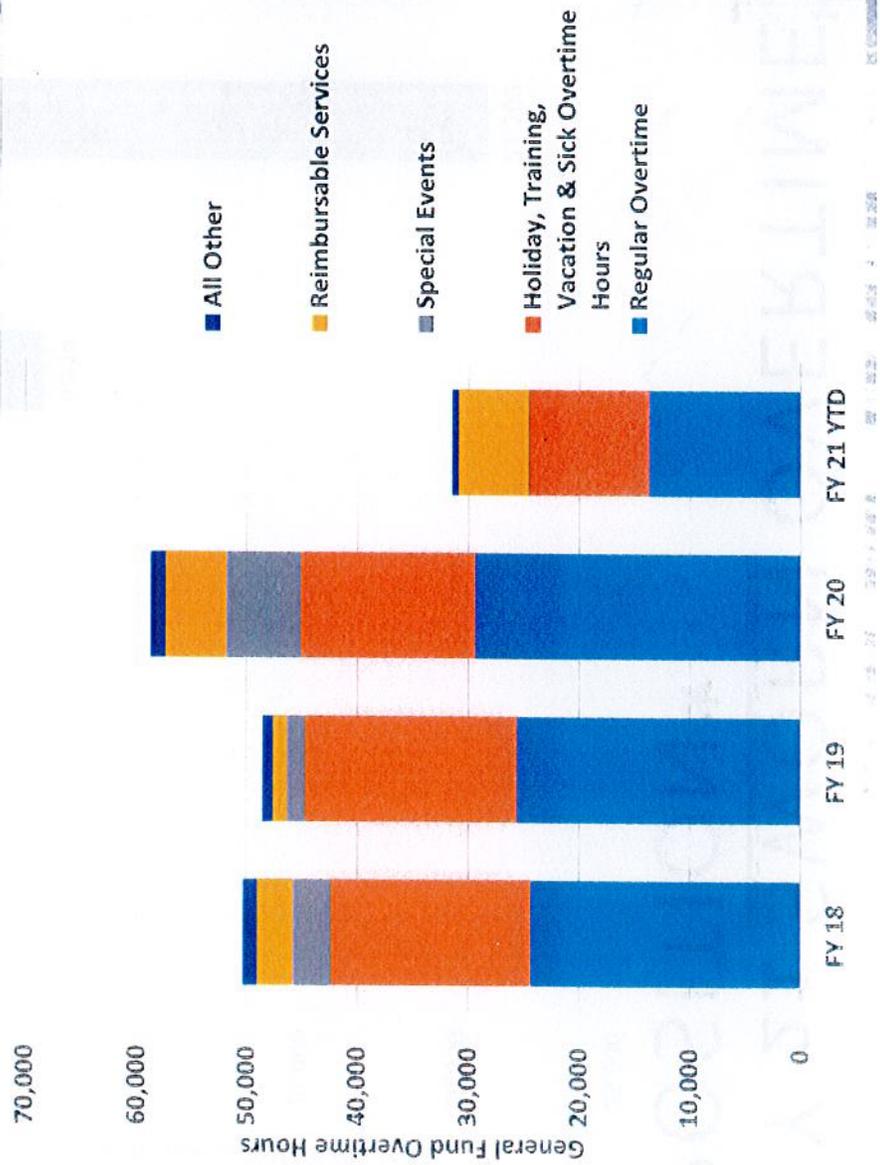
BUDGET AND FINANCE POLICY COMMITTEE



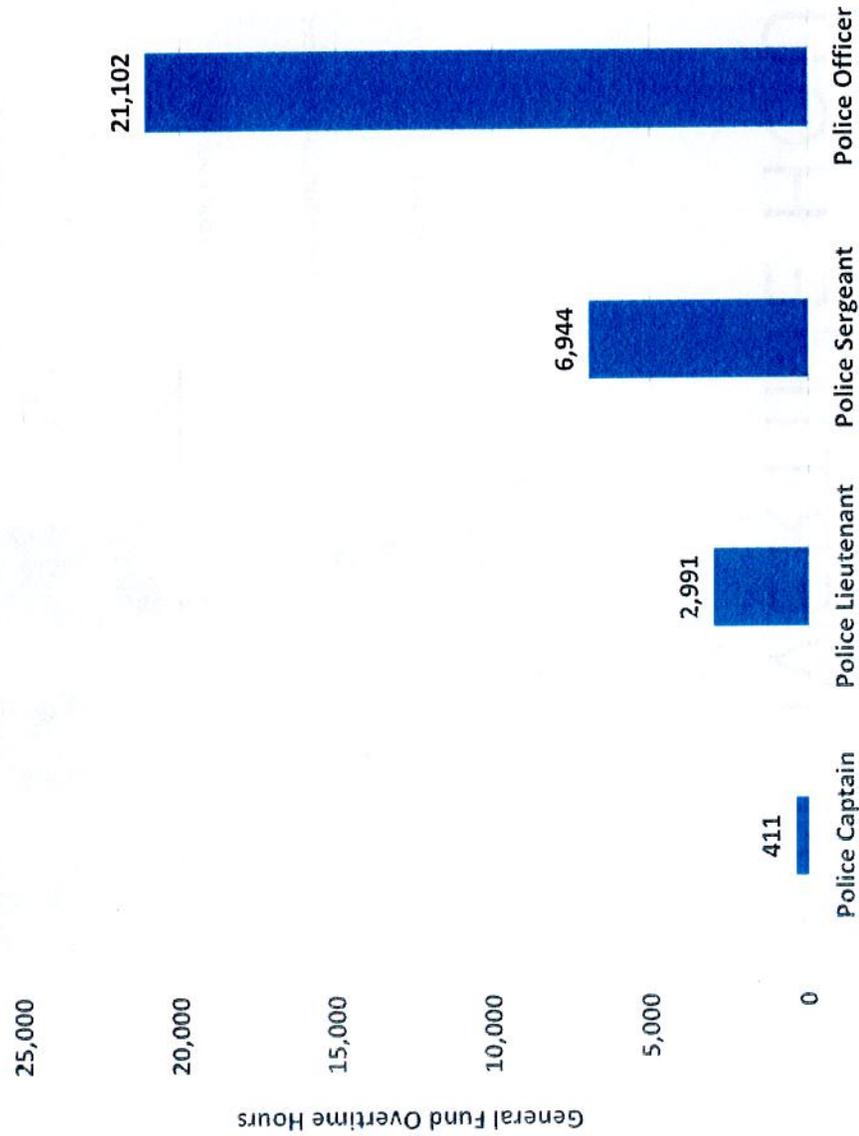
FY 21 OVERTIME BY MONTH



SWORN OVERTIME HOURS – BY CATEGORY

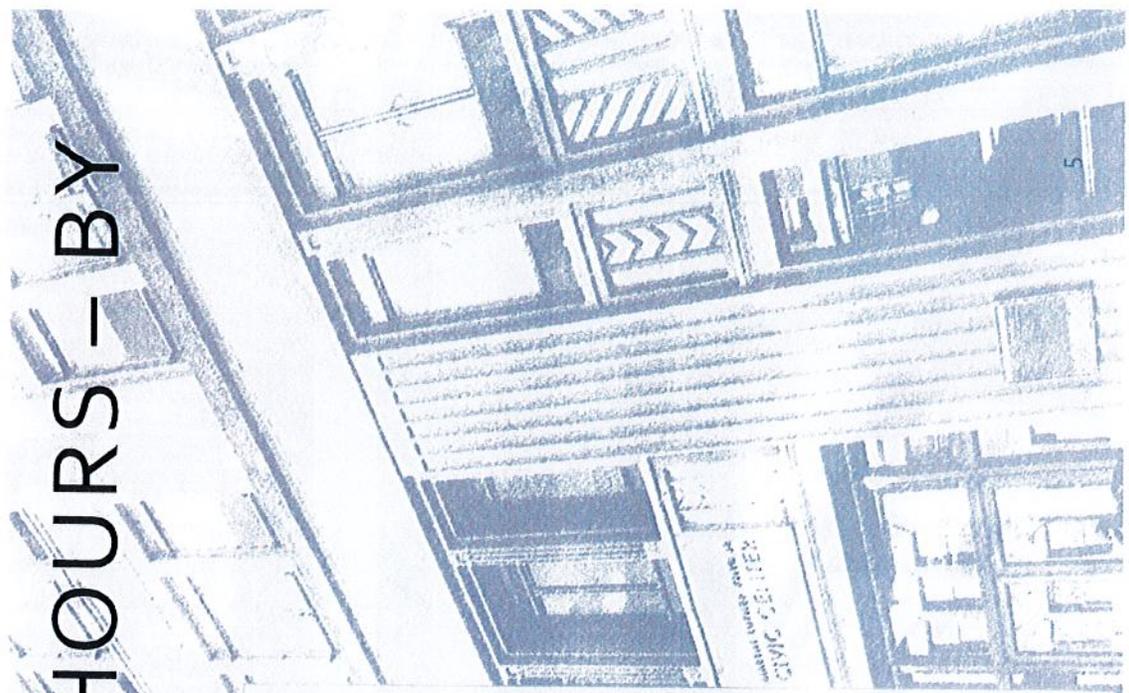
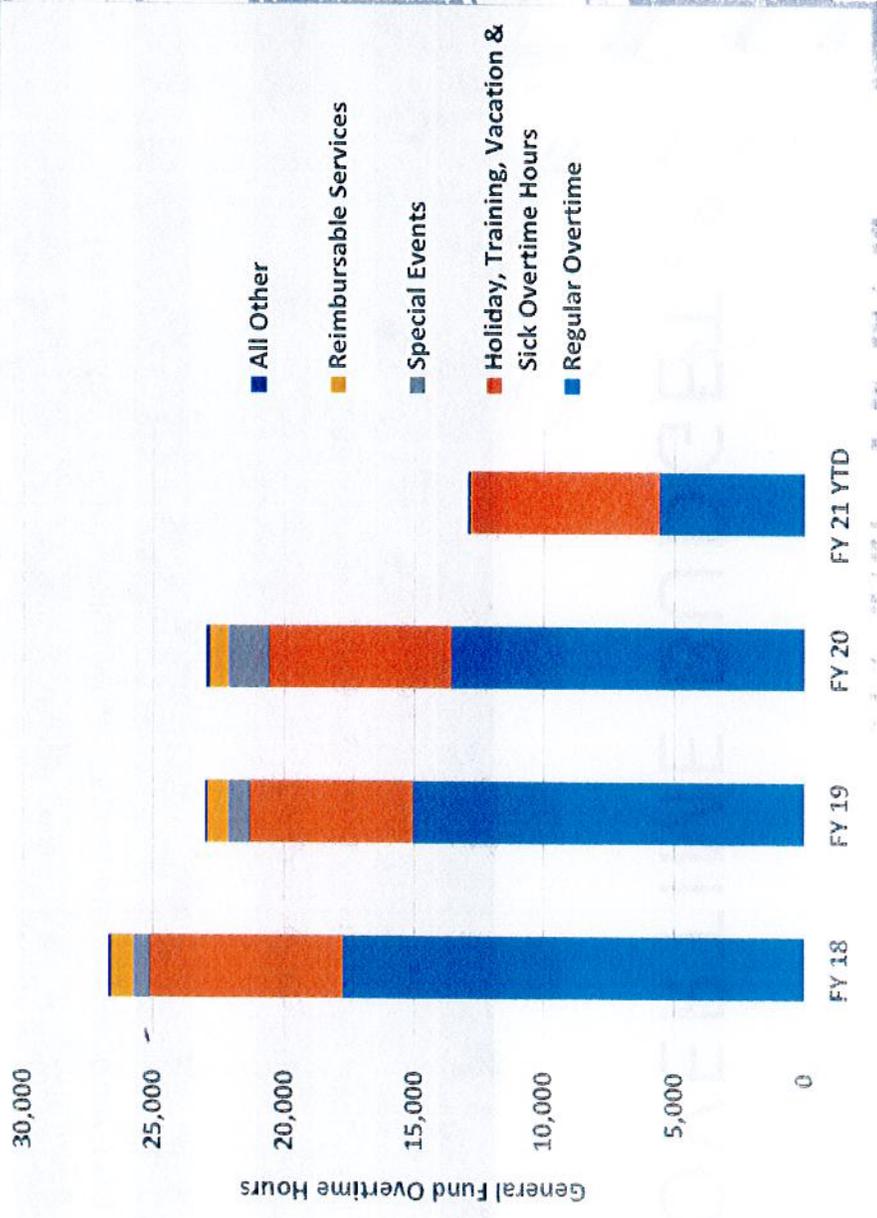


FY 21 SWORN OVERTIME HOURS - BY POSITION*



* FY 21 YTD thru December 31, 2020.

NONSWORN OVERTIME HOURS - BY CATEGORY



OVERTIME BUDGET

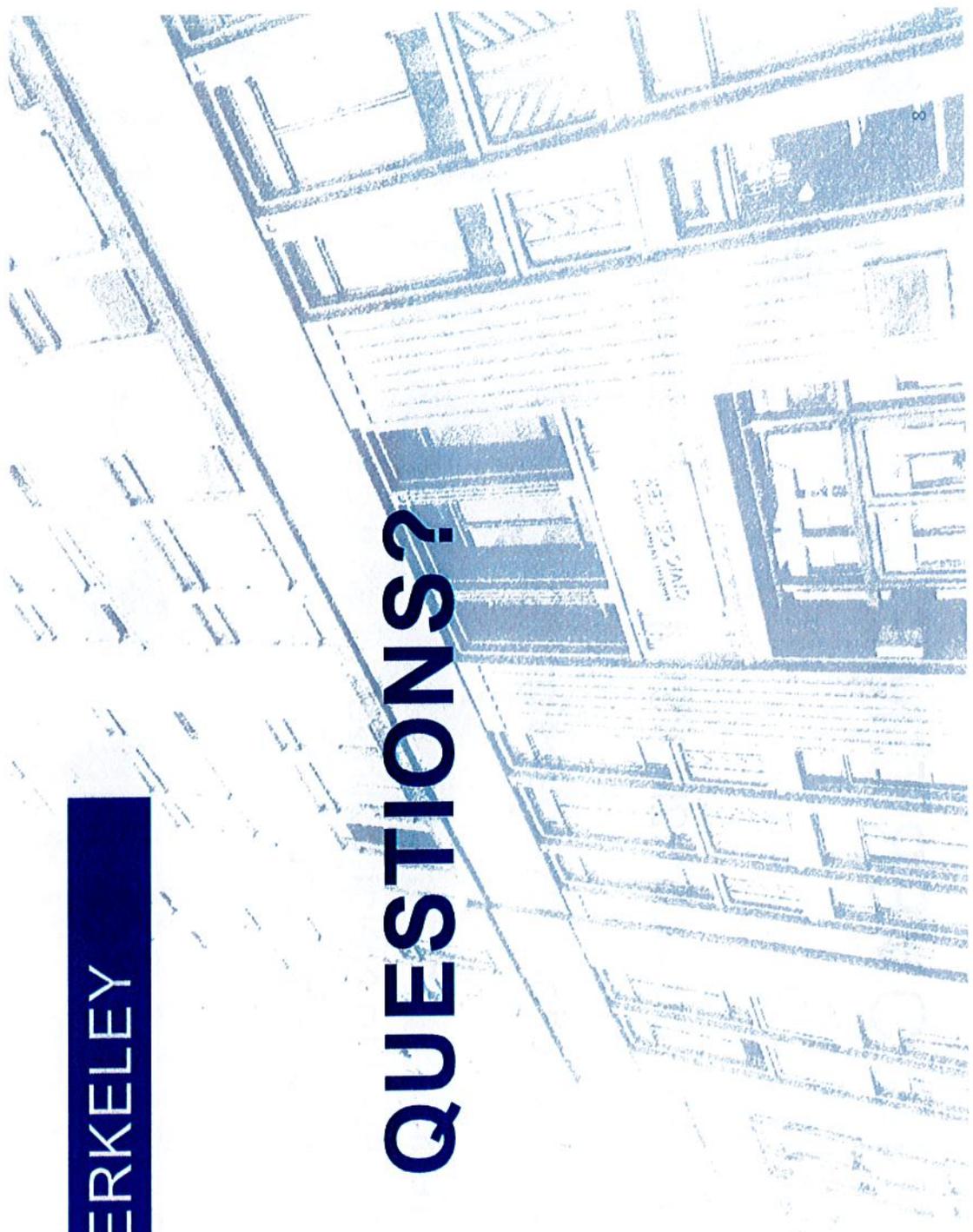
Total Amount Allocated to Overtime (Excluding Reserve)	\$5,264,641
Less: Total Overtime Incurred through December 2020	3,459,236
Remaining Budget For FY 21	\$1,805,405
Amount Reserved for Overtime	\$1,000,000
Less: Amount Allocated to Downtown Bike Patrol (7 Days/Week)	180,000
Remaining Overtime Reserve Allocation	\$820,000

ADDRESSING OVERTIME EXPENDITURES

- Utilize Special Funds (offset \$1.2M - \$1.4M in expenses)
- Potential service reductions by reassigning:
 - Bike Patrol Team
 - Sergeant assigned to Neighborhood Services
 - Community Services Bureau
 - Traffic Bureau
 - Detectives

CITY OF BERKELEY

QUESTIONS?



Lee, Katherine

From: PRC (Police Review Commission)
Sent: Monday, March 29, 2021 3:21 PM
To: Lee, Katherine
Subject: COB April 21, 2021 Notice of Virtual Public Hearing: CSBG DRAFT 2022/23 Community Action Plan

From: Katz, Mary-Claire
Sent: Monday, March 29, 2021 2:37 PM
To: Katz, Mary-Claire <MKatz@cityofberkeley.info>
Cc: Babka, Rhianna <RBabka@cityofberkeley.info>
Subject: COB April 21, 2021 Notice of Virtual Public Hearing: CSBG DRAFT 2022/23 Community Action Plan

Dear Community Partners,

The City of Berkeley will be hosting a virtual public hearing during the regularly scheduled Human Welfare and Community Action Commission (HWCAC) meeting on Wednesday, April 21, 2021 at 6:30PM. The purpose of the public hearing is to review the draft 2022/23 Community Action Plan as required as a recipient of the California Department of Community Services and Development Community Services Block Grant (CSBG) funding. The Community Action Plan includes an assessment of community needs, the mission and vision statement as a recipient of this funding source, and other updates on the administrative management of CSBG funding. To review the draft 2022/23 Community Action Plan click [here](#). The public comment period is from March 23 – April 28, 2021.

The HWCAC includes seats on the commission specifically for elected low-income representatives. Currently, there are three vacancies in these elected low-income seats. If you or someone you know may be interested in seeking election onto the HWCAC as a low-income representative, please visit the HWCAC webpage [here](#) for more information, including the election nomination form.

Please share this message and link to the draft Community Action Plan with your community partners, staff, and any other interested parties.

Thank you,

Mary-Claire

Mary-Claire Katz
City of Berkeley
Housing and Community Services
2180 Milvia Street, 2nd Floor
Berkeley, CA 94704
(510) 981-5414 (tel)
(510) 981-5450 (fax)
mkatz@ci.berkeley.ca.us

Please note: As a cost saving measure the City of Berkeley is closed the 2nd Friday of every month. Additional closures may occur. For the latest City Closures and Holidays please check the City of Berkeley Homepage at www.ci.berkeley.ca.us.

Lee, Katherine

From: Lee, Katherine
Sent: Tuesday, March 23, 2021 8:46 AM
To: Lee, Katherine
Cc: Norris, Byron
Subject: FW: Racial and Identity Profiling (RIPA) Board Subcommittee Meetings
Attachments: image007.wmz; RIPA Flyer.pdf

Commissioners: FYI. For more info go to <https://oag.ca.gov/ab953>. Subcommittee agendas are on the right.

-Kathy

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

From: PRC (Police Review Commission)
Sent: Monday, March 22, 2021 5:49 PM
To: Lee, Katherine <KLee@cityofberkeley.info>
Subject: FW: Racial and Identity Profiling (RIPA) Board Subcommittee Meetings

Racial and Identity Profiling (RIPA) Board Subcommittee Meetings

**For more information or to subscribe to
the AB 953 Mailing List, please visit
<https://oag.ca.gov/subscribe>**

These meetings will be hosted by videoconference via BlueJeans.

POST (Peace Officers Standards and Training):

**March 23, 2021
2:00 – 4:00 pm**

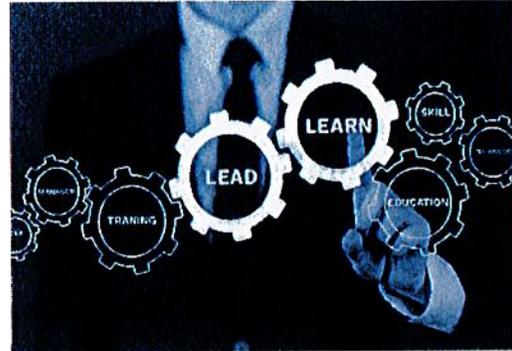
[Join Meeting](#)

(Join from computer or phone)

A phone dial-in option will also be available.

Dial (408) 317-9254

Meeting ID: 886 308 207



Civilian Complaints:

**March 30, 2021
2:00 – 4:00 pm**

[Join Meeting](#)

(Join from computer or phone)

A phone dial-in option will also be available.

Dial (408) 317-9254

Meeting ID: 438 913 729



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Lee, Katherine

From: Jayson Wechter <jayson@well.com>
Sent: Thursday, March 18, 2021 9:03 PM
To: georgeperezvelez@gmail.com; Rbloom@bart.gov; scelso@bart.gov; pcacere@bart.gov; eaubrey@richmondcpd.net; Lee, Katherine; Norris, Byron; Jalden@oaklandca.gov; Nurre, Shivaun; erin.oneill@sanjoseca.gov; Valiant86@sbcglobal.net; Jerry Threet; Robert Aaronson; lkle@thinkiggi.com
Subject: Applications for San Francisco's new Sheriff's Dept. Oversight Board

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.

Dear oversight colleagues,

Last November, San Francisco voted to establish a seven-member Sheriff's Dept. Oversight Board (SDOB). The San Francisco Board of Supervisors (BOS) will make four of these appointments and is seeking applications from San Francisco residents interested in serving on the SDOB. Please forward this information to any San Francisco residents you think might be interested and to any relevant organizations or listservs. Here is the link:
<https://sfbos.org/sheriffs-department-oversight-board>

One of the first tasks of the SDOB will be to hire an Inspector General for the Sheriff's Department Office of Inspector General (OIG). The OIG will investigate in-custody deaths and complaints against Sheriff's Dept. employees, conduct audits, recommend disciplinary action to the Sheriff, develop and recommend a use of force policy and a review process for use of force and critical incidents.

Here's a link to the section of the City Charter establishing the SDOB and the OIG:
https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_charter/0-0-0-52923#JD_4.137

Formation of the SDOB and the OIG are important steps in oversight of jails and prisons, and it's important that individuals committed to criminal justice reform and effective oversight serve on the SDOB. I have heard that the BOS has, as of this week, received few applications. Anything you can do to help spread the word would be very appreciated. Thank you.

Jayson Wechter
jayson@well.com
415-519-9684

Lee, Katherine

From: Lee, Katherine
Sent: Sunday, March 21, 2021 12:50 PM
To: Lee, Katherine
Subject: FW: interesting op ed
Attachments: Opinion _ George Floyd's killing sparked a debate on police reform. We need to think bigger. - Washington Post.html

Commissioners:

Please see attached from Comm. Calavita.

(The layout didn't turn out so well when I clicked on the above, so you might try this:
<https://www.washingtonpost.com/opinions/interactive/2021/reimagine-safety/>)

-Kathy

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

-----Original Message-----

From: Kitty Calavita [mailto:kccalavi@uci.edu]
Sent: Sunday, March 21, 2021 10:36 AM
To: Lee, Katherine <KLee@cityofberkeley.info>
Subject: interesting op ed

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.

Hi Kathy:

Could you please distribute the attached to PRC commissioners?

Thanks,

Kitty

<https://www.sfexaminer.com/opinion/sb-271-would-bring-meaningful-reform-to-sheriffs-offices/>

San Francisco Examiner

SB 271 would bring meaningful reform to sheriffs' offices

Mar. 21, 2021 6:30 a.m.

By Ross Mirkarimi

Let the people run for sheriff! It was once a tried-and-true practice in California, until the era of mass incarceration engendered a companion criminal justice system that demanded a different kind of sheriff.

In California, from 1850 to 1988, the only state law qualification for the office of sheriff was being a registered voter in the county. My predecessor, Michael Hennessey, was never a cop, but in fact, a prisoner rights attorney, first hired by Sheriff Richard Hongisto; later, he won his races for San Francisco sheriff. Mike was the longest serving sheriff in modern state history (1980-2012), a soft-spoken progressive who was ahead of his time, and yet, today he wouldn't be eligible to run for sheriff.

In 1987, local and state sheriff unions waged a campaign in Sacramento to change state law. California Government Code Sec. 24004.3, signed by Republican Gov. George Deukmejian, required that all elected sheriffs have a law enforcement background as certified by the State Peace Officer Standards and Training (POST). This legislative slight was but a footnote in the state's revving up on the war on drugs, lengthening mandatory sentencing, criminalizing mental illness, and targeting a combination of deterrence and retribution on mostly Black, brown and low-income communities. Public anxiety over high crime rates fueled the growth of the prison industrial complex — a legacy still churning today.

Mike took on the traditional duties of sheriff while he also set his administration apart by tackling recidivism, humanizing people caught up in the system, and using legislation to improve incarceration outcomes.

Working in law enforcement, and then as a member of the Board of Supervisors, it troubled me that capable professionals were prevented from running for sheriff. When Mike called me about his impending retirement, I couldn't imagine a city without his reformist vision. During my own campaign for sheriff, I amplified the need to correct misguided state laws including the POST requirement for sheriff candidates. Members of the state legislature then weren't in the mood to touch the issue, but now, they are.

In this era of reining in law enforcement misdeeds, state Sen. Scott Wiener has sponsored Senate Bill 271. It modernizes how California counties elect their sheriff and removes the POST requirement.

In all but two California counties, jails are under the jurisdiction of the sheriff. SB 271 goes to the heart of opening an impenetrable wall where many sheriffs run unchallenged or are less motivated to substantiate their other role, not as the crime fighter, but as the recidivism buster. I remember when one well-known sheriff confided to me during a meeting about State Prisoner Realignment with

Gov. Jerry Brown, "that talking about reentry programs made him feel, well, less than a sheriff."

Since leaving public office in 2016, I've led in-custody death and misuse of force investigations and have seen up close how preventable tragedies in California jails remain off the public radar. Accountability becomes even more challenging when 41 out of the 58 county sheriffs in California also serve as the county coroner, investigating and ruling on in-custody deaths. I've seen official death certificates designate an inmate's demise as "natural causes" when new evidence pointed to the contrary.

In practice, the sheriffs are a feature of local law with state protection, thus rendering any meaningful state oversight as weak. The default for accountability has shifted to mostly resourceful municipalities that are installing independent civilian-led police and sheriff oversight bodies, like Los Angeles, San Francisco, Oakland, Santa Clara County and more.

In response to calls for transformative change with how law enforcement operates, redefining what it means to be sheriff would be a significant start with the passage of SB 271.

Ross Mirkarimi served as San Francisco sheriff and on the San Francisco Board of Supervisors.