

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

POLICE ACCOUNTABILITY BOARD REGULAR MEETING

**Wednesday, October 27, 2021
7:00 P.M.**

Board Members:

ISMAIL RAMSEY, CHAIR
MICHAEL CHANG, VICE-CHAIR
KITTY CALAVITA

REGINA HARRIS
JULIE LEFTWICH
DEBORAH LEVINE

NATHAN MIZELL
JOHN MOORE III
CHERYL OWENS

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 Accountability Board 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/82237902987>. 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 **822 3790 2987**. 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 (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 Board's jurisdiction at this time.)

The Police Accountability Board and Office of the Director of Police Accountability (ODPA) were created to provide independent civilian oversight of the Berkeley Police Department. They review and make recommendations on police department policies, and investigate complaints made by members of the public against police officers. For more information, contact the ODPA.

1947 Center Street, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

4. APPROVAL OF MINUTES (3 minutes)

Regular meeting of October 13, 2021.
(To be delivered.)

5. CHAIR'S REPORT (5 minutes)

Update from Board member Calavita on the Police Chief search.
Update from Board member Mizell on Reimagining Public Safety Task Force.

6. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT (5 minutes)

Status of complaints; other items.

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

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

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. Fair & Impartial Policing Implementation – met Oct. 21.
- b. Director Search.
- c. Regulations – next meeting Nov. 2 at 6:30 p.m.

9. OLD BUSINESS (discussion and action)

- a. Question to City Attorney's Office regarding the confidential memo on the obligation to meet and confer over provisions of the Interim Regulations for handling complaints against sworn officers: 1) whether the City Attorney can meet with the PAB in closed session to discuss the memo (10 minutes)
- b. Status of memo from City Attorney's office regarding lawful changes to hearing process to correct imbalances. (5 minutes)
- c. City Attorney conflict-of-interest issues. (10 minutes)
- d. Affirm or revise permanent Standing Rules for the Board's conduct of business. (10 minutes)
- e. Policy complaint – Determine how to proceed on policy Complaint #7. (10 minutes)

10. NEW BUSINESS (discussion and action)

- a. Revision of Policy 425, Body Worn Cameras, to broaden access by PAB and ODP. (15 minutes)
From: Board member Mizell

- b. Consider letter to Police Chief requesting that she appear before the PAB to give a detailed progress report on implementation of the City Council's mandates regarding Fair & Impartial Policing, and to request collaboration as the Early Intervention System policy is being developed. (10 minutes)
(To be delivered.)
From: Fair & Impartial Policing Implementation Subcommittee
- c. Training: CIT - An Officer's Experience With People in Crisis (1 hour)

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and take action on the following matter(s):

- 11. **CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE OF COMPLAINT #3** (continued from Oct. 13, 2021 meeting)
- 12. **CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE OF COMPLAINT #8** (continued from Oct. 13, 2021 meeting)
- 13. **CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE OF COMPLAINT #9**

End of Closed Session

- 14. **ANNOUNCEMENT OF CLOSED SESSION ACTION** (1 minute)
- 15. **PUBLIC COMMENT** (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.)
- 16. **ADJOURNMENT** (1 minute)

Communications Disclaimer

Communications to the Police Accountability Board, 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 or in person to the Board Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the Board Secretary for further information.

**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 Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5th Floor, Berkeley, CA.

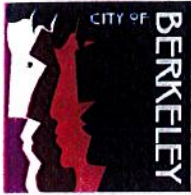
Contact the Director of Police Accountability (Board Secretary) at dpa@cityofberkeley.info

**POLICE ACCOUNTABILITY BOARD (PAB)
REGULAR MEETING ATTACHMENTS
OCTOBER 27, 2021**

<u>MINUTES</u>	
October 13, 2021 Regular Meeting Draft Minutes <i>(to be delivered)</i>	
<u>AGENDA-RELATED</u>	
Item 8. – Police Accountability Board Subcommittee list updated 10-21-21.	Page 7
Item 9.d. –Standing Rules as approved October 13, 2021.	Page 9
Item 10.a. BPD Policy 425 – 1-31-2019 Body Worn Cameras.	Page 15
<u>COMMUNICATIONS</u>	
10-8-21 email to the Councilmembers from the Interim Director of Police Accountability re Correction regarding PRC sustained complaints, with attachments.	Page 27
10-10-21 Berkeleyside article: New Police oversight board now has broader powers for misconduct inquests.	Page 31
BPD Annual Update 2020 and First Half of 2021 – Oct. 19, 2021 work session.	Page 39
10-20-21 Berkeleyside article: Officials vow to increase police staffing, with available officers at historic low.	Page 67
BPD recruitment materials.	Page 71
Announcement re Oct. 20, 2021 Statewide Meeting on Racial and Identity Profiling.	Page 75
Police Accountability Board and Office of the Director of Police Accountability Interim Regulations, approved Oct. 5, 2021.	-

**POLICE ACCOUNTABILITY BOARD
SUBCOMMITTEES LIST
10-21-21**

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21	Calavita Chang Leftwich Owens <u>Public:</u> Kitt Saginor	Chang	Lt. Dan Montgomery
Director Search Formed 8-4-21	Levine Mizell Moore <u>Public:</u> Rivka Polatnick Marc Staton		
Fair & Impartial Policing Implementation Formed 8-4-21	Calavita Moore Owens Ramsey <u>Public:</u> George Lippman Elliot Halpern Jamie Crook	Calavita	Sgt. Peter Lee



Police Accountability Board

Standing Rules

Approved Oct. 13, 2021

A. PURPOSE

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

B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Board, except that the Board may not adopt rules that conflict with the enabling Charter amendment (Measure II) or the Commissioners' Manual.

C. AGENDA ITEMS – REGULAR MEETINGS

Individual Board members shall submit agenda items to the Board secretary by 12:00 noon one week before the meeting date.

D. COMMUNICATIONS

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

E. MEETING PROCEDURES

1. Items shall be introduced by the Board member or staff member who proposed the item. The Chair shall then allow an initial period for discussion by recognizing Board members in rotation to ensure that each Board member has the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of two minutes to speak each time they are given the floor.
2. After a motion on the item is made and seconded, the Chair will recognize the maker of the motion, and then the seconder, to speak. After that, the Chair will recognize Board members in rotation, giving each Board member the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of one minute to speak each time they are given the floor, and must confine their remarks to the merits of the motion. The Chair may give the maker of the motion an additional minute to speak before putting the matter to a vote.

3. A pending motion may be modified by a “friendly amendment”; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall repeat, or ask the Board secretary to repeat, the motion before the action.
5. Guest speakers who are not on the agenda may address the Board only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert’s Rules of Order.

F. PUBLIC COMMENT

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

G. POLICY COMPLAINTS AND REVIEWS

1. A request for the Board to review a BPD policy, practice, or procedure may be initiated by a member of the public by filing a policy complaint on form provided by the Office of the Director of Police Accountability, and is considered a “policy complaint.”
 - a) Policy complaints should be reviewed by staff and brought to the Board for discussion and action within 30 days of filing or the next regular meeting of the Board if the 30 days has expired.
 - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Board members may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the Board. The Board may accept the policy complaint upon a majority vote.
2. The Board may initiate a review of a BPD policy, practice, or procedure upon a majority vote.
3. a) For policy complaints or policy reviews, Board members shall then determine how to proceed. Possible actions include, but are not limited to: considering the issue as whole Board, assigning a Board member to research the issue, asking staff to investigate or research, or establishing a subcommittee. If a

subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full Board.

- b) The full Board may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action. Upon conclusion, a policy complaint shall be formally closed by a majority vote of the Board.

H. REGULAR MEETINGS

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

Regular meetings shall commence at 7:00 p.m., and shall be held at a location or locations as may be determined by the Board, or virtually via teleconference when allowed by an emergency order.

I. ELECTIONS

1. Elections shall be held during the second January meeting of each year. During the Board meeting preceding the election meeting, the election of the Chair will precede the election of the Vice-Chair, and the following nomination process will be followed for each office:
 - a) The presiding Chair declares the nomination process open.
 - b) A Board member nominates another Board member or themselves. A Board member must be present in order to be nominated.
 - c) The nomination is seconded (the nomination fails if there is no second)
 - d) The presiding Chair declares the nomination process closed, when there are no further nominations.
2. At the second January meeting of the year, the following election process will be followed for each office:
 - a) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
 - b) Board members pose questions to each candidate.
 - c) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
 - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
 - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.

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

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

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

K. MUTUAL AID AGREEMENTS

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

L. COMMENDATIONS OF BERKELEY POLICE DEPARTMENT PERSONNEL

1. The Board regularly receives copies of communications praising Berkeley Police Department (BPD) personnel for noteworthy service; these commendations are both external (from members of the public) and internal (from fellow BPD or City of Berkeley employees). This process shall be used when the Board desires to bestow additional recognition upon those BPD personnel, or when a Board member on his or her own initiative wants the Board to recognize BPD personnel.
2. The Board may commend or otherwise honor with a special award or recognition an individual sworn officer or civilian employee of the BPD, or a group of officers and/or employees of the BPD, such as a team or division.
3. The Board secretary shall agendize commendations the Board receives from the BPD periodically, as received. A Board member wishing to initiate a commendation or other honor from the Board shall submit the proposal to the Board secretary for placement on the Board agenda in accordance with Section C of these rules. The proposal shall include the name of the person or group to be honored, and a description of the noteworthy action.
4. For the Board to issue a commendation or other honor, the BPD officer, employee, or group must be found to have performed an extraordinary service or performed in an extraordinary manner that meets one or more of the following criteria:
 - a) Exceptional valor, bravery, or heroism;
 - b) Superior handling of a difficult situation;
 - c) An action or performance that is above and beyond typical duties;
 - d) Extraordinary compassion, empathy, or kindness.
5. A motion to commend or otherwise honor BPD personnel shall include the act or incident giving rise to the honor and describe how it meets the above criteria. The motion must receive a majority of affirmative votes of Board members present at the meeting to pass.
6. Following the meeting, the Board secretary shall communicate the Board's action in writing to the City Council, and shall also forward the commendation to the Chief of Police, with a request that the commendation or other honor be placed in the personnel file of each sworn officer or civilian employee commended.

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Body Worn Cameras

425.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

425.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

425.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.

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- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

425.5 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

425.6 SUPERVISOR RESPONSIBILITIES

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy

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(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

425.7 ACTIVATION OF THE BODY WORN CAMERA

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

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425.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

- (a) **Witnesses:** In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
- (b) **Victims:** Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
 - 1. **Domestic Violence Victims:** Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.
 - 2. **Child Abuse and Sexual Assault Victims:** Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.
- (c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (See Penal Code 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

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425.9 ACTIVATION IN CROWD CONTROL SITUATIONS

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

425.10 SURREPTITIOUS USE OF THE BWC

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

425.11 CESSATION OF RECORDING

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:

- (a) Discussion of tactical or confidential information with other law enforcement personnel.
- (b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.
- (c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
- (d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

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Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

425.12 EXPLOSIVE DEVICE

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

425.13 PROHIBITED USE OF BODY WORN CAMERAS

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

425.14 PROCESSING AND HANDLING OF RECORDINGS

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

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Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

425.15 RETENTION REQUIREMENTS

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

425.17 REVIEW OF RECORDINGS BY A MEMBER

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed

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the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

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425.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- (d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

425.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

425.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

425.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

425.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

425.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

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425.18.3 MEDIA

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

425.20 TRAINING REQUIRED

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.

Lee, Katherine

From: Lee, Katherine
Sent: Friday, October 8, 2021 5:13 PM
To: council@cityofberkeley.info
Subject: Correction regarding PRC sustained complaints
Attachments: BOI sustaineds 2016-2020.pdf; PRC complaints filed 2016 - 2020.pdf

Dear Honorable Mayor and City Councilmembers,

Thank you for your thoughtful deliberations this past Tuesday regarding the Police Accountability Board / Office of the Director of Police Accountability's Interim Regulations for handling complaints.

It's often hazardous to guess on the spot, and I want to make sure that you have an accurate response to questions that I was asked that evening about the number of sustained complaints. In fact, they have ranged from zero to 20% for the five years from 2016 – 2020. Please see the attached excerpt from the PRC's 2020 Annual Report.

I more accurately recollected the number of complaints filed. I've attached another excerpt from the 2020 Annual Report with that information.

PRC Annual Reports from 2001 to 2020 are archived and remain accessible [here](#).

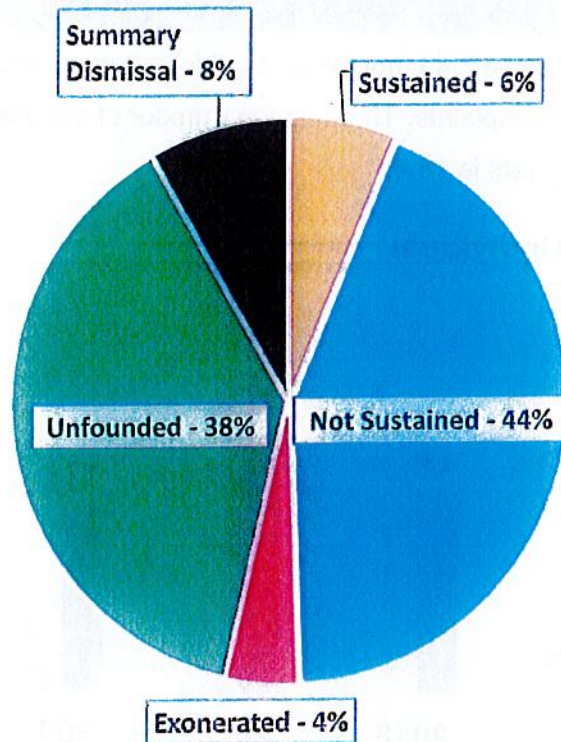
Sincerely,
Kathy

Katherine J. Lee
Interim Director of Police Accountability
City of Berkeley
1947 Center Street, 5th Floor
Berkeley, CA 94704
510.981.4960
Email: KLee@cityofberkeley.info
Website: www.cityofberkeley.info/dpa

*The Police Accountability Board and the Director of Police Accountability
replaced the Police Review Commission as of July 1, 2021*

BOARD OF INQUIRY FINDINGS

(Percentage by category, for the years 2016 – 2020 combined)



RATES OF “SUSTAINED” FINDINGS 2016 – 2020

The percentage of allegations sustained of the total number of allegations heard at a Board of Inquiry Hearing for 2016-2020 are shown on this table.

2020	1 of 8 allegations sustained	13%
2019	1 of 10 allegations sustained	10%
2018	2 of 38 allegations sustained	5%
2017	0 of 31 allegations sustained	0%
2016	2 of 10 allegations sustained	20%

DECISIONS ISSUED WITHIN 120 DAYS OF THE COMPLAINT

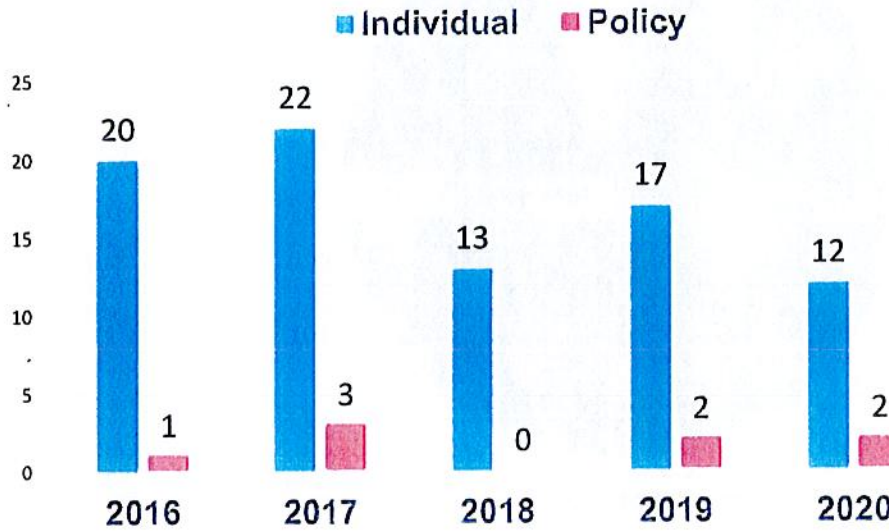
Of the two cases in which a BOI hearing was held in 2020, findings were issued within 120 days of the complaint date in both of them.



VII. STATISTICS 2016 - 2020

1. COMPLAINTS RECEIVED

In 2020, the PRC received a total of 14 complaints, of which 12 were individual complaints and 2 were policy complaints. The average number of complaints filed yearly over the past five years is 18.4.



COMPLAINTS RECEIVED	2016	2017	2018	2019	2020
Individual	20	22	13	17	12
Policy	1	3	0	2	2
Total	21	25	13	19	14

Berkeleyside

CITY

New police oversight board now has broader powers for misconduct inquests

In July, the city's new Police Accountability Board kicked off, replacing the longstanding Police Review Commission, which was formed in 1973.

By Emilie Raguso, Oct. 10, 2021, 4:46 p.m.



The Berkeley City Council on Zoom at its Oct. 5, 2021, meeting. Credit: Berkeleyside

Berkeley officials voted unanimously Tuesday to grant stronger authority to the new board that reviews police misconduct complaints.

In July, the city's new Police Accountability Board kicked off, replacing the longstanding Police Review Commission, which was formed in 1973 and is said to have been the first police oversight board in the nation with investigatory powers.

The creation of the new board — the PAB — was approved by 85% of the voters in November 2020 with Measure II. The new system pledged to provide people with more time to file complaints and grant the PAB more autonomy and authority.

But, although the board began meeting in July, it has been unable to review complaints against Berkeley police officers pending council approval of new interim rules for misconduct hearings. On Tuesday night, the City Council approved those new rules unanimously after a 2.5-hour discussion.

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The PAB currently has 10 complaints against officers pending, staff said, along with at least one policy complaint.

See the full Twitter thread of council highlights

Under the new rules, the PAB has twice as much time to complete investigations and notify officers of

discipline, 240 days rather than 120.

The new rules also lower the bar for finding that police misconduct did indeed occur, from the more stringent "clear and convincing" evidentiary standard to one that considers the preponderance of the evidence.

In recent years, under the Police Review Commission, allegations of police misconduct were sustained 9% of the time, according to the latest PRC annual report. There have been just two sustained allegations in the past two years. Both were for discourtesy.

There have been no sustained complaints in recent history regarding more serious violations such as excessive force, discrimination or improper stops and arrests. On average, the PRC received 18 complaints a year. (Each complaint generally includes numerous allegations.)



PAB Director Kathy Lee at a recent PAB meeting on Zoom. Credit: Berkeleyside

On Tuesday night, council members were charged with considering two versions of the new rules, one that was put forward by the PAB itself and another put forward by Interim PAB Director Katherine Lee.

The City Council ultimately adopted a version of the PAB rules — although officials put off the most contentious aspect of the proposal: whether a complainant, or their representative, can question an officer directly and be present for the officer's testimony. Under the old system that will continue, at least for now, the complainant cannot be in the hearing room aside from their own testimony.

Critics of the old rules said they created a one-sided process that put complainants at a disadvantage.

The board said it wants to “place the complainant and subject officers on equal footing with respect to asking questions and being present during the hearing,” adding, “However, the Board understands that the City Attorney's opinion is needed regarding whether the Board's proposal comports with state law and case law.”

On Tuesday night, Mayor Jesse Arreguín said he wanted to make the change but could not do so at this time

because it requires more legal analysis: “We cannot violate state law.”

The city attorney's office has provided a memo to council members and the PAB regarding the legal ramifications of the PAB proposal, but the city declined to release the document, despite a Public Records Act request from Berkeleyside, stating it is protected by confidentiality.

Council did adopt two other proposals from the PAB: extending the deadline to file complaints from 90 to 180 days and, perhaps more significantly, allowing witnesses to file complaints in addition to “aggrieved parties.”

On Tuesday night, council members clarified that language to limit witness complaints specifically to “percipient witnesses,” those with firsthand knowledge of events. During the discussion, Councilmember Susan Wengraf asked board members if they were concerned about the prospect of frivolous complaints flooding the process.

“It's important to keep the gates open here,” PAB Vice-Chair Michael Chang told her. “All people should have access” and be heard, he added.

“I think we need to keep the gates open,” Director Lee also said. “It would be incumbent upon staff to do their due diligence,” and maybe hire another investigator if need be, she said: “I'm willing to see how it will play out and to allow the complaints.”

With the adoption of the new rules, the board also gave itself more discretion to initiate investigations into alleged police misconduct — the results of which the board would ultimately also review.



PAB Director Kathy Lee with members of the Police Accountability Board and two Berkeley police officers at a recent meeting. Credit: Berkeleyside

“The Board further expanded their own ability to initiate an investigation, to do so upon a vote of five Board members,” according to Tuesday’s [staff report](#). “Previously the Board could initiate an investigation only in cases involving a death or if no complainant was available to file a complaint.”

But even in those cases where the board itself launches a probe, staff and PAB members said Tuesday, the board is charged with keeping an open mind and considering all the evidence collected by PAB staff and presented in hearings.



Chair Izzy Ramsey at a recent PAB meeting on Zoom. Credit: Berkeleyside

In those instances, the board would have a truth-seeking role, rather than advocating for a particular outcome, PAB Chair Izzy Ramsey told council Tuesday

night: “It would remain in its role as an... objective, independent factfinder.”

“The thought here is to have robust oversight,” he said.

“That’s not to say that we are going to run amok,” Chang said in agreement.

In response to a question from council, Chang said he was not aware of other city-level police oversight agencies with that sort of proactive investigative authority, but said it is common at state and federal levels and supported by “major case law and precedent.”

Ramsey said the PAB had been unanimous in its recommendations and that board members wanted “to establish legitimacy up front and to have a fair process.”

PAB Director Lee told council Tuesday that she was “not opposed to making the process more accessible and less intimidating for complainants” but had parted from the board in terms of process because the city attorney is still analyzing the legality of whether the complainant can remain in the room during misconduct hearings.

Lee said her goal with her version of the proposal was to get new rules on the books as quickly as possible so pending investigations could proceed.

The Berkeley Police Association, the union that represents officers, has not commented on the adoption of the new interim rules but some have said aspects of what the PAB wants to do could trigger a lawsuit.

The piece of the proposal regarding complainant questioning of officers and their presence during officer testimony is now slated to be debated during confidential “meet and confer” discussions between city staff and the police association, as governed by state employment law.

The association has said it cannot comment on these matters at this time on the advice of its attorney.

Berkeley’s Police Accountability Board has a budget of [\\$1.1 million](#), according to the current budget book, up from about \$770,000 for the PRC.

On Tuesday night, the City Council also approved a new lease with Motorola to purchase [updated radios for](#)

police and firefighters. (See Berkeleyside's Twitter thread for highlights of the radio discussion.)

Berkeley police reform timeline

June 9, 2020	City Council <u>permanently bans tear gas</u> use by BPD
June 30	Council <u> pares \$9 million</u> from police budget
July 14	Council approves ' <u>omnibus motion</u> ' on police reform
July 24	Council requires <u>more use-of-force reporting</u>
Oct. 21	Police launch <u>more robust data collection</u> about traffic stops
Oct. 27	Council votes in favor of <u>Ceasefire violence prevention</u> program
Feb. 10, 2021	Police adopt more <u>stringent rules</u> about searches
Feb. 18	Reimagining Public Safety Task Force <u>starts to meet</u>
Feb. 23	Council votes to <u>limit low-level traffic stops</u>
March 4	Police Chief <u>Andrew Greenwood</u> steps down
March 9	Police adopt <u>new use-of-force policy</u>
April 22	Auditor's office releases <u>calls for service analysis</u>
April 27	Council demands more data on " <u>militaristic</u> " police equipment
May 20	City launches <u>community survey</u> on police reform
June 1	Council <u>approves new Police Accountability Board</u> members
Oct. 5	Council approves interim rules for the PAB
Ongoing	Reimagining Public Safety Task Force and Police Accountability Board meetings; internal discussions about BerkDOT and the Specialized Care Unit

Note: Staff alerted Berkeleyside after publication that the rate of sustained complaints had been misstated during Tuesday's meeting. This story has been corrected with links to the data.

*Emilie Raguso is Berkeleyside's senior editor of news.
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Phone: 510-459-8325.*

Berkeleyside

OPINION

Opinion: Could cameras make Berkeley safer? Can we increase security and maintain privacy?

Adding cameras and license plate readers can offer more security but privacy issues must also be considered.

By Terry Taplin, Oct. 9, 2021, 8 a.m.

Public safety means different things to different people. The city's reimagining public safety process is explicitly designed to steer us through Scylla and Charybdis into a more peaceful future. So when I asked my appointee to the [Reimagining Public Safety Task Force](#), what the task force's conversations around gun violence had been like I was surprised to learn that there hadn't been much considering this year's [36 shootings](#) (up from 26 at this time last year).

A few weeks ago, late on a Saturday morning, [there was a shoot-out between people in two cars](#) near George Florence Park, my neighborhood park, which was recently renovated to upgrade the 2-5 and 5-12 play area. Families with young children, who were there to enjoy what is ostensibly a peaceful public space, scrambled to secure their loved ones and dive for cover. With the park fenced in on three sides, the only path to exit the park would have been out into the street, which is often used as a speedway for drivers avoiding San Pablo Avenue.

As I stood with my constituents in the park a few days later, listening to their stories of cowering in the park and hearing their frustration with the city's safety response in recent years, I wondered, "*are the needs and perspectives of the neighborhoods I represent being taken seriously?*" It is hard to answer this question in the affirmative when the response I get to any immediate public safety measures the City Council proposes is that my constituents should simply wait for the world to solve income inequality and that Berkeley should hire even more expensive consultants to continue reimagining.

The reimagining process is the city's multi-year effort to produce a new paradigm for public safety with varied

exchanges between communities, city staff, and consultants. But South and West Berkeley residents cannot be asked to simply wait a few years for our imagination to stop the violence happening now. My constituents frequently ask me what the city can do immediately to reduce gunfire — naturally, they are already familiar with the social determinants of crime and have had plenty of practice imagining life without them. Yet a speeding car or a gun can end those hopes and dreams in an instant. Imagining a better world is still an important task before us, but we also have to assess possibilities that are feasible today. The City Council's mandate as public servants requires immediate action. We have a commitment not just to ensure a better world for future generations, but also for you, right now.

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In 2020, Berkeley saw four lives lost due to [traffic violence](#) and more than 400 injuries. That same year saw a [66% increase](#) in vehicle thefts and over 400

catalytic converter thefts. Meanwhile, shootings are up for the fourth year in a row, with a 44% year-over-year increase in gunfire reported since late September. And let's not forget that behind each number is a person's story. This year, the adult children of Latitia Ahmad saw their mother killed right before their eyes when a speeding motorist struck her on Ashby Avenue. Earlier this year, Jackie Erbe's young child saw her struck and almost killed by a vehicle at the same intersection where she had just been advocating for safety improvements. An unidentified man was found dead in a crosswalk on Adeline Street, apparently struck by a hit-and-run driver. The city's long-term efforts to develop and implement holistic reparative justice goals do not conflict with our mandate to hold the perpetrators of violence accountable. Indeed they are both complementary aspects of the same mandate we have as public servants: to do no harm, and uphold justice for all.

Cameras will not be a panacea to end crime, but with the Berkeley Police Department at historically low staffing levels, and automated speeding cameras and civilian traffic enforcement both preempted by state law, the city government's options to fulfill its public safety mandate are limited. With 283 private citizens and businesses voluntarily registering their security cameras with the Berkeley Police Department, it's incumbent upon us to ensure we can provide some of the same safety tools for the general public, in public spaces. Moreover, following a shooting or other violent crime committed in one's neighborhood, some may not feel comfortable sharing private security footage with the BPD out of fear of retaliation for cooperating with law enforcement. Isolation makes our neighborhoods vulnerable; connection makes us resilient.

Nevertheless, I also believe in strong privacy rights. After all, what is privacy if not one of many freedoms that guarantee our safety? The government should not be privy to your grocery shopping, religious worship or political activities. But I also believe that driving a several-ton vehicle is a privilege, not a right, that comes with certain responsibilities to protect public safety, and holding citizens to those commitments is a far cry from Big Brother. As the saying goes, your right to swing your fist ends where it meets my face — and you can bet a truck hurts more than a fist. Moreover, I believe pedestrians and other road users deserve the right to *be protected* from cars that are *already on wanted lists* by the use of automated license plate readers (ALPRs). That's

right — your license plate wouldn't even be matched to a name unless your car was already associated with a list of stolen vehicles or open warrants.

Some criticisms of several council proposals hold that rather than enforcing public safety more effectively with modern technology, we should be focusing instead on root causes of social unrest — systemic racism, poverty, inequality, and disinvestment. While I also work to address these interrelated social ills in my capacity as a councilmember, it's pretty clear focusing exclusively on these long-term visions is not an adequate substitute for recovering stolen vehicles or getting ghost guns and other illegal firearms, meth, and other substances off our streets. We can and must do all of the above. I am strongly in support of developing a community-based Ceasefire program, modeled after successful programs in Oakland and Richmond. I support fully funding Berkeley's Vision Zero Plan so that our streets are engineered to promote slower, safer driving and save lives. I also support greater investments in community intervention programs such as Voices Against Violence, Berkeley Youth Alternatives, and Waterside Workshops. I strongly support developing a Specialized Care Unit and investing in the mental health and crisis intervention services that already exist and that we currently struggle to maintain.

Protecting the safety of road users by holding drivers responsible for the social contract they sign up for when obtaining a license is hardly an intrusion into civil liberties — it is the bare minimum your public servants should be doing to uphold them.

But it's also worth noting that Vallejo, a neighboring city with a growing Black population, including members of my own family who chose to leave Berkeley for elsewhere, saw a 140% increase in the detection of stolen vehicles after introducing automatic license plate readers (ALPRs) while limiting data retention of unmatched scans to 30 days. That's a real material gain for lower-income communities: fewer residents getting their car stolen when they need to get to work on time to pay their bills. It's worth underscoring that both things can be true: Black people are harmed by systemic racial injustice and inequality, and having one's primary mode of transportation stolen is also not a pleasant experience for any person trying to get to work on time.

When Black and Indigenous pedestrians are killed at a higher rate than white pedestrians, and drivers with a suspended or revoked license are 2.2 times more likely to cause a collision, we can immediately see how the lack of enforcement for basic traffic safety laws has a disproportionately negative impact on people of color. As we work to reimagine public safety institutions, we cannot lose sight of the current-day material reality: failure to enforce laws fairly and effectively is *in itself a form of disinvestment* that hurts marginalized communities. The City Council's public safety committee is discussing a measure to authorize the city manager to install automatic license plate readers "at strategic locations including public facilities, entrances to the city and strategic intersections in areas impacted by violent crime, traffic violations, illegal dumping, drug offenses, and other criminal activity." Data retention would be limited.

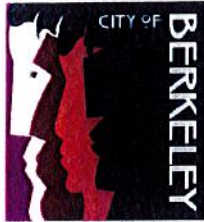
We do not yet live in a world where the rules establishing a peaceful society are imposed entirely by the gentle hand of positive incentives, voluntary cooperation, or sheer altruism. Unfortunately, we do

live in a city where lawless violence — with cars and guns as the weapons of choice — has a disparate impact on Black and Brown communities and disinvested neighborhoods. If you can empathize with the generational trauma in the Black community, it shouldn't be too hard to also empathize with Black people getting their cars stolen or hit or run over in crosswalks. Believe me, we're not fond of those indignities either.

I'm confident that there's no shortage of vision and imagination in our community when it comes to ideas for a safer city. For many, Berkeley is a symbol of peace and love. It's long past time for us to actually invest in making that symbol a reality for everyone.

Correction: A reference to Vallejo's vehicle theft statistics were originally misstated in the story. That has been fixed.

Terry Taplin is a West Berkeley native, former transportation commission vice-chair, and is the Berkeley City Councilmember representing District 2.



Office of the City Manager

WORKSESSION
October 19, 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: **BPD Annual Update: 2020/First Half of 2021 Crime Report; Council Referrals/Reporting: Use of Force, Stop Data (RIPA report), Hate Crime Response and Reporting; Departmental Personnel Report: Hiring, Recruitment and Staffing and Fair and Impartial Policing recommendations implementation**

INTRODUCTION

At the request of City Council, the City Manager provides regular reports on crime in Berkeley. This report includes 2020, and the first six months of 2021 Part One crime information. This work session will also provide updates on several Council referral items.

CURRENT SITUATION AND ITS EFFECTS

CRIME REPORT

In 2020, total Part One crime in Berkeley decreased by 11% overall. Part One Violent Crime decreased by 13% (81 crimes) and Part One Property Crimes decreased by 11% (738 crimes). In the first six months of 2021, total Part One crime in Berkeley decreased by 12% overall compared to the same timeframe in the prior year. Part One Violent Crime decreased by 10% (29 crimes) and Part One Property Crimes decreased by 12% (362 crimes).

Increases in Part One Crimes were seen in Aggravated Assault, Burglary, Auto Theft and Arson. Decreases were seen in Robbery, Sexual Assault and Larceny (Grand Theft, Petty Theft and Auto Burglary).

Homicides

Homicides increased from zero in 2019, to five murders in 2020. There were no homicides in the first six months of 2021.

Robberies

Robberies decreased by 26% with 274 incidents as compared to 369 in 2019. 2020 numbers reflect a decrease of 46% in pedestrian robberies and an increase of 23% in commercial robberies. There were 8 home invasion robberies which is twice as many as 2019. There were 5 bank robberies compared to 2 in 2019. There were 13 car jackings in 2020 which is one less than in 2019.

In the first half of 2021, Robberies decreased by 1% with 148 incidents as compared to 150 in the same timeframe in 2020. There was one bank robbery, five home invasions and nine car jackings in this time period.

Aggravated Assaults

Aggravated Assaults increased 20% in 2020, with 210 reports, compared to 175 in 2019.

Aggravated Assaults decreased 13% in 2021, with 96 reports, compared to 111 in the same timeframe in 2020.

Shootings

There were 40 confirmed shooting incidents in 2020 versus 28 in 2019. Confirmed shooting incidents include loud report calls where shell casings or other evidence of gunfire is found. Arrests were made in at least a third of these incidents.

There were 38 confirmed shooting incidents in the first nine months of 2021 versus 26 incidents in the same timeframe in 2020.

Rape

Reported rapes decreased 36% in 2020, with 47 reports as compared to 74 in 2019. Six of these cases were classified as stranger attacks. Reported rapes decreased 40% in 2021, with 25 reports as compared to 35 during the same timeframe in 2020.

Burglary, Larceny and Auto Theft

Burglaries increased by 3% in 2020, with 797 reports as compared to 771 reports in 2019. Residential burglaries increased by 8% while commercial burglaries decreased by 7%. Larcenies decreased by 21% to 3933 cases as compared to 4993 in 2019. The larceny figures which include Auto Burglaries, decreased 58% from 2473 cases in 2019 to 1042 cases in 2020. Auto Thefts increased 64% from 492 cases in 2019 to 805 in 2020.

Burglaries decreased by 15% in 2021, with 356 reports as compared to 419 reports during the same timeframe in 2020. Larcenies decreased by 22% to 1789 cases as compared to 2282 in 2020. Auto Thefts increased 52% from 339 cases in 2020 to 514 during the same timeframe in 2021.

Hate Crimes

In 2020 there were 12 incidents of hate crimes, up from 8 in 2019. In 2021, through September there were 28 reported incidents. Hate Crime numbers have increased in comparison to last year, and most of the reports continue to be categorized as crimes of intimidation (either by using slurs or by leaving graffiti) rather than crimes of violence.

Arson

Reported arsons increased from 17 reported incidents in 2019 to 52 reported incidents in 2020, an increase of 35. Reported arsons increased from 23 reported incidents in 2020 to 42 reported incidents in 2021, an increase of 19 incidents.

ADDITIONAL CRIME DATA

Data on serious crime is collected annually by the Federal Bureau of Investigation (FBI) from over 17,000 law enforcement agencies representing over 90% of the U. S. population. The FBI's primary objective in the Uniform Crime Report (UCR) is to generate a reliable set of crime statistics for use in law enforcement administration, operation, and management in the United States. The UCR tracks the following crimes:

Violent Crimes

Murder
Rape
Robbery
Aggravated Assault

Property Crimes

Burglary
Larceny (petty and grand theft, auto burglary)
Auto Theft
Arson*

**Arson is a UCR crime tracked separately from violent and property crime. It is included in the accompanying graphs.*

The UCR data provides the Berkeley Police Department the ability to analyze national and local crime trends, determine the effectiveness of response to crime, and conduct future planning and potential resource allocation. The FBI UCR handbook discourages using UCR statistics to compare crime rates of one jurisdiction to another because of the complex variables affecting crime and crime reporting practices.

Attached as appendixes to this report are the annual totals of UCR data for Part One Violent and Property Crimes for 2020 in Berkeley, as well as ten-year trends in Part One Violent Crimes and Part One Property Crimes. Density Maps for Total Violent Crime, Total Property Crime, Robberies, Burglaries and Auto Burglaries are also attached.

COLLISION DATA

There were 589 traffic collisions in Berkeley in 2020, 316 injury collisions, 2 fatal collisions and 46 DUI collisions. Ashby Ave. and San Pablo Ave. had the largest number of collisions of any other intersection in the City. The most common cause of collisions has been unsafe speed followed by unsafe lane change, and right of way violations relating to failure to yield.

Traffic Collisions*

	2020	2021
Total Collisions	589	550
Injury Collisions	316	205
Fatal Collisions	2	5
DUI Collisions	46	38

Top Intersections

2020		2021	
Ashby Ave / San Pablo Ave	9	Ashby Ave / San Pablo Ave	9
MLK Jr Way / Ashby Ave	5	MLK Jr Way / Ashby Ave	6
Sacramento St / Ashby Ave	6	Ashby Ave / Shattuck Ave	5
7th St / Ashby Ave	5	Eastshore Hwy / Gilman St	5
Ashby Ave / Shattuck Ave	5	Sacramento St / Cedar St	5

Primary Causal Factors

2020		2021	
22350 VC (Speeding)	133	22350 VC (Speeding)	94
22107 VC (Unsafe lane change)	104	22107 VC (Unsafe lane change)	88
21800-21804 VC (Failure to yield)	82	21800-21804 VC (Failure to yield)	52
22106 VC (Unsafe starting or backing)	45	23152 VC (DUI)	38
21950(a) VC (Failure to yield to ped)	45	21950(a) VC (Failure to yield to ped)	16

Bike Collisions

2020	2021
Bike Collisions	67
Bike Collisions	69

Pedestrian Collisions

2020	2021
Pedestrian Collisions	63
Pedestrian Collisions	31

2020		2021	
22350 VC (Speeding)	14	21950 VC (Speeding)	19
21800-21804 VC (Failure to yield)	12	22450 VC (Stop at limit line)	8
22107 VC (Unsafe lane change)	8	21800-21804 VC (Failure to yield)	8

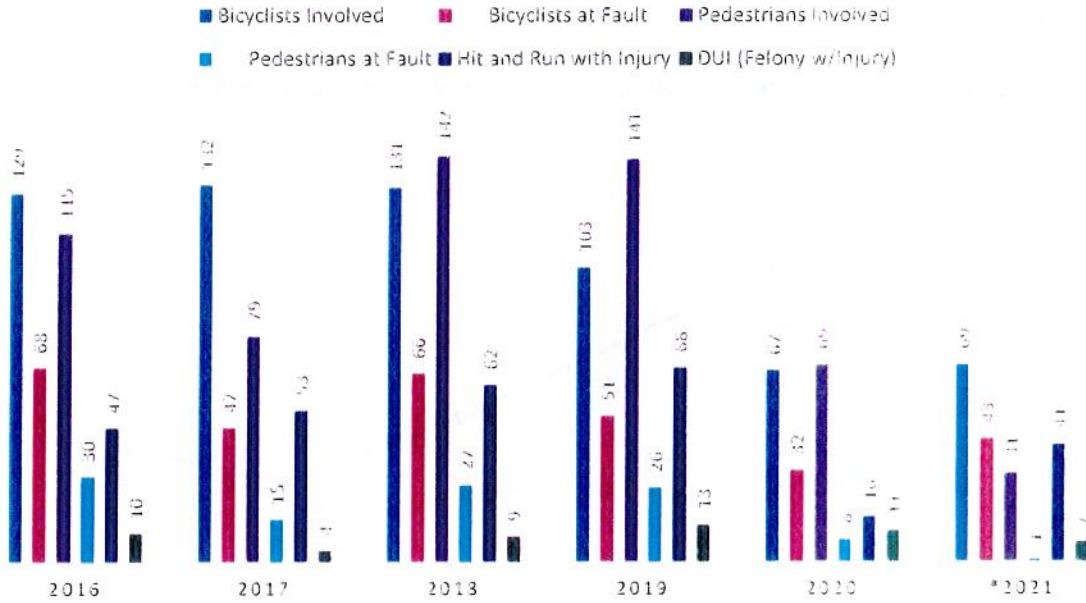
2020		2021	
21950 (a) VC (Failure to yield to ped)	45	21950(a) VC (Failure to yield to ped)	16
21950 (b), 21954 VC (Pedestrian safety)	6	23152 VC (DUI)	3
22107 VC (Unsafe lane change)	2	22107 VC (Unsafe lane change)	2

*2021 Data = January – October 1st

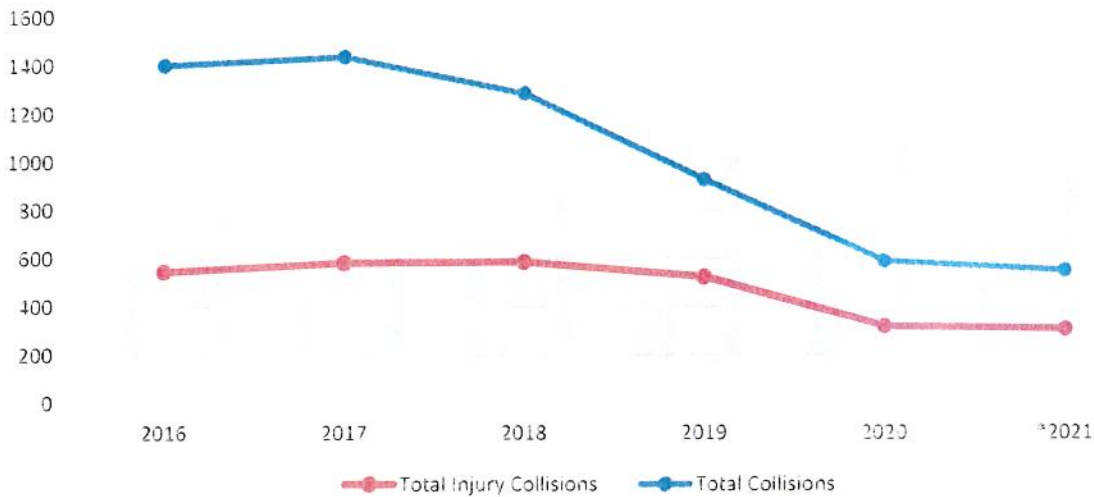


Bicycles were involved in 67 of the injury collisions and pedestrians were involved in 69. Right of way violations affected pedestrians in 51 of those collisions. The primary collision factor was found to be the bicyclist in 32 collisions, the pedestrian in 8 collisions and DUI in 46 collisions.

INJURY COLLISION TYPE

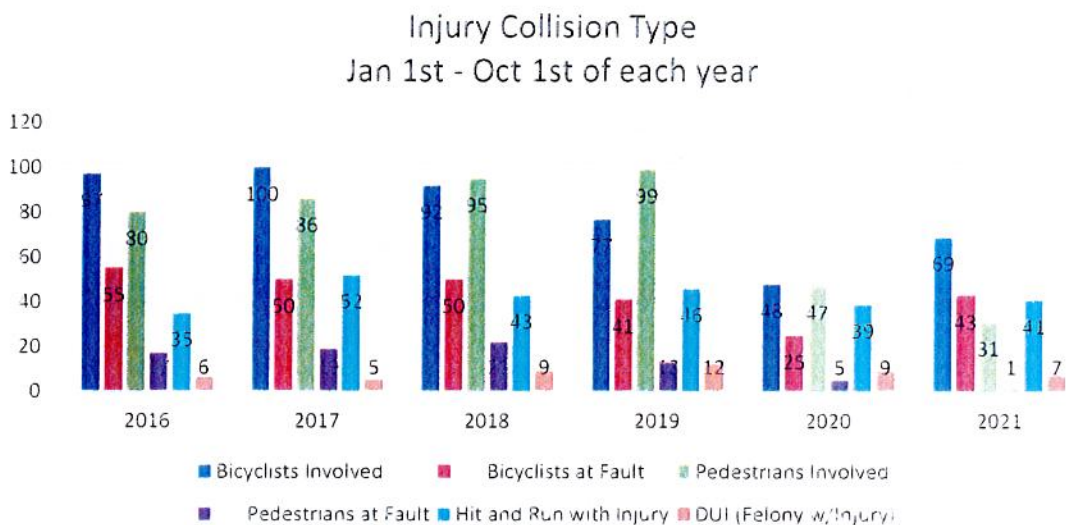
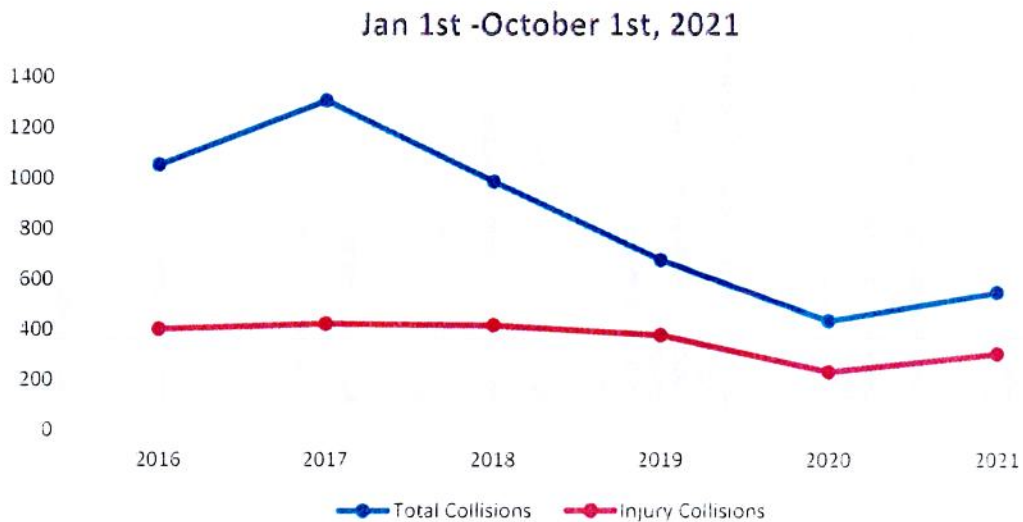


Total Annual Collisions (2021 data through Oct 1, 2021)



From January 2021 to October 1, 2021 there have been 550 traffic collisions, 305 injury collisions, 5 fatal collisions and 38 DUI collisions. Bicycles have been involved in 69 of the injury collisions and pedestrians have been involved in 31. Ashby Ave. and San Pablo Ave. has remained the intersection with the highest number of injury collisions in the City, and Ashby Ave. has been the location of 20 injury collisions this year. The top three primary collision factors remained unchanged from last year. The primary collision factor was found to be the fault of the bicyclist 43 times, where a pedestrian has been at fault one time. There have been 19 right of way violations that have caused injury to a pedestrian this year.

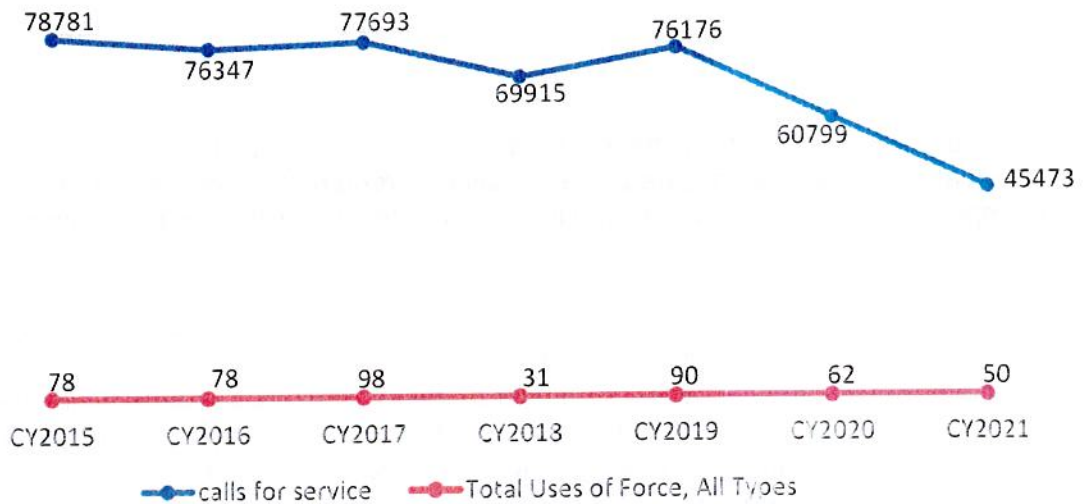
Berkeley is seeing an increase of pedestrian right of way and fatal collisions.



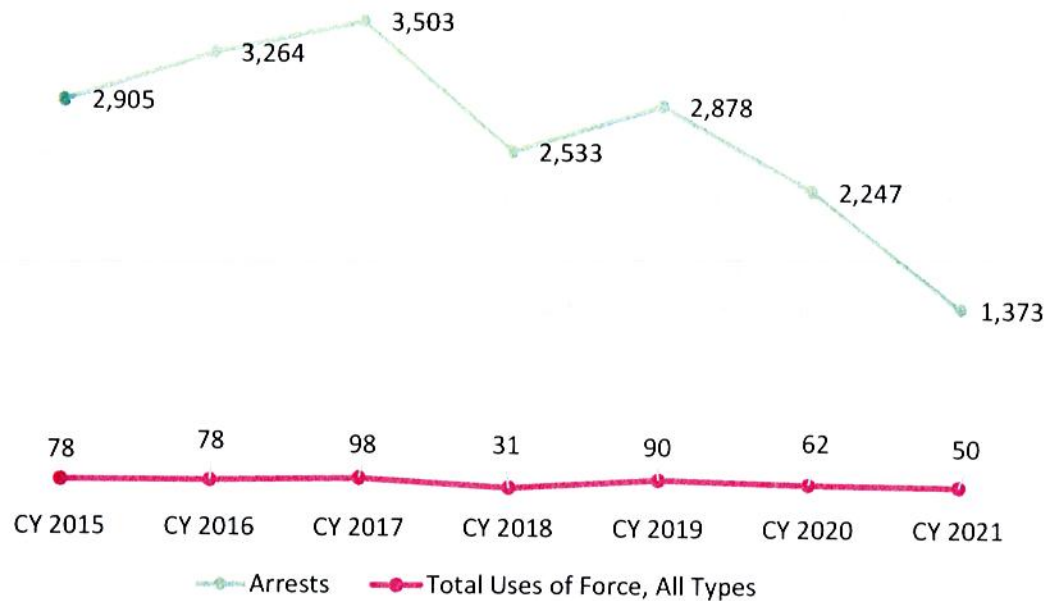
USE OF FORCE REPORT

Berkeley Police Department takes pride in our ability to accomplish our work with minimal reliance on force through approaches that include de-escalation techniques, as well as an awareness of mental health crisis issues and appropriate responses. The department reinforces these skills and strategies through regular training.

A review of the Berkeley Police Department's use of force statistics reflects a minimal reliance on force. Data covering January 2017 through September 2021 shows the department responded to an average of 72,738 calls for service per year and averaged 2,804 arrests. Under the department's prior reporting standards, there was an average of 75 uses of force per year.



*CY2021 covers Feb-Sep, 2021



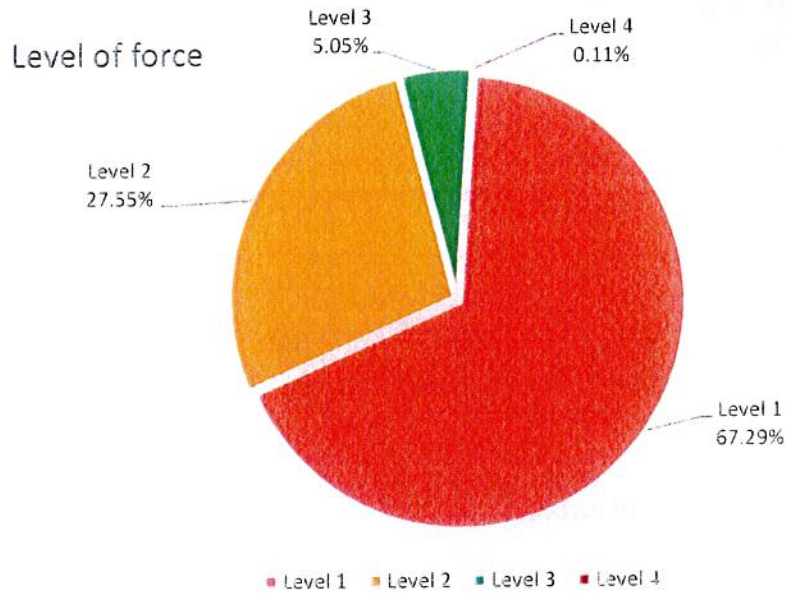
*CY2021 covers Feb-Sep, 2021

In February 2021, BPD transitioned to a new Use of Force Policy that had several substantial changes, that included a de-escalation requirement and an expanded use of force reporting standard. Under this policy, reportable force is delineated into the following four categories:

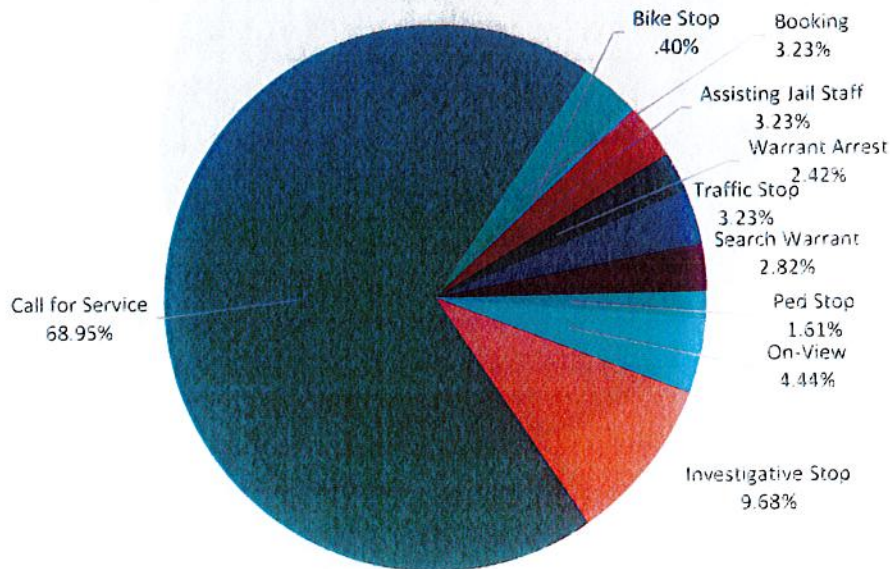
- Category 1 – Involves grabs, control holds, the use of leverage, or body weight with no injury or complaint of pain.
- Category 2 – Applies when an officer points or deploys a firearm while interacting with someone. It also applies to a Level 1 force that involves more than momentary discomfort but does not have an injury or complaint of pain.
- Category 3 – Parallels our old Use of Force reporting standard and involves the use of a weapon, subject injury, or complaint of pain. This category also applies to specific circumstances when an officer does not activate their body-worn camera.
- Category 4 – Applies when an officer uses a firearm or when there is an in-custody death.

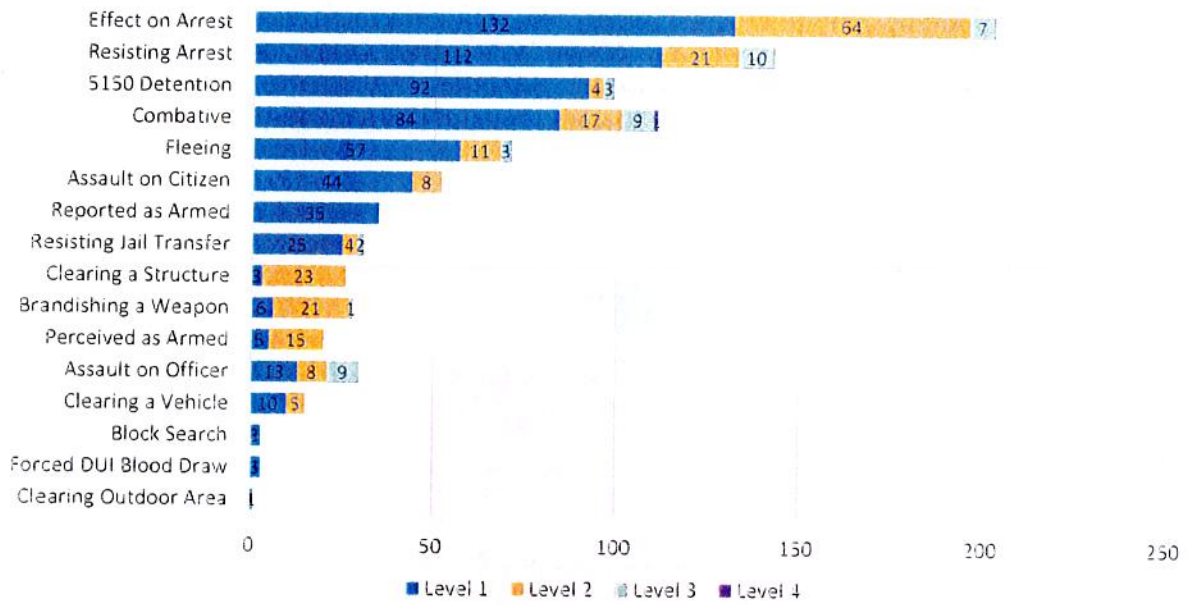
The department use of force policy requires officers to report uses of force to their sergeant, who documents these incidents in a formal report. In a given incident, more than one technique or type of force may be used to bring a resistant or combative individual into custody, and more than one officer may use force during the incident.

Under the new reporting standard, there were 248 incidents that involved 854 uses of force from February to October 2021. Of those, 67% were Level 1 uses of force, and 28% were level two. These two categories accounted for 95% of uses of force, demonstrating BPD officer's commitment to using minimal force when it is required.

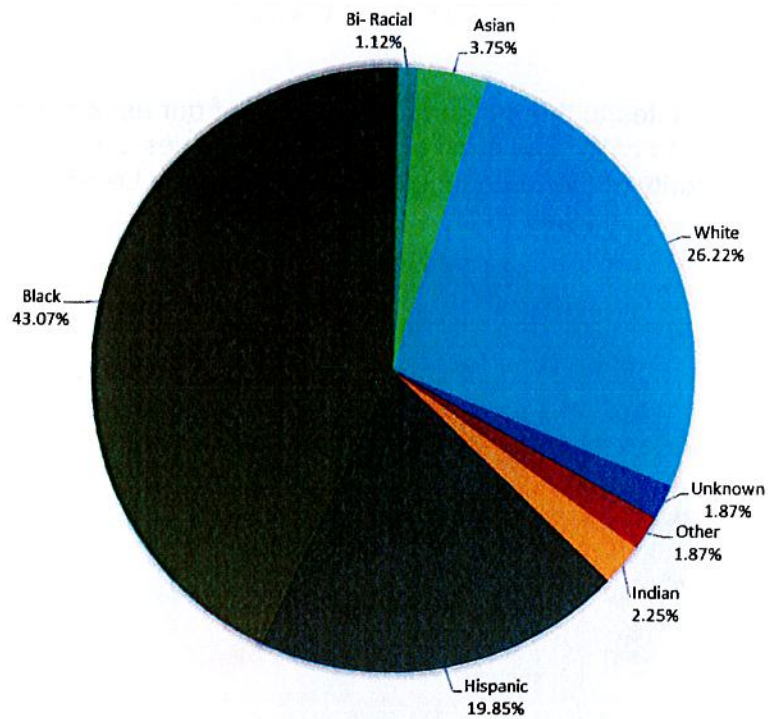


Another key takeaway relates to the fact that the majority of our uses of force occurred when officers responded to calls. The most significant categories involved arrests and detentions, with the majority of the force incidents falling into the Level 1 category.





Demographic breakdown of use of force:

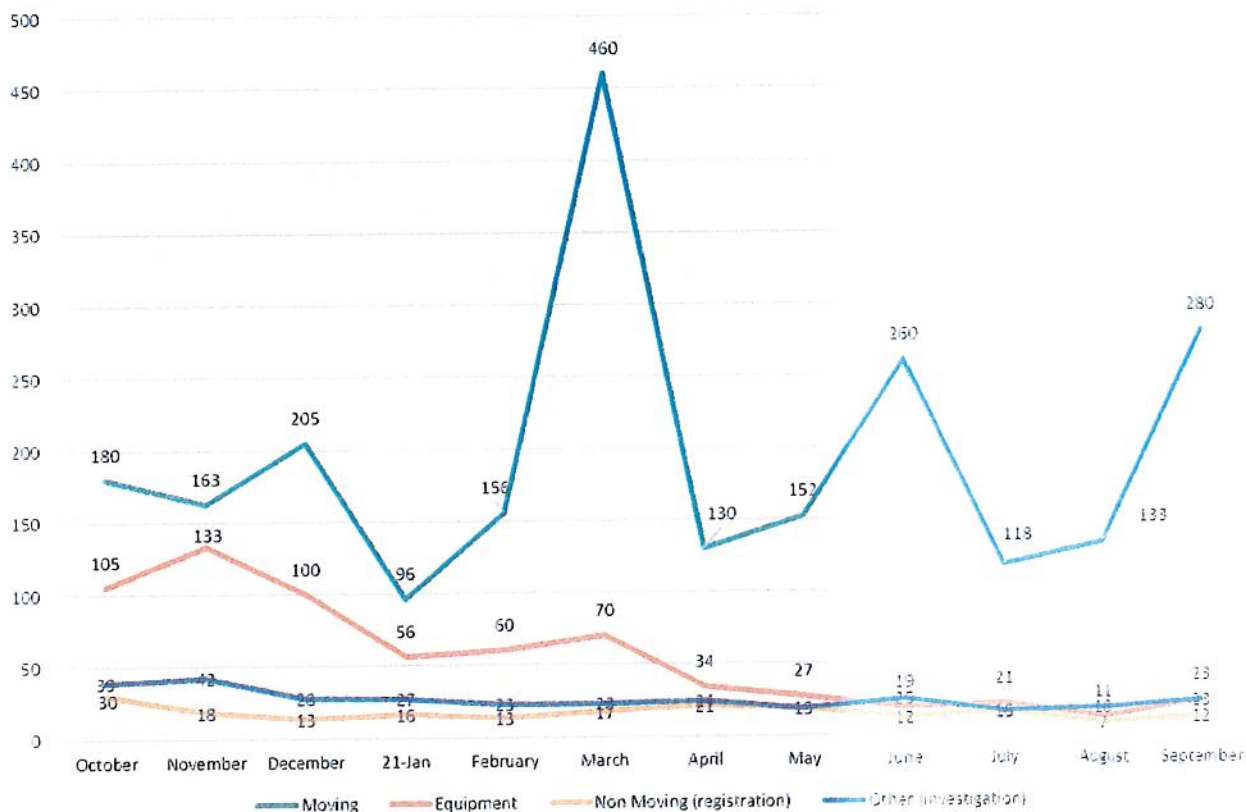


The new use of force policy provides a much more detailed picture of Berkeley Police Department's use of force. Trends indicate that BPD officers minimally use force, and apply the lowest levels of force when circumstances require it. As we continue to collect and review data under our new use of force policy, the Department will have the ability to better understand the manner and circumstances where force is applied and identify areas where additional training could positively affect outcomes.

STOP DATA REPORT

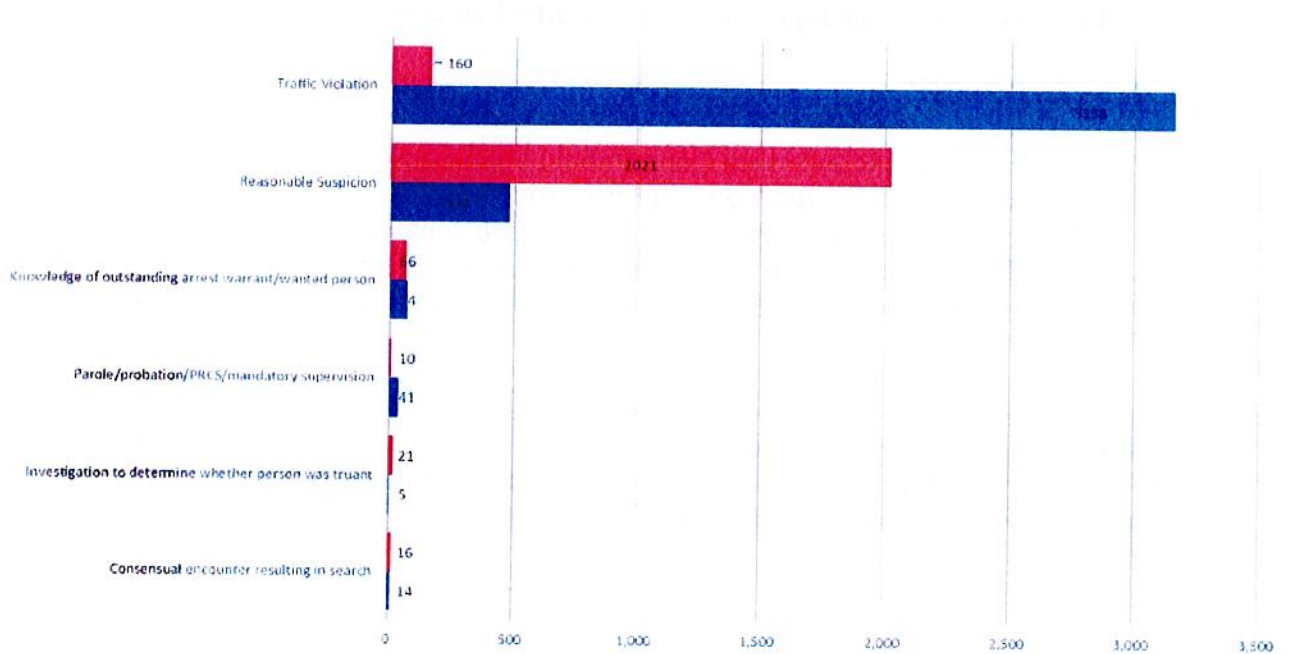
In October 2020, the Berkeley Police Department began tracking and ultimately supplying the State of California with our stop data pursuant to the Racial Identity Profiling Act (RIPA). BPD began this data collection a full two and a half years before agencies our size were required to comply with RIPA. Berkeley began this process early as part of the department's efforts to better capture, understand and share the data associated with our stops.

During the one-year period beginning in October 2020, BPD averaged 291 car stops, 205 pedestrian stops, and ten bike stops per month. Of those, the majority of vehicle stops were self-initiated and related to moving violations. In contrast, the majority of stops related to reasonable suspicion occurred when an officer was responding to a call for service.



*The spike in moving violations in March was tied to OTS Grant-related enforcement impacted by COVID.

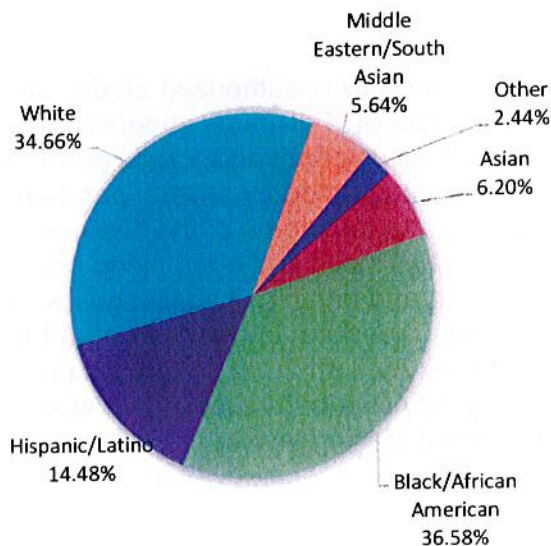
The following graph outlines the reasons for the stop with blue bars representing self-initiated activity and red bars indicating a response to a call for service. Overall 62.24% of all stops were self-initiated with the majority of them focused on traffic violations. The remaining 37.76% of our stops were in response to a call for a service.



Data also captured where stops occur, with the majority of these taking place in areas associated with high call volume or significant traffic-related issues. For example, in 2020 and 2021, intersections along Ashby and San Pablo Avenues, as well as Martin Luther King Jr Way and University Avenue were among the top intersections where collisions occurred.



A review of the stop demographics over the last year showed Black individuals made up 36.58% of stops, White individuals 34.66%, and Latinx 14.48%. Further, 33% of those stopped were not Berkeley residents, and the proportion of violation types (moving, non-moving, equipment, and other) remained consistent across the demographic groups.



Finally, RIPA data entry also allowed us to capture information about search rates. Over the last year BPD's search rate for all stops was 19.16% and had an overall yield rate of 44.23%. Those searches resulted in the seizure of 135 weapons, including 31 firearms.

Breaking down the demographic and yield rate by race reveals the following:

- Black 24.04% search rate 45.88% yield rate
- White 17.46% search rate 40.87% yield rate
- Latinx 17.31% search rate 45.39% yield rate

The department is in the process of hiring two crime analysts who will identify ways to evaluate this data to better inform and direct enforcement efforts.

DEPARTMENT PERSONNEL

The Berkeley Police Department prides itself on rigorous evaluation of police officer applicants, as well as hiring and training the some of the profession's best officers who exemplify the Department's overall mission as well as the value of our diverse and vibrant City. Beyond the expectations to successfully complete training and education requirements, the Department demands that officers hold themselves to a departmental culture of integrity, respect and professionalism.

We are currently maintaining staffing levels that fluctuate to at or just below our current authorized staffing level of 157 sworn personnel. Seven positions are held by officers who are currently in academy training and will not reach solo officer status until mid to late 2022. As of October 2021, there are 15 current sworn employees eligible to retire, and another 7 who will reach eligibility age in the next six months. Several of these employees have stated an intent to retire over the course of 2022. Low staffing numbers challenges the department's ability to proactively address and solve problems in the community. It also negatively impacts morale and the overall wellness of the Department.

Berkeley Police Department currently is authorized 28 dispatch positions, and is currently staffed with 20 dispatchers, 4 dispatch supervisors, and 2 dispatchers in training. There are currently 5 dispatchers and 1 supervisor that are eligible to retire. The Communications Center is supported by several per diem and other dispatch qualified employees, and who alleviate some of the strain of understaffing. The Department continues to actively recruit and open hiring processes to reach full staffing in the Communications Center, and has faced challenges with new hires failing out of the training program for failure to perform to minimum standards. According to the City of Berkeley Dispatch Audit from April on 2019, the Communications Center is not able to follow the National Emergency Number Association (NENA) guidelines for answering 911 calls, with current budgeted staffing levels.

DEPARTMENT INITIATIVES

The Berkeley Police Department mission is to safeguard our diverse community through proactive law enforcement and problem solving, treating all people with dignity and respect. The Department Initiatives underway support and guide this mission. Some of these are listed below:

Recovery Officer:

In response to multiple high-profile in custody deaths, Berkeley Police Department officers have been developing new ideas to improve their response to these challenging events. Central to these recommendations is a plan to reinforce the sanctity of life. BPD has identified an additional and new role of Recovery Officer during certain in progress incidents. This role has three basic objectives: improve scene management on incidents where an involved party has undergone extreme exertion, evaluate medical needs sooner and decrease BFD response time so any necessary treatment can occur more rapidly. De-escalation wherever possible remains the department's goal. However, in those instances where de-escalation efforts fail, there will be a proactive plan to get the subject evaluation and care as soon as practical.

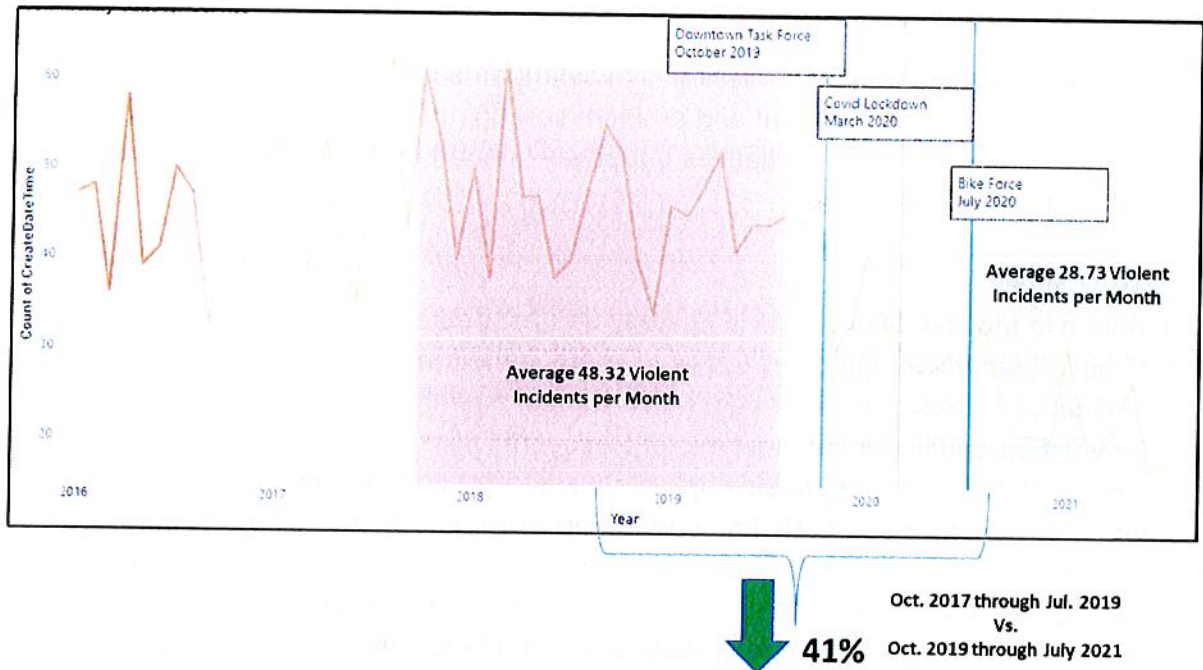
This concept was generated from a memo by a field supervisor and outlined several changes to current practice. The Department recently launched a pilot program along with Berkeley Fire Department to test and develop the concepts through use.

Improving Hate Crimes Reporting and Response:

Council unanimously approved and referred an item to the City Manager to improve hate crime reporting and response. The Department is leading a coordinated multi city department and committee response to accomplish the goals of this referral. Work is in progress on several items including: public facing mapping tool for hate crimes, public outreach video, and updated online reporting webpage providing hate crime information.

Bike Force:

The Department is continuing to see successful outcomes with the Bike Force, evidenced through an analysis of violent incidents in the Downtown area over the last five years (see chart below). The Bike Force is a multi-vehicle unit that uses a variety of proactive techniques to engage with the community and maintain a sense of safety in the Shattuck and Telegraph areas. This work is achieved through collaboration, proactive police work and problem solving. As we move towards evidence and information-based problem-solving approaches, we are looking to our call data, proactivity levels and learning the ways we can be most successful in ensuring public safety. As staffing levels allow, we this proactive, problem solving approach will also be available to focus on identified issues elsewhere in the City.



Data Analyst Team and Problem-Solving Approaches:

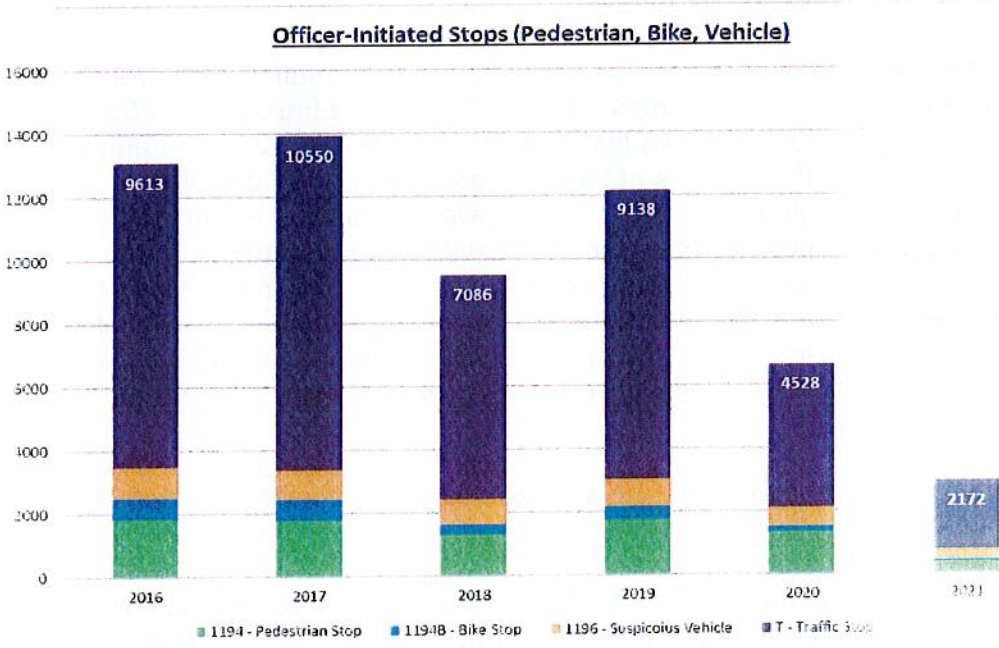
BPD is close to hiring two analysts to further the goal of establishing a unit that focuses primarily on crime prevention, supporting investigative strategies and strengthening problem solving approaches.

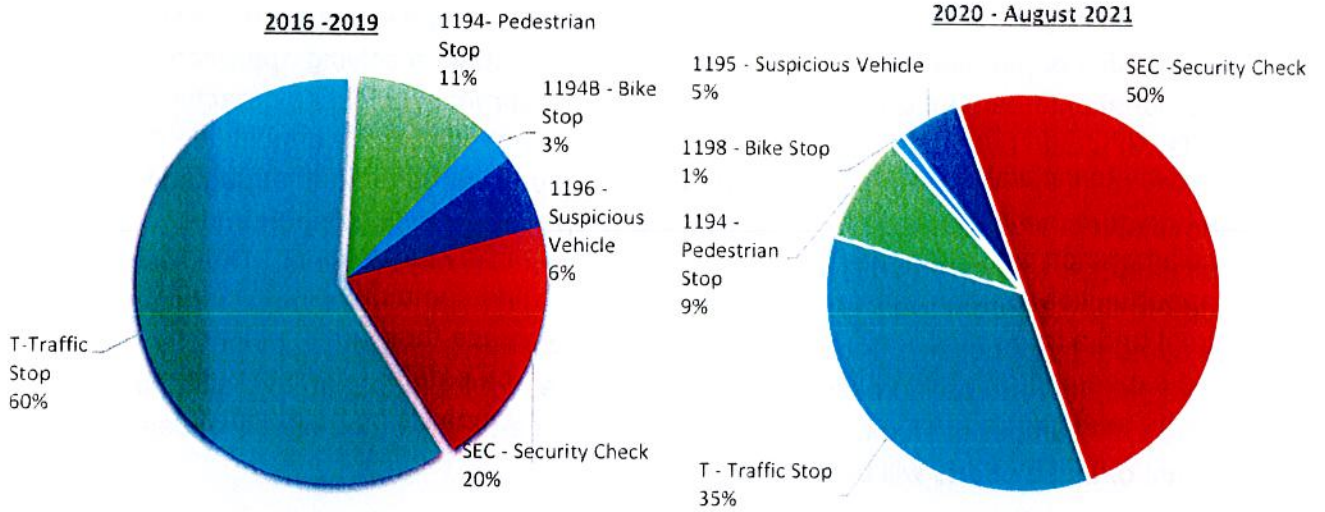
One analyst will have a macro-level focus; examining data from calls and community concerns and collaborating with other city departments to analyze city wide trends and problems. The Department must address problem areas in our city, but that does not mean "Hot Spot Policing". The convergence of problematic people, locations, and behavior often generates an issue that both negatively impact public safety as well as the community's sense of safety. BPD focus will be to carefully analyze contributing factors within an area to coordinate the proper response (which may or may not include law enforcement involvement or lead). Where enforcement responses do not appear to generate the appropriate, optimal, or equitable outcome, BPD will seek community collaborative interventions through its Community Services Bureau. There will also be an analyst with a micro focus on investigative efforts allowing a shift in department focus from street level visible enforcement to bolstering investigative functions.

Much of the analyst's role will also focus on transparency and accountability. The Department will be working on public facing platforms to share data and the initiatives put forth by the department. Data analysis will also be used to the Department is accountable, equitable and effective in actions and our strategies.

Departmental focus has shifted to emphasize enforcement of violations that are most often connected to severe and fatal collisions (based on regular review of collision data). As a department we are looking to employing problem solving approaches over traditional enforcement driven strategies. BPD is repurposing officer's proactive time to do fewer stops, but more security checks. A security check can be a multitude of police activity to include – walking or biking a beat, community engagement, engaging with shops and businesses, visible presence, follow-up investigation, support and collaboration with community-based organizations or City departments. These are opportunities to proactively engage with the public and community to build a focus on trust and a more positive “footprint”. As officers increase their work in these other areas we expect there to be increases in yield rates in the stop data, but an overall reduction in the total number of stops. Continual and ongoing analysis of the effectiveness and impact of these efforts will be important.

The below three charts provide data on officer initiated, proactive efforts.





FAIR AND IMPARTIAL POLICING UPDATE

This report provides the second quarterly update on the implementation of the Fair and Impartial Policing (FIP) Task Force recommendations from the February 23rd, 2021 City Council Special meeting. BPD provided a first update on June 16, 2021 and during this last several months, BPD staff, members of the FIP Task Force and Council representatives have participated in several collaborative discussions regarding the focus and progress towards the implementation of specific key recommendations. Implementation of the FIP Task Force recommendations is a priority of the Berkeley Police Department and we are actively undertaking this work. The BPD Professional Standards Bureau continues to oversee the implementation and the following outlines the recommendations where work is still actively in progress or was accomplished during this update period:

Recommendations related to: Implement a New Evidence-Base Traffic Enforcement Model

Council directed BPD to focus the basis for traffic stops on safety and not just low-level offenses and minimize or de-emphasize as a lowest priority, stops for low-level offenses. Departmental direction for officers currently focuses traffic enforcement on deterring these dangerous driving behaviors most commonly connected to severe and fatal collisions in our City. Officers have been directed to focus less attention to observations of equipment violations where no strong causal connection to collisions exists. In addition to focusing on enforcement of hazardous moving violations, sworn personnel are also expected to make investigative stops related to criminal intelligence and information brought forth by the community or our investigations. BPD's working group, along with City of Berkeley Transportation Division Manager, have been working

to identify what traffic offenses most impact public safety, and are therefore violations officers should focus their attention to.

Regarding the recommendation of reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects, the Police Department continues to develop and deploy data-driven tools to enhance a precision-based policing model and approach to enforcement stops. We are in the process of interviewing for the two data analyst positions are continuing to build our data dashboard and explore the ways that intelligence that is developed can be shared collaboratively with City partners and the community. Ensuring that we implement approaches that identify and work to reduce racial disparities will be a cornerstone to our evidence-based approaches. Berkeley Police Department will continue to only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.

Recommendations related to: Implement Procedural Justice Reforms

BPD is currently working on amendments to our existing policy for personnel on Early Warning System to include data around traffic, bike and pedestrian stops as a category that supervisors should consider for early intervention if merited. BPD's policy is near completion to require written consent for all vehicle and residence searches using an updated consent search form to align with best practice and community feedback. These new policies are being reviewed by the police union to determine if there are any meet and confer related issues.

BPD met with members of the FIP task force to discuss the recommendation directing the department to fire racist police officers identified through social media and other media screens. Current policy very clearly identifies racism as a violation of policy, requires anyone observing the violation to report it, and requires prompt investigation which can lead to discipline and termination. Currently social media and other screens are accomplished during the extensive background process. The FIP task force identified additional methods for discovering issues and will BPD will work with the task force to determine the effectiveness, legality, and usefulness of these tools.

Council directed the department to provide regular analysis of BPD stop, search, and use of force data. Our current 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. 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. BPD will also be able to use data collected through RIPA to provide more information to the community. Anticipated completion date is dependent on the technological needs and contract process as this dataset is updated. Since the last update the Berkeley Police Department has started working with a vendor to update the public facing open data.

ENVIRONMENTAL SUSTAINABILITY

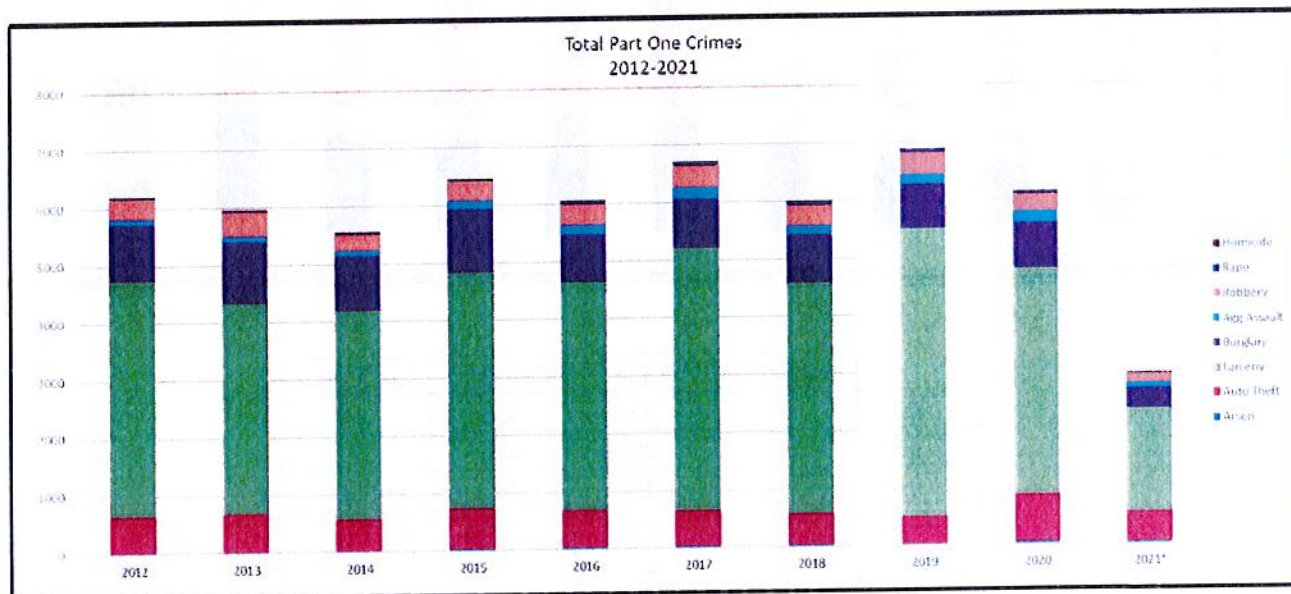
There are no identifiable environmental opportunities or impacts associated with the subject of this report.

cc: Jen Louis, Interim Chief of Police

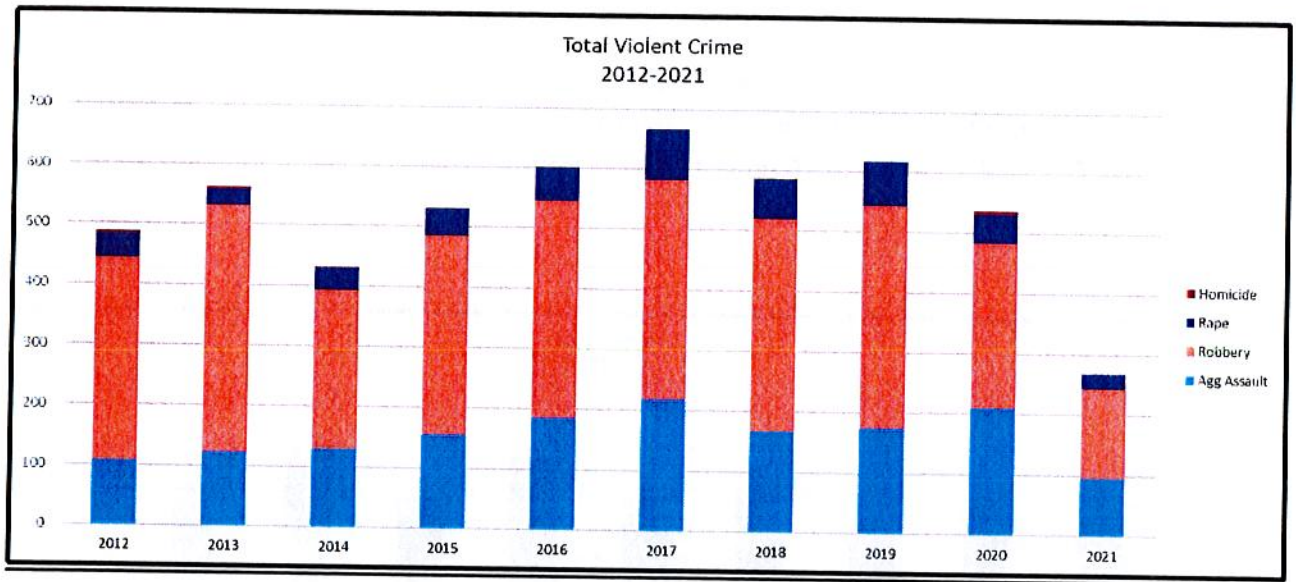
APPENDIX I

Graphs below include:

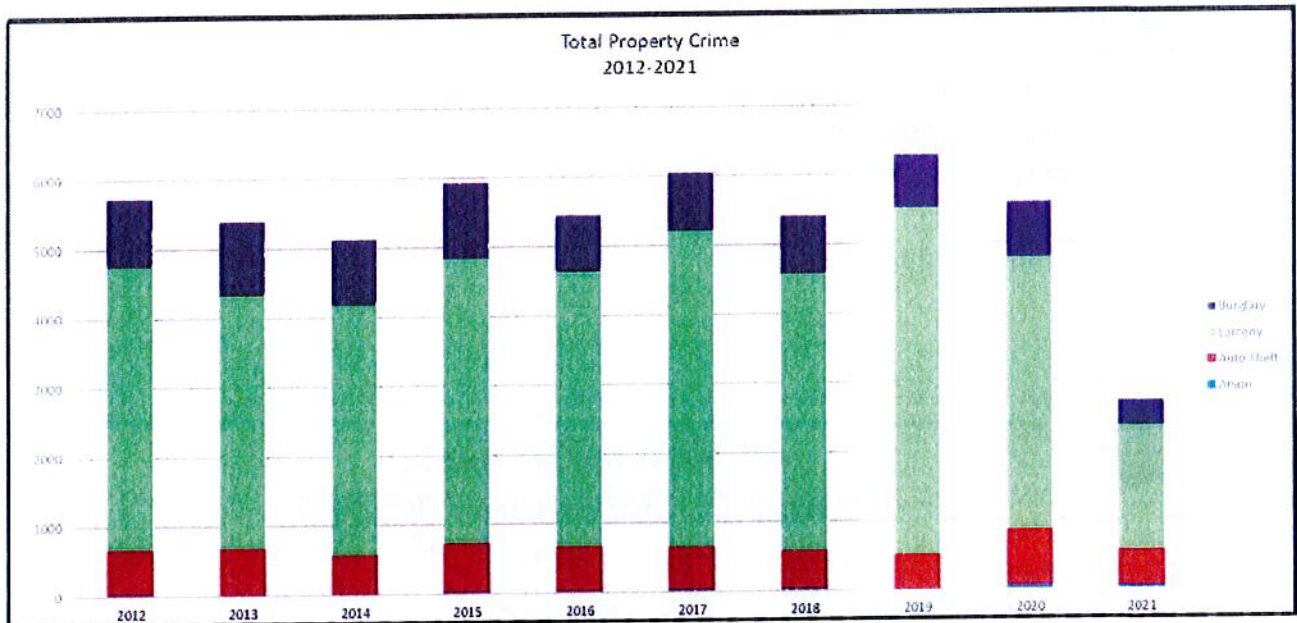
- UCR Part One Total Crime, ten-year trend
- UCR Part One Violent Crime, ten-year trend
- UCR Part One Property Crime, ten-year trend



	Homicide	Rape	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2012	5	39	335	108	971	4084	641	15
2013	4	26	410	122	1055	3658	664	16
2014	3	35	263	130	932	3615	555	15
2015	1	44	330	155	1090	4099	717	22
2016	2	54	361	185	805	3965	650	24
2017	1	83	364	218	843	4556	621	30
2018	1	65	353	167	829	4004	548	31
2019	0	74	369	175	771	4993	492	17
2020	6	47	274	210	797	3933	805	52
2021*	0	25	148	96	356	1789	514	42



	Homicide	Rape	Robbery	Agg Assault
2012	5	39	335	108
2013	4	26	410	122
2014	3	35	263	130
2015	1	44	330	155
2016	2	54	361	185
2017	1	83	364	218
2018	1	65	353	167
2019	0	74	369	175
2020	6	47	274	210
2021	0	25	148	96

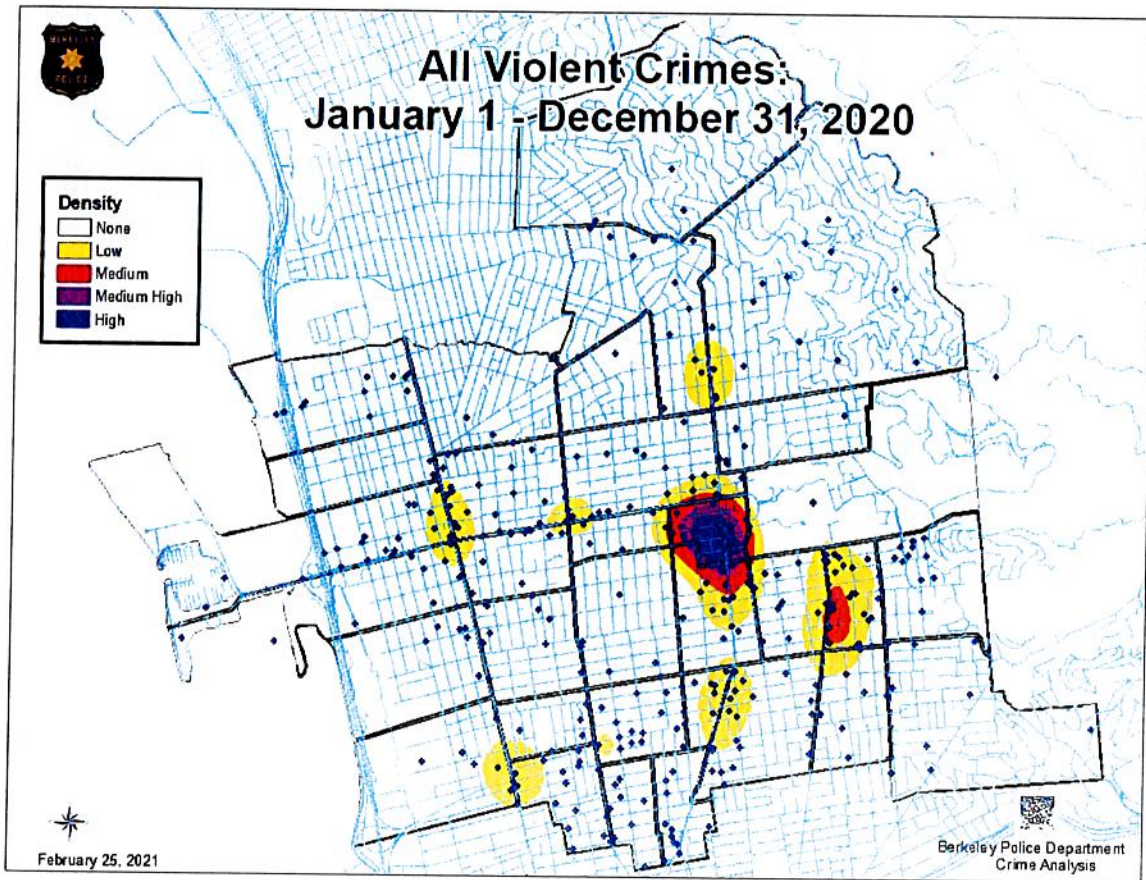


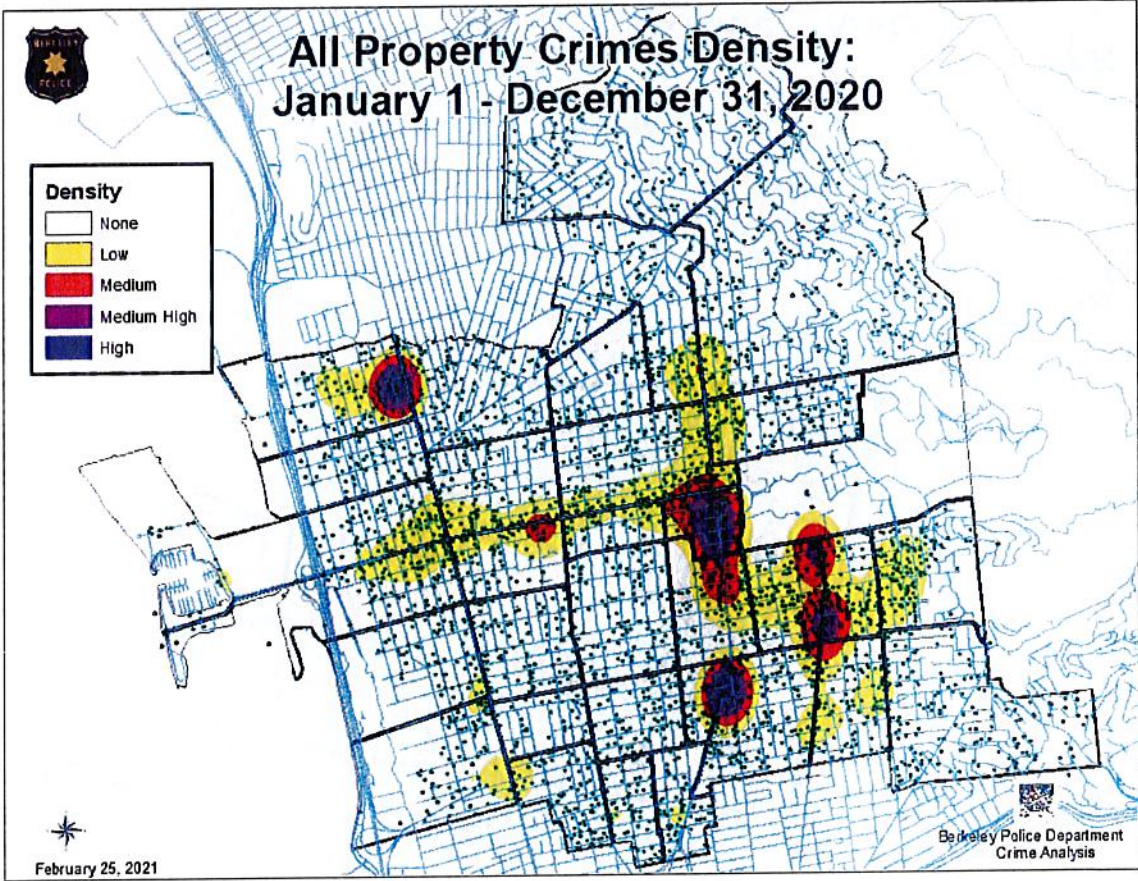
	Burglary	Larceny	Auto Theft	Arson
2012	971	4084	641	25
2013	1055	3658	664	16
2014	932	3615	555	15
2015	1090	4099	717	22
2016	805	3965	650	24
2017	843	4556	621	30
2018	829	4004	548	31
2019	771	4993	492	17
2020	797	3933	805	52
2021	356	1789	514	42

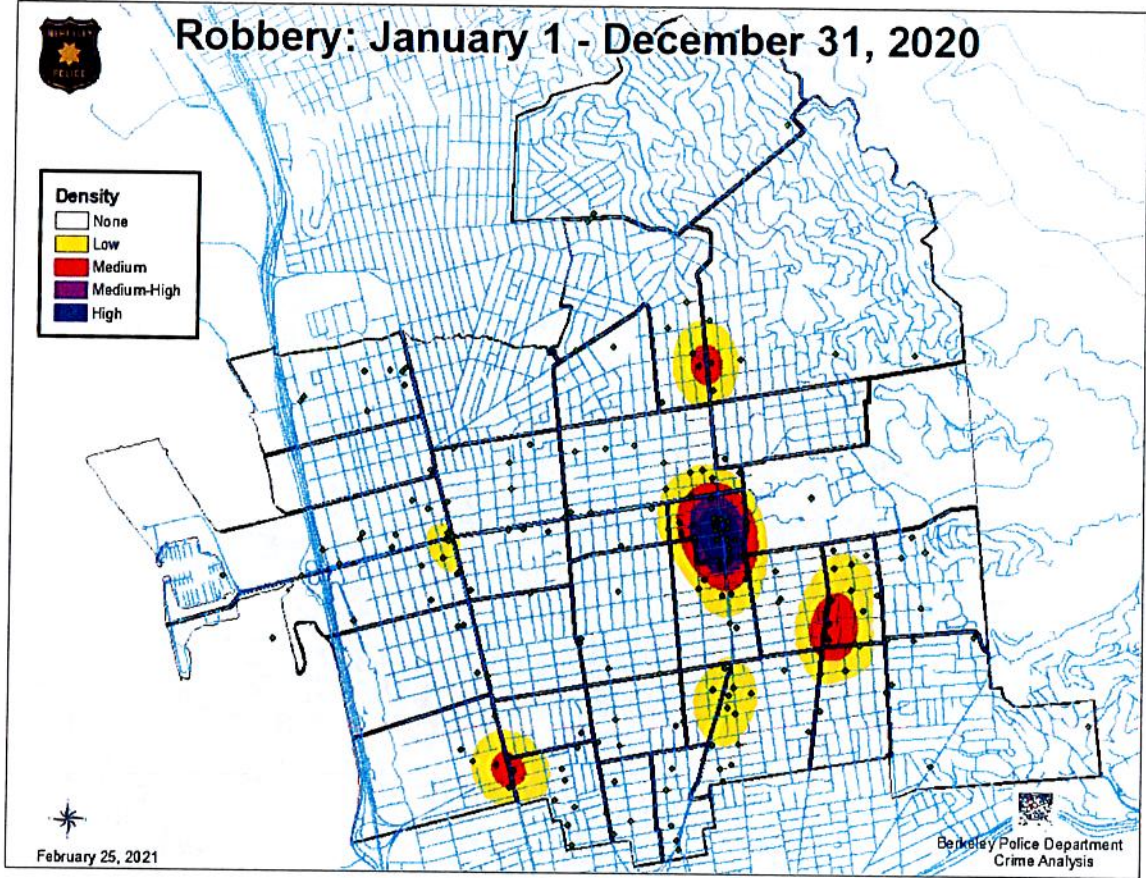
APPENDIX II

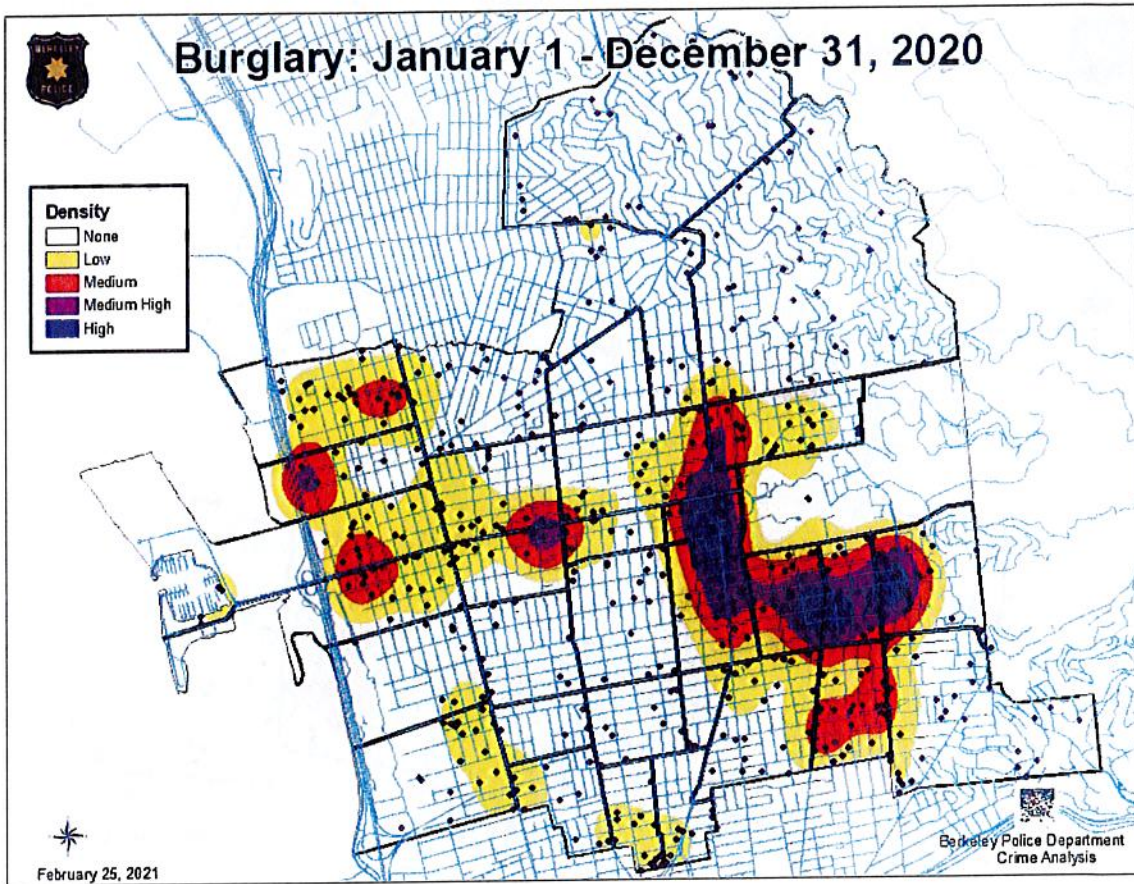
Density Maps below include:

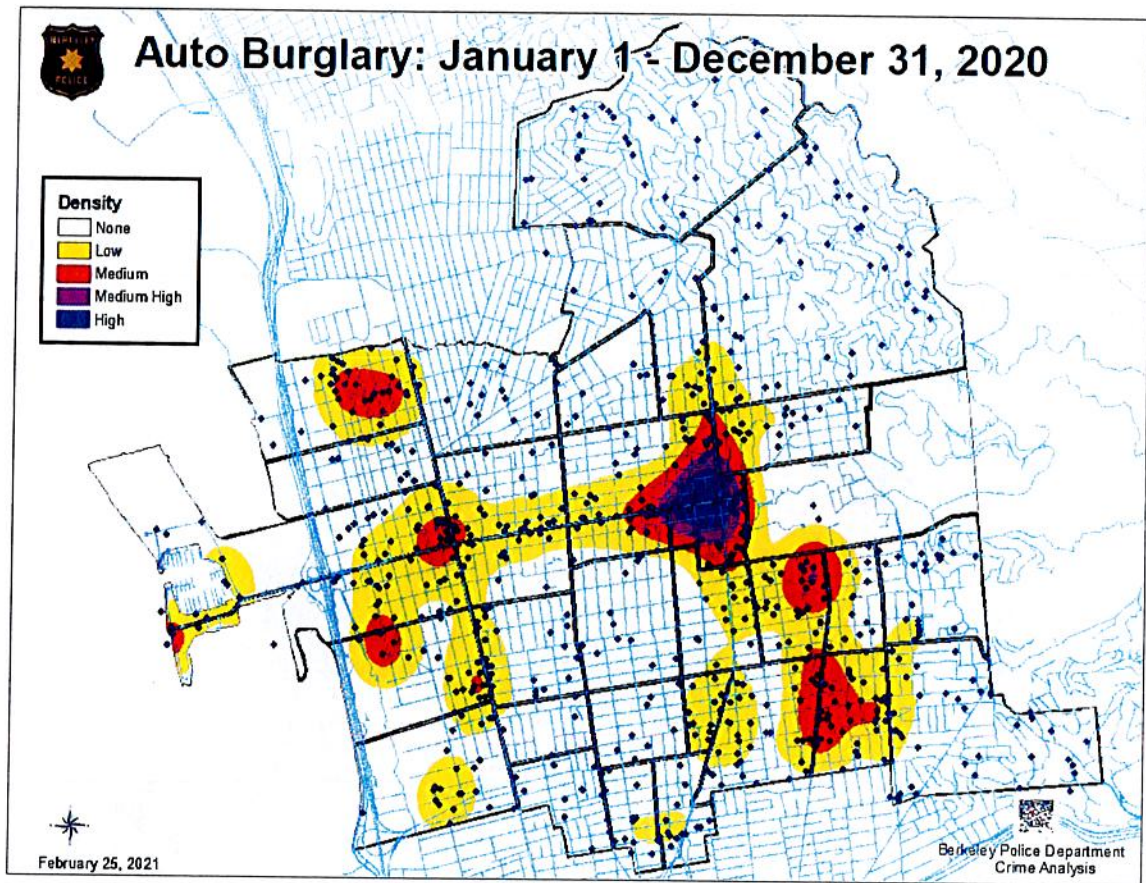
- All Violent Crimes 2020
- All Property Crimes 2020
- Robbery 2020
- Burglary 2020
- Auto Burglary 2020











Berkeleyside

CITY

Officials vow to increase police staffing, with available officers at historic low

The pledge came amid a lengthy discussion on the annual crime report, use-of-force and police stop data, traffic collision statistics and more.

By Emilie Raguso, Oct. 20, 2021, 12:52 p.m.



Berkeley City Council members had many questions for Interim Berkeley Police Chief Jen Louis on Tuesday night, Oct. 19, 2021. Credit: Berkeleyside

The Berkeley Police Department has hit what appears to be a historic low in staffing, with just 149 officers on the roster as of October, according to data reported Tuesday night during the annual crime report.

[See the staff report and slides from Tuesday's meeting and Berkeleyside's full Twitter thread](#)

That number does not include another 10-15 officers who are out at any given time due to injuries and other types of leave. At

least three officers in the city's traffic bureau are currently out on injury, for example, leaving just one officer assigned to traffic enforcement across the entire city.

The picture ahead looks even bleaker, officials observed, with 20 officers eligible to retire in the next two years and just six new recruits now hitting the

academy. The dispatch center, too, continues to struggle with chronic understaffing, BPD and city officials said.

Those shortages affect morale, the type of calls police can respond to quickly, and the amount of time officers are able to spend with community members and on follow-up investigations, Interim Berkeley Police Chief Jen Louis told the Berkeley City Council on Tuesday night. The staffing crunch has led to forced overtime and reduced opportunities for training, too.

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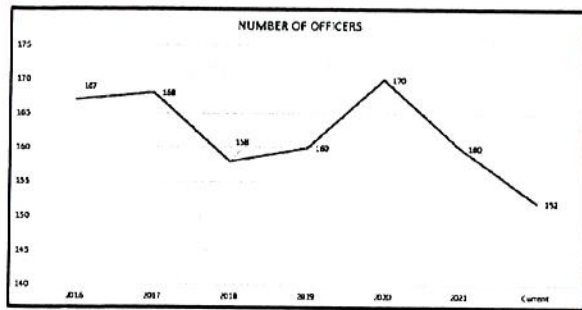
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"That chart of our sworn personnel is pretty terrifying," Councilmember Rigel Robinson said Tuesday night. "That paints a seriously concerning picture."

Department Personnel

Staffing



Berkeley police staffing appears to be at a historic low, BPD said Tuesday. See the full slide set. Credit: BPD

During a BPD staffing crisis in 2017 and 2018, levels were still above those the city is seeing now. At that time, many officers went to other agencies or retired. To stem the outflow, BPD created a recruitment team and took other steps to rebuild.

Interim Chief Louis said it took a “monumental effort” focused on strong recruitment to get back up to the 170-officer range in the years that followed. The department was unable to sustain those gains, however.

“You can see how rapidly it went back down,” she told officials, due to retirements, including medical retirements, and people leaving the profession.

In the last two fiscal years, the City Council has frozen more than 20 open police positions and a handful of civilian jobs and held them vacant, using the salary savings — more than \$6 million — to help balance the city budget in the face of challenges posed by COVID-19. Some of the money has also been earmarked to support the ongoing process to reimagine public safety in Berkeley, with stepped-up anti-bias training for police, more transparency around BPD data and other efforts.

Tuesday night marked a change in the narrative, however, as officials said the time is coming to launch a phased-in approach that will get more Berkeley police officers on the job.

“We’re going backwards in the progress that we made,” said Mayor Jesse Arreguín. “We can’t just cut the police and reallocate the money and think that’s going to be the solution.”

Arreguín also said it’s important to remember that police staffing shortages, and municipal staffing woes in general, are state and national problems. But he said that doesn’t make local impacts on community safety any less concerning.

“We need more boots on the ground,” he said, adding that the city must also make serious investments in alternative models that address the root causes of violence. Public safety, he added, means many things to different people.

Officials and City Manager Dee Williams-Ridley also noted that they don’t want to get ahead of the public process underway regarding police reform in Berkeley. The next six weeks will see multiple milestones in that work, to culminate in a special City Council meeting Dec. 2.

That evening, council is scheduled to hear proposals from the Reimagining Public Safety Task Force and its consultant, the National Institute for Criminal Justice Reform (NICJR), on alternatives to policing, changes to police dispatching and more.

Officials said that discussion, and those that follow, will be important. But they also said the staffing needs are clear.

“We have to overfill a police department in order to even keep our numbers close,” Williams-Ridley said, especially with so many retirements expected: “We’ve got to get in front of that.”

On Tuesday night, several council members — including the mayor — said their intention in creating the reimagining task force last year was not, in fact, to see the BPD budget slashed by 50%, although that was one element of an “omnibus package” of police reform proposals they voted to analyze and put before the public as part of a deep engagement process this year.

Much of that engagement work is scheduled to take place in November at a series of town halls organized by NICJR in collaboration with council and task force members. (Stay tuned for details.)

On Tuesday night, Mayor Arreguín said he hopes the task force, in the Dec. 2 meeting, will suggest ways to reduce gun violence as well as how to better serve the community “with the police we have.”

Councilmember Rashi Kesarwani said she supports the reimagining process and alternatives such as a new Specialized Care Unit – still in the works – that would respond instead of police to non-violent calls involving people in crisis. She said it is also vital to question the police budget – a hefty portion of Berkeley's general fund spending – and what community expectations of police are.

But she said broad cuts to the budget would be a mistake and that council erred by including that proposal in its omnibus bill.

"I did not agree with it at the time and I wish I had spoken up about that," Kesarwani said Tuesday. "It wasn't based off of any data or any understanding of what that would have meant."

Councilmember Lori Droste had broached the same topic earlier in the night.

"A 50% reduction in policing is infeasible and not data-driven. I think we all know that," she said. Droste said part of keeping the community safe entails ensuring BPD has the resources it needs to do data-driven work that tackles crime efficiently.

Using data to tailor its approach to policing was a recurrent theme for BPD on Tuesday night. The department said it is capturing more data than ever and using those findings to improve training and operations. It is also working to hire two crime analysts to help bolster those efforts. The application period closed recently and candidates are now under review.

The staffing discussion came after a rapid-fire report from BPD on many aspects of police data in Berkeley throughout 2020 and part of 2021. Police presented more data and reports during the 2021 annual crime report than have ever been shared before.

Among many highlights, BPD said violent and property crime were down in Berkeley in 2020, and that the city's violent crime rate had been lower than many of its neighbors. Berkeley's property crime rate was among the highest in the area, however, second only to Oakland, according to department data.

While overall trends were down, BPD pointed out that gunfire has continued to increase in Berkeley, a trend that began in 2018 and has been seen around the

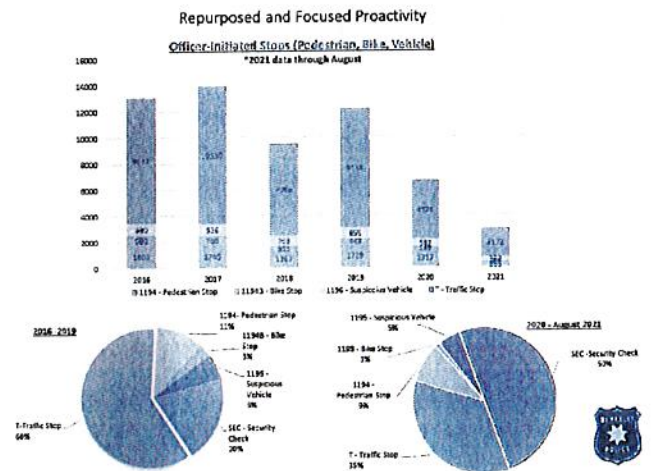
nation. Police said catalytic converter and auto thefts have been growing problems in Berkeley as well, along with elsewhere in the region.

On a more positive note, rape and robbery reports were down significantly in Berkeley in 2020, and the city has had no homicides this year. There have, however, been six traffic fatalities in 2021 – an increase over last year – and many of those investigations remain open.

Police also shared annual use-of-force statistics showing that, on average, officers have used force in recent years an average of about once in every 32 arrests.

Last year, the City Council approved more stringent use-of-force reporting requirements for Berkeley police, which went into effect in February. Since then, police have found, 95% of the force officers have used has fallen into the lowest two categories – resulting in either momentary pain or none at all. And 87% resulted in neither injury nor complaint of pain, BPD said.

Council members said they were pleased to see the more granular reporting, which seemed to be moving in the right direction, and also asked for demographics for each level of force. BPD agreed immediately to provide that information.



Berkeley police stops have been dropping significantly in recent years, according to department data. Credit: BPD

DIVE DEEPER: Download raw police stop data from the city website

BPD also provided an update on police stops involving drivers and pedestrians, which have historically seen Black community members overrepresented compared to their share of the Berkeley population. Last year, in an effort to better

understand the dynamics of those stops, BPD began to collect much more data about them – more than two years in advance of a state directive to do so.

Racial disparities continue to exist in the data. But council members said they were pleased to see that stops are down significantly and that the “yield rate” – how often police find contraband such as weapons or drugs during searches – was similar across races.

Experts have said disparate or low yield rates are a red flag that can be evidence of racial profiling. Until this past year, Berkeley did not track this data point, which led to numerous unanswered questions about the meaning of racial differences in the data. There are still many questions to be answered and analyses to be done, but the more nuanced data should make that work more accurate and feasible.

The department is working to create a public dashboard that will make all of its data more readily accessible.

Councilmember Kate Harrison said she expects BPD to take that further by providing regular reports on the data, in line with prior council discussions around Berkeley’s fair and impartial policing goals to reduce racial disparities.

“You will see tangible results,” Interim Police Chief Louis pledged. “We intend to hold ourselves accountable to hitting the mark on that.”

The bulk of BPD’s stops over the past year resulted from moving violations, BPD said. And Louis said officers have “changed the way we focus our proactive efforts” with the goal of “fewer but more focused stops.” She said she believes this will increase yield rates and also “have a more positive footprint in our community.”

Council members told Louis that Tuesday’s report was the most comprehensive and best they could recall. And they said they like the direction the already excellent department seems to be moving.

“I’m just really pleased with the progress that’s been made, but recognize that we have challenges we have to address also,” Arreguín said.

*Emilie Raguso is Berkeleyside’s senior editor of news.
Email: emilie@berkeleyside.org. Twitter: [emraguso](https://twitter.com/emraguso).
Phone: 510-459-8325.*



Hello,

Thank you for your interest in our Agency. The City of Berkeley is a fun, challenging and exciting place to work. Here's some helpful information as you navigate the process. Please note, the Police Recruit application process is scheduled for October 12, 2021 – November 1, 2021.

When it opens you can apply directly from the link below:

[APPLY WITH BPD](#)

PELLET B

Here is the link to information on the written test, Pellet B:

[PELLET B INFO](#)

You may take the Pellet B ahead of time. The date on the test must be within one year of the testing period with our agency. I recommend taking it before the application and testing period begins. This is because you can only take the test once every thirty (30) days. If you wait to take it with us and you do not score high enough, forty-eight (48) or higher, you will not continue in our hiring process and would have to wait until our next testing period to apply with us again.

If you want to take the PELLET B ahead of time, here is a link with places to take the PELLET B:

<https://www.eventbrite.com/o/post-written-tests-12025272767>

PELLET B practice test:

[Pellet B Practice Test](#)

PHYSICAL AGILITY TEST

Here is a link to the video that shows the physical agility test:

[PHYSICAL AGILITY INFO](#)

Below is a link for the minimum qualifications to qualify for our Agency as a Police Officer:

[BPD Minimum Qualifications](#)

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DISCOVER YOUR POTENTIAL

POLICE

3% raise as of 7/20/21

- \$128k MAX BASE SALARY AFTER 6 YEARS
- CALPERS RETIREMENT
- FULL MEDICAL & DENTAL FOR YOU & YOUR FAMILY
- \$1400 ANNUAL UNIFORM ALLOWANCE
- SPECIAL ASSIGNMENTS W/ PREMIUM PAY
- BILINGUAL ADD PAY
- 2-6 WKS VAC DEPENDING ON YRS OF SERVICE
- 13 PAID HOLIDAYS AND 3 FLOATING HOLIDAYS
- CHOOSE A 3 OR 4 DAY WORK WEEK
- PAID WORKOUTS
- ADDITIONAL EDUCATION AND POST INCENTIVE PAY
- SALARY INCREASE AFTER 10 & 20 YEARS OF SERVICE
- ACADEMY RECRUITS HAVE SALARY AND EXPENSES PAID

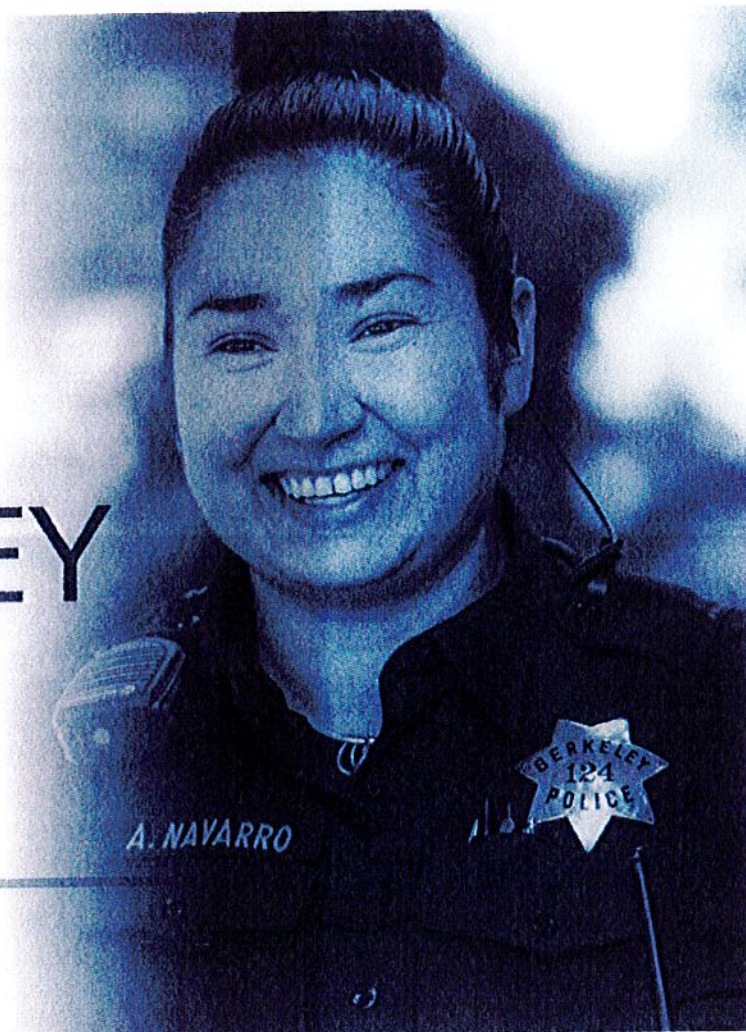
DISPATCHER

4% raise as of 7/20/21

- \$96k MAX BASE SALARY AFTER 4 YEARS
- CALPERS RETIREMENT
- FULL MEDICAL & DENTAL FOR YOU & YOUR FAMILY
- \$1400 ANNUAL UNIFORM ALLOWANCE
- SPECIAL ASSIGNMENTS W/ PREMIUM PAY
- BILINGUAL ADD PAY
- 2-5 WKS VAC DEPENDING ON YRS OF SERVICE
- 13 PAID HOLIDAYS AND 3 FLOATING HOLIDAYS
- NIGHTSHIFT DIFFERENTIAL PAY
- 4 DAY WORK WEEK

YOU BELONG IN BERKELEY

CA



JOIN US FOR INFO DAY

Ever thought of being a police officer? Wonder what the academy is like? Do you ask yourself, can I do what an officer does? If the answer is yes to any of these questions, come out to Berkeley Police Department's Info Day. You will have the opportunity to practice the physical agility test* and there will be a Q & A session with members of the department. You will also learn about the hiring and testing process.



November 9, 2021 • 5 pm –7:00 pm
Alameda County Sheriff's Regional Training Center
6289 Madigan Rd., Dublin CA 94568
RSVP: rjung@CityofBerkeley.info

* You must sign a waiver to practice the physical agility test

From: AB953 <AB953@doj.ca.gov>
Sent: Tuesday, October 19, 2021 2:47 PM
To: AB953 <AB953@doj.ca.gov>
Subject: Statewide Meeting on Racial and Identity Profiling



[a continuación este mensaje se repite en español]

October 20, 2021

10:00 a.m. – 1:45 p.m.

**Eliminating racial and identity profiling in law enforcement
requires everyone's participation!**

**This meeting will be hosted by videoconference via BlueJeans. You
can join the meeting by clicking on this link:**

[Join Meeting](#)

(Join from computer or phone)

**Or call:
(408) 317-9254
PIN 210 261 017**

The Racial and Identity Profiling Advisory Board

Will discuss:

- **Stop Data Collection on Profiling and Police Encounters**
- **Citizen Complaints**
- **Policies and Practices**
- **Peace Officer Standards and Training (POST)**
- **Calls for Service**

Documents for discussion at the meeting can be found here

<https://oag.ca.gov/system/files/media/notice-agenda-102021.pdf>

<https://oag.ca.gov/system/files/media/ripa-meeting-materials-draft-report-102021.pdf>

<https://oag.ca.gov/system/files/media/ripa-meeting-materials-ab846-comment-letter-102021.pdf>

To subscribe to the AB 953 Mailing List, please visit

<https://oag.ca.gov/subscribe>



Reunión Estatal sobre Perfiles Raciales y de Identidad

20 de octubre de 2021.

10:00 a.m. – 1:45 p.m.

¡Se requiere la participación de todos para eliminar los perfiles raciales y de identidad en las fuerzas policiales!

**Esta reunión se llevará a cabo por videoconferencia por BlueJeans.
Puede unirse a la reunión a través de la siguiente enlace:**

[Unirse a Reunión](#)

(por computadora o celular)

o llamar:

(408) 317-9254

Número de Reunión - 210 261 017

**Gabinete de Asesores sobre Perfiles Raciales y de Identidad de
California**

Se discutirá acerca de:

- **Recopilación de Datos sobre Detenciones**
- **Denuncias Civiles**
- **Políticas y Prácticas**
- **Normas y Capacitación para Oficiales de Policía**
- **Llamadas de Servicio**

En los siguientes enlaces se podrán encontrar los documentos que serán revisados durante la reunión:

<https://oag.ca.gov/system/files/media/notice-agenda-102021.pdf>

<https://oag.ca.gov/system/files/media/ripa-meeting-materials-draft-report-102021.pdf>

<https://oag.ca.gov/system/files/media/ripa-meeting-materials-ab846-comment-letter-102021.pdf>

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