

Police Review Commission (PRC)

POLICE REVIEW COMMISSION REGULAR MEETING

Wednesday, June 23, 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 June 9, 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, 5th Floor, Berkeley, CA 94704 • Tel: (510) 981-4950 • TDD: (510) 981-6903 • Fax: (510) 981-4955
Email: prc@cityofberkeley.info Website: 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)

Update from Comm. Calavita on Steering Committee for police chief recruitment (2 minutes)

6. PRC OFFICER'S REPORT (3 minutes)

Status of complaints; other items.

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

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

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

Report of activities and meeting scheduling for all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Outreach Subcommittee (See Item #10.a.)
- b. Lexipol Policies Subcommittee.

9. OLD BUSINESS (discussion and action)

- a. Consider making recommendations to the new Police Accountability Board about improving the process for handling complaints against officers. (10 minutes)
(See also materials in June 9, 2021 agenda packet.)
- b. Whether Commissioners may be allowed to observe police officers being trained and, if not, whether to take further action. (5 minutes)
- c. Update on transition to new Police Accountability Board and Office of Director of Police Accountability. (5 minutes)
- d. Commendation of BPD officers for their acts in capturing a fleeing suspect on April 30, 2021. (5 minutes)
(To be delivered.)
From: Commissioner Calavita

10. NEW BUSINESS (discussion and action)

- a. Review results of online survey regarding the public's knowledge and opinions about the PRC, for transmitting to the Police Accountability Board. (10 minutes)
(To be delivered.)
From: Outreach Subcommittee

- b. Thoughts on Berkeley Police Department's accounts of implementing the Use of Force policy. (5 minutes)
From: Comm. Mikiten

11. CLOSING REMARKS FROM COMMISSIONERS AND PRC OFFICER ON THE OCCASION OF THE END OF THE POLICE REVIEW COMMISSION (15 minutes)

12. PUBLIC COMMENT (time TBD)

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

13. ADJOURNMENT (1 minute)

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Communication Access Information (A.R. 1.12)

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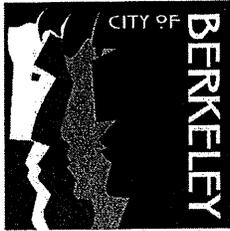
SB 343 Disclaimer

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

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

**PRC REGULAR MEETING ATTACHMENTS
JUNE 23, 2021**

<u>MINUTES</u>	
June 9, 2021 Regular Meeting Draft Minutes.	Page 7
<u>AGENDA-RELATED</u>	
Item 9.a – Recommendations to the new Police Accountability Board (PAB) to improve the process for handling complaints against officers, by Comm. Leftwich.	Page 11
Item 9.a – Recommendations to the new Police Accountability Board (PAB) to improve the process for handling complaints against officers, by Comm. Mikiten.	Page 13
Item 9.d. – Email and news release re April 30, 2021 incident and involved officers.	Page 15
Item 10.b. – Letter from Comm. Mikiten re Tension around the Implementation of Use of Force policy.	Page 19
<u>COMMUNICATIONS</u>	
6-9-21 email from Interim Chief Louis, re BPD staff statistics.	Page 23
6-13-21 email from Chair Ramsey, re vaccination for high-risk workplaces.	Page 25
6-15-21 Information Item, re Update on the Implementation of FIP Task Force Recommendations, from Interim Chief Louis.	Page 29
6-7-21 email from Comm. Calavita, re Skinner’s SB 16.	Page 37



DRAFT

POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(draft)

Wednesday, June 9, 2021, 7:00 P.M.

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

1. CALL TO ORDER & ROLL CALL BY CHAIR RAMSEY AT 7:01 P.M.

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

Absent: None

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Interim Chief Jen Louis, Lt. Robert Rittenhouse, Lt. Mel Turner, Sgt. Sean Ross (BPA)

2. APPROVAL OF AGENDA

Motion to approve the agenda with the following changes: Hear Item #9.e. before item #9.a., followed by Item #10.a.

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

3. PUBLIC COMMENT

There was 1 speaker.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of May 26, 2021

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

5. CHAIR'S REPORT

Chair Ramsey reported:

- Council approved the slate of nominees for the Police Accountability Board, which included 5 members of the PRC and 4 other individuals.
- PRC finishing up its business as it will be phased out shortly.

Comm. Mizell reported on the Reimagining Public Safety Task Force:

- Next meeting is tomorrow at 6 p.m. Will hear from Chief Louis and from NICJR re new and emerging models of public safety.
- The survey re a new paradigm for public safety closes on June 15.

6. PRC OFFICER'S REPORT

The PRC Officer reported:

- One new complaint filed since the last meeting, but investigation on hold due to pending criminal case. BOI [Board of Inquiry] hearing scheduled for July 2; thanks to Comms. Calavita, Chang, and Mizell for agreeing to serve.
- On June 15, Council plans to recognize the PRC Commissioners, as the last commissioners to serve. Will be a ceremonial matter which is early in the agenda.
- Final version of the Controlled Equipment Ordinance is in the agenda packet.

7. CHIEF OF POLICE'S REPORT

Interim Chief Louis reported:

- Addressing question from last meeting re crime prevention. Data analysis showed chronic thefts at convenience stores. Officers being outside or walking through the business, or parking outside helped limit crime. Also, Marina crime up, especially at night. Responded with more patrols and more signage re no overnight parking. Led to recovery of guns in vehicles parked overnight there.
- Will be participating with Councilmember Taplin at a June 23 community event at San Pablo Park; responding to recent shooting there.
- Staffing: 1 of the 4 persons accepted into academy has rescinded. Some tenured officers in background for other agencies; a handful of officers planning to retire. 11 sworn personnel off duty due to injury. At risk of falling behind 157 preferred staffing level. Actively monitoring.
- City budget process underway. Personnel & training Sgt is putting together fair & impartial training sessions for entire dept. August & September; budgeting extra \$150K for next year.

Interim Chief Louis answered questions from Commissioners.

8. SUBCOMMITTEE REPORTS (discussion and action)

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

- a. Outreach Subcommittee -- extend term. Co-chair Calavita reported 216 responses to survey so far. Survey open until June 16.

Motion to extend the term of both the Outreach and Lexipol Policy Subcommittees.

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

- b. Lexipol Policies Subcommittee – extend term. Co-chair Mikiten reported that the last 3 policies are on tonight’s agenda.

9. OLD BUSINESS (discussion and action)

- a. Consider making recommendations to the new Police Accountability Board about improving the process for handling complaints against officers.
(Heard following Item #10.a.)

(Discussed; to be continued to the next meeting.)

- b. Lexipol policies for review and approval.

Lexipol	G.O.	Title
324	P-29	Media Relations
804	R-23	Records Maintenance and Release
337	D-21	Biological Samples

Motion to accept Policy 337, Biological Samples.

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

Motion to table Policy 324 and forward it to the Police Accountability Board with written comments.

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

Motion to table Policy 804 and forward it to the Police Accountability Board with written comments.

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

- c. Whether Commissioners may be allowed to observe police officers being trained and, if not, whether to take further action.

(Discussed; to be continued to the next meeting.)

- d. Update on transition to new Police Accountability Board and Office of Director of Police Accountability.

The PRC Officer gave a report and answered questions.

- e. Extent of hate crimes tracking in the City of Berkeley and BPD response to recent anti-Asian hate crimes.

(Heard following Item #8.)

Interim Chief Louis and Lt. Turner gave a presentation and answered questions.

10. NEW BUSINESS (discussion and action)

a. Recruitment process for Chief of Police

i. Presentation from Human Resources Department.

Presentation made by HR Director LaTanya Bellow and HR staff Tamberlyn Crayton and Kevin Sledge.

ii. Select representative from PRC to serve on steering committee for Police Chief selection.

Motion to nominate Commissioner Calavita to serve on the steering committee for police chief selection

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

b. Review and approve certificate of appreciation for former Commissioner George Perezvelez, for 14 years of service on the PRC.

Motion to approve the revised draft from Chair Ramsey with one addition, to add "outstanding" before "leadership" in the first sentence.

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

c. Commendation of BPD officers for their acts in capturing a fleeing suspect on April 30, 2021.

Motion to postpone this item to the next meeting

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

11. PUBLIC COMMENT

There were 2 speakers.

12. ADJOURNMENT

Motion to adjourn the meeting

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

The meeting was adjourned at 9:28 p.m.

Lee, Katherine

From: Julie Leftwich <leftwichjuliet@gmail.com>
Sent: Wednesday, June 16, 2021 3:12 PM
To: Lee, Katherine
Subject: Recommendations to the PAB

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hi Kathy,

Here are my additional suggestions:

- Review state statutes and case law to determine whether they prohibit a complainant from receiving copies of the subject officer's statement, witness officers' statements or the report of the investigation. If no legal prohibition exists, these materials should be provided to the complainant as a matter of basic procedural fairness and due process.
- Review the process for drafting and finalizing BOI rulings. Staff currently is responsible for drafting the rulings (which, in my experience, works well), but Commissioners only have one opportunity to review the draft and make suggestions, and do not ever see the comments of other Commissioners, if any, or the final ruling. I understand this practice arose out of a concern regarding possible Brown Act violations, but I believe the process should be reconsidered since it prevents an open dialogue and possibly a clear consensus about the rulings, and because it lacks transparency. For example, what if another Commissioner completely disagrees with one of my suggestions? I would want to know that and have a chance to reconsider the suggestion or try to persuade the other Commissioner about its value. I also want to know what other Commissioners have suggested.
- Consider focusing on the development of community policing and other activities to improve the relationship between the Police Department and the public (e.g., informal gatherings like barbeques or baseball games, delivering holiday turkeys or toys to select neighborhoods, having Easter egg hunts, etc.).

As I mentioned at our last meeting, regarding my initial third suggestions (about the categories of findings), rather than saying they're "unworkable," let's say that they are "confusing and difficult to apply."

Finally, regarding my initial first suggestion (more about procedural fairness), please tweak it so it says "Officers are allowed to question the complainant and observe our questioning of the complainant, but the complainant is not allowed to question the officer or observe our questioning of the officer. This practice seems fundamentally unfair and should be changed unless it is mandated by state statute or caselaw."

Thanks!

Julie Leftwich
leftwichjuliet@gmail.com

Lee, Katherine

From: Elisa Mikiten <elisamikiten@mac.com>
Sent: Thursday, June 17, 2021 8:36 AM
To: Lee, Katherine
Subject: Comments on BOI

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear PAB,

The first thing I want newcomers to know is that staff investigator, Byron Norris, is your best resource. Mr. Norris is a deeply principled person who understands and successfully navigates the delicate work of complainant and officer interviews. He has penetrating insight into how this system works and why the integrity of the process is so vital. You will hear a lot of comments made about the complaint process. I hope you will rely on Mr. Norris to help you distinguish truth from fiction, and fact from opinion.

Second, I would like to see the context for BOI's established in the chairperson's opening statement. Officers and complainants alike deserve to know that what they say matters, and that their words can have impacts beyond the result of the BOI. For example, if you hear a complaint involving mental health, you might be motivated to advocate for 24/7 funding of the Mobile Crisis Unit, regardless of the BOI result. Complainants deserve to know that they can have that kind of impact.

Here's an attempt to put this into words:

"The PAB thanks everyone here for participating. We are here not just to make findings, but to learn something, and we always do. Your words matter, and they can have impact beyond the result of this hearing in our policies and practices."

Best of luck to you all,

Elisa Mikiten

Item # 9.d.

From: Schofield, Kevin M.
Sent: Thursday, June 03, 2021 10:59 AM
To: Norris, Byron <BNorris@cityofberkeley.info>
Subject: RE: Officer Commendation

Hi Byron-

An update...

The case number for this is 21-18993.

The involved officers are:

- Ofc. Stern #8
- Ofc. Michalczyk #9
- Ofc. Pickett #81
- Ofc. Breaux #15

Dispatch Supervisor Johnson was on the police radio during the incident as well.

Records will be pulling the case for you. If you haven't seen it, here is the helicopter footage.

(see aerial footage: <https://youtu.be/Gt3Z-EW7OsY>).

Kevin

BERKELEY POLICE DEPARTMENT

Police Department

Press Contact: Byron White, Public Information Officer, (510) 981-5780

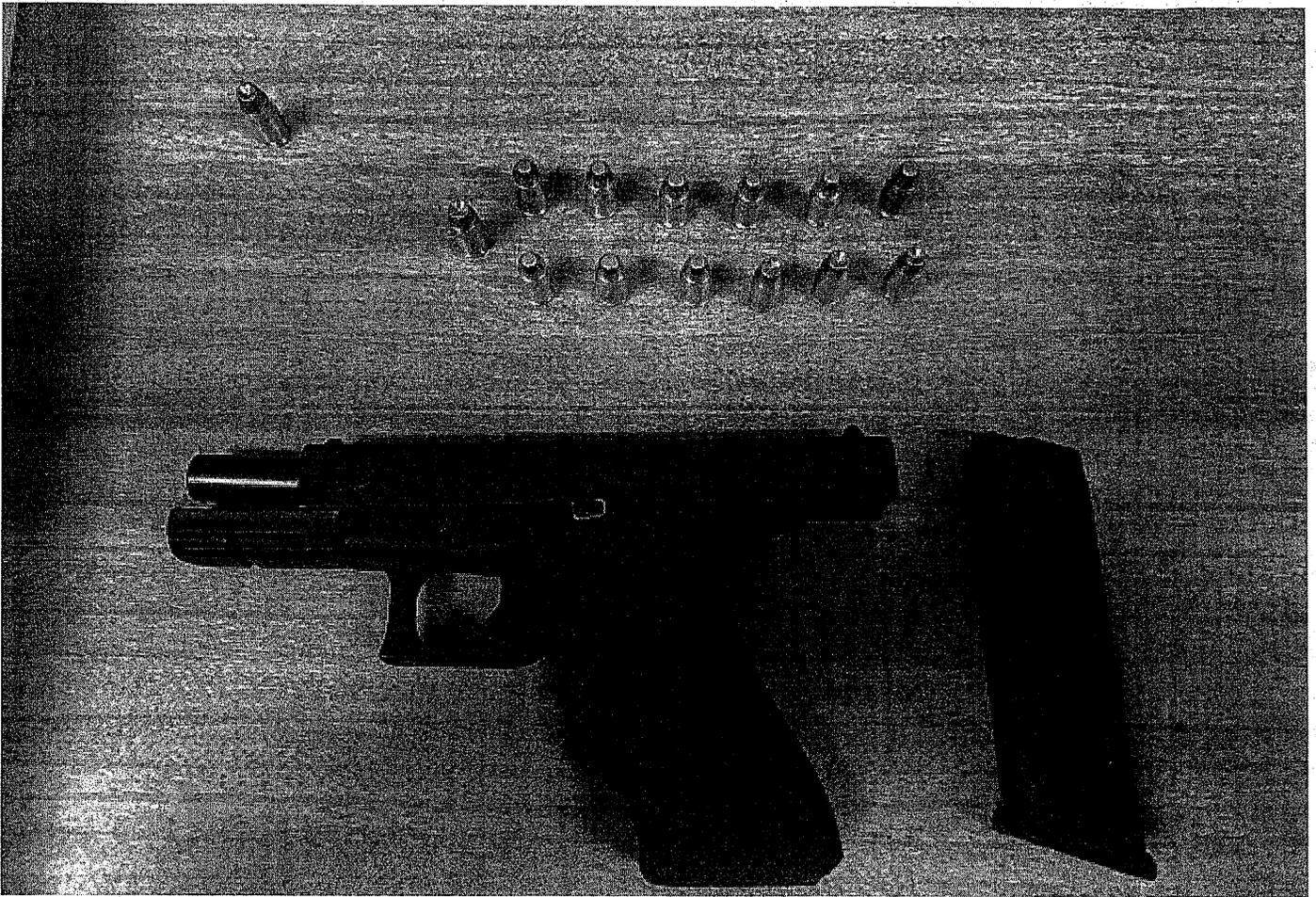
ARMED SUSPECT APPREHENDED IN THE SOUTH CAMPUS AFTER POLICE PURSUIT

Berkeley, California (Monday, May 03, 2021) - On April 30th at 3:16 pm, the Berkeley Police Department was notified of police pursuit entering the city from Highway 13. The Contra Costa County Sheriff's Office helicopter was following a suspect fleeing from a felony crime in the City of Antioch--read more (<https://fb.watch/5g9PFZT4nO/>).

The suspect in this case was believed to be headed toward an address in Berkeley and our allied agencies requested our assistance. After the suspect parked his vehicle in the area south of UC Berkeley campus, several officers responded to the area in search of the suspect—including BPD's Bike Force. Bike Force officers quickly spotted the suspect and chased after him as he ran from them on foot. When Bike Force officers caught-up with the suspect on Dwight Way, they were able to quickly take the suspect to the ground and restrain him in handcuffs (see aerial footage: <https://youtu.be/Gt3Z-EW7OsY>).

NOTE: In the video, you will also see that a loaded handgun dropped out of the suspect's fanny pack just as officers took him to the ground.

The suspect (a 23-year-old Berkeley man) was arrested on suspicion of resisting arrest and carrying a loaded firearm with a large capacity magazine.



Case 2021-00018993

###

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[Police Department](#), 2100 Martin Luther King, Jr. Way, Berkeley, CA 94704

Questions or comments? Email: police@cityofberkeley.info Phone: (510) 981-5900

(510) 981-CITY/2489 or 311 from any landline in Berkeley

TTY: (510) 981-6903

June 17, 2021

Dear Chair Ramsey and Commissioners,

There is obvious tension around the implementation of the Use of Force policy, and I encourage you to resolve it. I believe it is possible for you to reduce the tension without sacrificing the goals of Policy 300.

The two areas of tension are:

1. A requirement to use the minimum amount of force.
2. The amount of time supervisors are spending on reporting.

Minimum Force

Can we look at this through two lenses? Policy and context. Policy first.

I compared Berkeley's policy to Oakland's and to BART's. (I'm assuming that the policies posted on their websites are current.)

BART requires officers to "strive to use the minimal amount of force necessary," and details how that will be judged. The policy makes nuanced statements about reasonableness, and acknowledges that officers are required to make split second decisions.

Oakland's posted policy does not use the word "minimum," but discusses the concept of "reasonableness" in great detail.

BART and Oakland both state explicitly that 20/20 hindsight does not apply in a reasonableness test.

Berkeley requires officers to use "a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." Berkeley does not explicitly state that 20/20 hindsight does not apply in a test of reasonableness.

Why the tension around the word "minimum?" Certainly everyone—including officers—hopes to limit the use of force while safely resolving a situation for everyone involved. The tension must have something to do with officers' concern for how they will be judged after an event...that someone else with the benefit of time will determine a theoretical minimum and apply it to an officer's split second decision making. They must be concerned that the word "minimum" indicates a precise standard that cannot be ascertained in the field, but which they will be judged by after the fact.

When I listen to members of the Use of Force Subcommittee, I hear a different interpretation. I hear that *Graham v. Connor* sets the low bar beneath which a use of force is illegal, but that above that bar, there are a range of options for an officer's course of action. As I hear it, Subcommittee members are not asking officers to hit an absolute and precise minimum, but

rather to choose an option, when at all practicable, at the lower end of the range. If that's what you meant, it doesn't read that way, and it's not what the officers understand you to mean.

Context matters. We know that a sustained complaint can have serious career consequences for an officer. Communities are taking action to prevent hires of officers with sustained complaints, which means that it is critically important for Berkeley officers to feel that our standard is achievable. Right now, I think they believe that sustained complaints under Policy 300 are inevitable because a precise minimum cannot be determined in the field under the conditions and time pressure that they work under.

Meanwhile, PRC members say that if there is a problem with Policy 300, the BPD needs to "convince us" to change it. But friends, you are difficult to convince. Several of you are attorneys, and you're skillful in debate. I myself rarely feel that I can convince you of anything. But there is a difference between failing to convince and being wrong. I am probably failing to convince you right now, but I am not wrong. Police officers are not attorneys, and I watch them fail to make their point over and over again in the context of PRC and Council hearings, which are nearly impossible to navigate, especially in the current political heat.

If there is a problem with Policy 300, I don't believe you can sit back and wait for the BPD to overcome the politics of a public hearing, convince you, and (even harder) convince the City Council. I think you have to reach toward them and take responsibility not just for the details of the policy, but for the context it has created. I think that if this situation is going to be improved, you are the ones who will have to lead. You are the ones who can convince the City Council.

Consider, if you have a boss who doesn't understand you, how long to you stay trying to fix your boss? Not long, because no one employer means that much. You quit your job. That is happening here. That is the context I want you to consider. That is the context I hope you will address before our community pays the price.

I don't have a resolution for you. My hope is that you will understand that this rift is serious, and do what you can to heal it. Perhaps that is to reassure the BPD that the language is not intended to create a standard that can't be met. Perhaps it's to add language about how these things will be judged. Maybe it's to actually change the language of Policy 300 in a way that preserves your intent while communicating to officers that you understand the realities of the job.

Supervisor Time on Reporting

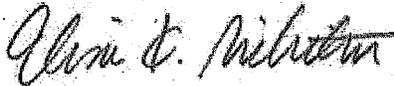
This seems easier to address. Our officers are a limited resource, and we need to consider how they can best serve this community. Watching body cam footage for Level 1 uses of force seems unnecessary, especially footage from multiple cameras. As a use of force, this footage is required to be retained for a minimum of two years plus one month. My suggestion is that you clarify for command staff that they can spot check body cam footage, but that reviewing it fully is not required for Level 1 reporting unless there is a complaint.

I also suggest that you eliminate the requirement to document the names and addresses of every witness of a Level 1 reporting event.

Those two changes would reduce the Blue Team reporting time substantially, while preserving the benefits of reporting. Both could be accomplished without changing the Use of Force policy. (Policy 300 is silent on review of body cam footage.) Perhaps the BPD could simply send you a memo regarding those two administrative practices, and you could simply accept it, or take no action and consider that an acceptance.

Best of luck to you all.

Sincerely,

A handwritten signature in black ink, appearing to read "Elisa Mikiten". The signature is written in a cursive, flowing style.

Elisa Mikiten
Your (soon-to-be-former) Colleague

cc: City Manager, City Council, Interim Chief of Police

Lee, Katherine

From: Louis, Jennifer A.
Sent: Wednesday, June 9, 2021 8:14 PM
To: Lee, Katherine
Cc: Louis, Jennifer A.
Subject: Information for PRC

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Officer Lee,

Here is the information that I promised to send over. I am sorry I didn't have it right in front of me to share, but I wanted to make sure the details were accurate

1. Number of officers eligible to retire:

The Police Department currently has seventeen (17) sworn officers that are eligible to retire. There are six (6) more sworn officers that will be eligible to retire within the next year - and five (5) more shortly thereafter. This does not include sworn officers that are currently undergoing background investigations to be hired with other agencies.

2. Statistics regarding separations and hiring: (this information was shared with the Budget and Finance Subcommittee last month)

- a. 2020: Separations = 15, hires = 9, Highest annual staffing level = 161
 - i. Separations due to retirement (11), failure to complete training (1); resignation or lateral (1), other (2)
- b. 2019: Separations = 14, hires = 24, Highest annual staffing level = 169
 - i. Separations due to retirement (6), failure to complete training (3), resignation or lateral (5), other (0)
- c. 2018: Separations = 17, hires = 17, Highest annual staffing level = 159
- d. 2017: Separations = 24, hires = 16, Highest annual staffing level = 159

3. I will work on getting an updated report on time spent completing blue team use of force reports, to include mean and median average time spent

Thanks

Jen

Jen Louis
Interim Chief of Police
Berkeley Police Department

Follow us on:



Lee, Katherine

From: Ismail Ramsey <izzy@ramsey-ehrllich.com>
Sent: Sunday, June 13, 2021 10:22 AM
To: Lee, Katherine
Subject: PRC Packet addition

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S.F. to require vaccination for high-risk workplaces <https://www.sfchronicle.com/health/article/S-F-to-require-vaccination-for-high-risk-16242557.php>

Izzy Ramsey
Ramsey & Ehrlich LLP
510-548-3600

<https://www.sfchronicle.com/health/article/S-F-to-require-vaccination-for-high-risk-16242557.php>

S.F. to require vaccination for high-risk workplaces, stricter rules for indoor mega-events

Aidin Vaziri

June 11, 2021 Updated: June 11, 2021 7:02 p.m.

Comments

San Francisco will require proof of COVID-19 vaccination for employees at hospitals, skilled nursing homes, residential care facilities, shelters and jails, and will go beyond state safety requirements for indoor events with more than 5,000 attendees, according to a new health order posted Friday.

The city will align with most of California's safety rules when the state eliminates pandemic restrictions Tuesday, with some notable exceptions.

"We want to protect vulnerable populations most at risk if they become infected with COVID," said Dr. Susan Philip, the city's health officer. "If there are staff in those settings that are unvaccinated, it could have a very devastating impact."

The vaccination requirement for those high-risk workplace settings will go into effect 10 weeks after the first COVID-19 vaccine gets full approval from the U.S. Food and Drug Administration, which city officials expect will happen later this summer. The vaccines are now available, thanks to an emergency use authorization by the FDA.

Staffers in the high-risk workplace settings will have to be vaccinated or produce a letter from a clinical provider saying they have a medical exemption. The city will also allow an exception for those who sign a form citing religious or deeply held personal beliefs against vaccination. Those who are exempted will have to undergo weekly coronavirus testing.

In the meantime, the health department is focusing its outreach on employees in those settings in the hopes of boosting vaccination rates.

“We want there to be very few people who these orders impact,” Philip said.

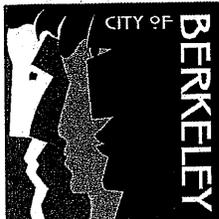
Under the city order, businesses will no longer be required to enforce social distancing, submit safety plans to the city or encourage office employees to work remotely. People who are vaccinated won’t have to wear a mask in many indoor settings. The state has yet to set masking rules for workplaces.

One area in which the city will be stricter than what the state allows is in so-called mega events indoors, those with more than 5,000 people. The state is allowing people to self-attest that they are vaccinated — essentially, an honor system — but San Francisco will go further.

Organizers of large sporting events, concerts and conferences will have two options: If they accept self-attestation, all attendees will be required to wear masks. If they verify that all attendees are vaccinated or have tested negative for the coronavirus, those who have received their shots can remove their face coverings.

“The pandemic is still active and raging in so many other parts of the world,” Philip said. “Because of that and because San Francisco is such an international destination, we’re going to be a little more strict.”

Outdoor events will not be subject to the new requirements.



Office of the City Manager

INFORMATION CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Update on the Implementation of FIP Task Force Recommendations

INTRODUCTION

The Berkeley City Council referred the recommendations from the Mayor's Fair and Impartial Policing (FIP) Task Force to the Berkeley Police Department for implementation.

CURRENT SITUATION AND ITS EFFECTS

This report provides the first quarterly update on the implementation of the Task Force recommendations from the February 23rd, 2021 City Council Special meeting. The Police Department was asked to implement the recommendations provided by the FIP Task Force.

On May 13, 2021 the City Manager and I met with the Mayor, Councilmember Harrison, additional staff and many of the FIP Task Force members. The current progress towards implementation described below was shared and discussed at this meeting. BPD is committed to continued collaboration with, and feedback from, the Task Force as we move towards full implementation.

The implementation of the FIP Task Force recommendations is a priority of the Berkeley Police Department. Lieutenant McGee of the Community Services Bureau and Sergeants Ledoux and Lee of the Professional Standards Bureau have been assigned to oversee the project of implementing the recommendations. The following outlines the Task Force recommendations and the respective progress:

Implement a New Evidence-Base Traffic Enforcement Model

- Focusing the basis for traffic stops on safety and not just low-level offenses &
- Minimize or de-emphasize as a lowest priority, stops for low-level offenses

A working group has been established comprising of employees working in every division of the Berkeley Police Department and a representative of the Berkeley Police Association leadership. The working group is tasked with identifying what low-level offenses are applicable while balancing the necessity of traffic safety and the Berkeley Vision Zero initiative. Additionally, the working group will look to identify any mitigating

factors such as grant eligibility, or conflicts with existing MOUs. The working group will meet minimally biweekly and will present recommended policy language as well as analysis of risk or unintended outcomes of implementation no later than the next quarterly update to Council in Fall of 2021.

Status: In progress

- Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects.

The Police Department is establishing a precision based policing model that considers data and public safety. This model aims to reduce the number of stops that studies have shown had minimal impact on public safety.

Data driven-tools that enables close to real-time dashboard tracking of calls for service demands have been provided to the Community Services Bureau and Patrol Watch Commanders. This tool provides crucial data that assist Area Coordinators and Watch Commanders explore different deployment strategies.

The Police Department is working to provide data-driven tools to patrol officers to incorporate into their daily briefings and to train officers to collect data in a comprehensive manner. The goal is to have data-driven approaches to violence prevention programs and real time crime and call analysis for patrol deployment strategies.

Status: In Progress

- Reaffirming and clarifying that the Berkeley Police Department will only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.

Penal code 13519.4 is existing California law that prohibits racial profiling. Policy 401 (Fair and Impartial Policing) also prohibits racial profiling.

Section 401.2 explicitly states, "Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities..."

The above policies were reviewed in light of the task force recommendations and found to affirm and clarify police officer responsibilities in stops.

Status: Completed

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;
Existing Berkeley Police general order E-13 (Early Warning System) is being amended and a draft of new language is being crafted by a working group comprised of several employees. Anticipated completion date: August 2021

Status: In progress

- 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;
Policy 311 (Search and Seizure) will be amended to create a section requiring written consent for searches. A revised written consent form has been drafted and is pending further review. Anticipated completion date: August 2021

Status: In progress

- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole;
Refer to Policy 311. On 02/10/21 sections 311.5 and 311.6 were modified to reflect the above limitations to warrantless searches. The above policies were reviewed and modified in line with the task force recommendations.

Status: Completed

- Address Profiling by Proxy (PAB Policy Development, Dispatcher Training);
The Communications Center Operation Manual has been amended to address, in writing, profiling by proxy. All dispatchers have reviewed the amended manual and are instructed to be cognizant and screen for profiling by proxy calls. BPD intends to continue to educate and train dispatchers, officers and all departmental employees on how to identify and address biased based reporting.

Status: Completed

- Fire racist police officers identified through social media and other media screens;
The following existing policies dictate procedures for investigating employees in this area; these policies adhere to due process and Government Section 3300:

Policy 1029 (Employee Speech, Expression and Social Networking) provides accountability to employee personal social media posts. Section 1029.4(b) states "Speech or expression that, while not made pursuant to an official duty, is significantly link to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, or reputation of professionalism of the Berkeley police Department or its employee.

PR 232 (Controversial Discussion), PR 235 (Acts –Statements-By employees), PR 238 (Organizational Membership), and PR 250 (enforcement of Law, Impartiality) are also policies that provide accountability for any racist behaviors.

The above policies were reviewed in light of the task force recommendations found to provide necessary authority to investigate allegations of racism. Departmental policy clearly identifies discrimination based upon a person's race as misconduct, and requires reporting and prompt investigating of any allegation of racism. Any employee who becomes aware of or observes any discrimination on the basis of a protected class is required to notify a supervisor by the end of their shift or within 24 hours if they are off duty.

Status: Completed, however the BPD is committed to continuing to explore additional methods to identify and address potentially racist behaviors or actions by our members.

- Require regular analysis of BPD stop, search, and use of force data;
The Open Data Portal (ODP) is a public facing website that gives the public access to police data and is accessible through the City's website. This allows for open and independent analysis and review to foster police accountability and transparency.

ODP is operational and the data is updated approximately every 60 days. The data that is provided to ODP includes calls for service, arrests, bookings, and stop data (RIPA) which is updated monthly.

The Police Department is in the process of expanding the call for service dataset to include all types of calls and eliminate the 180 day time range that currently exist to allow for searches several years into the past. Anticipated completion date is dependent on the technological needs and contract process as this dataset is updated, but work is anticipated to be completed within six months.

Amendments to Berkeley Police general order E-13 (Early Warning System) will further address this recommendation.

Status: Partially completed

- Make resources on police-civilian encounters more publicly available such as through RAHEEM.org;
- For any individual detained, BPD officers shall provide a business card with information on the commendation and complaint process with the Police Accountability Board and the Berkeley Police Department, Internal Affairs Bureau.

A new business card has been drafted with information on the commendation and complaint process that includes a QR code to the Police Department Internal Affairs website. This business card is pending review.

Pending the approval and arrival of new business cards, the Berkeley Police Department has printed approximately 3000 labels for officers to affix on the backside of existing business cards containing the phone numbers to Internal Affairs and the Police Review Commission. The label also contains a QR code to the Berkeley Police Department's website containing information on how to file a complaint through Internal Affairs and PRC as well as a link to resources on police-civilian encounters. This website will be designed to ensure broad accessibility and ease of use for all members of our community, including those whose primary language may not be English.

Officers are being instructed to provide business cards to all detained individuals, and these instructions will be memorialized in Policy in the near future. All future BPD business cards will have the aforementioned printed on the backside of cards.

Berkeley Police Department is ready to modify the labels to include the link for the survey that's being created by the Reimagine Public Safety Task Force, and once completed BPD can quickly print new labels for officers to hand out as outlined in this recommendation. Anticipated completion date: June 2021

Status: Partially completed

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.

Lieutenant McGee's work on the Reimagine Public Safety Task Force is on-going and no formalized systems are in place at this time.

Status: In Progress

- Conduct a baseline community survey

A community survey from the Reimagine Task Force is imminent. The City has contracted with the National Institute for Criminal Justice Reform (NICJR) to devise, disseminate, and subsequently analyze the survey. An additional community survey is being prepared specifically tailored to the Specialized Care Unit and covering topics around law enforcement engagement with mental health related calls.

Status: In progress

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

- BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;

The police department released the data in December of 2020

Status: Completed

- Fund and implement a specialized care unit for mental health crises;
The City has contracted with a consulting firm who has already started work on this project.

Status: In progress

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

The City's Auditor's report was recently released which analyzed Computer Aided Dispatch data.

Status: Partially completed

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

- Refer to the Police Review Commission

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).

- The Police Department will be collaborating with the City Manager to determine the best use for the budget allocation in aiding our implementation process of these recommendations
- Refer to the Budget Office/City Manager

BACKGROUND

On February 23, 2021 the Berkeley City Council voted unanimously to implement of the recommendations from the Mayor's Fair and Impartial Policing Task Force. The Police Department has begun implementing the recommendations. The Police Department has committed to quarterly progress updates on the movement towards the implementation of the recommendations.

Sgt. Lee and Sgt. Ledoux have been assigned to coordinate and track the implementation of the recommendations. Both sergeants have established a working group that consists of employee from every division/unit and a representative from the Berkeley Police Association leadership. Lt. McGee is participating on the Reimagine Public Safety Task Force. Meetings with the Reimagine Public Safety and working group will continue to further implement the remaining recommendations.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

The Police Department will continue to work toward the full implementation of the Task Force recommendations.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Staff time and additional training time to be determined at a later date.

CONTACT PERSON

Jennifer Louis, Interim Chief of Police, (510) 981-5700

Attachments:

1: Berkeley Police Policy 401

[https://www.cityofberkeley.info/uploadedFiles/Police/Level_3 -
General/401%20Fair and Impartial Policing\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/401%20Fair_and_Impartial_Policing(1).pdf)

2: Berkeley Police Policy 311

[https://www.cityofberkeley.info/uploadedFiles/Police/Level_3 -
General/Search and Seizure.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Search_and_Seizure.pdf)

3: California Legislative Information

[https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§
ionNum=13519.4.](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=13519.4)

4. Berkeley Police Policy 1029

[https://www.cityofberkeley.info/uploadedFiles/Police/Level_3 -
General/1029%20Employee Speech Expression and Social Networking.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/1029%20Employee_Speech_Expression_and_Social_Networking.pdf)

5. Berkeley Police Regulation Chapter 2

[https://www.cityofberkeley.info/uploadedFiles/Police/Level_3 -
General/PR%20Ch2_08Mar17.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/PR%20Ch2_08Mar17.pdf)

Lee, Katherine

From: Lee, Katherine
Sent: Monday, June 7, 2021 12:01 PM
To: Lee, Katherine
Subject: FW: Skinner's SB 16

Dear Commissioners:

Please see below from Comm. Calavita.

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

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

From: Kitty Calavita <kccalavi@uci.edu>
Sent: Monday, June 7, 2021 11:32 AM
To: Lee, Katherine <KLee@cityofberkeley.info>
Subject: Skinner's SB 16

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hi Kathy:

Could you please forward the following to PRC Commissioners? Thanks. Kitty

Skinner's SB 16 has passed the Senate and is on to the Assembly. It would expand access to records on officers who have engaged in biased or discriminatory behavior, unlawful arrests and searches, and excessive force.

