

Police Review Commission (PRC)

## POLICE REVIEW COMMISSION REGULAR MEETING

Wednesday, April 28, 2021, 7:00 P.M.

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

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

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

### AGENDA

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

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

4. APPROVAL OF MINUTES (5 minutes)

Regular meeting of April 14, 2021.

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

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

**5. CHAIR'S REPORT**

Report from Chair. (5 minutes)

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

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

Status of complaints; other items.

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

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

**8. SUBCOMMITTEE REPORTS (discussion and action) (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. Outreach Subcommittee.

b. Lexipol Policies Subcommittee.

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

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

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. (5 minutes)

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

a. Whether Commissioners may be allowed to observe police officers being trained (old business) and if not, whether to take further action (new business). (10 minutes)  
From: Commissioner Ramsey

b. Consider draft Policy 606, Warrant Service (20 minutes)  
From: Warrant Service Policy Subcommittee  
*(To be delivered.)*

c. Discuss how the PRC will conduct monitoring and assessment of the Police Department's implementation of the policy reforms passed by City Council, as recommended by the Mayor's Working Group on Fair and Impartial Policing. (10 minutes)

From: Commissioner Calavita

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

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

**12. ADJOURNMENT (1 minute)**

**Communications Disclaimer**

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



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

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

**SB 343 Disclaimer**

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

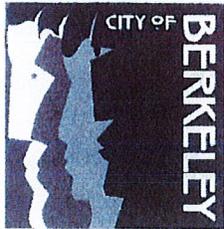
Contact the Police Review Commission at [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info).



**PRC REGULAR MEETING ATTACHMENTS  
APRIL 28, 2021**

<b><u>MINUTES</u></b>	
April 14, 2021 Regular Meeting Draft Minutes.	Page 7
<b><u>AGENDA-RELATED</u></b>	
<b>Item 8.</b> – PRC Subcommittees List, updated 4-15-21.	Page 11
<b>Item 10.c.</b> – Feb. 23, 2021 Annotated Agenda, Special Meeting of the Berkeley City Council.	Page 13
<b>Item 10.c.</b> – Attachment 1, 2-23-2021, The Mayor's Working Group on Fair and Impartial Policing Policy Proposals.	Page 19
<b><u>COMMUNICATIONS</u></b>	
Proposed Ordinance Regulating Police Acquisition and Use of Controlled Equipment – from Councilmember Harrison. Agenda Item #32 on City Council's April 27, 2021 agenda.	Page 45
4-13-21 email to the Commissioners re Working link for article about traffic enforcement in Berkeley.	Page 63





Police Review Commission (PRC)

DRAFT

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

Wednesday, April 14, 2021, 7:00 P.M.

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

**1. CALL TO ORDER & ROLL CALL BY COMMISSIONER GEORGE PEREZVELEZ\* AT 7:03 P.M.**

Present: Commissioner Gwen Allamby  
Commissioner Kitty Calavita  
Commissioner Michael Chang  
Commissioner Juliet Leftwich  
Commissioner Elisa Mikiten  
Commissioner Nathan Mizell  
Commissioner Hans Moore  
Commissioner George Perezvelez  
Commissioner Ismail Ramsey (arrived 7:10 p.m.)

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Lt. Robert Rittenhouse, Ofc. Carlos Maldonado (BPA)

(\* As the Commission was without a Chairperson or Vice-Chairperson, Commissioner Perezvelez presided over the beginning of the meeting as the longest-serving member of the Commission.)

**2. APPROVAL OF AGENDA**

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

**3. PUBLIC COMMENT**

There were 4 speakers.

**4. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON**

Motion to nominate Commissioner Ramsey for Chairperson  
Moved/Second (Calavita/Leftwich)

**Izzy Ramsey was elected PRC Chairperson by acclamation**

**Motion to nominate Commissioner Chang for Vice-Chairperson**

Moved/Second (Leftwich/Calavita)

**Michael Chang was elected PRC Vice-Chairperson by acclamation**

(Chair Ramsey presided over the remainder of the meeting.)

## **5. APPROVAL OF MINUTES**

a. Regular meeting of March 24, 2021.

**Motion to approve Regular Meeting Minutes of March 24, 2021**

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

## **6. CHAIR'S REPORT**

Chair Ramsey reported:

- Subcommittees continue their work.
- Deadline for applications to the Police Accountability Board has closed. 37 applicants. Council expected to approve nominations at their June 1 meeting.
- Discussion of implementation of Fair & Impartial Working Group recommendations, and potential involvement of PRC and PAB in monitoring, to be agendized for next meeting.

Comm. Mizell reported on Reimagining Public Safety Task Force:

- Met on April 8th. Heard presentations from: Bright Research group on a draft survey; from Interim Chief Louis on BPD structure; and from staff re task force responsibilities and their place in the various other work being done. Established 2 subcommittees: one on the BPD, different policing models, and budgets; and another on community engagement. Next meeting April 29, where Auditor will present on the calls for service audit.

## **7. PRC OFFICER'S REPORT**

The PRC Officer reported:

- One new case has been filed since your last meeting.
- A version of the proposed ordinance regulating police use and acquisition of controlled equipment was approved by the Council's Public Safety Policy Committee and will be agendized for the April 27 Council meeting.
- She will forward the job description for the Director of Police Accountability that was presented to the Personnel Board this past Monday.

## **8. CHIEF OF POLICE'S REPORT**

Lt. Rittenhouse reported on behalf of Chief Louis:

- Appreciate interest in learning more about implementation of Use of Force policy. Capt. Roller working on a response, including time spent on reporting. Working to fix a CAD system issue, so data can be extracted and reported to you.

- Chief has assigned Lt. Montgomery as the department's point person for the many tasks involved in the transition to the new Police Accountability Board.
- Regarding Blue Team [software], when the department presents on UOF, it will include a complete Blue Team entry to look at.

#### 9. SUBCOMMITTEE REPORTS (discussion and action)

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

- a. Warrant Service Policy Subcommittee – Met April 6. Chair Ramsey reported that the Subcommittee voted unanimously to support complete ban on no-knock warrants. BPD opposes complete ban but proposes a very strict approach. Next meeting April 22; should be the last and will soon bring to full PRC for consideration.
- b. Outreach Subcommittee – Met April 7. Approve proposed online poll regarding the PRC complaint process, and submission to City Council for permission to distribute.

**Motion to approve proposed online poll regarding the PRC complaint process, and submission to City Council for permission to distribute.**  
Moved/Second (Perezvelez/Leftwich) **Motion Carried by general consent.**

- c. Lexipol Policies Subcommittee – Chair Mikiten reported they met April 8 and are moving along. Four policies on tonight's agenda. Subcommittee doing what it can before PRC sunsets.
- d. Police Acquisition & Use of Controlled Equipment Subcommittee – Consider dissolving.

**Motion to dissolve the Police Acquisition & Use of Controlled Equipment Subcommittee.**  
Moved/Second (Mizell/Allamby) **Motion Carried by general consent.**

#### 10. 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 – 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.

Deputy City Manager David White gave a report on several facets of the transition, including the above topics, and answered questions from Commissioners.

- 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.

*(Postponed to the next meeting at the BPD's request.)*

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

Discussed; to be continued.

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

- a. Whether Commissioners may be allowed to observe police officers being trained.

Discussed; to be continued.

- c. Lexipol Policies for review and approval.

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

*(Action on Policy 337 postponed.)*

**Motion to approve Policy 431**

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

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

Noes: Mizell Abstain: Calavita, Mikiten Absent: None

**Motion to approve Policy 502**

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

**Motion to approve Policy 503 with the addition of section 36(b)(1) from General Order V-02.**

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

**12. PUBLIC COMMENT**

There was 1 speaker.

**13. ADJOURNMENT**

**Motion to adjourn.**

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

**The meeting was adjourned at 9:01 p.m.**

**POLICE REVIEW COMMISSION  
SUBCOMMITTEES LIST  
Updated 4-15-21**

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



ANNOTATED AGENDA  
SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL

Tuesday, February 23, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

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

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

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

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

## Preliminary Matters

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

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

**Absent:** Kesarwani

Councilmember Kesarwani present at 4:13 p.m.

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

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

## Action Calendar – New Business

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

## Action Calendar – New Business

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

-Conduct a baseline community survey

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

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

-Require enhanced annual implicit bias training for police

-Accelerate Crisis Intervention Team (CIT) activity

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

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

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

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

**Financial Implications:** See report

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

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

1. Accept and acknowledge the report from the Mayor's Fair and Impartial Policing Working Group;
2. Acknowledge and appreciate the work already completed or underway by the City Manager's Office and Police Department to implement policing reforms including:
  - Adoption and implementation of Policy 401, Fair and Impartial Policing
  - Public reporting of stop data on the BPD Open Data Portal
  - Initiation of the Center for Policing Equity study
  - Implementation of the Body Worn Camera Program
  - Early adoption of Racial and Identity Profiling Act (RIPA) data collection and reporting
  - Updates to the Use of Force Policy, Policy 300
  - Development and passage of Measure II to create a new Police Accountability Board
  - Launching of the Public Safety Reimagining process
3. Refer to the City Manager to implement the following recommendations summarized below, with **quarterly progress updates to the City Council and Police Review Commission/Police Accountability Board** (when established):  
**Implement a new evidence-based Traffic Enforcement Model**
  - Focusing the basis for traffic stops on safety and not low-level offenses;
  - Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects;
  - Reaffirming and clarifying that the Berkeley Police Department will use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
  - Minimize or de-emphasize as a lowest priority stops for low-level offenses.

Receive updates

## Action Calendar – New Business

### Implement Procedural Justice Reforms

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

Review

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

### Compliance and Accountability Mechanisms

- The City Manager will create an implementation plan with the assistance of a consultant that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group's policy proposal. **Long-term monitoring and assessments will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).**
- The implementation plan will be presented to the Berkeley City Council for approval. Once the plan is approved by the City Council, the consultant's work is finished. **Long-term monitoring and assessment will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).**

Monitor and assess

Monitor and assess

4. Refer the following recommendations summarized below to the Reimagine Public Safety process:

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

Await action by RPSTF

5. **Refer the following training recommendations summarized below to the Police Review Commission, to be taken up by the Police Accountability Board when it is established, and consider the resources required to implement this expanded training:**

- **Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4**
- **Require enhanced annual implicit bias training for police**
- **Accelerate Crisis Intervention Team (CIT) activity**

\*\* Primary tasks \*\*

## Action Calendar – New Business

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

Vote: All Ayes.

## Adjournment

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

Vote: All Ayes.

Adjourned at 7:07 p.m.

## Communications

- None

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

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

1. Elizabeth Ferguson

## Supplemental Communications and Reports 3

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

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

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

## The Mayor's Working Group on Fair and Impartial Policing Policy Proposals

Developing and implementing reforms that will effectively reduce existing racial disparities requires changes at several levels. The following recommendations include setting new policy, updating institutional structures, and mandating individual accountability. Their implementation and ongoing effectiveness require supportive leadership, transparency and police accountability.

**Executive Summary.** Mayor's Working Group on Fair and Impartial Policing (hereafter, "the working group") focused on reducing racial disparities in stops and searches and improving community relationships damaged by the racially disparate practices in stops and searches.

This report advances the following recommendations for BPD practices:

- Focus on public safety and eliminate stops for low-level offenses not directly impacting public safety.
- Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.
- Institute annual implicit bias training and scenario-based training for California Penal Code 13519.4, prohibiting racial or identity profiling.
- Establish a truly effective Early Intervention System and risk management process to ensure department accountability and identify officers who are outliers in stops, searches, dispositions, and outcomes.
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.
- Require written consent for consent searches.
- Include evaluations of cultural competence in hiring and promotion, and fire officers who have expressed racist attitudes and/or are identified as members of racist groups.

The report also advances these recommendations for the Berkeley City Council and/or the City of Berkeley:

- Hire a consultant to create a plan for monitoring and reporting on the implementation of these recommendations.
- Ensure the creation of a Specialized Care Unit with crisis-response field workers, as included in the recent contract for a community-process to establish an SCU.
- Ensure a robust community engagement process, including annual surveys and community forums
- Require quarterly analysis of stop, search, and use of force data by City Auditor and/or the PRC.
- Adopt and carry out the compliance and accountability system outlined in this document.

## Proposed Actions

Table 1 provides a proposed action for each recommendation in the body and appendices of this draft report.

<u>Action</u>	<u>Recommendations</u>
<p>Direct the City Manager to implement key recommendations, with at minimum, quarterly progress reports to the PAB and/or the Working Group</p>	<ul style="list-style-type: none"> <li>• <u>Focus traffic stops on safety</u></li> <li>• <u>Use a clear, evidence-based definition for stops of criminal suspects</u></li> <li>• <u>Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria</u></li> <li>• <u>Eliminate stops for low-level offenses</u></li> <li>• <u>Implement an Early Intervention System (EIS) and a risk-management structure</u></li> <li>• <u>Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group</u></li> <li>• <u>Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole</u></li> <li>• <u>Require written consent for all consent searches</u></li> <li>• <u>Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)</u></li> <li>• <u>Fire racist police officers identified through social media and other media screens</u></li> <li>• <u>Address Profiling by Proxy (Council develop &amp; pass CAREN policy)</u></li> <li>• <u>Require regular analysis of BPD stop, search, and use of force data</u></li> <li>• <u>Make resources on police-civilian encounters more publicly available such as RAHEEM.org</u></li> <li>• <u>Adopt Compliance and Accountability Mechanisms</u> <ul style="list-style-type: none"> <li>a. Hire consultant to develop implementation plan</li> </ul> </li> <li>• <u>For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complain process with PAB</u></li> </ul>
<p>Refer to be included in the process to reimagine public safety</p>	<ul style="list-style-type: none"> <li>• <u>The City should create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized and includes a basic report card and quarterly neighborhood check-ins</u></li> <li>• <u>Conduct a baseline community survey.</u></li> </ul>
<p>Refer to the Police Accountability Board</p>	<ul style="list-style-type: none"> <li>• <u>Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4</u></li> <li>• <u>Require enhanced annual implicit bias training for police</u></li> <li>• <u>Accelerate Crisis Intervention Team (CIT) activity</u></li> </ul>
<p>Follow-up with PAB and/or Fair and Impartial Working Group</p>	<ul style="list-style-type: none"> <li>• <u>Evaluate the impact of these proposals on racial disparities in stops and searches, using regular updates to stop and search data</u></li> <li>• <u>Conduct a regular community survey and annual community forums on Police and Public Safety</u></li> </ul>
<p>Recommendations already underway</p>	<ul style="list-style-type: none"> <li>• <u>Fund and implement a specialized care unit for mental health crises</u></li> <li>• <u>Conduct a Capacity Study of police calls and responses and use of officer time outside of case work</u></li> </ul>
<p>Outstanding - No Action Recommended</p>	<ul style="list-style-type: none"> <li>• <u>Include community member participation and feedback in the hiring process</u></li> <li>• <u>Include the following for Performance Appraisal Reports</u></li> </ul>

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## **Reducing Disparities in Vehicle, Pedestrian, and Bicycle Stops & Searches:**

### **1. Focus traffic stops on safety**

According to Dr. Frank Baumgartner's 2018 book, *Suspect Citizens*, "Safety stops are those aimed at enforcing the rules of the road to decrease the likelihood of an accident" (pg. 191). The types of stops falling into this traffic safety category may include:

- Excessive speeding<sup>1</sup>
- Running a stop sign or stop light
- Unsafe movement
- Driving while intoxicated

### **2. Use a clear, evidence-based definition for stops of criminal suspects**

Dr. Baumgartner's analysis<sup>2</sup> reveals that "investigatory stops" (stops that use a minor infraction as a pretext for investigating rather than to prevent or reduce dangerous behavior pgs. 53-55) allow for the most officer discretion and open the possibility of implicit bias or "reliance on cultural heuristics" (pg. 191). Based on analyses of more than 9 million stops, Baumgartner's team found that 47% were investigatory and that they added substantially to the racial disparity statistics. Thus, investigatory stops and stops of criminal suspects shall be restricted to those made because the person and/or vehicle fits a description in relation to a specific crime.<sup>34</sup>

Since the Oakland Police Department (OPD) has implemented evidence-based methods, the number of African American civilians stopped by the OPD has declined. Since Oakland Police Department has implemented evidence-based methods, the number of African American civilians stopped has declined from 19,185 in 2017 to 7,346 in 2019, a drop of 62% and a stop disparity rate reduction of almost 60%,<sup>5</sup> with no corresponding increase in crime (Captain Chris Bolton presentation, 7/15/2020).

### **3. Use race and ethnicity as relevant factors when determining law enforcement action only when provided as part of a description of a crime and suspect that is credible and relevant to the locality and timeframe of the crime and only in combination with other specific descriptive and physical characteristics.<sup>6,7</sup>**

Specific descriptive and physical characteristics may include, for example: the gender, age, height, weight, clothing, tattoos and piercings of the suspect, the make and model of the car, and the time and location of the crime. Simple race and ethnicity alone are not

<sup>1</sup> <https://www.drivesafely.com/dmv/california/laws/traffic-tickets-and-violations/>, <https://www.martenslawfirm.com/blog/2016/november/what-is-excessive-speeding/>

<sup>2</sup> *Suspect Citizens*, pp. 190-192

<sup>3</sup> Eberhardt, J. L. (2016). *Strategies for change: Research initiatives and recommendations to improve police-community relations in Oakland, Calif.* Stanford University

<sup>4</sup> This definition was created by Dr. Jennifer Eberhardt in collaboration with the Oakland Police Department.

<sup>5</sup> This is the percentage of African American stops within all discretionary non-intel led stops made by Police Area 2 officers fell from 76% in September 2017 to 31% in September 2018

<sup>6</sup> Southern Poverty Law Center, 10 Best Practices for Writing Policies Against Racial Profiling

<sup>7</sup> CA Penal Code

satisfactory as bases for reasonable suspicion under the law, and amount to racial profiling.

#### **4. Eliminate stops for low-level offenses**

According to the presentation to the Working Group by Captain Bolton of the OPD, Oakland significantly reduced stops for these low-level, non-public safety related offenses, resulting in a reduction in the number of African Americans being stopped and a reduced stop-disparity rate, with no effect on crime rates (homicides and injury shootings went down during the same period). There is often overlap between “investigatory stops” and “stops for low-level offenses,” as the latter may be used as a pretext for investigation. The types of stops falling into these categories may include:

- Equipment violations
- Not wearing a seat belt
- Improper use of high beams
- Violating a regulation (e.g. expired license tags)
- Stop purposes recorded as “other”

#### **5. Implement an Early Intervention System (EIS) and a risk-management structure**

These measures to ensure individual accountability have operated successfully in Oakland and many other localities for some time. They involve identifying officer outliers in stops, searches, and use of force and their outcomes and examining the reasons for racial disparities. Existing software programs to assist BPD in implementing an EIS could be utilized or BPD can build its own system.

These programs operate to identify officers who are a danger either to themselves or to the public. They are referred to as “risk management” systems because they help limit the financial liability of the City and hence its taxpayers. They may address a broad range of concerns, but in this document, we only consider their use with regard to racial disparities. Elements of this process include the following steps:

- a. Evaluate and assess stop incidents for legality and enforcement yield.
- b. Analyze data to determine whether racial disparities are generalized across the force or are concentrated in a smaller subset of outlier officers or squads/groups of officers. To the extent that the problem is generalized across the department, supervisors as well as line officers should be re-trained and monitored, and department recruitment, training, and structure should be reviewed. In addition, department policy should be examined for their impacts.
- c. Where disparities are concentrated in an individual or a group of officers, with no race-neutral legitimate evidence for this behavior in specific cases, initiate an investigation to determine the cause for the disparity. Evaluate whether there are identifiable causes contributing to racially disparate stop rates and high or low rates of resulting enforcement actions exhibited by outlying officers. Determine and address any trends and patterns among officers with disparate stop rates. In the risk management process, the responsible personnel in the chain of

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command reviews and discusses the available information about the subject officer and the officer's current behavior.

- d. Absent a satisfactory explanation for racially disparate behavior, monitor the officer.. Options for the supervisor in these cases include reviewing additional body-worn camera footage, supervisor ride-alongs, and other forms of monitoring. Further escalation to intervention, if necessary, may include a higher form of supervision, with even closer oversight. If performance fails to improve, command should consider other options including breaking up departmental units, transfer of officers to other responsibilities, etc. The goal of this process is to achieve trust and better community relations between the department as a whole and all the people in Berkeley. Formal discipline is always a last resort unless there are violations of Department General Orders, in which case this becomes an IAB matter.
- e. Identify officers who may have problems affecting their ability to make appropriate judgments, and monitor and reduce time pressures, stress and fatigue on officers.
- f. An outside observer from the PRC shall sit in on the risk management and/or EIS program. Reports from these meetings, or other accurate statistical summary, can be given to the commission without identifying any officers' names.
- g. Report the results of this data analysis quarterly.

**6. Immediately release the following data to the Working Group:**

- a. All data given to the Center for Policing Equity (CPE) - This data includes:
  - i. Calls for Service (January 1, 2012 - December 2016)
  - ii. Use of Force Data (January 1, 2012 - December 31, 2016)
  - iii. Crime Report Data (January 1, 2012 - December 31, 2016)
- b. STOP DATA - this data shall include information on "call type," similar to the data used by the Center for Policing Equity. The timeframe would be January 1, 2012 to present.
- c. USE OF FORCE DATA - This data was used in the analysis presented in the CPE report. Along with the CPE data, it would be helpful to have more recent Use of Force data. The timeframe would be January 1, 2012 to present.
- d. DEIDENTIFIED STOP & ARREST DATA - To determine if there are any problematic patterns among certain officers, or perhaps pairs of officers, data that we can be attached to anonymized individuals. The timeframe for this data would be January 1, 2012 to present.
- e. ADDITIONAL ARREST DATA - Currently, the Open Data Portal posts arrest data from January 1, 2015. The timeframe for this data would be January 1, 2012 to present day.
- f. ADDITIONAL CALLS FOR SERVICE - Currently, Calls for Service data are posted for the last 180 days. The timeframe for this data would be January 1, 2012 to present.

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**7. Limit warrantless searches of individuals on supervised release status, including probation, Post Release Community Supervision (PRCS), and parole, absent evidence of imminent danger**

California is one of a handful of states that allow high-discretion, suspicionless searches of probationers and parolees. The following was passed by the Police Review Commission on 9/23/2020 and the Working Group endorses this approach:

*"In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion. However, under Berkeley policy, officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status.*

*The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions, should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime."*

**8. Require written consent for all consent searches**

Baumgartner (pp. 195-209) and his team found that in cities requiring written consent to perform a consent search, these searches declined by 75%. Since people of color are disproportionately the subjects of these searches, it makes sense that a significant reduction would lead to fewer consent searches for people of color.

Examining three cities in North Carolina, Baumgartner found that in cities where there was resistance by leadership to the new written-consent policy, there was a substitution effect, such that as consent searches went down, probable cause searches went up. However, the substitution effect seemed to be directly correlated with leadership priorities. The chapter concludes, "We showed that a combination of leadership directives and simple initiatives can alter the relationship a department can have with their community" (pg. 213). *This speaks to the need for clear buy-in from BPD leadership.* The Working Group recommends that the BPD adopt the written consent form used in North Carolina, a copy of which can be found [here](#).

**9. For any individual detained, BPD officers shall provide a business card with the following information on the back**

- a) A website similar to RAHEEM that collects information on police-civilian encounters.<sup>8</sup>
- b) Contact information for filing a complaint with the PRC or its successor, the Police Accountability Board.

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<sup>8</sup> <https://www.raheem.ai/en/>

**10. Address Profiling by Proxy<sup>9</sup>**

Police should not be dispatched to calls that are motivated by caller bias or malintent, e.g., a claim that someone is suspicious with no corroborating reason.<sup>10</sup> These types of calls harm police-community relationships and undermine the authority of the police. To protect against profiling by proxy the police department shall:

- a. work with PRC and other appropriate agencies to formulate a policy that defines and remedies profiling by proxy.
- b. enhance Dispatcher training to evaluate calls and add implicit bias training for 911 Dispatch.

An article on profiling by proxy by the Vera Institute of Justice recommends including 911 Dispatch in implicit bias training as a method for reducing issues with profiling by proxy. Anti-bias training will also help Dispatchers become aware of their own biases. For example, when they receive calls about behavior the complainant may dislike but is not illegal—e.g., “too many” black teenagers in the public park.<sup>11</sup>

**Hiring & Evaluation**

The successful hiring and evaluation of police officers is an important part of creating a healthy and high-functioning police department. The types of people the department hires, and the effective evaluation of police officers are important in determining police department culture. Researchers on policing have repeatedly found that organizational culture is the single most important determinant of officer behavior.<sup>12</sup> Human Resource Management research supports including the evaluation for cultural competency as important in improving agencies. The key components for a high degree of cultural competency are: awareness, attitude, knowledge, skills.

**11. Fire racist police officers identified through social media and other media screens**

A third-party agency, hired by the City of Berkeley, or agency outside the police department should screen police officers and potential new hires’ social media accounts for racist or violent comments, affiliations to racist groups whether public or private, including private groups expressing racist or violent rhetoric.

- a. BPD shall immediately fire all identified officers who have engaged in racist or violent actions or commentary online.
- b. A social media screen of officer online conduct shall be done annually.

<sup>9</sup> Profiling by proxy may occur “when an individual calls the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against—e.g., ethnic and religious minorities, youth, homeless people” (retrieved from The Vera Institute of Justice).

<sup>10</sup> Captain Bolton of the Oakland Police Department made improvements on profiling by proxy using an approach that educated citizens on focusing on criminal behavior instead of suspicion when calling police.

<sup>11</sup> “Avoiding ‘profiling by proxy,’” Vera Institute of Justice, March 13, 2015, <https://www.vera.org/blog/police-perspectives/avoiding-profiling-by-proxy>

<sup>12</sup> [Organizational Culture and Police Misconduct](#)

## **Recommendations for Council**

**Community Engagement and Feedback** - When the City of Berkeley pledged to consider reducing funding for the police department by 50%, it also committed itself to shifting to new and alternative methods of community safety. To effectively understand and implement new and alternative safety practices and services, the City of Berkeley must look to its residents for ongoing insight and feedback. The City must collect and utilize regular community feedback to inform the city on community investment priorities including police department policies and practices and future direction. To that end:

### **12. Address Profiling by Proxy<sup>13</sup>**

To protect against profiling by proxy City Council should:

- a. Introduce profiling by proxy legislation similar to CAREN Act in SF, which would hold residents accountable for using police in a biased manner.
- b. Issue a quarterly review of data from 911 Dispatch, for the PRC or City Auditor to help understand the extent of calls from community members presenting 'biased' suspicions."

### **13. Require regular analysis of BPD stop, search, and use of force data**

The City Auditor and/or PRC shall update the analysis of BPD data completed by the Center for Policing Equity and the PRC and publish the results on the BPD website every quarter. This report shall include stop, search, and use of force analysis. —

## **Ensuring Timely and Effective Implementation:**

Since the fall of 2017, the police department has received 37 separate policy or legislative directives to address the racially disparate treatment of City of Berkeley residents. Those directives are the result of extensive and on-going racial disparities in police department stops, searches, and use of force. As of the drafting of this report, at least 30 of those directives remain outstanding with no plan for implementation.

We respectfully recognize that the role of the Mayor's Working Group on Fair and Impartial Policing is to advise the Berkeley City Council and staff. We recognize that we are not in a position to make final decisions; rather, our role is to offer advice and recommendations to the Council. The Mayor's Working Group is committed to ensuring that the policy recommendations outlined in this proposal are not added to the long list of unaccomplished directives. Therefore, we have included an accountability system with our policy proposal. This accountability system

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<sup>13</sup> When an individual calls the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against—e.g., ethnic and religious minorities, youth, homeless people; retrieved from The Vera Institute of Justice

will ensure that the changes necessary to establish fair and impartial policing and rebuild public trust occur.

**Compliance and Accountability Mechanisms:**

- A. Working in partnership with the Mayor’s Working Group on Fair and Impartial Policing and within six months from approval of the proposal (extended for good cause), the City Manager hires an experienced consultant to help draft an implementation plan that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the working group’s policy proposal.
  - i. If a consultant is not hired within six months from approval of the proposal, the Council should move to item “E” below.
  - ii. If a consultant is not hired within six months (extended for good cause), the working group should remain formally organized by the Mayor until a consultant is hired and a plan is approved.
- B. The Working Group, Police Chief, and the consultant will create an implementation plan that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group’s policy proposal. Long-term monitoring and assessments will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
- C. The implementation plan will be presented to the Berkeley City Council for approval. Once the plan is approved by the City Council, the consultant’s work is finished. Long-term monitoring and assessment will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
- D. The City Manager and the Berkeley Police Chief should do everything within their power to implement the items outlined in the plan and timeline set forth and approved by City Council.
- E. The City Council should set the implementation of this plan as a priority in the annual evaluation of the city manager.
- F. If the City Manager does not ensure that the Police Department implements the plan in accordance with the timeline, the City Manager should be held accountable.
  - i. In the event of a new Berkeley Police Department Chief: the Mayor’s Working Group, on Fair and Impartial Policing, the new Police Chief and the City Manager shall meet and agree upon an updated timeline to monitor, assess, and report on the implementation of the items outlined in the plan approved by City Council.
  - ii. In the event of a new City Manager: the Working Group, the Berkeley Police Chief, and the new City Manager shall meet and agree upon an updated timeline to monitor, assess, and report on the implementation of the items outlined in the plan approved by City Council.

If these recommendations are adopted and implemented promptly, we expect that the disparate stop data can show significant improvement in the near future. We expect the City Manager and the Police Chief to implement these programs with enthusiasm and dedication, as they reflect the constitutional imperative of equal protection under the law.

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## Appendix A: Additional Recommendations

*The following recommendations are also supported by the working group, which suggests referring them to the reimagining process and/or follow-up with the Police Accountability Board and the Fair and Impartial working group. See table 1 for recommended actions.*

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

- a. The training must include specific, relevant examples of prohibited actions and how to conduct law enforcement activities in an unbiased manner.<sup>14</sup>
- b. MILO and VIRTRA are two such scenario-based training programs<sup>15</sup>
- c. An independent observer shall review the training and report back to the PRC or its successor on the quality of the training.

### **15. Require enhanced annual implicit bias training for police**

There is scant scientific evidence that implicit bias training works to change implicit biases over the long-term. However, agency-wide, enhanced, and well-executed training that occurs on a regular basis could have a positive effect on the cultural environment of the police department and on expectations for behavior. Regular, required implicit bias training provides an expression of institutional support for fairness, which is important in improving relationships across groups<sup>16</sup> and improving agency culture.

- a. Officers should receive intensive anti-racism and implicit bias training as part of their core instruction in the first 90 days of employment, and an annual 'refresher' course.
- b. An independent observer shall attend the training and report back to the PRC on the quality of the training.

### **16. Accelerate Crisis Intervention Team (CIT) activity**

- a) Require 40 hours of CIT training in the first year of employment.
- b) Collect data on CIT calls to allow BPD to make informed decisions about staffing and deployment so that a CIT officer is available for all shifts in all districts to respond to every CIT call.
- c) Develop a CIT reporting system so that each deployment of a CIT officer is well documented. CIT officers should submit narrative reports of their interactions with persons in crisis so the appropriateness of the response can be evaluated in an after-action analysis.
- d) Implement an assessment program to evaluate the efficacy of the CIT program as a whole and the performance of individual CIT officers. A portion of a CIT officer's performance review should address skill and effectiveness in CIT situations.

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<sup>14</sup> CA Penal Code

<sup>15</sup> MILO in an Oakland setting

<sup>16</sup> Allport, G. W., Clark, K., & Pettigrew, T. (1954). The nature of prejudice.

**17. The City of Berkeley should conduct annual community forums on Police and Public Safety:**

- a. Identifying community-based leaders and impacted individuals for control of the envisioning process.
- b. Placing the process under the Office of the Mayor, not the City Manager. Upon establishment of the Police Accountability Board, place the process under the auspices of the Police Accountability Board.
- c. Including the creation of community-based measures of safety as part of the first round of the envisioning process.<sup>17</sup>
- d. Once community-based measures of safety are created, including these measures in the annual community survey (see item 17) and publishing the data as per item 17b.

**18. The City of Berkeley should conduct an annual community survey.**

Sample surveys include the Milwaukee survey and the Dallas survey.

- a. Data collected should be shared publicly via the City of Berkeley website or an online community dashboard.

**19. The City should create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized and includes:**

- a. A basic "Report Card," in collaboration with the PRC or its successor the Police Accountability Board, based on community feedback for each reform. This will enable the Department to take the 'community's temperature' on how the implementation of the reforms are being perceived by the public.
- b. Quarterly neighborhood 'check ins' for relationship building .

**20. Conduct a Capacity Study**

- a. Release data including but not limited to 911 dispatch calls, BPD stops and interventions, written reports, and body-worn camera footage to the City Auditor and/or PRC for analysis.<sup>18</sup>
- b. Conduct an audit on officer down time to determine the percentage of police time spent outside of responding to calls for service and how police officers spend this time. Share this information with the City Auditor and/or PRC for analysis for use in the capacity study.
- c. Conduct an audit of police overtime to determine the factors that contribute to the use of overtime .

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<sup>17</sup> This process should follow or be modeled after the Everyday Peace Indicators process

<sup>18</sup> This study could be time-limited and would not have to be a comprehensive analysis of internal data; a random sample done correctly would suffice to determine how best to restructure the response to a variety of problematic situations.

- d. Identify what percentage of calls for service require a unique police response and what percentage of calls could be better served by an alternative response with the goal to focus police response on issues that can best be responded to by police officers.
- e. These data can also assist in identifying calls suspected of profiling by proxy.

**21. Fund and implement a specialized care unit for mental health crises**

Fully fund and implement the specialized care unit as swiftly as possible in order to remove mental health and homeless encounters from the responsibility of BPD.

Research has found that individuals with mental illness are at a higher risk of police stops, use of force,<sup>19</sup> and a fatal police encounter.<sup>20</sup> These disparities increase for Black and Latinx individuals. Specialized mental health crisis units are a safer option for those experiencing a mental health crisis than a police response and a more cost-effective use of public resources.<sup>21</sup> The Council's July 14, 2020 decision to create a Specialized Care Unit will better serve people in Berkeley experiencing a mental health crisis. The Working Group supports transitioning away from police as first responders to 911 calls related to mental health and towards trained, unarmed mental health first responders.

The Berkeley Community Safety Coalition in collaboration with Councilmember Bartlett are developing a proposal related to a pilot program transitioning away from sworn police as first responders to professional mental health first responders. The Working Group supports this effort.

**22. Make resources on police-civilian encounters more publicly available, including:**

- a. A website similar to RAHEEM that collects information on police-civilian encounters.<sup>22</sup>
- b. Contact information for filing a complaint with the PRC or its successor.

**23. Evaluate the impact of these proposals on racial disparities in stops and searches, using regular updates to stop and search data**

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<sup>19</sup> [Mental Illness, Police Use of Force, and Citizen Injury](#)

<sup>20</sup> [Deaths of people with mental illness during interactions with law enforcement](#)

<sup>21</sup> [CAHOOTS Media Guide, 2020](#)

<sup>22</sup> <https://www.raheem.ai/en/>

## Appendix B: No Action Recommended

*The following recommendations were proposed and discussed at the working group but no action is recommended by the Council.*

### **1. Include community member participation and feedback in the hiring process**

For all potential sworn officer hires interviewed by BPD, Berkeley residents should be included in the hiring process. For example, citizens of Berkeley should be allowed, in an equitable manner, to participate in Berkeley Police Department orals boards for prospective police officers or some comparable interview process.

### **2. Include the following for Performance Appraisal Reports**

As the current Performance Appraisal Reports General Order P-28 requires, objectives of the report are to provide for fair and impartial personnel decisions, and to provide an objective and fair method for the measurement and recognition of individual performance according to prescribed guidelines.<sup>23</sup>

- a. Officers should exhibit cultural competency and anti-racist conduct, and that should be included in their City of Berkeley Performance Appraisal Report (Police Sworn-Operations Division Personnel<sup>24</sup>)
- b. Add to standards 1 and 2 of the Performance Appraisal Report as follows:
  - i. Provides excellent customer service and represents the Department well as a culturally competent and anti-racist officer
  - ii. Is respectful of both the people they serve and the people they serve with, in a culturally competent and anti-racist manner
  - iii. All officers should aspire for an "Above Average" "Exceeds Expectations" or "Exemplary Performance" mark each year with "Meets Minimum Standards" as the basic floor (with expected increase in performance level in subsequent years)

### **3. Include community and peer input into the annual review of sworn police officers.**

For all BPD sworn officers, Berkeley residents should be included in the annual review process. For example, citizens of Berkeley should be allowed, in an equitable manner, to provide feedback into the annual review of Berkeley police officers.

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<sup>23</sup> Previous language "a. An amendment to General Order P-28 would add a reference to 'cultural competency' and reassurances by the community that the officers are evaluated on their conduct in relationship to a person's gender, race, ethnicity, religion or gender identity/orientation. B. Performance Evaluation, Section B, page 2, #1 and #2 include language of cultural competency "

<sup>24</sup> on p. 2 of 8 under Section "B" "Professionalism."

## Appendix C – Incorporation of BPD Feedback

Please note: quoted text in this section references written feedback on the working group draft proposal provided by Chief Greenwood of the Berkeley Police Department.

### **Focus traffic stops on safety.**

The BPD are in agreement with this item. In July 2020, representatives from BPD (Officer Matthew Ye and Arlo Malmberg) presented a “problem-oriented policing” strategy to the working group. Further, Captain Bolton of the Oakland Police Department presented an intelligence-led policing strategy to the working group. According to Captain Bolton, OPD was able to significantly reduce stops for low-level and non-public safety related offenses using an intelligence-led policing strategy, resulting in a 70% reduction in the number of African Americans being stopped with no effect on crime rates. BPD stated they plan to “establish a formal strategy focusing officers’ discretionary stops on intelligence-based and traffic safety stops.”

Additional updates include: the sample list of stops falling into the category of unsafe driving behavior was updated based on BPD feedback; the working group deleted a reference made to “misdemeanor” stops as BPD pointed out that most traffic violations are “infractions” and not misdemeanors.

### **Use a clear, evidence-based definition for stops of criminal suspects.**

BPD stated they plan to establish a formal strategy focusing officers’ discretionary stops on intelligence-based stops. Chief Greenwood stated that an “intelligence based stop strategy aligns with [use of a clear, evidence-based definition for stops of criminal suspects].”

The BPD strategy as described focuses on general “intelligence” related to crime patterns. The BPD strategy does not respond to specific descriptions of perpetrators, nor is it clear what types of intelligence BPD would be using for stops of criminal suspects. An intelligence-based stop strategy can and should be implemented in concurrence with the items outlined in the working group’s proposal. However, the working group is not convinced by Chief Greenwood’s response that the BPD strategy will effectively address this item. The Working Group is recommending a shift in stop policy to address issues with racial disparities in stops. The BPD response as well as the strategy they have offered has not provided evidence there will be any shift from the status quo.

**Use race and ethnicity as relevant factors when determining law enforcement action only when provided as part of a description of a crime and suspect that is credible and**

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**relevant to the locality and timeframe of the crime and only in combination with other specific descriptive and physical characteristics.**

BPD stated “overall agreement” with this recommendation. BPD did not directly address the specific recommendation that race and ethnicity be used *only* in combination with other descriptive features of the individual or alleged offense. BPD wrote “[d]epending on circumstances, simple race and sex in a description can be sufficient for a terry [sic] stop.” It is the working group’s understanding that, absent other factors, race is insufficient to constitute the reasonable suspicion required for a Terry stop (i.e. detaining an individual based on reasonable suspicion of illegal activity, including the ability to handcuff and search the outer clothing of the individual detained). Furthermore, BPD’s feedback that “In a 1538 Motion to Suppress hearing, the court makes a determination if there [sic] factors associated with a detention are sufficient,” is inappropriate in this context. While the statement is factually accurate, the purpose of this recommendation is to establish a stop policy based on the Constitution, not to place the burden on civilians to go to court for relief.

**Eliminate stops for low-level offenses**

In response, BPD stated the plan to establish a formal strategy focusing officers’ discretionary stops on intelligence-based stops. Further, BPD stated, “We would support our Intelligence Based Stop Strategy through increasing our analysis capability, so that more information can be more efficiently provided to officers, Officers working in this manner would be more likely to have a higher yield even when making fewer stops, because of their focus on crime investigations.” It remains unclear to the working group how BPD plans to increase their analysis capacity or how that would impact racial disparities in stops.

In responses to items throughout the draft working group policy proposal, BPD referenced an early transition to the data collection methods required by the California Racial and Identity Profiling Act (RIPA). BPD announced an early transition to data collection methods in line with RIPA requirements at an October 2020 working group meeting. As of the writing of this report, data collected according to RIPA standards (hereafter “RIPA data”) has not been released on the BPD open data portal.

It is important to note: using the data currently available on the open data portal, a hit rate cannot be calculated. Hit rates are commonly used to measure the presence of racial bias in searches. A hit rate is calculated by dividing contraband found during a search (e.g. weapons, drugs, etc.) by the total numbers of searches, within racial categories (e.g. Black or white). The logic of the hit rate is straightforward: in the absence of discriminatory behavior, officers should find contraband on searched minorities at the same rate as on searched whites. A similar hit rate indicates a similar standard for searches is being used across different groups. If searches of racial minorities turn up contraband at lower rates than searches of whites, this suggests there is a double standard, where minorities are being stopped and searched on the basis of less evidence. BPD did not collect contraband information before the transition to RIPA. Therefore, there was no way to calculate a true hit rate during the period the working group met. Transitioning to RIPA will be helpful to determine racial bias in search decisions, but it does not

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provide information on racial bias in stop decisions. Most importantly, the collection of RIPA data does not directly address or work to mitigate existing racial disparities.

In a previous draft, this item included a reference to BerkDOT, but we removed it after BPD pointed out that inclusion was an unnecessary addition.

We also deleted a recommendation that officers provide those they stop with a reason for the stop, since BPD feedback cited section 14 of the T-3 Traffic Enforcement policy which requires officers to provide “explanation of the circumstances giving rise to the enforcement contact.”

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

BPD responded that it “conducts all mandated training.” However, the working group item recommends including scenario-based training with relevant examples of what is prohibited, and includes an independent observer. This addition of specific scenario-based training is not currently mandated by the state, and it is this specific scenario-based training that the working group is recommending. This recommendation for specific scenario-based training comes from the Southern Poverty Law Center, “10 Best Practices for Writing Policies Against Racial Profiling.”

**Require enhanced annual implicit bias training for police.**

BPD agrees with the importance of implicit bias training and stated officers currently get implicit bias training while in training academy. BPD also cited budget constraints would limit the department’s ability to provide annual implicit bias training. The working group understands the constraints of budget cuts, but anticipates that some of the recommendations proposed here (e.g. eliminating stops for many low-level infractions) may free up resources for this important training that has the potential to trigger the kind of cultural shifts that are necessary.

This item also includes a policy recommendation that an independent observer attend the training and report back to the police oversight body (the PRC or its successor). Chief Greenwood stated he was open to the idea of an outside observer but had concerns that difficult conversations might be chilled by outside observers. The working group understands and appreciates these concerns.

**Implement an Early Intervention System (EIS) and a risk-management structure.**

Chief Greenwood's feedback expressed interest in this approach and in learning how the Oakland program works, stating “Open to learning about how Oakland does this work. Learning how the analysis works will help us understand the resources needed to do this work.” In response, a member of the working group put Chief Greenwood in touch with the OPD official in charge of that program. To date he has not taken advantage of that opportunity.

Further, BPD feedback references RIPA data, stating “With the collection of RIPA data, we will have richer data to examine. This will help us focus on data on stops, searches, and yields.” According to the National Police Foundation, in their report, *Best Practices in Early Intervention*

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*System Implementation and Use in Law Enforcement Agencies*, an “early intervention system [EIS] is a personnel management tool designed to identify potential individual or group concerns at the earliest possible stage so that intervention and support can be offered in an effort to redirect performance and behaviors toward organizational goals. The ideal purpose of an EIS is to provide officers with resources and tools in order to prevent disciplinary action, and to promote officer safety, satisfaction and wellness.”

The collection and analysis of RIPA data could be helpful to identify *racial implications* related to identified individual or group red flag behavior. However, the collection of RIPA data does not meet two core components of an EIS system: 1) identify potential individual or group red flag behavior (as early as possible), and 2) intervene to redirect performance and behaviors toward organizational goals. In short, the collection of RIPA data does nothing to address this item.

The working group considers this recommendation for an EIS and risk management system to be among its top priorities.

**Immediately release the following data to the Working Group:**

All data given to the Center for Policing Equity (CPE) - This data includes:

- a. Calls for Service (January 1, 2012 - December 2016)
- b. Use of Force Data (January 1, 2012 - December 31, 2016)
- c. Crime Report Data (January 1, 2012 - December 31, 2016)

STOP DATA - this data shall include information on “call type,” similar to the data used by the Center for Policing Equity. The timeframe would be January 1, 2012 to present.

USE OF FORCE DATA - This data was used in the analysis presented in the CPE report. Along with the CPE data, it would be helpful to have more recent Use of Force data. The timeframe would be January 1, 2012 to present.

DEIDENTIFIED STOP & ARREST DATA - data that we can be attached to anonymized individuals. The timeframe for this data would be January 1, 2012 to present.

ADDITIONAL ARREST DATA - Currently, the Open Data Portal posts arrest data from January 1, 2015. The timeframe for this data would be January 1, 2012 to present day.

ADDITIONAL CALLS FOR SERVICE - Currently, Calls for Service data are posted for the last 180 days. The timeframe for this data would be January 1, 2012 to present.

The BPD responded by referring to RIPA data collection, stating “RIPA data and current BPD officers seems to be the best path forward.” BPD also states, “Approximately 50 officers have been hired since late 2016,” and, “BPD staff are working on a number of technical projects, and resources are limited, especially after recent budget deferrals.”

Based on conversations related to this item which occurred in formal working group sessions, the working group believes the BPD comment related to the hiring of 50 officers was intended to communicate that the BPD department before 2016 (reflected in the CPE data), is different from the BPD today. The working group believes this may be true. The best way to determine if this

is true is to have access to the data we have requested so we can determine if there have been any measurable shifts in the racial disparities found by CPE.

It is important to note that a member of the working group used publicly available BPD stop data to redo a portion of the CPE analysis. This publicly available stop data was from 2015 to 2019. Therefore, this data included the two years of the CPE report (2015 - 2016) and two and a half years after the CPE report (2017-2019). This analysis was presented to the working group. This analysis found persistent racial disparities in stops and searches during this time. In other words, the pattern of racial disparities found in the CPE analysis persisted through 2019, over two years after the CPE report was released. It is also important to note that this analysis only includes stops and searches. It does not include an analysis of use of force. A complete CPE redo has not been possible because **BPD has never released any data to the working group.**

The working group understands budgetary constraints are impacting BPD. Further, the working group understands that it is possible BPD does not have some of the data we request, e.g. de-identified stop and arrest data. When BPD has made it clear they do not have the data, we have updated our data requests. For example, an early draft of the working group's policy proposal included a request for weapons and contraband data. BPD has made clear they do not have weapons and contraband data, so the working group removed this data request from our final proposal.

For the remaining data requests, BPD has not provided a compelling reason for why they have not released this data. At the very least, BPD should be able to turn over all the data that was shared with CPE as this data has already been put into a format which allowed it to be shared. Moreover, BPD feedback that, "BPD staff are working on a number of technical projects," seems to indicate that BPD has staff capable of providing and perhaps already working on the data we request.

The Working Group agrees that RIPA data will be useful going forward. However, this item speaks to data from the past, beginning in 2012, and includes data given to the CPE as well as additional data. For the City Council to determine if and how the policy shifts implemented in this proposal have been effective in reducing racial disparities, it must have data from before the implementation of RIPA and this data must be more extensive than stop and search data. The data the working group has requested in this proposal would allow City Council to properly measure the impacts of the policy changes outlined in this proposal. RIPA data will help create a richer picture but in isolation it cannot tell us any information about changes to racial disparities that result from the policy changes outlined in this proposal.

**Limit warrantless searches of individuals on supervised release status, including probation, Post Release Community Supervision (PRCS), and parole, absent evidence of imminent danger**

BPD agrees with this recommendation which has passed the PRC with BPD collaboration.

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**Require written consent for all consent searches**

BPD agreed with this item and cited the collection of RIPA data. Chief Greenwood's feedback states, "BPD will make it a policy that the department's existing consent search form shall be used when consent to search is sought by an officer. Existing body worn camera policy already captures the consent request interaction. RIPA data will specifically address this issue: Data will indicate when a consent search was performed, and what the outcome (yield) is providing specific data for analysis. The data will support understanding of how often it occurs, the circumstances under which it occurs, and the outcomes."

In mid-December, the Working Group received a copy of the consent form used by the BPD; however, as noted above in #8, the Working Group recommendation is that the BPD adopt the written consent used in North Carolina. It is imperative that any consent form be used consistently and include the printed name and signature of the person consenting to the search as well as clear indications of what property the person consents to search, rather than blanket statements that the consent includes all aspects of the person and their property.

Additionally, while the written feedback did not make this distinction, conversations with Chief Greenwood at Working Group meetings indicated that perhaps BPD focus for written consent was on car or traffic searches only. This policy item recommendation includes all searches-- traffic, pedestrian, bike, etc.

The Working Group acknowledges that body worn cameras may capture the consent process but does not support only the use of body worn cameras to capture this process. The intent of this item is to require written consent for any person, or their property, undergoing a consent search.

The Working Group agrees RIPA data collection will be helpful in determining if there are racial disparities in stops and searches. However, RIPA data collection is not a substitute for a written consent.

**Accelerate Crisis Intervention Team (CIT) activity**

BPD agrees with this response. However, Chief Greenwood states, "Class availability is limited. Budget and resource constraints may impact this as well, as overtime is restricted to backfill for officers' absence due to training." The working group considers that accelerating current CIT activity as critically important.

**For any individual detained, BPD officers shall provide a business card that displays with the following information on the back:**

- a. A website similar to RAHEEM that collects information on police-civilian encounters
- b. Contact information for filing a complaint with the PRC or its successor, the Police Accountability Board.

BPD feedback states, "Open to idea, but with balance: perhaps a link to an online survey, provide info on commendations as well as how to file complaints with PRC and IAB." The

working group supports the collection of both positive and negative feedback on police civilian contacts.

**Address Profiling by Proxy**

BPD supports this item.

**Include community member participation and feedback in the hiring process**

BPD provided no written feedback on this item. However, in a formal working group session Chief Greenwood expressed concerns about including community participation in the hiring process for all BPD staff. The proposal was updated to include community member participation only in the hiring process related to sworn officers.

**Include the following for Performance Appraisal Reports**

- a. Officers should exhibit cultural competency and anti-racist conduct, and that should be included in their City of Berkeley Performance Appraisal Report (Police Sworn-Operations Division Personnel), on p. 2 of 8 under Section "B" "Professionalism."
- b. Add to standards 1 and 2 of the Performance Appraisal Report as follows:
  - i. Provides excellent customer service and represents the Department well as a culturally competent and anti-racist officer
  - ii. Is respectful of both the people they serve and the people they serve with, in a culturally competent and anti-racist manner
  - iii. *All officers should aspire for an "Above Average" "Exceeds Expectations" or "Exemplary Performance" mark each year with "Meets Minimum Standards" as the basic floor (with expected increase in performance level in subsequent years).*

BPD provided no written feedback to this item. This item was updated based on verbal feedback Chief Greenwood gave during a formal working group session.

**Include community and peer input into the annual review of sworn police officers.**

Based on BPD feedback, this item was updated. Previous language was as follows: Include a "360 Degree Review Form" completed by December 30th each year after an Annual Community Forum. The working group updated the item to account for the lack of familiarity at BPD with a 360 review process as well as to incorporate peer review into the annual review process.

**Fire racist police officers identified through social media and other media screens.**

- a. BPD shall immediately fire all identified officers who have engaged in racist or violent actions or commentary online.
- b. A social media screen of officer online conduct shall be done annually.

BPD agrees with this item. In response, BPD cited existing policies in place to discipline or terminate an employee. However, Chief Greenwood stated a need to check if or how these policies are related to racist behaviors. Further, Chief Greenwood pointed towards the existing

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screening process and background checks for hiring. Lastly, other members of BPD expressed concerns that social media screens might violate legal protections.

The working group has not received clarification on if or how existing disciplinary policies relate to racist behavior of officers. The working group would like clarity on this process. Further, if policies are in place to discipline an officer engaged in racist behavior this still does not address the issue of identifying officers engaged in racist behavior. This item is designed to identify if BPD officers are engaged in racist online activity and states clearly any officers so identified should be terminated. The working group does not recommend that Council accept any other action than termination for any officer found to have engaged or currently engage in racist behavior.

Additionally, this item is not requesting BPD violate privacy laws of potential or existing employees. Comments made on an electronic app, chat room, social media group, etc. are not protected by privacy laws or the constitution. A screen of social media platforms is routinely done by employers today. According to a 2018 CareerBuilder survey, "70% of employers use social media to screen candidates during the hiring process, and about 43% of employers use social media to check on current employees." Regular social media screens are a routine practice today. A third party that specialized in social media screens is well aware of legalities of the screening process, which is one reason why the FIP working group suggested a third party, not BPD, conduct the screening process.

**Of Note:**

The working group removed one item based on BPD feedback. The original item read: Officers shall prominently display identification. This item was updated with new language that read: Officers violating penal code (CA 830.10) shall be severely disciplined. Finally, the working group removed this item completed based on feedback from BPD.

## Appendix D - Unfulfilled Council Mandates to BPD

Following on the publication by the CPE and the PRC of their respective reports on BPD stop, search, and use of force data, the Berkeley City Council gave specific policy direction to staff to address racial disparities apparent in that data.

At the onset of the Fair and Impartial Working Group in the fall of 2019, mayoral staff noted the following directions that had not been carried out by the City Manager or Chief of Police. Significantly, these directions remain unfulfilled as of August 2020:

- I. Council referral from Nov. 14, 2017, to be completed by September 2018 and annually thereafter.
  1. Direct the City Manager to track yield, stop, citation, search and arrest rates by race, develop training programs to address any disparities found, and implement policy and practice reforms that reflect cooperation between the Berkeley Police Department ("BPD"), the Police Review Commission ("PRC") and the broader Berkeley community. The City Manager will report findings in September 2018 and annually thereafter, using anonymized data. [NOTE: BPD responded that they are addressing this via RIPA work, but it has still not been done.]
  2. Tracking Yield rates
    - a. Analyze whether officer-initiated or in response to calls for service or warrants.
    - b. Focus on reasons for disparate racial treatment and to identify any outliers. [NOTE: BPD responded that they are addressing this via RIPA work, but it has still not been done.]
  3. Consider any other criteria that would contribute to a better understanding of stops, searches, citations and arrests and the reasons for such actions. [NOTE: BPD responded that they are addressing this via RIPA work, but it has still not been done.]
  4. Consulting and cooperating with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values. Work closely with the PRC, providing the commission all legally available information that may be helpful to designing reforms.
  5. Once released, BPD should analyze the final Center for Policing Equity report and propose improvements as needed. [NOTE: CPE final report was released in May 2018.]

None of these items, which are now nearly three years old, were ever accomplished

### II. Council referral from April 24, 2018

1. Create, Present and Execute a Departmental Action Plan by **April 30, 2019**.

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2. Officer Identification. Develop a policy requiring officers to identify themselves by their full name, rank and command and provide it writing (e.g. a business card) to individuals they have stopped, as in Oakland, New York, Providence, and San Jose.
3. Review and Update BPD Policy Surrounding Inquiries to Parole and Probation Status.
4. Enhance Search Consent Policies.
5. Collect Data on Terry Stops/Searches and Citations [NOTE: Remains undone. BPD responded that they are addressing this via RIPA work, but it has still not been done.]
6. BPD Data Dashboard.
7. Enhance Existing "Early Warning" Systems

None of these items, which are over two years old, were ever accomplished

III. CPE recommendations from early 2018

1. We recommend that BPD monitor search and disposition outcomes across race, and arrest and disposition outcomes associated with use of force. In particular, BPD should collect and share data with respect to contraband (distinguishing among drugs, guns, non-gun weapons, and stolen property) found during vehicle or pedestrian searches, and that it analyze data about charges filed resulting from vehicle and pedestrian stops. [NOTE: BPD responded 4/2019 that they are addressing this via RIPA work but it has still not been done.]
2. We recommend that BPD more clearly track, analyze, and share data with respect to whether law enforcement actions are officer-initiated, or responses to calls for service. [NOTE: BPD responded 4/2019 that they are addressing this via RIPA work but it has still not been done.]
3. We recommend that BPD continue to affirm that the egalitarian values of the department be reflected in the work its officers and employees do. [NOTE: Chief responded in 4/2019 message, saying they address in ongoing training, but their own heavily disparate stop and force data suggests that more needs to be done and that the ongoing training may be insufficient.]
4. We recommend that BPD consult and cooperate with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values. [NOTE: See Council referrals above. Also referred to Working Group and to July 14 2020 community engagement process.]
5. We recommend BPD track yield rates (of contraband found at searches). [NOTE: BPD responded 4/2019 that they are addressing this via RIPA work but it has still not been done.]
6. We recommend that BPD monitor patrol deployments, using efficient and equitable deployment as a metric of supervisory success. One way to promote equitable contact rates is to monitor racial disparities (not attributable to non-police factors such as crime) and to adjust patrol deployments accordingly.
7. We recommend that BPD track crime trends with neighborhood demographics in order to ensure that response rates are proportional to crime rates.

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8. We recommend that BPD engage in scenario-based training on the importance of procedural justice and the psychological roots of disparate treatment in order to promote the adoption of procedural justice throughout the organization, and to protect officers from the negative consequences of concerns that they will appear racist. [NOTE: Chief responded in 4/2019 message to say the department completed procedural justice training, but their own heavily disparate stop and force data suggests that more needs to be done and that the procedural justice training may be insufficient.]

9. We recommend that values-based evaluations of supervisors be developed to curb the possible influence of social dominance orientation on the mission of the department. CPE research has found a significant relationship between social dominance orientation and negative policing outcomes in many police departments.

10. We recommend that BPD training include clear messaging that racial inequality and other invidious disparities are not consistent with the values of BPD. [NOTE Chief responded in 4/2019 message, said they address in ongoing training, but their own heavily disparate stop and force data suggests that more needs to be done and that the ongoing training may be insufficient.]

11. We recommend leveraging the Police Review Commission, as well as ensuring inclusion from all groups in the community, to help review relevant areas of the general orders manual and provide a more integrated set of policies with clear accountability and institutional resources. [NOTE: Chief responded in 4/2019 message, saying they address in ongoing PRC subcommittee work.]

The Fair and Impartial Policing Working Group has received three contemporaneous studies of the BPD's stops as published on the City's Open Data Portal. The following patterns emerge from this data as shown in these studies:

1. Berkeley's stop rate for African Americans is over three times greater than Oakland's. Annually, African Americans are stopped by police according to BPD records at a rate of 32.7% (3,083 stops of African Americans compared to 10,331 African American Berkeley residents). In Oakland, the corresponding stop rate is 10.4% (10,874 compared to a total of 104,310 African American Oakland residents).

2. During the first 13 weeks of the Covid-19 pandemic from March 15 to June 12, the disparity between stops of Black and White civilians in Berkeley skyrocketed. African American stops were exactly 50% of total 608 stops at 304, with White stops were 143 for 23.52% of all stops. Taking into account the low number of African Americans residing in Berkeley, the disparities are even starker: African American stops are about 42.7 per 1,000 of their population, where White stops are about 2.9 per 1,000, a disparity of 14.5 to 1, twice the disparity in 2018.

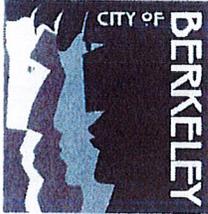
3. The discriminatory stops exploded under the Black Lives Matter curfew at the end of May. In three days from May 31 to June 2, 92 African Americans and 18 Latinx people were pulled over by Berkeley police, compared to just 18 White people. This is a disparity in raw numbers of five to one. Based on stops per 1,000 of ethnic population,

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Black civilians were nearly 35 times more likely to be stopped than Whites during the curfew.

There has been no meaningful response from the BPD to either confirm and account for the disparities, convincingly explain why the critical analysis is incorrect, or give some alternative interpretation of the data. Instead the department has simply ignored the data and the evidence that it discriminates in its treatment of Black, Latinx, and White civilians. BPD representatives quibble over side issues such as whether the data is skewed by stops of Black people coming into Berkeley from outside, or a theory that police are being nice to Black people by issuing them only warnings whereas they ticket White civilians in similar circumstances. The recommendations made in this document will uncover the true cause of the stark racial disparities, and indicate a path to correct them.

The Fair and Impartial Working Group does not want its recommendations to go the way of prior recommendations and directives from the City Council, CPE, and PRC. As shown above, the City Manager and Chief of Police have failed to execute the policies set by the elected officials. The City Council must ensure that staff act promptly to bring Berkeley policing into compliance with constitutional principles, particularly equal protection under the law.



Kate Harrison  
Councilmember District 4

## REVISED AGENDA MATERIAL

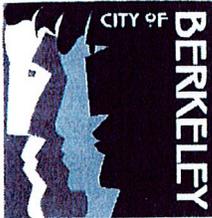
**Meeting Date:** April 27, 2021

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

**Submitted by:** Councilmember Harrison

The item has been amended to:

- Include updates to the transmittal including: changes made pursuant to comments from the Police Review Commission and Public Safety Policy Committee review process, additional background information about the potential dangers of LRADs, and photographic examples of Controlled Equipment Deployments;
- Respond to the Public Safety Committee recommendations, including adding a definition of “Deployed” and removed the term “Displayed” to clarify instances when Controlled Equipment may be deemed reportable. The definition includes instances when equipment is utilized or employed for a deliberate purpose in the presence of members of the public, or during any operation or critical response. The definition of “Deployed” does not include an officer merely wearing a piece of Controlled Equipment on their belt or elsewhere on their person;
- Further clarify the definition of “Deployed” to include batons 30 inches or longer in length shall only when used for management or control of crowds and LRADs only when used for a purpose other than to convey lawful verbal instructions.
- Reflect minor language changes recommended by the City Attorney.



Kate Harrison  
Councilmember District 4

ACTION CALENDAR

April 27, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison, Bartlett and Taplin

Subject: Adopt an Ordinance Adding Chapter 2.100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

RECOMMENDATION

Adopt an Ordinance Adding Chapter 2.100 to the Berkeley Municipal Code to Regulate Police Acquisition and Use of Controlled Equipment.

POLICY COMMITTEE RECOMMENDATION

On March 29, 2021, the Public Safety Policy Committee moved to send the item with a qualified positive recommendation, removing definition #13 (LRAD) and 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 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.

BACKGROUND

The acquisition and use of certain police equipment and weapons pose grave threats to civil liberties and public health and safety. It is in the public interest that acquisition of any police equipment with the potential to impose physical or psychological harm to community members should be thoroughly reviewed by the Police Accountability Board (PAB) or the Police Review Commission until such time that the new board is established, and Council. Legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before certain categories of equipment are funded, acquired, or used.

The Council already relies on the Police Review Commission to review certain Police equipment acquisitions and uses. In addition, the Council has imposed limits directly, for example: limiting further acquisition of military material from the Department of Defense 1033 Program, acquisitions of armored vehicles and surveillance equipment, the use of

Adopt an Ordinance Adding Chapter 2.100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

pepper spray in crowd control situations, and the use of tear gas. However, the City currently lacks a comprehensive framework for reviewing and regulating the acquisition of a broad spectrum of potentially problematic equipment.

The Oakland Police Commission is also currently in the process of recommending to the Oakland City Council a new policy inspired by Berkeley's Surveillance Technology Ordinance and California Assembly Bill AB 3131, a prior attempt to regulate military equipment statewide, to thoroughly consider the proposed acquisition and use of potentially problematic police equipment *before* community members can be harmed.

The list of Controlled Equipment defined in Berkeley's ordinance is in part inspired by equipment definitions President Obama's Executive Order 13688 and California Assembly Bill AB 3131. The list of equipment is not exhaustive and may be added to or subtracted from as needed.

President Biden is reportedly in the process of readopting President Obama's executive order limiting transfers of military equipment to police departments as well as requiring local oversight and approval of such acquisitions. This ordinance operates under the same premise: local governments should oversee the acquisition and use of equipment that has the potential to impact public safety and civil liberties.

Deployment of such equipment, regardless of whether it is actually fully utilized, may have a significant impact on community members during police operations and crowd management and control events. For example, the deployment of militarized armored vehicles, or drones may elicit outsized fear and trauma in the populace, and ultimately contribute to a further breakdown in community-police relations.

Before the Ordinance was reviewed by the Public Safety Committee, a subcommittee of the Police Review Commission, including representative of the BPD, held extensive conversations over six full meetings, and reviewed every concept in the proposed ordinance. The full Commission approved the Ordinance. It was also carefully considered by the Public Safety Committee for more than 120 days. The Ordinance is a product of thorough and thoughtful consideration by various policy making bodies and is ready for consideration and adoption by the full Council.

### **Definition of Controlled Equipment**

The proposed Ordinance, as reviewed by the Police Review Commission and the Council's Public Safety Committee, defines the following equipment types as Controlled Equipment:

- Vehicles that are built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.
  - Police versions of standard passenger vehicles are specifically excluded.

Adopt an Ordinance Adding Chapter 2.100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

- Multi-purpose wheeled vehicles that are: built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck; or built or modified to use a breaching or entry apparatus as an attachment.
  - Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.
- Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- Aircraft, vessels, or vehicles of any kind, whether manned or unmanned, with attached or mounted weapons.
- Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive in nature. Items designed to remove a lock, such as bolt cutters, small gauge frangible rounds, or a handheld ram, are excluded from this policy.
- Firearms of .50 caliber or greater.
- Ammunition of .50 caliber or greater.
- Specialized firearms, including the Colt M4, and associated ammunition of less than .50 caliber, as defined in Sections 30510 and 30515 of the California Penal Code.
- Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, “bean bag,” rubber bullet, or specialty impact munition (SIM) weapons, and equipment used to disperse chemical agents.
- Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.
- Explosives, pyrotechnics, such as “flashbang” grenades, and chemical weapons such as “teargas,” CS gas, pepper spray, and “pepper balls”.
- Batons 30 inches or longer.
  - Batons 30 inches or longer in length shall only be deemed “deployed” when used for management or control of crowds.

Adopt an Ordinance Adding Chapter 2.100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

- Active area denial weapons, such as the Taser Shockwave, microwave weapons, and water cannons and the Long Range Acoustic Device (LRAD).
  - The LRAD shall only be deemed “deployed” when used for a purpose other than to convey lawful verbal instructions. LRAD as Deployed to convey lawful verbal instructions is not reportable.
- Any other equipment as determined by a majority of the City Council to require additional oversight.

### **Significance of the LRAD**

Despite legitimate uses of the LRAD, including for Fire and Police Department dispersal orders during natural disasters and crowd events, there is still significant potential for these devices to be used in ways that could impact human health and safety. Depending on how LRAD devices are used, they can be used to project both verbal instructions and tones of various frequencies. It is the latter setting that prompts concern for public safety.

According to Popular Mechanics, LRAD devices deployed by police departments in other jurisdictions cause “horrible, nauseating pain” across the entire body, causing disorientated protesters to collapse to the ground. The setting can induce permanent hearing damage, and was originally developed by the U.S. military to deter terrorists from approaching naval ships. It has since reportedly been used during the Dakota Access Pipeline protests, the 2017 Washington D.C. Women’s March, and during various protests following the murder of George Floyd. LRADs can generate sounds up to 160 dB, despite the fact that sounds over 85 decibels cause permanent damage.<sup>1</sup>

Although BPD policy 707 explicitly forbids BPD from using the LRAD system as “a weapon,” it is unclear whether officers are forbidden from using the LRAD for non-verbal sounds in order to deter protesters from certain areas. In fact, policy section 707.4 states that the LRAD may be legitimately used to “Establish safety zones and humanely enforce permitters” in addition to communicating with protesters. Therefore, this Ordinance requires impact and use policies for LRAD devices, and annual reporting is triggered only when the device is used for purposes other than verbal dispersal communications. LRAD deployments providing lawful verbal instructions would not be reportable under this ordinance. Only the potentially most harmful uses of LRAD (non-verbal tones) would be reportable. This recent amendment responds directly to the Public Safety Policy Committee’s recommendations regarding the ordinance.

### **Ordinance Overview**

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<sup>1</sup> Lynne Peskoe-Yang, “How to Dodge the Sonic Weapon Used by Police,” Popular Mechanics, June 17, 2020, <https://www.popularmechanics.com/military/weapons/a32892398/what-is-lrad-sonic-weapon-protests/>.

Adopt an Ordinance Adding Chapter 2.100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

The primary concepts of the proposed Oakland and Berkeley Ordinances are as follows:

1. Controlled Equipment Use Policies and Controlled Equipment Impact Reports must be reviewed and adopted before the use of Controlled Equipment may be authorized.
2. Requires the Police Department to submit Controlled Equipment Use Policies and Controlled Equipment Impact Reports to the Police Commission for review and recommendation.
3. Requires the PAB to review submissions at a public hearing and determine whether such submissions warrant a recommendation to Council for adoption or rejection within 90 days.
4. Requires the City Council to ratify or reverse the PAB's recommendations following the Board's review of Controlled Equipment Use Policies.
5. Requires the Police Department to submit an annual report describing the use of authorized Controlled Equipment during the year prior.
6. Requires the PAB to review the annual Controlled Equipment report, determine whether covered equipment has complied with the standards for approval, and recommend renewal or modification of Use Policies, or the revocation of authorization for use.
7. Requires the City Council to ratify or reverse the PAB's recommendations following the Commission's review of the Controlled Equipment annual report.

The Berkeley Surveillance Ordinance model of thoroughly considering the impact of acquiring and using certain technology has served the public well since adoption in early 2018. A similar regime is appropriate for consideration of police equipment.

Similar to the Surveillance Ordinance, the item provides the Police Department with a year from the date of passage to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval. This process will assist the public, Council and Commission in better understanding the scope of controlled equipment inventory, use policies and impact. Like the Surveillance Ordinance, this ordinance does not presuppose that certain equipment is harmful or should be disallowed; it simply flags certain equipment acquisitions for further review and approval by civilian bodies.

Reporting mandated by this ordinance may actually serve the Department's fundraising goals, by creating an account of how equipment is used. Just as grants require reporting on use that are often the basis for grant renewals, tracking the legitimate uses of equipment that is often perceived by some people as militarized or controversial creates a solid basis for future funding decisions.

In cases where the department applies to acquire Controlled Equipment that is subject to a time-sensitive grant application, the PAB will have 30 days to provide a recommendation to the Council.

Adopt an Ordinance Adding Chapter 2.100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

This ordinance does not provide any obligations on other jurisdictions providing mutual aid to Berkeley.

### Reporting Threshold

The ordinance requires annual reporting when Controlled Equipment is deployed. The word “deployed” is defined in the Ordinance as meaning: “to utilize, employ, or arrange Controlled Equipment for a deliberate purpose in the presence of members of the public, or during any operation or critical response.” Deploy does not mean storing controlled equipment such as a baton or pepper spray on an officer’s belt, or carrying a Colt M4 rifle in a vehicle. Deploy is clearly defined in an active sense in the presence of community members. The clear and concise definition of “Deployed” was added to the ordinance in response to the Public Safety Policy Committee review process.

Reports will include specific data about the geographic location of the deployment of Controlled Equipment. This will assist the Department, PAB and Council in monitoring whether there are any disparities in how such equipment is deployed.

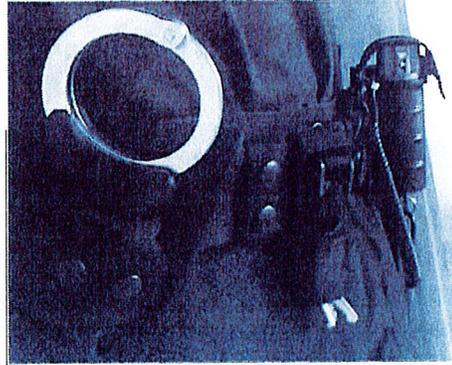
The reporting requirements of this ordinance are distinct from the Use of Force Policy. For example, Use of Force reporting only occurs when force is used (except in the case of pointing firearms in the presence of an individual), whereas this ordinance is concerned with the deployment of equipment even if force does not result. In addition, it may be difficult, if not impossible, to know controlled equipment was used in a Use of Force event because the report is focused on the force used and not on the equipment itself. Finally, this policy includes important reporting requirements such as geographic location and type of event (e.g., in a demonstration, against an individual, in hostage situations), which will help facilitate an understanding of how and how often Controlled Equipment is being deployed across the city and whether inequities exist. The Use of Force reporting scheme does not yet include such geographic details.

### Examples of Controlled Equipment Deployment Pursuant to the Ordinance

The following are examples illustrating the intent of the Ordinance with respect to what is not and what is not considered deployment of Controlled Equipment:

- Carrying pepper spray or a baton during crowd management in the presence of the public, or during an operation, in a passive or inactive fashion such as on a belt or on the back with a strap, is not a deployment of controlled equipment:

Adopt an Ordinance Adding Chapter 2.100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment



- Holding a specialized rifle in the presence of the public, or during an operation, regardless of whether it is fired or pointed is considered a deployment:

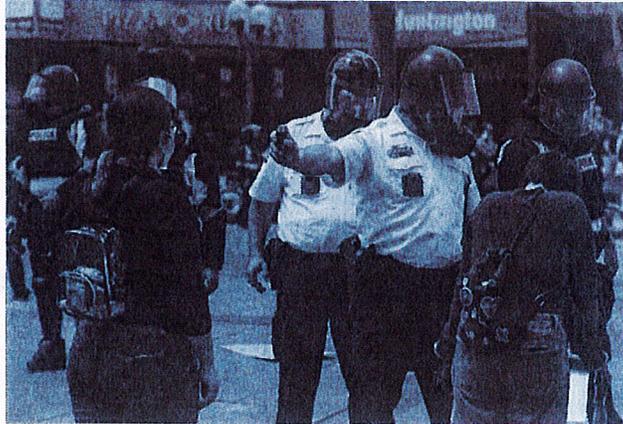


- Holding a baton during crowd management or control in the presence of the public, or during an operation, regardless of whether officers attempt to strike individuals **is a deployment** of controlled equipment:



Adopt an Ordinance Adding Chapter 2.100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

- Holding pepper spray (as opposed to carrying on their belt or elsewhere on their person) in the presence of the public, or during an operation, in an active or deliberate manner is a deployment of Controlled Equipment:



### Enforcement Provisions

The ordinance includes enforcement remedies for alleged violations of the ordinance, including injunctive relief, declaratory relief, writ of mandate in the Superior Court of the State of California to enforce this Ordinance and attorneys' fees. Individuals subject to the use of Controlled Equipment in violation of this Ordinance may institute proceedings in the Superior Court of the State of California against the City of Berkeley and shall be entitled to recover actual damages (but not less than liquidated damages of one thousand dollars (\$1,000.00) or one hundred dollars (\$100.00) per day for each day of violation, whichever is greater). Violators of the ordinance may result in consequences that may include retraining, suspension, or termination, subject to due process requirements and applicable City policies.

### FINANCIAL IMPLICATIONS

Staff time.

### ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

### CONTACT

Councilmember Kate Harrison  
kharrison@cityofberkeley.info | 510-981-7140

### ATTACHMENTS:

1. Ordinance

Annotated by PRC Officer  
to show all changes from  
version PRC submitted  
to Public Safety Policy  
Committee Nov. 2, 2020

ORDINANCE NO. -N.S.  
ADDING A NEW CHAPTER 2.100 TO THE BERKELEY MUNICIPAL CODE  
REGULATING POLICE ACQUISITION AND USE OF CONTROLLED  
EQUIPMENT

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

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

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

**Sections:**

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

**2.100.010 Name of Ordinance**

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

**2.100.020 Definitions**

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

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

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

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

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

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

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

- (4) Aircraft, vessels, or vehicles of any kind, whether manned or unmanned, with attached or mounted weapons.
  - (5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive in nature. Items designed to remove a lock, such as bolt cutters, small gauge frangible rounds, or a handheld ram, are excluded from this policy.
  - (6) Firearms of .50 caliber or greater.
  - (7) Ammunition of .50 caliber or greater.
  - (8) Specialized firearms, including the Colt M4, and associated ammunition of less than .50 caliber, as defined in Sections 30510 and 30515 of the California Penal Code.
  - (9) Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, "bean bag," rubber bullet, or specialty impact munition (SIM) weapons, and equipment used to disperse chemical agents.
  - (10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.
  - (11) Explosives, pyrotechnics, such as "flashbang" grenades, and chemical weapons such as "teargas," CS gas, pepper spray, and "pepperballs".
  - (12) Batons 30 inches or longer in length.
  - (13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, and water cannons and the Long Range Acoustic Device (LRAD).
  - ~~(a) Only LRAD as an area denial tool shall trigger the reporting requirements of this ordinance.~~
  - (14) Any other equipment as determined by a majority of the City Council to require additional oversight.
- (B) "City" means any department, agency, bureau, and/or subordinate division of the City of Berkeley.
- (C) "Controlled Equipment Impact Statement" means a publicly released, written document that includes, at a minimum, all of the following:
- (1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.
  - (2) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.
  - (3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.

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

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

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

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

(D) Except as provided below, "Deployed" means to utilize or employ Controlled Equipment for a deliberate purpose in the presence of members of the public, or during any operation or critical response. "Deployed" shall not mean an officer merely wearing a piece of Controlled Equipment on their belt or elsewhere on their person.

(1) Batons 30 inches or longer in length shall only be deemed "deployed" when used for management or control of crowds.

(2) The LRAD shall only be deemed "deployed" when used for a purpose other than to convey lawful verbal instructions.

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

(EF) "Police Accountability Board" means the body established by Charter Article XVIII. The Police Review Commission, established by Ordinance No. 4,644-N.S., as amended, shall serve any and all functions and duties set forth by this chapter before and until they are transferred to the Police Accountability Board pursuant to Charter Article XVIII.

*moved from 2.100.040 (D)*

*new*

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

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

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

(A) Restrictions Prior to Submission and Approval

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

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

(b) Seeking funds for Controlled Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(c) Acquiring Controlled Equipment either permanently or temporarily, including by borrowing or leasing.

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

(e) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Controlled Equipment.

(B) Submission to Police Accountability Board

(1) At least 15 days prior to any public meeting to consider the adoption of any Controlled Equipment Use Policy or Controlled Equipment Impact Report, the Use Policy and Impact report shall be published for public review.

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

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

(C) Criteria for Police Accountability Board Recommendations

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

(a) The Controlled Equipment is needed, <sup>[despite available alternatives]</sup> ~~and there is no practicably available alternative equipment which is not Controlled Equipment that is sufficient for the purposes.~~

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

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

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

<sup>[to avoid them proactively]</sup> ~~detected~~

(D) Temporary Use in Exigent Circumstances

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

(a) Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state or federal law;

(b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Section 2.100.040; and

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

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

(1) The Police Accountability Board shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy, and notify the Police Department of its recommendations.

(2) The Police Accountability Board shall present its recommendations to City Council.

(3) Failure by the Police Accountability Board to make its recommendation on a proposal within ninety (90) days, or thirty (30) days in instances where the proposal is subject to a time-sensitive grant application, of submission shall enable City Staff to proceed to the City Council for approval of the proposal.

(F) Police Accountability Board Review of Prior Recommendations

(1) The Police Accountability Board shall determine, as part of its annual Work Plan, whether to include the review of any Controlled Equipment use policy in the coming year.

(2) A Police Accountability Board recommendation to City Council that a prior approval be revoked shall be presented to Council. If City Council does not act on such a recommendation within four (4) City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment.

(G) Review Process for Previously-Acquired Equipment

(1) The Police Department shall have one year from the date of passage of this Ordinance to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval if the Department wishes to continue the use of Controlled Equipment acquired prior to the passage of this Ordinance. If the Department fails to do so, it must cease use of such equipment.

Definition of exig. circs. moved to .020 E

(2) To ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of such Controlled Equipment, and the Police Accountability Board shall consider this ranking in determining the order in which to perform its review.

(H) City Council Approval Process

(1) After the Police Accountability Board review requirements have been met, the Police Department shall schedule for City Council consideration the proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy, and include Police Accountability Board recommendations, at least fifteen (15) days prior to a public meeting.

(2) If the City Council does not approve such item within four (4) regular City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment until such review and approval occurs.

**2.100.050 Reports on the Use of Controlled Equipment.**

(A) Annual Report on Controlled Equipment

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

\* deleted  
[for any  
Controlled  
Equipment  
not included  
in a VOF  
report]

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

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

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

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

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

(B) Compliance or Revocation of Approval

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

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

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

**2.100.060 Enforcement.**

(A) Remedies for Violations of this Ordinance

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

**2.100.070 Transparency**

(A) Disclosure Requirements

(1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

(2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary.

**2.100.080 Whistleblower Protections.**

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

**2.100.090 Severability**

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

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



Lee, Katherine

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**From:** Lee, Katherine  
**Sent:** Tuesday, April 13, 2021 12:42 PM  
**To:** Lee, Katherine  
**Subject:** Working link for article about traffic enforcement in Berkeley

Dear Commissioners,

You may have had a problem with the link forwarded from Comm. Calavita, which was in an article in a NextDoor post. Here is the direct link to the article..

-Kathy

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

----- Forwarded Message -----

**Subject:**reform  
**Date:**Tue, 13 Apr 2021 12:11:15 -0700  
**From:**Kitty Calavita <[kccalavi@uci.edu](mailto:kccalavi@uci.edu)>  
**To:**Kitty Calavita <[kccalavi@uci.edu](mailto:kccalavi@uci.edu)>

<https://www.kron4.com/video/police-traffic-enforcement-reform-in-berkeley/6527317>

