



OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

## POLICE ACCOUNTABILITY BOARD REGULAR MEETING

Wednesday, May 25, 2022  
7:00 P.M.

### Board Members:

MICHAEL CHANG, CHAIR  
NATHAN MIZELL, VICE-CHAIR  
KITTY CALAVITA

REGINA HARRIS  
JULIE LEFTWICH  
DEBORAH LEVINE

JOHN MOORE III  
CHERYL OWENS  
ISMAIL RAMSEY

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be 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** (2 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, 5<sup>th</sup> Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955  
Website: [www.cityofberkeley.info/dpa/](http://www.cityofberkeley.info/dpa/) Email: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)

4. **APPROVAL OF MINUTES** (5 minutes)  
Regular meeting of May 11, 2022.
5. **CHAIR AND BOARD MEMBERS' REPORTS** (5 minutes)  
Update from Board member Calavita on Police Chief Search .
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)** (15 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 May 19.
  - b. Director Search.
  - c. Regulations – met May 4.
  - d. Controlled Equipment – met May 17, May 23.
9. **OLD BUSINESS (discussion and action)**
  - a. Continue review of commendations of Berkeley Police Dept. personnel; review draft letter commending specific officers for repeated praise (to be delivered), and consider commendation for reserve officers. (40 minutes)  
*(See also April 27, 2022 agenda packet.)*
  - b. Consider forming Outreach Subcommittee. (10 minutes)  
From: Board member Calavita
  - c. Consider forming Lexipol Policies Subcommittee. (10 minutes)  
From: Board member Calavita
10. **NEW BUSINESS (discussion and action)**
  - a. Review draft of proposed permanent Regulations for Handling Investigations and Complaints. (1 hour)  
From: Regulations Subcommittee
  - b. Consider having a booth at the Berkeley Juneteenth Festival on Sunday, June 19, 2022. (10 minutes)  
From: Interim Director

**11. 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.)*

**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):

**12. TENTATIVE AND FINAL DECISIONS IN COMPLAINTS #1 AND #3 (15 minutes)**

**End of Closed Session**

**13. ANNOUNCEMENT OF CLOSED SESSION ACTION**

**14. 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, 5<sup>th</sup> Floor, Berkeley, CA.

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



**POLICE ACCOUNTABILITY BOARD (PAB)  
REGULAR MEETING ATTACHMENTS  
MAY 25, 2022**

<b><u>MINUTES</u></b>	
May 11, 2022 Regular Meeting Draft Minutes	Page 7
<b><u>AGENDA-RELATED</u></b>	
<b>Item 8.</b> – Police Accountability Board Subcommittees List.	Page 13
<b>Item 10.a.</b> – Draft Regulations of the Police Accountability Board and Office of the Director of Police Accountability, dated 5-4-2022.	Page 15
<b>Item 10.b.</b> – Berkeley Juneteenth Festival Vendor Application for Sunday, June 19, 2022.	Page 37
<b><u>COMMUNICATIONS</u></b>	
5-13-2022 email from the City Attorney re Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report.	Page 39
5-11-2022 Memo from PAB Chairperson to the Council Members re Revisions to Berkeley Police Department Policy 311, Section 311.6, <i>Warrantless Searches of Individuals on Supervised Release Search Conditions</i> – agendized for the May 24, 2022 City Council meeting.	Page 43
5-9-2022 email from Vincent Southerland to the Mayor and Councilmembers re Berkeley Police Search Policy.	Page 47
5-18-2022 email from Katherine Lee re Give input on the next Berkeley Police Chief.	Page 51
5-17-2022 email from Charles Clarke to Councilmembers Kesarwani, Taplin, and Wengraf re BPD Special Response Team Exception to Tear Gas Ban.	Page 53
5-6-2022 Berkeleyside article: In 7-2 vote, Berkeley council approves broad package to reimagine policing.	Page 69
5-5-2022 article from <a href="http://www.sfchronicle.com">www.sfchronicle.com</a> re Berkeley pledges to refund the police while also embracing law enforcement alternatives and violence prevention.	Page 73
BPD Collision and Traffic Safety PowerPoint Presentation to PAB 4-27-2022.	Page 77





OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

DRAFT

**POLICE ACCOUNTABILITY BOARD**  
**REGULAR MEETING**  
**MINUTES**  
*(draft)*

**Wednesday, May 11, 2022, 7:00 P.M.**

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

**1. CALL TO ORDER & ROLL CALL BY CHAIR CHANG AT 7:02 P.M.**

Present: Board Member Michael Chang (Chair)  
Board Member Nathan Mizell (Vice-Chair)  
Board Member Kitty Calavita  
Board Member Regina Harris  
Board Member Juliet Leftwich  
Board Member Deborah Levine  
Board Member John Moore  
Board Member Cheryl Owens  
Board Member Ismail Ramsey (arrived 7:20 p.m.)

Absent: None

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability;  
Beneba Thomas, DPA Investigator

BPD Staff: Interim Chief Jennifer Louis; Lt. Melanie Turner

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda.**

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

**3. PUBLIC COMMENT**

4 speakers.

**4. APPROVAL OF MINUTES**

Special meeting of April 27, 2022.

**Motion to approve Special Meeting Minutes of April 27, 2022**

**Moved/Second (Harris/Owens) Motion Carried by general consent**

## 5. CHAIR AND BOARD MEMBERS' REPORTS

Chair Chang: no report.

Board member Calavita no report on Police Chief Search: no report.

## 6. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT

The Interim Director reported:

- One new complaint filed since the last meeting.
- Investigator Byron Norris is now gone [retired] but we now have Investigator Thomas.
- Budget presentation to the Council Budget Committee went pretty well.
- Council began regular hybrid meetings last night; for now, Council policy committees and board and commissions will continue to meet virtually.
- Will be participating in an interview panel for the Sonoma Co. Director of Independent Office of Law Enforcement and Outreach on Friday.
- Got a preview of the BPD's new Transparency Hub this afternoon.

## 7. CHIEF OF POLICE'S REPORT

Interim Chief Louis reported:

- Dept's Transparency Hub is close to going live. Will incorporate data currently on Open Data Portal; use of force data, stop data; yield rates. Will be updated daily. Snapshots provided but data also filterable. Got feedback from stakeholders and Board welcome to provide further feedback.
- Cases of interest.
  - April 16 minivan owner carjacked, with BHS mountain bike team's bikes. Following investigation, suspects arrested May 2 per BPD detectives' search warrant.
  - May 3 fatal shooting on Channing originally thought to be suicide. Found 2<sup>nd</sup> shooting victim; determined not suicide but one suspect shot 2 people. Suspected arrest within 1 day.
- Last week hired 2 entry-level officers who started academy, but also 1 officer retired and 3 resigned. Currently 152 sworn.
- Capt. Rolleri will continue to work with the Board on Controlled Equipment Ordinance.
- Finalizing next quarterly update on Fair & Impartial Policing recommendations. Incorporated some of PAB's suggestions on the consent search form and reissued.
- Budget presentation to Council Budget Committee; included items related to reimagining public safety efforts.

Interim Chief Louis answered questions from Board members.



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

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

- a. Fair & Impartial Policing Implementation – Chair Calavita – next meeting being scheduled. Will discuss 3-pronged approach to traffic enforcement. Worked on consent search form. Haven't seen anything back on Early Warning System Policy.
- b. Director Search -- Chair Levine spoke to LaTanya Bellow. Byers Group reviewing the 13 applications received. 5 to 8 will be sent to Ms. Bellow to set up interviews; one interview panel will include PAB members. City Manager will select 3 finalists for Council. More details week of May 23.
- c. Regulations – met May 4. Finalizing draft to bring to Board with specific commentary.
- d. Mental Health Issues (Response and Crisis Stabilization). On hold.
- e. Policy 351, Fixed Surveillance Cameras. On hold.
- f. PAB Budget Proposal. No work necessary at this time.

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

- a. Review commendations of Berkeley Police Dept. personnel.

**By general consent, the Board agreed to commend BPD personnel for the following reasons:**

**Sgt. Speelman, Ofc. DeBruin, and Ofc. Mitchell for superior handling of a difficult situation, actions above and beyond typical duties, and displaying extraordinary compassion, empathy, or kindness, in helping a man threatening to jump off a building on March 6, 2021. (p. 19 of the April 27, 2022 packet)**

**Officers Hogan, Warren, Jackson, and Valle, for their superior handling of a difficult situation in saving the life of a man who overdosed on October 18, 2021. (p. 32.)**

**Officers Armistead, Grover, Moore, Albrandt, Abdoulmawla, Legall, Nash, and Muratovic, and CSO Lee for actions above and beyond typical duties in assisting two stab wound victims in separate incidents on March 6, 2021. (p. 17.)**

Discussion to continue at the next meeting.

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

- a. Review and respond or make recommendations on the following items related to Impact Statements, Use Policies, and Annual Use Report prepared under the Police Equipment & Community Safety Ordinance and AB 481:

- 1) Report submitted by Interim Police Chief to City Council for May 10, 2022 meeting;
- 2) Board member Mizell's April 29, 2022 Notice of Violations;
- 3) 2021 Annual Equipment Use Report;
- 4) Policy 709, Military Equipment;
- 5) Capt. Rolleri's May 4, 2022 memo in response to April 6 PAB memo.

**Motion to suspend the rules to allow John Lindsay-Poland to speak.**  
 Moved/Second (Calavita/Levine) Motion Carried by general consent

**Motion to form a subcommittee to analyze and make recommendations on the Controlled Equipment Impact Statements, Use Policies, and Annual Use Report prepared under the Police Equipment Ordinance and AB 481.**  
 Moved/Second (Leftwich/Calavita) Motion Carried by general consent

**Chair Chang appointed Vice-Chair Mizell and Board member Moore to the Subcommittee.**

- b. Consider forming Outreach Subcommittee  
 Postponed to the next meeting.
- c. Consider forming Lexipol Policies Subcommittee  
 Postponed to the next meeting.

**11. PUBLIC COMMENT**

1 speaker.

**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):

**12. PRESENTATION OF ADMINISTRATIVE CLOSURE OF COMPLAINT #2488**

**Motion to not administratively close the complaint; to ask that staff request documents, body-worn camera video, and police reports related to the incident; and to enforce the request in any way that the law provides.**

Moved/Second (Ramsey/Leftwich) Motion Carried

Ayes: Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: None

**13. TENTATIVE AND FINAL DECISIONS IN COMPLAINTS #1 AND #3**

Postponed to the next meeting.

**End of Closed Session**

**14. ANNOUNCEMENT OF CLOSED SESSION ACTION**

The Board's vote in Item #12 to not administratively close the complaint and request evidence; and postponement of Item #13 were announced.

**15. ADJOURNMENT**

**Motion to adjourn the meeting.**

Moved/Second (Leftwich/Mizell) By general consent, the meeting was adjourned at 11:09 p.m.



**POLICE ACCOUNTABILITY BOARD  
SUBCOMMITTEES LIST  
5-18-2022**

<b>Subcommittee</b>	<b>Board Members</b>	<b>Chair</b>	<b>BPD Reps</b>
<b>Regulations</b> Formed 7-7-21	Calavita Chang Leftwich Owens  <u>Public:</u> Kitt Saginor	<b>Chang</b>	Lt. Dan Montgomery
<b>Director Search</b> Formed 8-4-21	Levine Mizell Moore  <u>Public:</u> Rivka Polatnick Marc Staton	<u>Co-chairs</u> <b>Levine</b> <b>Moore</b>	
<b>Fair &amp; Impartial Policing Implementation</b> Formed 8-4-21	Calavita Moore Owens Ramsey  <u>Public:</u> George Lippman Elliot Halpern	<b>Calavita</b>	Sgt. Peter Lee
<b>Mental Health Response</b> Formed 11-10-21 Scope expanded 3-9-22	Harris Levine  <u>Public:</u> Elena Auerbach		Sgt. Joe LeDoux
<b>Fixed Surveillance Cameras (Policy 351)</b> Formed 2-9-22	Mizell Ramsey		
<b>PAB Budget</b> Formed 2-23-22	Levine Harris Owens	<b>Owens</b>	
<b>Controlled Equipment Use &amp; Reporting</b> Formed 5-11-22	Mizell Moore	<b>Mizell</b>	



**Police Accountability Board  
and  
Office of the Director of Police Accountability  
Regulations for Handling Investigations and Complaints**

**Preamble**

These regulations for handling complaints against sworn members of the Berkeley Police Department (BPD) and investigations are issued in accordance with City of Berkeley Charter Article XVIII, Section 125.

**I. GENERAL PROVISIONS**

**A. Definitions**

The following definitions shall apply:

1. **Administrative Closure:** Closure of a complaint before findings and recommendations are sent to the Chief of Police.
2. **Aggrieved party:** Any person who is the subject of alleged police misconduct.
3. **Allegation:** An assertion of specific police misconduct.
4. **Board member:** A member of the Police Accountability Board appointed by the City Council.
5. **Chief; Police Chief:** Chief of the Berkeley Police Department.
6. **City's discovery of alleged misconduct:** The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. **Complaint:** A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. **Complainant:** An aggrieved party or an eyewitness who files a complaint with the Office of the Director of Police Accountability.
9. **Complaint hearing:** A confidential personnel hearing regarding alleged police misconduct as referenced in City Charter Article XVIII, Section 125.
10. **Days:** Calendar days unless otherwise specified.
11. **Director of Police Accountability (Director):** The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).

Section I.B.

12. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying Departmental policy.
13. Eyewitness: A percipient witness.
14. Formal complaint: A complaint filed on the ODPa complaint form by a member of the public or a complaint initiated by the Board.
15. Hearing Panel: Three Board members impaneled to conduct a confidential hearing of alleged police misconduct.
16. Informal complaint: A communication not on the official ODPa complaint form from any member of the public that identifies an officer by name, badge number, other identifying features, or specific circumstances, and alleges an act of police misconduct.
17. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODPa.
18. Investigation: The fact-finding process engaged in by the ODPa staff.
19. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
20. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
21. Preponderance of the evidence: Standard of proof in which the evidence on one side outweighs, or is more convincing than, the evidence on the other side, but not necessarily because of the number of witnesses or quantity of evidence.
22. Subject officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
23. Toll: To suspend a time period.
24. Witness officer: A sworn employee of the Berkeley Police Department, other than the subject officer, who witnessed the events described in the complaint or has relevant personal knowledge of those events.

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**B. Confidentiality**

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley Police Department personnel. ODPa staff will likewise have access to such confidential information. It is vitally important to the integrity of the complaint process that all parties understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. The testimony of any sworn employee of the Police Department is



Section I.B.

subject to the due process and confidentiality provisions of applicable state and federal law.

2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated.
3. Closed hearings; effect on public records. All confidential complaint hearings, confidential investigative records, and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. However, any public records included in, or attached to, investigative reports shall remain public records.
4. Handling confidential information. Each Board member shall shred or return to ODPa staff all hard copies of confidential material and delete all confidential material sent electronically, at the close of any proceeding or as soon as the information is no longer needed. Board members shall inform ODPa staff after the confidential material has been shredded or electronically deleted.
5. Effect of violation. A Board member who violates confidentiality before or during a confidential complaint hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a closed session of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential complaint hearings for the remainder of the Board member's term.

II. FORMAL COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

A. Initiating a formal complaint

1. Complaint form. A formal complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. Complaints must include language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint, to consult an attorney before filing a

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Section II.A.

complaint. The form shall require the complainant to sign the following statement: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath."

2. Who may file. Aggrieved parties, as well as eyewitnesses (percipient witnesses) to alleged police misconduct, may file a complaint. Complaints may also be initiated by the Board, upon a vote of five Board members to authorize an investigation. Complaints shall be signed by the complainant, except for complaints initiated by the Board.
3. Filing period. A complaint must be filed within 180 days of the alleged misconduct, except that the 180 days shall be tolled if:
  - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
  - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.
4. Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be submitted by the Director to the Board for administrative closure at the next meeting that allows the complainant to be provided at least 5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation.
5. Right to representation. Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPa is notified that a complainant or subject officer is represented, then the ODPa shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives, as well.

B. Mediation

1. Election
  - a. ODPa staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. E.1 below.

Section II.B.

- b. If the complainant elects mediation, ODPa staff shall issue a Notice of Complaint and Request for Mediation to the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before the mediation session concludes.
- d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and heard at a confidential complaint hearing, unless the subject officer withdraws from mediation.

2. Completion

- a. After receiving notice from the mediator that a mediation has concluded, ODPa staff shall close the case and inform the Board.

C. Complaint investigation

1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's discovery by a person authorized to initiate an investigation of the alleged misconduct, unless a Government Code sec. 3304(d) applies, except:
  - a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPa shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPa shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding.
  - b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.N.
2. Transmittal of complaint. Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed.
3. Notice of Complaint and Allegations. Within 30 days of a complaint filing, rejection of a recommendation for administrative closure, or officer's rejection of a mediation offer, the ODPa shall prepare and send a Notice of Complaint and Allegations to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject

Section II.C.

officer. The Notice of Complaint and Allegations need not be sent if the complainant requests mediation, or the Director recommends administrative closure. After the initial Notice of Complaint and Allegations is sent, ODPa staff may add, modify, or remove allegations as they deem appropriate, with a brief explanation for any such changes, in a revised Notice of Allegations that is sent to the complainant, the Chief or Internal Affairs, and each subject officer. Notices under this section may be sent by hard copy or electronically.

4. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPa staff with the schedules of all sworn employees of the Police Department.
5. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence.
6. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, unless state or federal law forbids the production of those records and information.
  - a. The Director and/or the PAB may issue subpoenas to compel the attendance of persons and the production of books, papers, and documents, including but not limited to photographic, audio, and video evidence, as needed to carry out their duties and functions.
  - b. While an investigation is in process or tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
    - i. The original Communications Center tapes relevant to the complaint.
    - ii. All police reports, records, and documentation, including body-worn camera video.
    - iii. Names, addresses, telephone numbers, and statements of all witnesses.
7. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability.

Commented [KL3]: Flag for discussion with full Board. Does the Board have a role in investigations? Also, does subpoena power extend to PAB during F&R process? (See Charter Sec. 3(a)(5). Does the Charter allow for additional investigatory work after F&R are presented but before a hearing?

Section II.C.

8. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act<sup>1</sup> ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond.

Both the subject officer and the complainant retain all their constitutional rights throughout the process, and any such exercise shall not be considered by the Board in its disposition of a complaint.

**D. Pre-hearing complaint disposition.**

1. Administrative Closure

- a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- i. The complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- ii. The complainant requests closure.
- iii. Staff have been unable to contact the complainant despite at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- iv. The complaint is moot, including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.

- b. Procedure

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<sup>1</sup> Government Code Sec. 3300 et seq.

Section II.D.

A complaint may be administratively closed by a majority vote of Board members during closed session at a meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 5 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified.

2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.E.1. If the subject officer enters a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them.

E. **Initial submission and consideration of investigative findings and disciplinary recommendations.**

1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and disciplinary recommendations to the Board in a closed session and convene a confidential complaint hearing if the Board requests it by a majority vote. This deadline may be extended as provided under Section II.M.
2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is "preponderance of the evidence."
3. Categories of Findings.

The Director's recommended finding shall include one of the following categories:

- a. Unfounded: The alleged actions of the police officer did not occur.
  - b. Not Sustained: The available evidence can neither prove nor disprove whether the alleged actions of the police officer occurred.
  - c. Exonerated: The actions of the police officer occurred, but were found to be lawful, justified, and/or within policy.
  - d. Sustained: The actions of the police officer were found to violate law or department policy.
4. Recommendation of discipline and level of discipline. If the Director recommends a "sustained" finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421 on January

**Commented [LK4]:** Bd mbr Leftwich suggests deleting but this is taken from Charter sec. 18(m) (and now I think we should add, after 1421, "on January 1, 2019" as the Charter states).

Section II.E.

1, 2019, the Director must include a recommendation regarding the level of discipline.

5. Board decision. Upon reviewing the Director's investigative evidence (other than body-worn camera footage) and the Director's findings and disciplinary recommendations, and viewing any relevant body-worn camera footage, the Board shall proceed as follows:

- a. If the Board affirms or proposes a sustained finding or a recommendation of discipline on any allegation, or decides that further fact-finding is warranted, a confidential complaint hearing shall be convened on all allegations in the complaint. The Board may request that ODPA staff conduct further investigation as needed.
- b. If the Director and the Board agree on all proposed findings, none of the findings are "sustained," and the Board decides there is no need for a hearing, the Board shall send its findings to the Chief of Police.
- c. If the Board modifies the Director's findings, none of the findings are "sustained," and the Board decides there is no need for a hearing, the Board shall send its findings to the Chief of Police.
- d. All findings and recommendations must be sent to the Chief of Police within 195 days of the City's discovery of alleged misconduct, except if extended as provided under Section II.M.2.

Commented [LK5]: Subcomm. 5-4: flag for full Board – potential prejudicial effect of BWC footage at this stage, prior to hearing.

Commented [LK6]: 3-22-22: Very complicated issue that should be discussed at full Board.

Commented [LK7]: See comment from Bd mbr Leftwich at II.L.1, p. 19. They are Board's findings but Director (or ODPA staff) performs the act of sending. Suggest, "The Board's findings shall be sent to the Chief of Police."

Commented [LK8]: Ditto

F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.

1. Time. If the Board decides to move forward with a confidential complaint hearing, it must be held within 60 days of the date the ODPA has completed its investigation.
2. Scheduling hearing. ODPA staff shall determine the availability of subject officers and complainant before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers identified in the same complaint do not share a common day on duty.
3. Hearing Panel. ODPA staff shall secure a Hearing Panel to conduct the confidential complaint hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which a majority of Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel.
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer and complainant retain the right to challenge the Board member for

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cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing. The hearing will be continued until the challenge can be resolved.

5. Effect of continuance. If a hearing is rescheduled due to the unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened.
6. Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel.
7. Hearing Packet. At least 14 days before the hearing date The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation, and provide access to any relevant body-worn camera footage. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command Officer, and the Police Chief. The complainant shall receive a Hearing Packet without information protected from disclosure by state law. Witness officers and civilian witnesses shall receive a copy of only their interview transcript.

Commented [KL9]: Ask City Attorney if complainant can be entitled to more materials, or to redacted materials. Trying to align with specific language of Penal Code 832.7.

G. Board member impartiality; recusals; challenges

1. Impartiality.
  - a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential complaint hearings, they shall consider all viewpoints and evidence.
  - b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.
  - c. No Board member with a personal interest or the appearance thereof in the outcome of a hearing shall sit on the Hearing Panel. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs or affiliations  
Examples of personal interest include, but are not limited to:
    - i. a familial relationship or close friendship with the complainant or subject officer;



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- ii. witnessing events material to the inquiry;
  - iii. a financial interest in the outcome of the inquiry;
  - iv. a bias for or against the complainant or subject officer.
- d. A Board member who violates Section G.1.b above, before or during a confidential complaint hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendaize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential complaint hearings for the remainder of the Board member's term.
2. Recusal. Board members who recuse themselves for personal interest must do so as soon as they become aware of it.
3. Disclosure of ex parte contacts. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing.
4. Challenges to Hearing Panel member
- a. Basis for Challenge  
A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing as defined in Sec. II.G.1.c. shall not sit on the Hearing Panel.
  - b. Procedure
    - i. Within 7 calendar days from the date of mailing of the notice of a confidential complaint hearing, which includes the names of the Board members constituting the Hearing Panel, or 10 calendar days before the hearing date, whichever occurs first, the complainant or the subject officer(s) may file with the ODPa a written challenge for cause to any Hearing Panel member. Such challenge must specify the nature of the personal interest or perceived bias, accompanied by all evidence and argument supporting the challenge.
    - ii. The Director of Police Accountability or their designee shall notify the challenged Board member and send them a copy of the challenge and supporting materials within 1 business day after receipt of the challenge.

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- iii. A Board member challenge and a Board member's response to being challenged may be filed via email to [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info). ODPa staff may serve a notice of challenge and supporting materials, and response to a challenge and supporting materials, via email.
  - iv. If the Board member agrees to recuse themselves, the Director or their designee shall ask another Board member to serve.
  - v. If the Board member does not agree that the challenge is for good cause, the Board member has 3 calendar days from the date of contact by staff to file a written response with supporting materials, if they desire, and ODPa staff must send the response and supporting materials to the challenging party within 1 business day of receipt. The Director or their designee shall convene a special meeting of the two other Hearing Panel members to occur as soon as practicable to hear the challenge. For the challenge to be granted, both Board members must agree that the challenge is for good cause using the clear and convincing standard. If the challenge is granted, the Director or their designee shall ask another Board member to serve. If there is not unanimous agreement by the two Board members, the challenged Board member will be allowed to serve. "Clear and convincing" means evidence that is so clear as to leave no substantial doubt; or that shows a high degree of probability."
  - vi. At the special meeting to hear the challenge, the party making the challenge shall, under oath, reiterate the basis of the challenge for the Board members. All parties will be allowed the opportunity to present arguments, witness testimony and answer questions under oath. Testimony and arguments presented at the special meeting shall be recorded.
  - vii. If a challenge to a Board member is rejected, and the Board member serves, the written challenge and the Board member's written response shall be part of the complaint file. If a challenge is upheld, the Board members voting to uphold must prepare a written decision explaining their reasoning. This decision will be furnished to the challenging party and the challenged Board member, and is confidential.
5. Replacement of Board members
- a. If a challenge to a Board member is upheld, DPA staff shall ask another Board member to serve.
  - b. In cases where the full Board sits as the Hearing Panel, a Board member who agrees to a challenge or is successfully challenged will be replaced by the alternate Board member.

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6. Tolling of time

A challenge to a Board member that is granted at the request of the subject officer shall toll any BPD disciplinary time period.

H. Continuance requests; other pre-hearing motions

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for the request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i).

2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODPa staff no later than 10 days before the scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. ODPa staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

Commented [KL10]: Add language to section above re notice to parties of new witnesses or evidence and time frame. (IF further investigation is authorized.)

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision.

3. Procedural issues or objections. The complainant and subject officer shall ~~shall~~ raise any procedural issues or objections by submitting them in writing to the Director at least 7 days before the hearing date.
4. Pre-hearing submission of questions. The complainant, subject officers, or their respective representatives may submit proposed questions related to the incident in writing at least three business days before the hearing to ODPa staff. Hearing Panel members may ask these questions if they deem them appropriate and useful.

I. Hearing procedures

1. Who may or must be present at hearing. Hearings are closed to the public. The Director, Investigator, and Hearing Panel members may be present during the entirety of the hearing. The complainant and the subject officer must be present to answer questions from Board

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members, subject to state law. An attorney or other representative (up to two for each complainant and subject officer) may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for ensuring their representative's presence at the hearing.

2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing to another date due to the unanticipated unavailability of a witness or a representative.
3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained.
4. Good cause for failure to appear at complaint hearing.
  - a. A complainant or subject officer who fails to appear at a complaint hearing due to significant, unforeseen circumstances that could not have been anticipated has 7 calendar days from notice of the dismissal or notice of findings to request that the complaint be re-opened and a hearing or re-hearing held. The request must be made to the ODPa in writing and state the reason for not attending the hearing.
  - b. ODPa staff shall notify the Hearing Panel members and the opposing party of the request. On the same date, staff shall notify the requesting party that they must submit, within 5 business days, documentary or other evidence (such as witness statements, a doctor's note, or an obituary) to support their claim of inability to attend the hearing.
  - c. Staff shall schedule a special meeting date to hear the request, and then send written notice thereof. At least 72 hours' written advance notice of the meeting must be sent. The notice to the opposing party and Hearing Panel members shall include the requesting party's evidence. The opposing party may submit a written response before or at the special meeting.
  - d. At the special meeting, the requesting party will have the opportunity to present their case to the Hearing Panel members, who may ask questions of the requesting party. The opposing party may not ask questions of the requesting party but may present their argument in opposition. Hearing Panel members may ask questions of the opposing party. Each side shall have an opportunity for rebuttal.
  - e. Following the parties' arguments, everyone except ODPa staff is excused while the Hearing Panel members deliberate. In determining whether good cause has been shown, the Hearing Panel members

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shall consider the reason for not appearing, the prejudice to the opposing party, and other relevant information. The finding of good cause must pass by a majority of the Hearing Panel. The decision of the Hearing Panel will be announced orally and issued in writing. If good cause is found, staff will schedule a hearing or re-hearing.

- f. A re-hearing granted at the request of the subject officer shall toll any BPD disciplinary time period and the one-year investigatory time period under Government Code section 3304(d).
5. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued (i.e. delayed) until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous.
6. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing.
7. Viewing body-worn camera footage. Hearing Panel members, complainants and their representatives, and subject officers and their representatives (in accordance with BPD policy), may view relevant body worn camera footage in advance of the hearing. Relevant body-worn camera footage may also be shown during the hearing.
8. Taking testimony at the hearing. Testimony at the hearing will include the following elements:
  - a. The complainant, witnesses, and officers will be called into the hearing room to testify separately. Hearing Panel Members may ask questions submitted previously in accordance with Section II.H.4, if deemed appropriate and useful.
  - b. The complainant will generally testify first and may be accompanied by their representatives. The complainant and/or their representatives may make a statement or rely on their interview statement. The representatives may ask the complainant questions. Hearing Panel Members may then ask questions. After questioning is completed, the complainant or their representatives will have up to 15 minutes to provide a summary of their case and a closing statement.
  - c. The complainant and their representative will be excused from the hearing room after their testimony or representation is completed.
  - d. Any civilian witnesses will be called into the hearing room to testify separately. They may make a statement or rely on their interview statement. Hearing Panel Members may ask questions. After their questioning is completed, witnesses will be excused.

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- e. The subject officer(s) and any witness officers will be called into the hearing room to testify separately, and will not be present during the complainant's and civilian witness's testimony. Subject officer representatives may be present for all of their subject officer's testimony. Subject officers may make a statement or rely on their interview statements. The subject officer may be questioned by their representative, after which the officer may be questioned by up to 2 Hearing Panel Members, unless the officer waives this limitation. After questioning is completed, subject officers or their representative will have up to 15 minutes to provide a summary of their case and a closing statement.
  - f. Witness officers will then be called into the hearing room. They may make a statement or rely on their interview statement. Hearing Panel Members may then ask questions. After questioning is completed, the officer witness(es) will be excused.  

The Duty Command Officer (DCO) may be present during the subject officer and witness officer's testimony. The DCO appears on behalf of the Berkeley Police Department to answer questions from the Board about Department policies and procedures. The DCO is not to testify as to the events pertaining to the complaint, offer any opinion about whether misconduct occurred, or act as a representative of a subject officer.
  - g. Board members may call any participant back into the hearing room for follow-up questions.
9. Maintaining order. No person at the hearing shall become subject to undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient.

**J. Evidence**

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be considered if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Subpoenas. The Director and/or Board may issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out their duties and functions.
3. Procedure. Evidence shall be considered in accordance with the following provisions:

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- a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and questioned.
- b. All oral evidence shall be taken under oath.
- c. The Chairperson shall exclude irrelevant evidence.
- d. The Chairperson shall conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPA staff will answer Board members' questions on the evidence, points of law, and procedure.
- e. The City Attorney's opinion shall be sought whenever the interpretation of a City Ordinance or the City Charter is contested and pivotal to the case, or when a case raises substantial legal issues of first impression. If a conflict of interest exists for the City Attorney, outside counsel may be obtained (Article XVIII, Section 125 (15) (b).)
- f. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
- g. If either party requests that the hearing be continued at a later date to consider motions or points of law, any applicable BPD disciplinary time limit may be tolled for the period of such continuance. The Hearing Panel, in consultation with the parties, shall decide on the continuance and any possible tolling.
4. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a matter relating to the incident in question by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

Commented [KL11]: Kitty 1-20-2022 would like to clarify what this phrase means. 3-31 City Attorney will be asked about this (Board's role, if any in extending subpoena power)

Commented [LK12]: At 11-30 meeting, Lt. Montgomery said 240 days cannot be extended unless subject officer agrees. Even if officer agrees with PAB to toll, the BPD is still abiding by the original 240? Staff would like to consult with City Attorney's office.

K. Deliberation and Findings

1. Deliberation. After the hearing has concluded, the Hearing Panel shall deliberate outside the presence of everyone except ODPA staff. The Hearing Panel shall only consider information provided in the hearing packet, through body-worn camera footage, or during the hearing.
2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability, as set forth in Section II.E.3. All actions of the Hearing Panel shall be by majority vote of those Board members present.
3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing,

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unless extended as provided under Section II.M.2. The decision shall also be transmitted to the complainant and the subject officer(s).

4. Content of findings.

a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.

b. If the Board modifies or rejects the DPA's findings and recommendations, the Director shall, if the Hearing Panel desires, reconvene the Hearing Panel within 10 days of the confidential hearing to review and approve the written findings draft prepared by the Director, except as stated below.

If the Director is unable to reconvene the hearing panel or there is insufficient time to meet the investigative deadlines, the Director shall prepare and electronically submit a written findings draft to the Hearing Panel for approval. To avoid a Brown Act-serial meeting violation, the Director will circulate the draft findings separately and only once to Hearing Panel members for comment and feedback to the Director, who shall not share the comments or feedback of Panel members with one another.

b. If the Hearing Panel modifies or rejects the Director's findings and recommendations, the Director shall prepare and electronically submit a written draft of the new findings and recommendations to the Hearing Panel. If any member of the Hearing Panel advises the Director that the member seeks to make substantive changes to the draft, the Director shall reconvene the Hearing Panel to ensure the Panel has reached consensus on the findings and recommendations.

b.c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning, unless the dissenter agrees with the Director's finding and recommendation.

L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.E.5.a. above, or from the Hearing Panel under Section II.L.4.b. above, the Chief of Police shall take one of the following actions:

a. Issue a final decision if the Chief agrees with the Director or the Hearing Panel.

Commented [LK13]: This section b. and alternate language proposed by Bd. Member Leftwich was flagged for 5-4 meeting but not discussed. New proposed language below.

Commented [LK14]: Director okay with this but believes additional language to address situations where meeting can't be convened.

Commented [LK15]: Bd mbr Leftwich 4-26 notes should say "Board" for consistency with Sec. II.E.5., p. 9 above. However they are Board's findings, which are sent by the Director.



Section II.M.

- b. Submit a tentative decision including any disagreement with the Director or the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision disagreeing with any findings or recommendations of the Director or Board, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.
3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.
4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.M.2.

**M. Time limits; extensions; tolling.**

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies.
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days.
3. Tolling. If a subject officer is unavailable for an interview with ODPA staff or to attend a confidential personnel hearing due to any leave of absence, the 240-day time limit for complaint investigation and notification of discipline under Section 18(d) of Article XVIII of the City Charter shall be tolled pending availability of the officer. This provision shall apply only when the subject officer's leave of absence exceeds 14 consecutive days.

**III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT**

**A. Application**

Section II.M.

This Section III applies to complaints that a member of the public files with the Police Department only.

**B. Procedure**

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code.
2. If a finding is "not sustained," "unfounded," or "exonerated," the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief's determination to the Director. The Director, if appropriate, may request to review all files, transcripts, and records related to the complaint.
3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
  - a. The objection is accepted and the Board will convene to conduct a review based on the investigative record provided by the Department; or
  - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.
4. If the Director decides that the Board will conduct a review, ODPa staff shall ask the Board to conduct a review of the investigative record at a closed session meeting.
  - a. At the meeting, only Board members and ODPa staff will be present. A Duty Command Officer may be present.
  - b. The Board shall evaluate the investigative record to determine whether the complainant's objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief's decision is not supported by the evidence in the record.
  - c. All action of the Board must be by majority vote.
5. The Board must, within 45 days of the date the Director accepts an objection:
  - a. Dismiss the complainant's objection;
  - b. Issue a report agreeing with the Chief's determination; or

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- c. Issue a report disagreeing with the Chief's determination if the Board finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.
6. Within 15 days of receiving a Board's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections.
7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief, and send a final determination with a written explanation to the Director, the Board, and the Chief.
8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies.

**IV. INVESTIGATIONS INITIATED BY THE BOARD**

Investigations may be initiated by the Board upon a vote of six Board members. Subsequent to an initial inquiry or investigation, a formal complaint may be initiated by the Board in cases of potential serious misconduct, by a vote of six Board members. Rules of procedure (including, but not limited to, the sufficiency of the complaint) shall follow those set out for formal complaints initiated by aggrieved parties or percipient witnesses of alleged police misconduct. Two exceptions to this general principle apply:

- 1) Regulatory references to "complainant" are moot.
- 2) Only subject officers, their representatives, and witnesses shall be interviewed and testify.

**V. INFORMAL COMPLAINTS**

A. An informal complaint is a communication not on the official ODPa complaint form from any member of the public that identifies an officer by name, badge number, other identifying features, or specific circumstances, and alleges an act of police misconduct. The individual who initiates an informal complaint may request anonymity (i.e., remain anonymous to all, including ODPa staff) or confidentiality (i.e., remain known only to ODPa staff and Board members).

Commented [KL16]: Flag for full discussion by the Board.

Section V.

- B. ODPa staff shall contact the individual to explain how to file a formal complaint.
- C. If ODPa staff is unable to contact the individual, or if the individual declares their intention not to file a formal complaint, staff shall agendaize the informal complaint for closed session at the next PAB meeting with notice to the named officer. At said meeting, the Board shall determine whether to initiate an investigation under Section IV. based, in part, on the following considerations:
  - 1. Whether the informal complaint alleges prima facie misconduct;
  - 2. The seriousness of the incident;
  - 3. The timeliness of the complaint;
  - 4. Whether a formal complaint has already been filed about the incident.
- D. The identity of an individual who submits an anonymous or confidential informal complaint shall remain anonymous/confidential, if requested.
- E. A complaint filed anonymously on the official ODPa complaint form shall be treated as an informal complaint

**VI. COMPLAINT FOLLOW-UP**

After the Chief of Police or City Manager has issued a final decision on a complaint, ODPa staff shall invite the subject officer(s), complainant, and witnesses who testified, to participate in an exit interview or survey, and ODPa staff shall conduct the exit interview or survey with those who are willing.

**VII. AVAILABILITY AND AMENDMENT OF REGULATIONS**

- A. These Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPa staff shall furnish them to any person requesting a copy.
- B. Amendments to these Regulations require a majority vote of the Board and ratification by the City Council.



**VENDOR APPLICATION**

SUNDAY, JUNE 19, 2022 11am-7pm

**ALL APPLICATIONS AND PAYMENTS MUST BE RECEIVED BY JUNE 1<sup>ST</sup>**

-please don't send application without payment-

BUSINESS NAME: \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_ CELL PHONE #: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_ WEBSITE: \_\_\_\_\_

LIST OF FOOD ITEMS	METHOD OF PREPARATION	COOKING EQUIPMENT	GENERATOR / PROPANE?
LIST OF MERCHANDISE FOR SALE/ OR INFORMATIONAL: DESCRIPTION OF PRODUCT			

THIS PAYMENT CONFIRMS RESERVATIONS FOR A 10' X 12' SPACE ONLY  
 NO ELECTRICITY PROVIDED  
 VENDORS MUST PROVIDE OWN TENTS, TABLES AND CHAIRS.  
 RENTAL ADD-ONS CAN BE PROVIDED DEPENDING ON AVAILABILITY.

		RENTALS (OPTIONAL)	
<input type="checkbox"/> FOOD- (INCLUDES 1-DAY FOOD PERMIT & ADMIN FEE)	\$450		
<input type="checkbox"/> MERCHANDISE SALES	\$150	<input type="checkbox"/> 10 X 10 CANOPY	\$150
<input type="checkbox"/> INFORMATIONAL (NO SELLING ALLOWED)	\$100	<input type="checkbox"/> TABLE AND TWO CHAIRS	\$40

<input type="checkbox"/> EARLY BIRD APPLICATION AND PAYMENTS RECEIVED <u>BEFORE APRIL 30<sup>TH</sup></u>	DEDUCT \$20
<input type="checkbox"/> APPLICATIONS AND PAYMENTS RECEIVED <u>AFTER JUNE 1<sup>ST</sup></u>	ADD \$50
<input type="checkbox"/> VISION MAGAZINE "SPECIAL VENDOR RATE" ¼ PAGE AD	ADD \$50

<b>TOTAL PAYMENT</b>	\$
----------------------	----

ALL SALES ARE FINAL!  
 NO PERSONAL CHECKS!  
 CASH/CASHIER'S CHECKS/MONEY ORDERS ONLY  
 PAYPAL AVAILABLE (FEE APPLIES)  
PAYABLE TO:  
 (BJCC) BERKELEY JUNETEENTH CULTURAL CELEBRATIONS  
 PO BOX 3427, BERKELEY, CA 94703-0427  
 CONTACT: DELORES COOPER  
[berkeleycajuneteenth@gmail.com](mailto:berkeleycajuneteenth@gmail.com) 510-524-8804

**ALL VENDORS: PLEASE READ, SIGN AND ATTACH TO APPLICATION**

**VENDOR CONTRACT**  
**Event policies and Procedures**

1. Vendors WILL CLOSE business AT 5:45 PM SHARP! NO EXCEPTIONS!!!
2. Alcoholic beverages are not permitted to be sold or consumed on the streets or within the event area WITHOUT PREVIOUS PERMITS AND APPROVAL
3. Electricity is not provided. No loud generators.
4. Vehicle traffic is not allowed within the event boundaries between 10 am and 530 pm – no exceptions.
5. Spaces must be left clean and vacated before 630 pm on the day of the event (dumpsters are provided) or a clean-up fee of \$50.00 per space will be charged. ONLY CHARCOAL AT ROOM TEMPERATURE MAY BE PLACED IN DUMPSTERS!  
(Failure to remove hot coals safely from the premises will result in citations and barring from future City of Berkeley events.)
6. FOOD BOOTHS: Vendor water containers must be emptied into WASTE WATER container on center median island (grassy area). Used oil containers must be saved, removed and disposed of away from festival site by the vendor.
7. All merchandise must remain within vendor booth spaces.
8. Berkeley Juneteenth events are family events. No merchandise featuring drugs, drug paraphernalia or explicit sexual connotations will be permitted. Event staff reserves the right to remove vendors who are offering such merchandise for sale.
9. There will be no guns, ammunition, pepper gas, etc. sold or present in event facility.
10. All city, county and state regulations will be obeyed, PARTICULARLY THE SECTIONS ON SHUTDOWN TIME.
11. We ask that you avoid using or distributing the following types of materials at the event:

**\*\*\*Styrofoam\*\*\***

The Berkeley Municipal Code, Chapter 11.60. prohibits the use of styrofoam in the City of Berkeley.

I have read and understand the above-listed event policies and procedures. I agree to follow the rules as stated above and hereby release the Berkeley Juneteenth Cultural Celebrations and the City of Berkeley from all damages, costs, or expenses that may arise because of fire, theft, or breakage of property or personal injury received by reason of or in the course of the Berkeley Juneteenth event which may be occasioned by any willful or negligent act or omissions of myself, my employees, or any liability from disorder or disturbance during this event. I warrant that I have the authority to bind this business to this agreement.

SIGNATURE:  
BUSINESS NAME:

DATE:

## Lee, Katherine

---

**From:** Brown, Farimah F.  
**Sent:** Friday, May 13, 2022 6:54 AM  
**To:** Williams-Ridley, Dee; Harrison, Kate; Louis, Jennifer A.; Lee, Katherine; Arreguin, Jesse L.  
**Cc:** McCormick, Jacquelyn; Trachtenberg, Tano; Naso, Christopher; Michael Chang; Kitty Calavita; Bellow, LaTanya; Buddenhagen, Paul; Darrow, Brendan; Mattes, Laura Iris; Chang, James J  
**Subject:** Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

Dear Vice Mayor Harrison, Mayor Arreguin, City Manager Williams-Ridley, Chief Louis, and Director Lee,

Thank you for giving us the opportunity to review these issues. Below is our guidance regarding some of the questions that have arisen:

- 1) Use Policies: The City's Police Equipment and Community Safety Ordinance (the "Ordinance") instructs PAB to "recommend that the City Council adopt, modify, or reject," the proposed controlled equipment use policy and "present its recommendations to the City Council." PAB has 90 days to make its recommendation absent time-sensitive situations. Only "[a]fter the Police Accountability Board review requirements have been met," can BPD schedule the impact reports and use policies for City Council consideration. Because it appears no recommendation regarding the use policies was provided to *Council*\* nor presented on, and 90 days have not elapsed, we recommend that PAB be allowed the opportunity to comply before the Council considers the impact reports and use policies.
- 2) Annual Reports: The Ordinance provides that PAB has 60 days to consider annual reports at an open meeting, and then allows them the opportunity to "recommend revocation" of the controlled equipment or "modif[cation]" of the use policy. Only "[a]fter review by the Police Accountability Board, the Police Department shall submit the annual report to the City Council." It does not appear that PAB has considered the report at an open meeting nor has the 60 days elapsed since being provided the annual report. Therefore, we recommend that PAB be provided this opportunity before Council considers the annual report.
- 3) AB 481 conflict: We are unsure of the precise basis for Mr. Mizell's conflict concerns, however he seems to argue that the Ordinance conflicts with AB 481 because it requires a law enforcement agency to "commence a governing body approval process" by May 1, 2022. However, that provision of AB 481 and the Ordinance are not in conflict. There is an open question as to what the "governing body approval process" refers to – it may be the process delineated by the Ordinance or the more narrow Council approval process. Regardless of the interpretation, however, there is no direct conflict between that requirement and the Ordinance.

Relatedly, we note that AB 481 provides that if the governing body does not approve the continued use of the military equipment within 180 days of submission of the proposed use policy, the law enforcement agency must cease use of the equipment until approval is granted. Similarly, the Ordinance provides that if City Council does not approve the impact report and use policies within four regular City Council meetings from when it is first schedule, the Police Department must cease its use.

\*While on April 6, PAB provided a memo to BPD containing examples of how the impact reports and use policies were "lacking," PAB has not provided the memo to Council and it contains no explicit recommendation for adoption, modification, or rejection.

Let us know if can provide further guidance.

Regards,  
Farimah

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**From:** Harrison, Kate <KHarrison@cityofberkeley.info>

**Sent:** Monday, May 2, 2022 10:12:43 AM

**To:** Louis, Jennifer A. <JLouis@cityofberkeley.info>; Bellow, LaTanya <LBellow@cityofberkeley.info>; Lee, Katherine <KLee@cityofberkeley.info>; Brown, Farimah F. <FBrown@cityofberkeley.info>

**Cc:** Arreguin, Jesse L. <JArreguin@cityofberkeley.info>; McCormick, Jacquelyn <JMccormick@cityofberkeley.info>; Trachtenberg, Tano <TTrachtenberg@cityofberkeley.info>; Naso, Christopher <CNaso@cityofberkeley.info>; Michael Chang <mike@mikechangforberkeley.com>; Kitty Calavita <kccalavi@uci.edu>; Williams-Ridley, Dee <DWilliams-Ridley@cityofberkeley.info>

**Subject:** Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

Dear Chief, Deputy City Manager, PAB Director, and City Attorney:

I am writing to address the May 10 Council item entitled: *Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report*.

As you know, I authored the underlying ordinance last year and it is very important to me, the Council, and the community.

I want to thank the Chief and City Manager for submitting these items within one year of passage amidst various competing demands. I also want to thank the PAB for their work.

However, I have a few concerns about the Council report and the process, and recommend that we delay consideration of this item for at least one Council meeting (the ordinance provides the Council with up to four meetings of consideration before any equipment is suspended, and AB 481 provides Council with up to 180 days of consideration) to address them:

1. It appears that the PAB has not yet submitted to Council its recommendation as provided for under the ordinance.

While the PAB sent you a memo on April 6 with recommendations and questions, it is unclear how the Department has responded and addressed them.

The PAB cannot provide Council with a recommendation until the Department responds to their questions. Under the ordinance, the PAB has until May 25 to provide Council with its recommendation. These recommendations do not appear to be frivolous or even discretionary--they relate to Berkeley needing to be in compliance with state law and policy.

Ideally, before submitting the item to Council, the PAB would have been provided the full 90 days, and received responses to their questions in writing.

Again, I appreciate that you have competing demands and needed to submit the item by May 10, but in retrospect there seems to be a breakdown in process.

2. In their April letter, the PAB raised questions about possible compliance issues with AB 481. I would like the City Attorney to weigh in on this issue and more broadly with respect to compliance with the ordinance and state law.



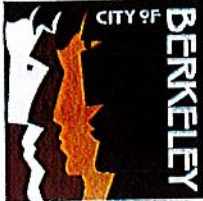
3. In speaking with PAB representatives, I understand that the PAB did not get a use report from the BPD, as is required by Section 2.100.050. The Ordinance states that this was to have been submitted to the oversight body "no later than March 15".

Thank you very much for your work here. I am looking forward to working together on this important report.

Sincerely,

Kate Harrison  
Vice Mayor





OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

May 11, 2022

To: Honorable Mayor and Members of the City Council

From: Michael Chang, Chairperson, Police Accountability Board

Re: Revisions to Berkeley Police Department Policy 311, Section 311.6, *Warrantless Searches of Individuals on Supervised Release Search Conditions* – agendized for the May 24, 2022 City Council meeting

The Police Accountability Board (PAB) has evaluated the proposal from Councilmembers Droste and Taplin to modify Berkeley Police Department (BPD) Policy 311, Section 311.6, *Warrantless Searches of Individuals on Supervised Release Search Conditions*, and voted unanimously to support retaining the current version of Section 311.6.

Policy 311, *Search and Seizure*, was the product of 18 months of work and collaboration between the former Police Review Commission (PRC) and the BPD. The policy was later incorporated into the Mayor's Working Group on Fair and Impartial Policing recommendations that Council passed on February 23, 2021. The PRC gathered evidence, reviewed the legal and scholarly literature, and received input from practitioners and experts, including the Alameda County Assistant Chief of Probation. The following summarizes the information gathered by the PRC and, subsequently, by the PAB.

- **California is one of only nine states that allow police officers without limitation to search individuals on community supervision.** A divided U.S. Supreme Court decision issued in 2006, *Samson v. California*, did not find the practice unconstitutional, and it remains part of the state Penal Code. That said, Berkeley's current policy brings it closer to that of most other jurisdictions in the United States.
- **In 2015, the U.S. Supreme Court in *Rodriguez v. United States* found that police officers may not prolong traffic stops absent reasonable suspicion longer than necessary to process the traffic infraction.** Given the longstanding value that Berkeley places on constitutional policing, the City will want to ensure that its probation and parole search practices subsequent to traffic stops are consistent with *Rodriguez*.
- **Probationers and parolees are subject to search by their Probation and Parole Officers (PO's), who classify their clients according to risk**

1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955  
Website: [www.cityofberkeley.info/dpa/](http://www.cityofberkeley.info/dpa/) Email: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)

**assessments.** Those at high risk of re-offending are subject to intensive supervision and search by their PO's. The California Division of Adult Parole Operations subject sex offenders and other "special cases" to the highest level of supervision and search by their PO's.

- **The reasonable suspicion standard in Policy 311.6 is a relatively low threshold.** At a recent training conducted for PAB members, BPD training officers underscored the distinction between "reasonable suspicion" and "probable cause," and provided examples of the relatively low level of suspicion currently required to conduct a parole and probation search.
- **Probationers and parolees in California are disproportionately people of color, with 71% of Alameda County probationers either Black or Latinx people.** They are therefore disproportionately subject to these searches.
- **The empirical evidence suggests that police officer parole and probation searches are not associated with crime reduction.** Of the nine states that allow unlimited probation and parole searches by police officers, six have crime rates higher than the national average. In Berkeley, Part One violent crimes were down slightly from 2020, while property crimes increased by 2.2%. This increase in Berkeley's crime rate in 2021 is lower than in jurisdictions that allow these police searches. For example, in neighboring San Francisco, overall crime was up 12.8% and in Richmond 9%. The Pew Charitable Trust, in a 2020 report of its Public Safety Project, found from their exhaustive review of available research that intensive probation and parole interventions and searches are not correlated with reduced crime.
- **Evidence also suggests that allowing police officers to do suspicionless probation or parole searches does not reduce recidivism.** The average 3-year recidivism rate across the United States is 39%. Five of the nine states that allow police officers unlimited searches of people on probation or parole have rates higher than that, with California's 50% rate substantially higher than average.
- **Evidence suggests these searches are not cost effective.** They take time from police officers to supplement the duties of Parole and Probation Officers during a period of already costly police overtime. Further, they may uncover technical violations of parole or probation, with related cost increases. Nationally, 30-40% of state prison admissions are for technical violations of probation or parole conditions, such as traveling more than 50 miles from home or violating curfew. Nationwide, states spend about \$3.1 billion annually to re-incarcerate people for technical probation or parole violations. The Pew Charitable Trust Report concluded that subjecting low-risk individuals to intensive supervision "drives up costs and runs counter to what the evidence recommends."
- **There is no evidence that intensive supervision of probationers and parolees facilitates rehabilitation.** A *Washington Post* article last year summarized Pew's Public Safety Project, "A supervision system meant to encourage rehabilitation outside of prison often stands in the way of its own goal." This is in part

because of the message of disrespect that these suspicionless searches send. Further, as Prof. Michelle Phelps suggests in her Princeton University dissertation, even the brief periods of incarceration associated with technical violations "cause enough disruption to destabilize family relationships and employment," which are critical for rehabilitation.

In sum, the evidence suggests that allowing police officers to search individuals on supervisory release without suspicion does not reduce crime, is associated with higher recidivism, drives up costs, and may be an obstacle to rehabilitation. And, since people of color are more likely to be on probation or parole, they are more likely to be subject to these searches.

The PRC originally recommended the current Section 311.6 of Policy 311 based on these empirical data, and it is in its commitment to evidence-based policing that the PAB unanimously and respectfully recommends retention of this policy. The vote to send a letter to the Council recommending against the proposed change to Section 311.6 and keeping the policy as is, was made at the PAB's April 13, 2022 meeting. Moved/Second (Calavita/Leftwich): Ayes – Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey; Noes – None; Abstain – None; Absent – None.

cc: Jennifer Louis, Interim Police Chief  
Police Accountability Board Members



**Benado, Tony**

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**From:** Southerland, Vincent <vincent.southerland@nyu.edu>  
**Sent:** Monday, May 9, 2022 12:49 PM  
**To:** All Council; City Clerk  
**Cc:** Arreguin, Jesse L.  
**Subject:** Letter Regarding Berkeley Police Search Policy  
**Attachments:** Letter to City Council re Searches.pdf

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

Hello-

I hope this note finds you well. Attached please find a letter reflecting my views regarding the City Council's consideration of the Berkeley Police Department's search policies for those on probation or parole. Thank you for your consideration.

Best,

Vincent

Vincent M. Southerland  
Assistant Professor of Clinical Law  
Director, Criminal Defense and Reentry Clinic  
Co-Faculty Director, Center on Race, Inequality, and the Law  
New York University School of Law  
245 Sullivan Street, 629  
New York, NY 10012  
Telephone: (o) (212) 998-6882 (c) (267) 608-7300  
[vincent.southerland@nyu.edu](mailto:vincent.southerland@nyu.edu)

May 9, 2022

City Council  
City of Berkeley  
2180 Milvia St.  
Berkeley, CA 94704  
[council@cityofberkeley.info](mailto:council@cityofberkeley.info)

Dear Berkeley City Council Members,

I am writing in light of your consideration of Berkeley Police search policy which currently requires that officers have reasonable suspicion to justify a search of a person on probation or parole. I was disheartened to learn that the Berkeley City Council is considering a rollback of policies meant to curtail the suspicionless search of people on supervision by Berkeley Police. Given the serious implications of these practices on Fourth Amendment rights and racial equity, I strongly urge City Council to leave the current limits on police authority in place.

I am an Assistant Professor of Clinical Law and co-Faculty Director of the Center on Race, Inequality, and the Law at the New York University School of Law. My expertise centers on the intersection of race and the criminal legal system, as well as criminal law and procedure. Prior to joining NYU School of Law, I was an Assistant Federal Defender with the Federal Defenders for the Southern District of New York, where I represented individuals in federal criminal proceedings and during post-conviction supervised release. My time as a federal defender was preceded by nearly a decade at the NAACP Legal Defense and Educational Fund and several years as a state public defender in New York.

The Fourth Amendment safeguards our fundamental right to be secure from unreasonable searches and seizures by the government.<sup>1</sup> It ensures that law enforcement cannot intrude upon our privacy without at least individualized, reasonable suspicion. This basic requirement is “the shield the Framers selected to guard against the evils of arbitrary action, caprice, and harassment.”<sup>2</sup> The Fourth Amendment’s safeguards apply to all people, regardless of race, sex, national origin, or for that matter, criminal status. As the Supreme Court has long recognized, people on supervised release, just like any other class of people, merit the Fourth Amendment’s protections.<sup>3</sup>

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<sup>1</sup> “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” CONST. AMEND. IV

<sup>2</sup> *Samson v. California*, 547 U.S. 843, 866 (Stevens, J. dissenting).

<sup>3</sup> See *United States v. Knight*, 534 U.S. 122 (2001) (holding that there must still be reasonable suspicion of wrongdoing to justify warrantless search of people on supervised release); *Griffin v. Wisconsin*, 483 U.S. 868, 876-77 (1987) (holding that warrantless searches carried out by probation officers as part of individualized counseling and monitoring may give rise to special needs justifying departure from the Fourth Amendment’s strictures); *c.f. Samson*, 547 U.S. 843 (2006).



Yet, contrary to the spirit of the Fourth Amendment, California is one of only nine states to allow warrantless, suspicionless searches by law enforcement of those on probation or parole.<sup>4</sup> Although California's arcane policy was upheld by the Supreme Court in *Samson v. California*,<sup>5</sup> the state's justifications for the measure emanated from the assumption that the suspicionless search of people on supervised release would reduce California's above-average recidivism rate. This assumption was flawed in 2006, when *Samson* was decided, and remains erroneous today. In *Samson*, the Court overlooked the fact that California's recidivism rate was driven by the state's system-wide failure to provide people in prison with vocational education, mental health treatment, and related services upon release,<sup>6</sup> combined with "lockup quotas" that perversely incentivized the violation of parolees to fill bed space in the state's prisons.<sup>7</sup> These shortcomings resulted in California returning more people on supervised release to its custody than in 39 states combined.<sup>8</sup> As recently as 2019, the state has admitted its failure to adequately support the re-entry of people in its custody.<sup>9</sup> The suspicionless search of people on supervised release bolsters the falsehood that people on supervised release are inherently suspicious and therefore less entitled to the law's fundamental protections. Such policies vest police with the sort of unbridled authority that resulted in a national outcry over policing in the wake of George Floyd's death.

In response to that outcry, the Berkeley City Council made significant strides to promote racial justice within its criminal legal system. Among the policies adopted were measures restricting law enforcement's ability to inquire about a person's supervised release status and limiting warrantless searches of people on supervised release to only those instances where there are "articulable facts that create a reasonable suspicion" that the individual was involved in criminal activity.<sup>10</sup> The regulation restored the protections enshrined in the Fourth Amendment—that touchstone requirement for government searches to be based not on a person's status, but on some individualized, reasonable suspicion of wrongdoing.

<sup>4</sup> See Cal. Penal Code Ann. § 3067(a) (West 2000).

<sup>5</sup> *Samson*, 547 U.S. 843 (2006).

<sup>6</sup> W. David Ball, *Mentally Ill Prisoners in the California Department of Corrections and Rehabilitation: Strategies for Improving Treatment and Reducing Recidivism*, 24 J. of Contemporary Health Law & Policy 1.2 (2007), Marvin Mentor, *Supreme Court: California's Law Permitting Suspicionless Police Search of Parolees Does Not Violate Fourth Amendment*, Prison Legal News (June 15, 2007), <https://www.prisonlegalnews.org/news/2007/jun/15/supreme-court-californias-law-permitting-suspicionless-police-search-of-parolees-does-not-violate-fourth-amendment/> (detailing how California prisons failed to adequately screen inmates for mental illness during intake, offer special programming or housing, provide basic treatment, and to address special needs upon release, resulting in "mentally ill prisoners get sicker, stay longer, suffer more, and wind up back in prison soon after their release."); Opinion, *California Reinvents the Wheel*, N.Y.T. (Apr. 16, 2004), <https://www.nytimes.com/2004/04/16/opinion/california-reinvents-the-wheel.html> (noting that despite California laws requiring that people be provided remedial education while in prison, fewer than 10% of prisoners were enrolled in academic programs).

<sup>7</sup> Marvin Mentor, *Supreme Court: California's Law Permitting Suspicionless Police Search of Parolees Does Not Violate Fourth Amendment*, Prison Legal News (June 15, 2007), <https://www.prisonlegalnews.org/news/2007/jun/15/supreme-court-californias-law-permitting-suspicionless-police-search-of-parolees-does-not-violate-fourth-amendment/>; see also *Criminal: How Lockup Quotas and "Low-Crime Taxes" Guarantee Profits for Private Prison Companies*, In the Public Interest (Sept. 2013), <https://www.inthepublicinterest.org/wp-content/uploads/Criminal-Lockup-Quota-Report.pdf>

<sup>8</sup> Mentor, *supra* note 7.

<sup>9</sup> California Dept. of Corrections and Rehabilitation, *Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs*, Report 2018-113 (Jan 2019), <https://www.bsa.ca.gov/pdfs/reports/2018-113.pdf>.

<sup>10</sup> Berkeley Police Department Law Enforcement Service Manual § 311.6

In passing these reforms, City Council acknowledged that California's authorization of suspicionless searches aggravated racial disparities endemic to the criminal legal system. Black, Latinx and other people of color are disproportionately policed and prosecuted, and therefore—predictably—more likely to end up on supervised release. Although Black Californians make up less than 8% of the general population, they represent 22.9% of those on state supervised release.<sup>11</sup> Black people who often live in heavily policed neighborhoods are also more likely to be stopped by law enforcement. The Berkeley Police Department's own data reveals that Black residents are not only more likely to be stopped than white residents, but also four times more likely to be searched following a traffic stop.<sup>12</sup> By restoring law enforcement authority to search Berkeley residents on the sole basis of their supervision status, the contemplated rollbacks invite gratuitous and discriminatory police contact, which in turn threatens to compound these stark racial disparities and undermines community well-being.

Restoring Fourth Amendment protections to people on supervised release made Berkeley stand out as a beacon committed to advancing racial equity and civil rights. Rolling back this progress would be a grave step in the wrong direction.

Sincerely,



Vincent Southerland  
Assistant Professor of Clinical Law  
Director, Criminal Defense and Reentry Clinic  
Co-Faculty Director, Center on Race, Inequality, and the Law  
New York University School of Law  
245 Sullivan Street, 629  
New York, NY 10012  
Tel.: (212) 998-6882  
[vincent.southerland@nyu.edu](mailto:vincent.southerland@nyu.edu)

cc: Mayor Jesse Arreguín

<sup>11</sup> Mia Bird, Justin Goss, Viet Nguyen, *Recidivism of Felony Offenders in California*, Public Policy Institute of California, (June 2019), <https://www.ppic.org/wp-content/uploads/recidivism-of-felony-offenders-in-california.pdf>.

<sup>12</sup> Malini Ramaiyer, *Berkeley police stop and search Black residents more often, Police Review Commission finds*, THE DAILY CALIFORNIAN (March 12, 2018), <https://www.dailycal.org/2018/03/12/berkeley-police-stop-search-black-residents-often-police-review-commission-finds/>.

**Lee, Katherine**

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**From:** Lee, Katherine  
**Sent:** Wednesday, May 18, 2022 3:53 PM  
**To:** Lee, Katherine  
**Subject:** Give input on the next Berkeley Police Chief

Board members:

Deadline is Monday, May 30 at 5:00 p.m. And please pass this along.

<https://berkeleyca.gov/community-recreation/news/give-input-next-berkeley-police-chief>

**Katherine J. Lee**

Interim Director of Police Accountability

City of Berkeley

o: 510.981.4960 (usually in office during regular business hours)

c: 510.926.1103



## Lee, Katherine

---

**From:** Charles Clarke <cfclarke@att.net>  
**Sent:** Tuesday, May 17, 2022 7:49 PM  
**To:** Kesarwani, Rashi; Taplin, Terry; Wengraf, Susan  
**Cc:** Lee, Katherine; Louis, Jennifer A.; Roller, Rico; Berkeley City Council Policy Committee  
**Subject:** BPD Special Response Team Exception to Tear Gas Ban  
**Attachments:** Clarke Memo Tear Gas Ban 05.17.2022.pdf

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

Dear Public Safety Committee Members,

In June 2020 the City Council voted to ban tear gas usage by the Berkeley Police Department.

In July 2020 the City Council referred to your own committee and the Police Review Commission a limited exception for the Special Response Team in the case of a barricaded subject.

In September 2020 your committee and the PRC gave their positive recommendations to the exception.

However, as far as I can discern the exception was never brought to the full City Council for its consideration.

I recommend that the Public Safety Committee pass the item along (belatedly) to the Agenda & Rules Committee for scheduling a vote by the full City Council.

I have attached a memo with relevant excerpts and hyperlinked references that substantiate the history I have summarized above. I conclude with recommendations to this Committee, the Police Department, and the Police Accountability Board.

I urge Council consideration for four reasons:

1. There may arise a 'barricaded subject' for which the exception would prove useful.
2. It would also re-focus attention on the merits of BPD's having recourse to tear gas, which pointedly was not discussed in June 2020.
3. National events may bring potentially violent crowds to Berkeley in the near future, just as in 2017-2018. The potentially inhibiting effect of Berkeley's tear gas ban on outside law enforcement agencies' willingness to render mutual aid should be understood in advance of such need.
4. It could focus attention on a statewide ban that would save Berkeley from being left unaided as in scenario #3 above.

Our Police Department should have the right tools to do the very difficult job we ask of them. Please see to that interest.

Sincerely,

Charles Clarke  
Resident, City Council District 6



**Documentary History of the City of Berkeley Tear Gas Ban**  
**Memorandum from Charles Clarke, a resident of Berkeley, May 17, 2022**  
**To the Public Safety Policy Committee**

*This memorandum is an updated version of a memorandum of the same title sent to the Police Accountability Board on April 13, 2022.*

At the June 9, 2020, Council special meeting the City Council established City policy to, among other things, prohibit the use of tear gas in Berkeley by the Berkeley Police Department (BPD) or any outside agency rendering mutual aid assistance.<sup>1</sup>

At the July 23, 2020, Council special meeting BPD Chief Andrew Greenwood observed that the tear gas ban could inhibit outside agencies from rendering any mutual aid with the possible consequence:

“Reducing or eliminating our ability to utilize mutual aid severely compromises our ability to safeguard the city. If our City is perceived as not being able to manage community safety, one could conceive that the City could become a target for the opportunistic placement of federal resources here.”<sup>2</sup>

The president of the Berkeley Police Association (BPA) echoed a related concern in an October 2020 e-mail to the City Council (attached) in advance of possible unrest following the 2020 Presidential election.<sup>3</sup>

Chief Greenwood also proposed an exception to be inserted into the Policy 300 Use of Force section concerning Restraint and Control Devices:<sup>4</sup>

“Tear gas may be used by trained personnel in the conduct of Special Response Team operations, e.g. during a barricaded subject operation, when it is objectively reasonable and objectively necessary to protect people from the risk of serious bodily injury or death.”<sup>5</sup>

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<sup>1</sup> Annotated Agenda, Berkeley City Council special meeting, June 9, 2020, 4:00 PM, p. 5 of 13  
<https://records.cityofberkeley.info/PublicAccess/api/Document/AevNyS1RnMoyw0rLkHeNr6jTm5gOYWki8YkzhBgsNGZÉInAY6r6Xr8le5uKCw8qC5eEqBI5z2UaBqK494GBwiWo%3D/>

<sup>2</sup> A.R. Greenwood, Chief of Police, “Companion Report: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force,” p. 10 of 15  
<https://records.cityofberkeley.info/PublicAccess/api/Document/AUSHÉVGqjc3vÁN26iSd0YXUÉÁvxÉQzCtpofGiiPlqZgNdD9rNzsEMfnVxwe2WStXqZÁzXYUZrZBJXRhHaG8ahfw%3D/>

<sup>3</sup> BPD Sgt. Emily Murphy to All Council, “Berkeley Police Association Request-Chemical Agents,” October 22, 2020, in Council Communications – November 10, 2020, p. 253 of 268  
<https://records.cityofberkeley.info/PublicAccess/api/Document/Abr5DoDGGÁ86IÁaEYTM73H6Nvk48KSPDECIJSUIkTdT8icxKCyx9t1DaZ7JFsLlgV64kB6FCk4TmNG5XahNusn4%3D/>

<sup>4</sup> Berkeley Police Department Policy 300 Use of Force  
[https://berkeleyca.gov/sites/default/files/2022-05/Use\\_of\\_Force.pdf](https://berkeleyca.gov/sites/default/files/2022-05/Use_of_Force.pdf)

<sup>5</sup> Greenwood, supra n. 2, p. 9 of 15.

At the July 23, 2020, Council special meeting the City Council referred the exception to the Police Review Commission and the Public Safety policy committee, specifically “the issue of providing an allowance for the Special Response Team to use tear gas in certain circumstances.”<sup>6</sup>

At its September 21, 2020, meeting the Public Safety policy committee voted to send the exception to Council with a positive recommendation.<sup>7</sup>

At the September 23, 2020, Police Review Commission (PRC) meeting the PRC forwarded for City Council consideration the following proposed exception in Policy 303 Control Devices and Techniques<sup>8</sup>

### 303.6 TEAR GAS GUIDELINES

Tear gas may only be used by trained members of the Special Response Team during SRT tactical operations (e.g., during barricaded subject operations or responding to armed attacks during an SRT operation) in accordance with Policy 300 to protect people from the risk of serious bodily injury or death.

The above paragraph notwithstanding, as per City Council policy (June 9, 2020), the use of tear gas by any employees of the Berkeley Police Department, including the Special Response Team, is prohibited in crowd control and crowd management situations.

When practicable, fire personnel should be alerted or summoned to the scene prior to deployment of tear gas by SRT, in order to control any fires and to assist in providing medical aid or gas evacuation if needed.

Moved/Second (Perezvelez/Leftwich) Motion Carried

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

Noes: Mizell

Abstain: Allamby

Absent: None

Apparently the City Council has never considered the suggested exception despite the PRC’s approval and the Public Safety committee’s positive recommendation.

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<sup>6</sup> Annotated Agenda, Berkeley City Council special meeting, July 23, 2020, 6:00 PM, p. 5 of 7  
<https://records.cityofberkeley.info/PublicAccess/api/Document/AdKE1bDK8Pzdf1NZbB8C2vUJXqMmtWwYIwtc20ffGK5NNed6ULLwHQVvEGaznEEn0Xsjw3shzrG7CcYUYrbVW1M%3D/>

<sup>7</sup> Minutes, Council Public Safety committee special meeting, September 21, 2020, p. 2 of 5  
<https://records.cityofberkeley.info/PublicAccess/api/Document/AY93jBe7hq3oFS396q8md3OVwEHNHyiUUrRLeShuQsnfHadZjyclWBOoEOA4T56nMvOoDyHOD92YGYsSRpwdtrO%3D/>

<sup>8</sup> Minutes, Police Review Commission regular meeting, September 23, 2020, pp. 3-4  
<https://records.cityofberkeley.info/PublicAccess/api/Document/AV3Kug2biL8FNJAIPqDxLqzop0ÁcÉz2ÉBiklRztfaiDÉhcaJl9XJfScKtOujldqNDÉmN3ÁoMHZy6Rt12ePEXvcQ%3D/>



I have searched the Annotated Agendas of the Council Agenda & Rules committee<sup>9</sup> since September 23, 2020, but found no item embodying the suggested exception.

Equally evidently BPD has not updated the Policy 303 Control Devices and Techniques<sup>10</sup> section on Tear Gas Guidelines (303.6) since its initial publication on October 12, 2018 – before the June 2020 tear gas ban.

### Recommendations

1. BPD should update Policy 303 to conform with the June 9, 2020, City Council policy on tear gas, Assembly Bill 48 (2021-2022),<sup>11</sup> Assembly Bill 481 (2021-2022),<sup>12</sup> and other applicable federal, state, and local law.
2. The **Public Safety Committee** should forward the exception to the Agenda & Rules committee for consideration by the full City Council, including the Committee's own positive recommendation and the PRC's (now PAB's) recommendation.
3. In accordance with the City Charter, the **Police Accountability Board (PAB)**, as the successor agency to the PRC,<sup>13</sup> should review the tear gas ban for its implications on the terms and conditions of mutual aid,<sup>14</sup> including the possibility that other law enforcement agencies may decline the Berkeley Police Department's requests for mutual aid because of the tear gas ban.

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<sup>9</sup> City Council: Policy Committee: Agenda & Rules (old link)  
[https://www.cityofberkeley.info/Clerk/City\\_Council/Policy\\_Committee\\_Agenda\\_Rules.aspx](https://www.cityofberkeley.info/Clerk/City_Council/Policy_Committee_Agenda_Rules.aspx)  
City Council agendas before 2022 are not currently available at berkeleyca.gov.

<sup>10</sup> Berkeley Police Department Policy 303 Control Devices and Techniques (p. 64 of 797)  
[https://berkeleyca.gov/sites/default/files/2022-05/RELEASE\\_20220411\\_T083431\\_Berkeley\\_PD\\_Policy\\_Manual.pdf](https://berkeleyca.gov/sites/default/files/2022-05/RELEASE_20220411_T083431_Berkeley_PD_Policy_Manual.pdf)

<sup>11</sup> Assembly Bill No. 48 (Gonzalez), Law enforcement: use of force  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB48](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48)

<sup>12</sup> Assembly Bill No. 481 (Chiu), Law enforcement and state agencies: military equipment: funding, acquisition, and use  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB481](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB481)

<sup>13</sup> Charter of the City of Berkeley Section 125, Article XVIII Police Accountability Board and Director of Police Accountability, Section 125(2)(e) [https://berkeley.municipal.codes/Charter/125\(2\)\(e\)](https://berkeley.municipal.codes/Charter/125(2)(e))

<sup>14</sup> Charter Section 125, Section 125(3)(a)(2). [https://berkeley.municipal.codes/Charter/125\(3\)\(a\)\(2\)](https://berkeley.municipal.codes/Charter/125(3)(a)(2))

## Excerpted Documents

City Council Minutes, "Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic," June 9, 2020, p. 5

BPD Chief Andrew Greenwood, "Companion Report: Police Review Commission Recommendation on Revised Berkeley Police Department Policy 300, Use of Force," July 23, 2020, pp. 9-10

BPD Sgt. Emily Murphy, City Council Communication, "Berkeley Police Association Request-Chemical Agents," October 22, 2020

Berkeley Police Department Policy 300.3.7 Restraint and Control Devices, in Policy 300, Use of Force, 04/11/2022, p. 50

City Council Minutes, July 23, 2020, p. 5

Public Safety Committee Minutes, "Providing an Allowance for the Special Response Team to use Tear Gas in Certain Circumstances," September 21, 2020, p. 2

Police Review Commission Minutes, "Motion to forward to the City Council for their consideration the following exception for use of tear gas during SRT operations," September 23, 2020, pp. 3-4

Berkeley Police Department Policy 303.6 Tear Gas Guidelines, in Policy 303, Control Devices and Techniques, 04/11/2022, p. 64

## Action Calendar

**Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic**

**From: Mayor Arreguin (Author), Councilmember Harrison (Author), Councilmember Robinson (Author)**

**Recommendation:** Adopt a motion to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition.

**Financial Implications:** See report

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

**Action:** 23 speakers. M/S/Failed (Wengraf/Kesarwani) to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. And, to refer the item to the Public Safety Policy Committee and the Police Review Commission for the consideration of a permanent ban of these chemical agents.

**Vote:** Ayes – Kesarwani, Hahn, Wengraf, Droste; Noes – Davila, Bartlett, Harrison, Robinson; Abstain – Arreguin.

**Action:** M/S/Carried (Davila/Harrison) to establish an official City of Berkeley policy 1) prohibiting the use of tear gas by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, and 2) prohibiting the use of pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition.

**Vote:** All Ayes.

Tear gas may be used by trained personnel in the conduct of Special Response Team operations, e.g. during a barricaded subject operation, when it is objectively reasonable and objectively necessary to protect people from the risk of serious bodily injury or death.

**Rationale regarding Mutual Aid and the effects of the Tear Gas ban:** The full ban on tear gas impacts mutual aid availability, and therefore our ability as a department to protect our community members and critical city infrastructure and property during large scale demonstrations. This amended language provides for exceptions to the tear gas ban to protect the lives of people, protect people from serious bodily injury, and to prevent the imminent criminal destruction of property, and for use by the Special Response Team for barricaded subject situations. This language is similar to a recent court ruling in Oakland.

The language regarding use of Pepper Spray are brought verbatim from GO U-2.

It is our clear understanding that if a city or Department restricts mutual aid agencies from the use of crowd management tools to protect themselves from violent encounters, the Alameda County Sheriff's Office will not provide mutual aid, and other mutual aid agencies' Chiefs will make the decision for their agencies, and likely follow suit. Absent these exceptions, the City of Berkeley will be deprived of the Mutual Aid assistance which has been a key factor in managing numerous large events. Mutual Aid is a voluntary program. Agencies can choose to not provide mutual aid resources.

Mutual Aid agency commanders collaborate with the host agency, gaining an understanding of operational goals and operating conditions.

Mutual Aid allowed the Berkeley Department to effectively and safely manage large scale demonstrations in 2017, 2018, et al. Our success and safety were contingent on the involvement of large numbers of personnel from other agencies. Should agencies be prevented from using their tools, training and policies, in support of our City's goals in managing demonstrations, the City will Mutual Aid resources.

Recently, we have seen federal law enforcement being inserted into cities where there is a claim that "locals authorities" can't provide for their community's safety. The best way to insulate our community from this sort of opportunistic intervention is to ensure we have the ability to safeguard the city through using Law Enforcement Mutual Aid, using our proven strategies, tools, and training, including our mutual aid resources.

Reducing or eliminating our ability to utilize mutual aid severely compromises our ability to safeguard the city. If our City is perceived as not being able to manage community safety, one could conceive that the City could become a target for the opportunistic placement of federal resources here.

**Benado, Tony**

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**From:** Emily Murphy <berkeleypoliceassocmurphy@gmail.com>  
**Sent:** Thursday, October 22, 2020 4:20 PM  
**To:** All Council  
**Cc:** Williams-Ridley, Dee; Greenwood, Andrew; Bellow, LaTanya; Brown, Farimah F.  
**Subject:** Berkeley Police Association Request-Chemical Agents

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

Re: Chemical Agents Carve Out Language

Dear Mayor Arreguin and Members of the City Council,

As November 3rd approaches, so does the very real public safety threat of violent civil unrest in the lead up to the election and its aftermath.

I write as President of the Berkeley Police Association (BPA) with an appeal that you take immediate action to ensure our community and officers are safeguarded in the event of violent civil unrest. The BPA is concerned that if extreme violence erupts in the context of peaceful demonstrations that Berkeley's residents, officers on the front lines, and critical infrastructure will be at risk under our current chemical agents policy. I respectfully ask that you carve out a very narrow yet important exception that permits the use of chemical agents where there is an imminent threat of physical bodily harm or significant destruction of property and where other techniques have failed us or are not reasonably likely to succeed.

The Berkeley Police Department has a long and admirable track record of safeguarding the right of community members to engage in free speech through peaceful protest. There is no city in the United States that has been more accommodating to free speech than Berkeley. Keep in mind that we've only needed to deploy tear gas twice in the last two decades and that we would never use tear gas on peaceful protestors.

Please know that all of our officers worked under a long standing policy which permitted discriminate use of tear gas, smoke and pepper spray under very limited and exigent circumstances. Our current training is geared around responding to and preventing violence with tear gas as a final option to create a buffer of time and space. That training loses its practical application and relevance without access to tear gas. Currently there is no clear plan on how to protect the community if we get to a point where tear gas would be required. Mutual aid is offered as a solution but understand that it is likely that regional mutual aid will be pulled in many directions and we could be on our own.

Mayor Arreguin - you and City Council are responsible for the safety of the community and the safety of our officers. I urge you to put that responsibility first and foremost today. We will work hard and do what we can to keep Berkeley safe; however, I am concerned that we cannot adequately protect the community under our current chemical agents policy.

Sincerely,

Sergeant Emily Murphy  
 President, Berkeley Police Association

# Berkeley Police Department

## Law Enforcement Services Manual

### *Use of Force*

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#### 300.3.7 RESTRAINT AND CONTROL DEVICES

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

## Action Calendar

- The adopted Use of Force Policy 300 will be effective October 1, 2020.
- The adopted policy does not make any changes to the previously adopted ban on teargas.
- The Council refers to the City Manager a request for an analysis by the City Attorney of the recent court decision in Oakland regarding the use of tear gas and mutual aid.
- The Council refers to the Police Review Commission and the Public Safety Committee the issue of providing an allowance for the Special Response Team to use tear gas in certain circumstances.

**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Droste.



## MINUTES

### Committee Action Items

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

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

**2. Providing an Allowance for the Special Response Team to use Tear Gas in Certain Circumstances (Supplemental Material Received)**

**Referred: July 23, 2020**

**Due: February 7, 2021**

**Recommendation:** On July 23, 2020, the City Council referred the following language to the Police Review Commission and the Public Safety Policy Committee: Refer to the Police Review Commission and the Public Safety Policy Committee the issue of providing an allowance for the Special Response Team to use tear gas in certain circumstances.

**Action:** 11 speakers. Discussion held. M/S/C (Robinson/Kesarwani) to send the item, as presented, to Council with a positive recommendation.

**Vote:** All Ayes

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

- a. Review and make recommendation to the City Council regarding a revised tear gas policy, to allow use by the Special Response Team in certain circumstances.

**Motion to forward to the City Council for their consideration the following exception for use of tear gas during SRT operations:**

**303.6 TEAR GAS GUIDELINES**

**Tear gas may only be used by trained members of the Special Response Team during SRT tactical operations (e.g., during barricaded subject operations or responding to armed attacks during an SRT operation), in accordance with Policy 300, to protect people from the risk of serious bodily injury or death.**

**The above paragraph notwithstanding, as per City Council policy (June 9, 2020), the use of tear gas by any employees of the Berkeley Police Department, including the Special Response Team, is prohibited in crowd control and crowd management situations.**

**When practicable, fire personnel should be alerted or summoned to the scene prior to deployment of tear gas by SRT, in order to control any fires and to assist in providing medical aid or gas evacuation if needed.**

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

**Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez, and Ramsey.**

**Noes: Mizell**

**Abstain: Allamby**

**Absent: None**

*Control Devices and Techniques*

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**303.6 TEAR GAS GUIDELINES**

Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

- (a) However, tear gas may used without the Chief's authorization when exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles being thrown and immediate crowd dispersal is necessary). In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.

When practicable, fire personnel should be alerted or summoned to the scene prior to the deployment of tear gas to control any fires and to assist in providing medical aid or gas evacuation if needed.

# Berkeleyside

CITY

## In 7-2 vote, Berkeley council approves broad package to reimagine policing

Thursday's vote was a budget referral: The package will come back in June so officials can decide what will actually be funded in the coming years.

By Emilie Raguso, May 6, 2022, 4:57 p.m.

A Berkeley City Council majority approved an expansive package of new programs and positions Thursday night designed to transform public safety in Berkeley while also helping boost police staffing from a historic low.

**Council highlights from Berkeleyside's live coverage: [Part 1](#) | [Part 2](#)**

The council vote is a budget referral, meaning it will come back to officials in June for consideration as part of

the upcoming budget process.

But if it is fully funded, the package — built on years of work by community members, officials and staff — would represent a major investment in what officials say they hope could result in an entirely new approach to community safety.

The vision involves having civilians respond to many of the calls police now handle — those determined not to need an armed response — as well as the potential creation of a new Department of Community Safety, modeled on a program in Albuquerque, to provide comprehensive oversight of the overhauled system and bring a range of initiatives under one roof. The new umbrella agency would be a first in California, Mayor Jesse Arreguín said this week.

“With crime increasing, don’t we want our police to focus more on gun violence, investigations and community policing?” Arreguín said Thursday night. “That is why we proposed that we explore alternatives to policing.”

The reimagining package includes nearly \$1 million in estimated consultant costs to help the city continue to

**See the mayor's presentation Thursday's meeting**

analyze several efforts: BerkDOT, a civilian approach to certain types of traffic

enforcement (\$300,000); the new Department of Community Safety (\$250,000); potential changes to Berkeley's dispatch center (\$200,000); and a BPD staffing analysis (\$70,000) to help determine how many police officers the city actually needs.

The package also funds an in-depth review of the city's municipal code, estimated to cost \$150,000, that could see Berkeley change its approach to fines and fees in order to create more equitable outcomes.

“The era of balancing our books on the backs of poor people has got to come to an end,” Councilmember Ben Bartlett said.

The reimagining package also includes about \$1 million in new city staffing: \$480,000 to create a new Office of Race Equity and Diversity; \$315,000 for a reimagining project coordinator; and \$175,000 for a new Vision Zero staff position to analyze traffic collision trends.

**Read more about work underway related to crisis response, BerkDOT and dispatch**

In addition, the package envisions nearly \$1.6 million in new funding to community organizations, from violence prevention work and a behavioral health-focused crisis response model to efforts to address gender violence and language equity.

This would be in addition to the \$14 million the city already spends on community organizations, staff has said.

Arreguín said the package could be funded from salary savings related to vacant police positions, other General Fund dollars and, potentially, some kind of philanthropic support.

The city won't need to spend all the money at once, he said, because the work will take place in phases over multiple years.

The package also includes about \$2.4 million to add police positions as well as civilian staff such as dispatchers and community service officers, which the department says are needed to handle the existing workload and cut down on overtime costs.

"Berkeley is capable of walking and chewing gum at the same time," Arreguín said Thursday night. "We can maintain support for our excellent police department, while building toward a transformative and holistic approach to public safety."

Initially, officials said they planned to wait until next month to vote on the issue of police staffing. But several council members, who had put forward their own reimagining package, asked for it to be included as part of Thursday's vote. In response, Arreguín made that funding commitment as an amendment to his original motion.

BPD has about 150 officers and was authorized, until the COVID-19 pandemic, to have 181. During the pandemic, the city froze most municipal hiring and decided to hold 23 officer positions vacant pending the reimagining process. Current staffing levels have made it difficult for BPD to fill patrol beats, which has resulted in overtime costs and other problems, according to a recent city audit.

**Councilmember Lori Droste created a matrix to compare both proposals**

On Thursday night, officials had two packages before them for consideration: one, from Mayor Arreguín and

council members Kate Harrison, Ben Bartlett and Sophie Hahn; and the other, from council members Terry Taplin, Lori Droste, Rashi Kesarwani and Susan Wengraf.

There was substantial overlap between the two packages, but the Taplin item did not include the new Department of Community Safety and totaled about \$3

million in new funding asks, compared with what Droste said would add up to \$6 million in the mayor's amended package.

Droste said the item she put forward with Taplin and colleagues also differed from the mayor's item because it did not support a recommendation for the city to look at further expanding the type of calls to be diverted from police to civilians.

The city has already been working to create a new Specialized Care Unit to respond instead of police to people in crisis and hopes to launch a pilot program later this year through a contract with an as-yet-undetermined community agency. The civilian unit could respond to calls related to everything from concerns about suicidal thoughts and welfare checks to drug overdoses, intoxicated people and indecent exposure. Also on the list for a possible SCU response are suspicious circumstances, disturbances, trespassing and "social disorder."

The recommendation in the mayor's package would consider how to expand the list to even more "low-level" offenses.

Council voted on the Taplin package first, but it failed in a 4-5 split, with Councilmember Rigel Robinson voting to support the package put forward by Arreguín and his co-sponsors.

Ultimately, Droste and Kesarwani alone voted against the mayor's package, citing concerns about whether the city would be able to appropriately staff and fund so many new initiatives.

"I am pleased the mayor incorporated our demand to request to unfreeze all BPD positions, hire a dispatch team and fully fund the Office of Racial Equity. That is a huge victory for our community," Droste said after the meeting. "I look forward to June to see if we actually can fund everything. I hope we can, but I remain worried."

Kesarwani said Thursday night that she was "concerned that we have not established what the priority is," adding: "It feels to me that we have put everything on the table and we want to advance everything."

Wengraf said she too was concerned about the money, particularly in light of a new city audit released this

week that put Berkeley's unfunded pension and retiree-related liabilities at more than \$770 million and unfunded infrastructure needs at \$1.2 billion. She ultimately voted in favor of the mayor's package, however.

Councilmembers Harrison and Hahn said they hoped the new efforts would help stop the cycle of violence, reduce racial disparities and correct a system that overly burdens people who are already struggling to survive.

"We know we need to invest more in crime prevention and social services, and those investments must achieve equitable outcomes to redress often gaping racial disparities," Hahn told constituents in a prepared statement earlier this week. "Many studies the City produces – on health, education, housing, homelessness, and other measures of social welfare – show a persistent pattern: people of color, in particular

African Americans, have the worst outcomes. If we are going to reimagine public safety, we must address these persistent disparities as well."

Robinson said he believed the mayor's package, including the Department of Community Safety, could allow for a systemic shift in Berkeley that has the potential to create a clearer path for the "labyrinth of changes" the city is exploring.

"Did we mean a single thing we said in 2020?" Robinson asked. "That's not an easy question. I think this package is a major step in making good on that commitment."

*Featured photo credit: Pete Rosos*

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





<https://www.sfchronicle.com/eastbay/article/More-police-or-more-alternative-responses-to-911-17149237.php>

BAY AREA//EAST BAY

## Berkeley pledges to refund the police while also embracing law enforcement alternatives and violence prevention

Sarah Ravani

May 5, 2022 Updated: May 6, 2022 5:36 p.m.

Berkeley leaders who two years ago called for defunding law enforcement found a compromise this week that recognized a shifting political landscape but frustrated some residents and observers looking for bolder reform.

City Council members want to divert more nonviolent 911 calls from police officers and support more violence prevention programs, but they're also pledging to add more officers, citing pressure from constituents worried about violent crime. A similar debate is playing out in Oakland and San Francisco.

On Thursday, the City Council approved Mayor Jesse Arreguín's \$5.3 million plan to fund more efforts to reimagine public safety and reform the police. The city will now expand violence prevention programs and kick off a process to create more police alternatives to respond to mental health calls.

At the same time, the council agreed to restore about 30 of the Police Department's frozen positions — a move pushed by several council members.

Arreguín called the vote an "important milestone" and said that Berkeley can be a model for other cities.

"A lot of the conversation nationally has been focused on 'defunding' or abolishing or cutting the police department," said Arreguín, a major proponent of cutting the department's budget two years ago. "We refunded and we also expressed support for other approaches. We found a balance."

The votes come nearly two years after Berkeley made headlines when leaders pledged to slash the police force's budget in half.

In fact, the city ended up cutting about 12% of its police budget by freezing 30 positions. At the time, all city departments were required to find cost-saving measures because of pandemic deficits.

The department accounts for nearly 40% of the city's general fund with a nearly \$73 million budget that will grow to about \$80 million in the next fiscal year. The department currently has about 150 filled positions.

City leaders in Berkeley and Oakland say police should focus more on violent crime and that most of their time is taken up with low-level calls. One way to free up officers — and potentially cut down on racial disparities in policing — is to move traffic enforcement away from cops. More than a year ago, Berkeley approved a plan for sweeping law enforcement reforms, including changes to traffic stops, but some of the plan has been stymied by limitations in state law.

Though council members said they feel pressure from constituents worried about violent crime, a nationwide trend of rising homicides has not been clearly seen in Berkeley. The city has recorded two homicides this year compared to none last year and five in 2020. Still, council members said Thursday they received nearly 900 emails from constituents urging them to hire more cops.

Dan Lindheim, a professor at UC Berkeley's Goldman School of Public Policy and a member of the city's reimagine task force, said Thursday's debate focused too much on police staffing.

"If this is the net result of a reimagining process in which Berkeley seems to be interested in reducing the footprint of policing, to fully fund the police seems like a bizarre result," he said.

In parts of the East Bay, violent crime has disproportionately impacted Black and brown neighborhoods. And council members in Oakland and Berkeley who represent those areas have called for more police.

Council Member Terry Taplin, who represents part of South Berkeley, said a homicide occurred in his district earlier this week and that he's tired of being lectured by "more privileged communities" that aren't facing the same safety concerns.

Taplin told The Chronicle gun violence has impacted him personally. He said he's had friends, cousins and loved ones slain and so he's "really eyeing these proposals with a lot of scrutiny."

"How does keeping our police positions frozen improve my ability to protect my residents?" Taplin said.

Taplin ended up voting for the mayor's proposal after Arreguín added several amendments that committed to restaffing the Police Department and allocated more funding to a new department of Office of Race, Equity and Diversity to study disparities in all city departments. The city manager will bring a proposal to the council to restore the positions over the next few weeks.

Berkeley is already working to launch a team of social workers and civilians — run by a nonprofit — to respond to some mental health and homelessness calls,

part of a Bay Area trend to launch alternative policing teams of unarmed civilians. But the mayor's plan approved Thursday would create a new office of community safety to eventually house the city's different police alternatives.

Arreguín said the city's efforts to rethink policing has been slow and methodical on purpose.

"Some cities have rushed into making decisions, some have backed away from reimagining," he said. "We've taken our time and really given this serious thought."

Arreguín said his plan lays out a framework for how "reimagining public safety" priorities can be implemented.

The city will also begin transitioning two aspects of traffic enforcement — collision analysis and crossing guards — from the Police Department to public works.

Arreguín's proposal also commits funds to violence prevention and youth services among other programs and directs city staff to explore creating a team of unarmed community mediators.

City Council will have to vote next month on how to fund the proposal, which will take several years to fully implement.

Still, not all council members were on board. Council Members Lori Droste and Rashi Kesarwani voted against the mayor's proposal.

"What is our strategy here?" Kesarwani said. "It feels to me that we have put everything on the table and we want to advance everything. I just think realistically that doesn't seem like an approach that is going to yield an effective public safety system."

During public comment, most of the speakers spoke in favor of the mayor's proposal. Speakers urged more investment in mental health support, after-school programs and violence prevention.

"We need to try a different approach," one speaker said. "Police cannot prevent crime, they only respond to it."

But some backed more officers.

"For God's sake, unfreeze these positions," said one person, adding that staffing up the department "is the only thing that will keep me safe and my kids."

*Sarah Ravani (she/her) is a San Francisco Chronicle staff writer.  
Email: sravani@sfchronicle.com Twitter: @SarRavani*



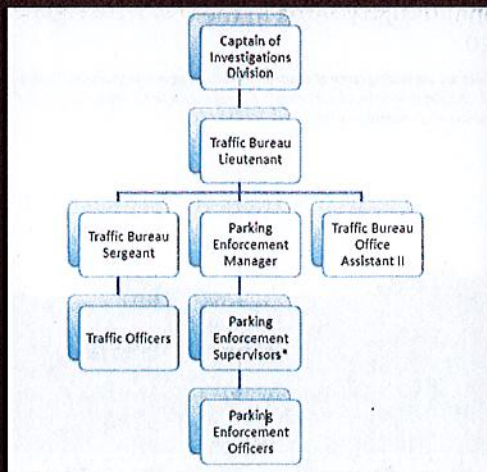
Presented to PAB  
4-27-2022

# Berkeley Police Department Collision and Traffic Safety Presentation



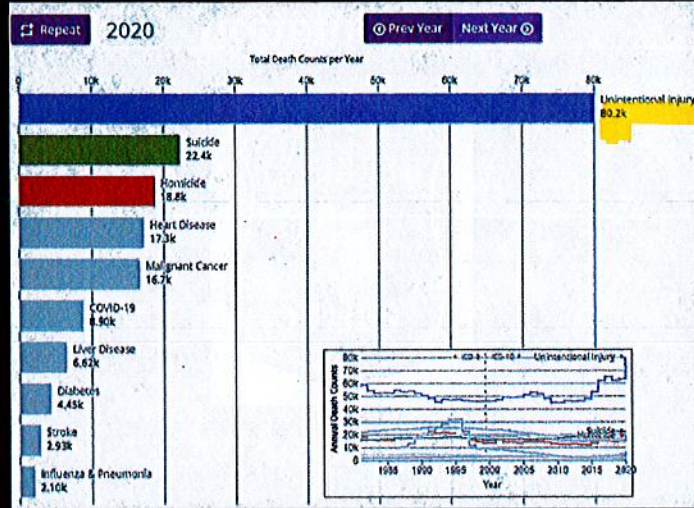
Presentation by: Lieutenant Jen Tate  
Berkeley PD Traffic Bureau

## Traffic Bureau Organization



Motor Vehicle Crashes  
are the 2nd leading cause of death

### Motor vehicle crashes are the 2<sup>nd</sup> leading cause of death for people in the United States age 1-44

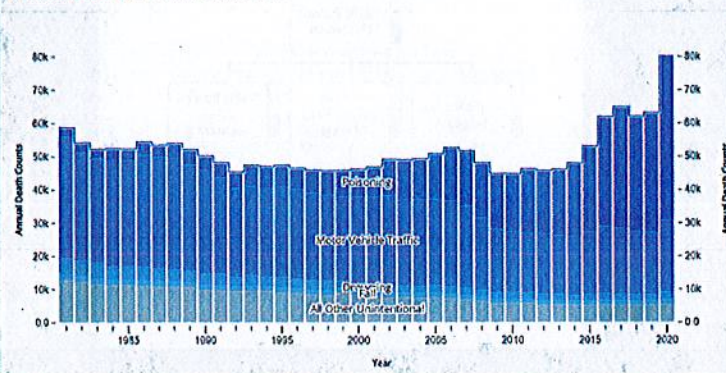


Source : CDC

### Motor vehicle crashes are the 2<sup>nd</sup> leading cause of death for people in the United States age 1-44

#### Unintentional Injury Deaths in the U.S. for Ages 1-44 from 1981-2020

Unintentional Injuries are the leading cause of death for Americans aged 1-44 years old. The leading causes of death for unintentional injury include: unintentional poisoning (e.g., drug overdoses), unintentional motor vehicle (m.v.) traffic, unintentional drowning, and unintentional falls.



Source : CDC

## Five Year SWITRS Collision Data

- Dates: January 2016 - January 2021
- Investigated 4467 collisions & 1856 injury collisions
- 414 - Involved bicycles (approx. 54% at fault)
- 407 - Involved pedestrians (approx. 19% at fault)
- 15 - Fatal collisions
- 215 - Hit and Run w/Injury
- 41 - DUI Felony Collisions

➤ State Wide Integrated Traffic Records System

Source : SWITRS

## 2021 Top Collision Intersections

Ashby Ave / San Pablo Ave	9
Mix Jr Way / Ashby Ave	6
Ashby Ave / Shattuck Ave	5
Eastshore Hwy / Gilman St	5
Sacramento St / Cedar St	5
Shattuck Ave / Dwight Way	4
6 <sup>th</sup> St / Allston Way	3
Fairview St / Adeline St	3
Sacramento St / Dwight Way	3
Stanford Ave / Adeline St	3

### 2021 Top PCF

22350 VC	94
22107 VC	88
21800-21804 VC	52
23152 VC	38
21950(a) VC	16

## 2021 Bicycle / Ped Data

### Bicycle Collisions

#### Most Common PCF

22350 VC	19
22450 VC	8
21800-21804	8

#### Beat

1,2	12
3,4	8
5,6	5
7,8	4
9,10	3
11,12	3
13,14	12
15,16	6

#### Time

0300-0859	2
0900-1459	22
1500-2059	25
2100-0259	4

### Ped Collisions

#### Most Common PCF

21950 (b) VC	16
23152 VC	3
22107 VC	2

#### Beat

1,2	4
3,4	3
5,6	1
7,8	3
9,10	3
11,12	1
13,14	5
15,16	3

#### Time

0300-0859	1
0900-1459	7
1500-2059	10
2100-0259	5

## 2019 (Most Recent) OTS Rankings

Berkeley = Group B – 59 cities, Population 100,001-250,000

TYPE OF CRASH	VICTIMS KILLED & INJURED	OTS RANKING
Total Fatal and Injury	622	13/59
Alcohol Involved	48	32/59
Had Been Drinking Driver < 21	3	12/59
Had Been Drinking Driver 21 – 34	4	53/59
<b>Motorcycles</b>	<b>42</b>	<b>1/59</b>
<b>Pedestrians</b>	<b>144</b>	<b>1/59</b>
Pedestrians < 15	4	33/59
<b>Pedestrians 65+</b>	<b>31</b>	<b>1/59</b>
<b>Bicyclists</b>	<b>100</b>	<b>1/59</b>
Bicyclists < 15	3	22/59

#1 means highest ranking for similarly situated cities in the state

Source : OTS



## Basic Officer Training

### Police Academy Traffic Enforcement & Collision Investigation:

- Basic principles of CVC to include violations
- Legally establish probable cause to provide quality of life and public safety w/in community
- DUI, hit-run, reckless driving & authority to arrest
- Manage scene/safety – caring for injured, protect evidence
- Prepare report – document injuries, parties, vehicles, time/location, events leading to collision, area of impact, interview parties/witnesses

## Traffic Officer Training

- Intermediate Traffic Investigation – 40 Hours
- Advanced Traffic Investigation – 80 Hours
- Traffic Collision Reconstruction – 80 Hours
- Auto Pedestrian Collision Investigation – 40 Hours
- Radar Operator – 24 Hours
- Child Safety Seat Technician – 40 Hours
- Standardized Field Sobriety Testing – 24 Hours
- Draeger/Preliminary Alcohol Screening - 16 Hours

## Collision Investigations

- How do Officers Determine the Party Most at Fault?
  - Driver statements
  - Witness statements
  - Physical evidence at the scene
    - Tire friction marks
    - Collision debris
    - Gouges/marks in roadway
    - Surveillance footage
  - Vehicle damage
    - Can sometimes be visually pieced together like a puzzle to determine what happened
  - Area of impact (AOI) measurements
  - For fatal injury collisions we can examine the Electronic Data Recorder (EDR) with the assistance of CHP.
    - EDR Data Provides (for most car manufacturers):
      - Speed before and at time of collision
      - Steering wheel input (degrees of movement)
      - Throttle activation %
      - Brake activation %

## Collision Scene Management

- The first officer to arrive at the scene of any collision shall manage and attempt to stabilize the scene until relieved by the assigned officer, or other competent authority.
- The initial scene management includes, but is not limited to:
  - Determining the number and extent of injuries, if any, and requesting medical support, if needed.
    - The officer shall broadcast the injury or non-injury information as soon as possible.
  - Providing emergency medical aid, when it is safe to do so, until relieved by medical personnel.
  - Determining the need for traffic control and expediting the removal of vehicles, persons, and debris from the roadway when the removal will not interfere with the investigation. The officer should consider:
    - The use of flares, traffic cones and/or barricades.
    - Enlisting assistance from on-lookers to direct or divert traffic, etc.

## Collision Investigation

(When scene is stabilized)

- Identify the drivers and passengers of the vehicles, determine their positions in the vehicles and obtain statements.
- If a party has been taken to the hospital, the handling officer may continue his/her investigation at the scene and contact the injured party at a later time, with supervisor approval.
- Identify witnesses and obtain statements.
- Determine whether the involved parties were wearing seatbelts.
- Determine whether the involved parties were in possession of a personal communication device (e.g., cell phone) at the time of the collision.
- Identify whether objective signs of drug and/or alcohol or physical impairment are present.

## Collision Investigation

(Continued)

- Consider whether the criteria for a Priority Re-Examination is met (DMV Form DS-427).
- Determine the area of impact and take any necessary measurements.
- Issue a Notice to Appear at the conclusion of the investigation, when appropriate and possible, and when the investigating officer has completed a course or courses of instruction in collision investigation in compliance with Vehicle Code § 40600(a).
- Protect the personal property of an involved party from theft or loss (e.g., if they are transported to the hospital).
  - If it is not practical for the property to be delivered to the owner, and/or the owner does not authorize another disposition, the property shall be booked for safekeeping. The property's disposition should be documented in the report.
- Issue a report receipt or business card with the incident number to each of the involved parties.
  - The involved parties should be informed that they are responsible for reporting the collision to the DMV on the appropriate form (SR-1) which is available at the front counter of the PSB or on the DMV's website.

## Collision Investigations

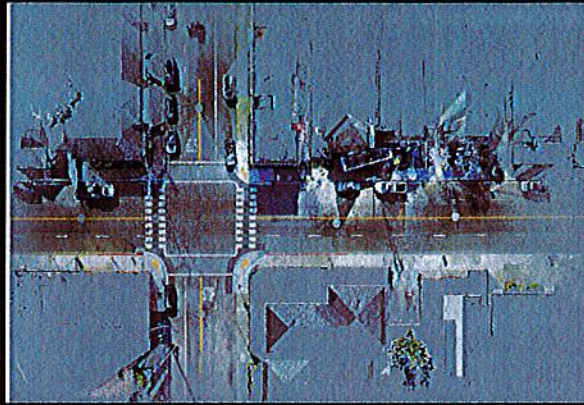
- Why should Police Officers do these investigations?
  - Expertise in collision dynamics from training/experience
  - Advanced tools such as FARO/Lidar/Total Station
  - Maintain and submit data for state/nationwide collision statistics
  - Collisions can turn in to criminal investigations
    - DUI
    - PC 192 (Manslaughter)
    - PC 245 (Intentional assault/ramming with a vehicle)
    - Police have the ability to write search warrants for additional data and evidence (vehicle EDR, cellphones, medical records etc.)

## Advanced 3D Scanner Purpose

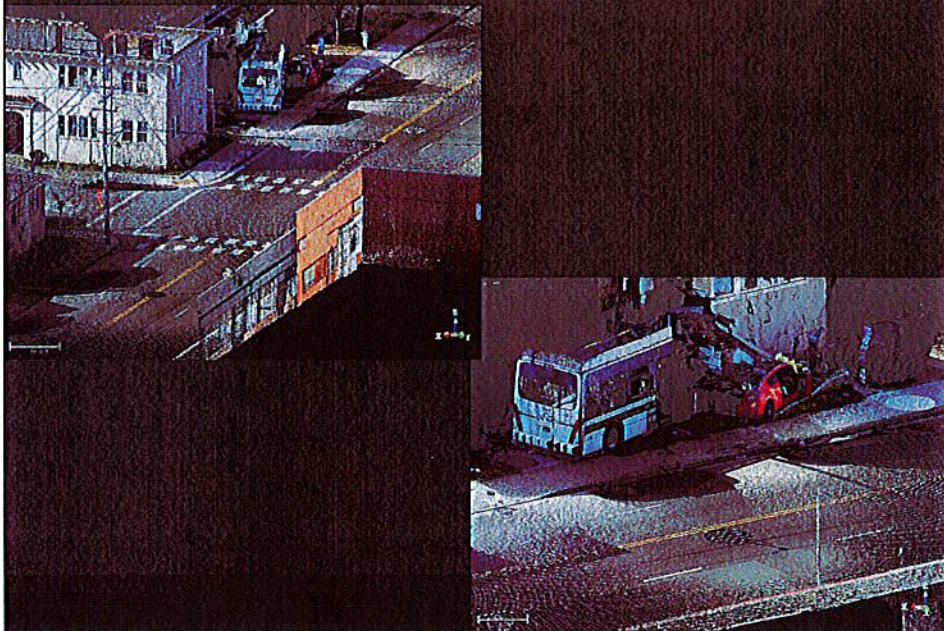
- FARO Focus X130 laser scanning tool (used by BPD)
  - The FARO uses laser technology to produce detailed three-dimensional images of complex environments and geometries by capturing millions of 3D measuring points.
  - Provides an exact digital reproduction of the existing conditions.



# Unrefined Raw Data Points Recorded by FARO



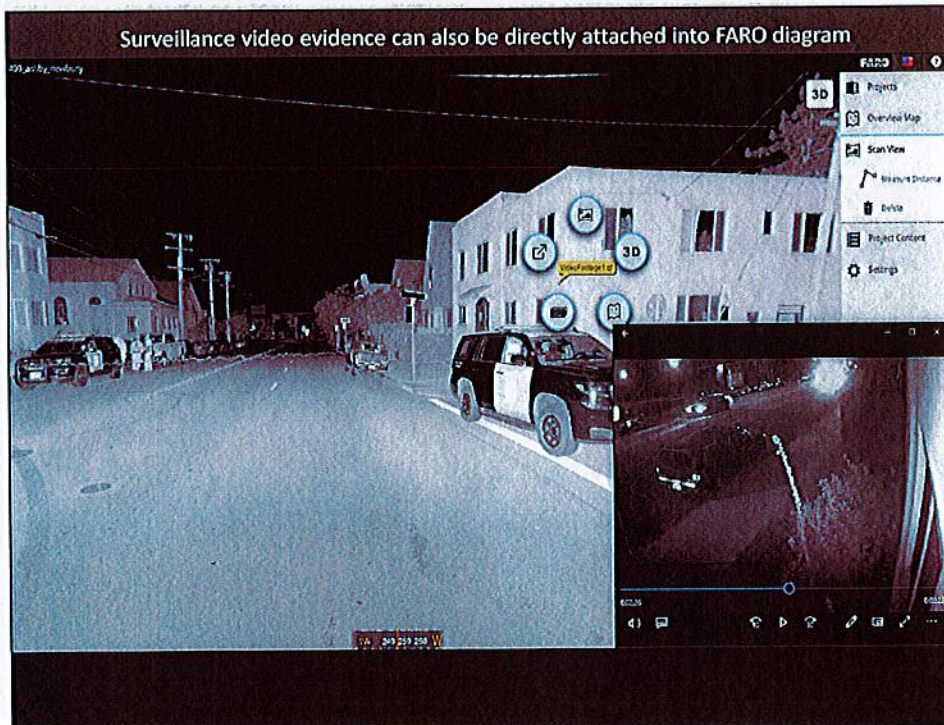
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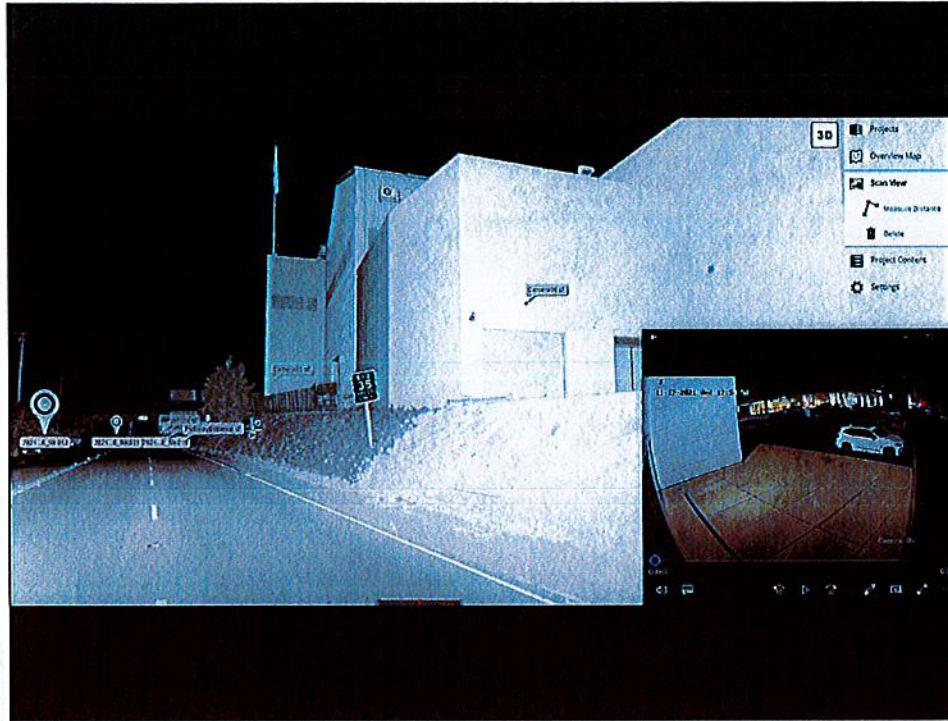


# New FARO Diagram Program

Scenes can be re-viewed in 3D with evidence photos directly attached







## Traffic Stops

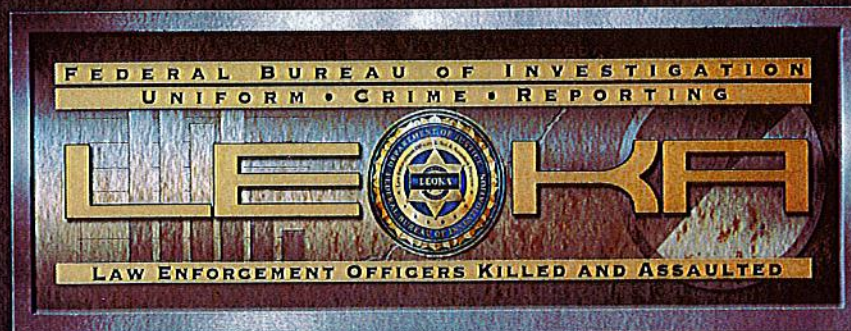




## Reasons for Making a Traffic Stop

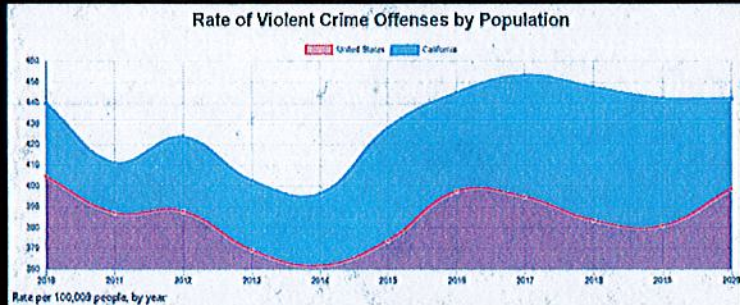
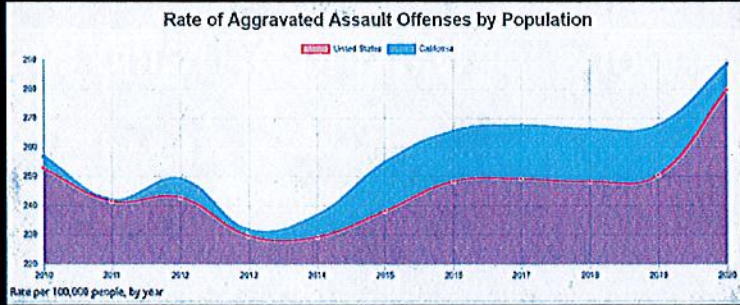
- **Moving Violation**
  - Unsafe driving behavior (Focus on PCF)
- **Equipment Violation**
  - Something on the vehicle isn't properly maintained in order to safely be on the road.
- **Suspected Involvement in a Reported Crime**
  - In-progress crime that matches suspect/vehicle description
  - **Previous crime**
    - Warrant attached to vehicle or R/O in CLETS system
    - Matches bulletin for wanted vehicle.
    - Stolen vehicle

## Traffic Stop Data From:



<https://www.fbi.gov/services/cjis/ucr/leoka>

General Assaults are up. Overall violent crime is relatively high.

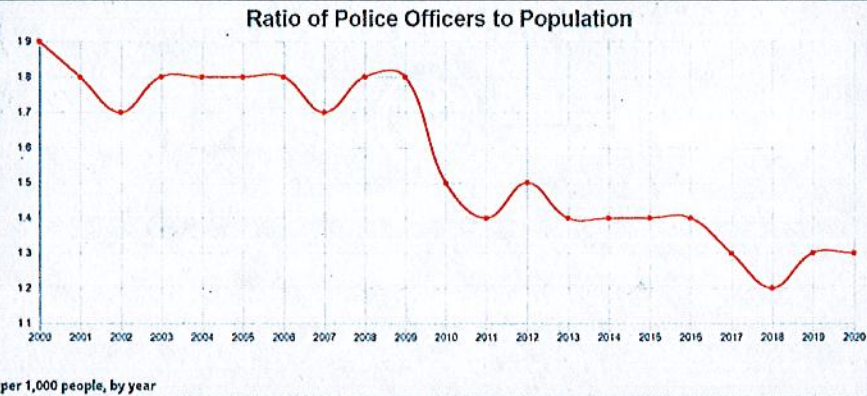


Source

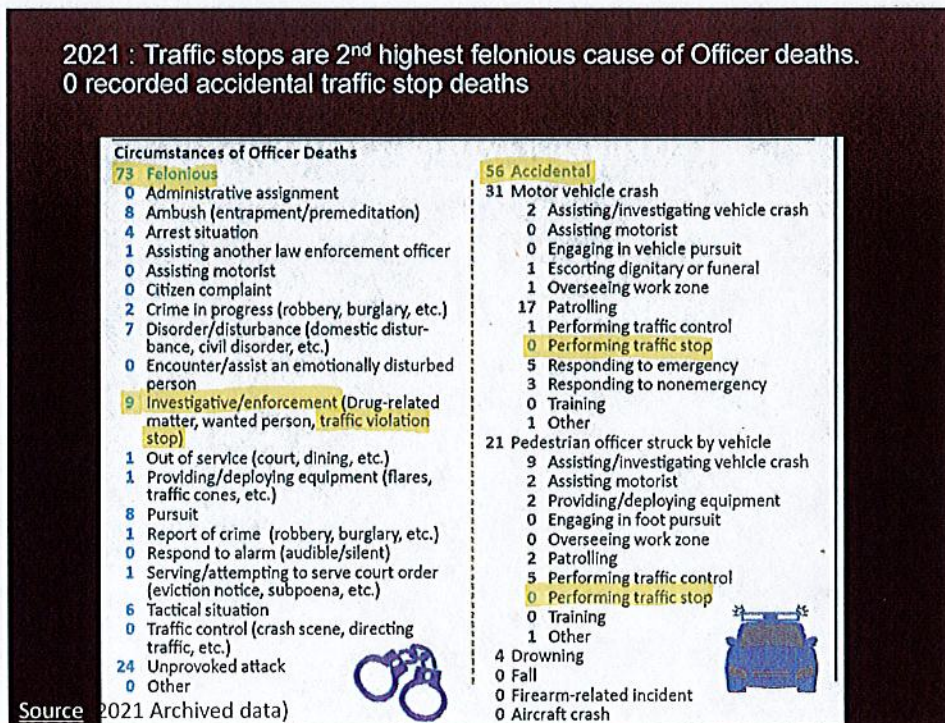
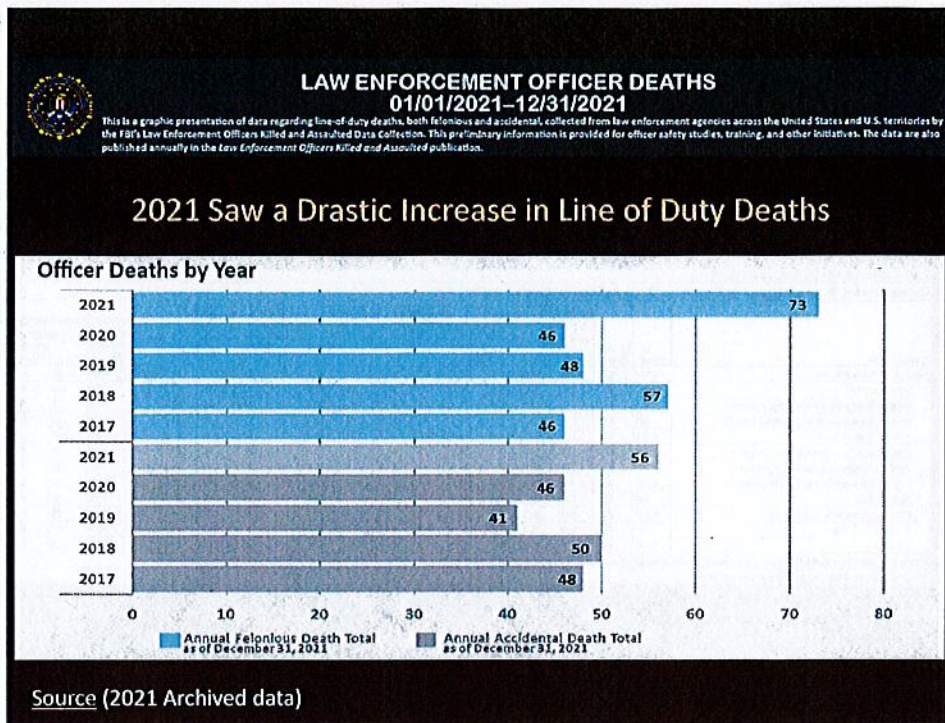
Fewer officers translates to a delay in getting cover/help, which means officers are more vulnerable to assaults.

### Berkeley Police Department

The Berkeley Police Department is located in Alameda county, California. Police Employment totals for this agency are voluntarily submitted to the FBI using Summary Reporting System (SRS).



Source



# Latest (2019) UCR Data of Officers Assaulted



**Law Enforcement Officers Assaulted**  
 Circumstance at Scene of Incident by Population Group and Percent Cleared,<sup>1</sup> 2019

Circumstance	Total	Group I (Officer 250,000 and over)		Group II (Officer 100,000-249,999)		Group III (Officer 50,000-99,999)		Group IV (Officer 10,000-49,999)		Group V (Officer 10,000-24,999)		Group VI (Officer under 10,000)		Metropolitan counties		Nonmetropolitan counties		
		Total	Percent cleared	Total	Percent cleared	Total	Percent cleared	Total	Percent cleared	Total	Percent cleared	Total	Percent cleared	Total	Percent cleared	Total	Percent cleared	
<b>Number of victim officers</b>	<b>56,054</b>	<b>87.1</b>	<b>15,498</b>	<b>87.8</b>	<b>7,546</b>	<b>87.8</b>	<b>6,952</b>	<b>87.7</b>	<b>4,527</b>	<b>86.8</b>	<b>3,968</b>	<b>89.4</b>	<b>4,512</b>	<b>86.3</b>	<b>12,508</b>	<b>87.9</b>	<b>2,461</b>	<b>84.9</b>
Disturbance call	47,048	88.3	3,664	90.1	2,589	89.5	2,540	87.8	1,620	87.8	1,260	92.9	1,475	73.4	3,117	90.1	642	89.3
Burglary in progress (person/burglary suspect)	710	88.3	142	90.3	123	95.3	118	90.7	83	80.3	41	78.0	46	82.6	134	85.8	23	92.7
Robbery in progress (person/robbery suspect)	449	84.3	191	90.3	93	89.2	56	83.2	26	65.4	24	79.2	18	89.8	70	83.7	10	90.0
Attempting other arrest	9,592	89.2	2,401	89.2	1,245	88.3	1,310	87.4	794	88.0	745	89.2	793	89.2	2,032	90.4	343	92.4
Child abuse/neglect (sexual abuse, visit, etc.)	488	84.4	125	70.4	92	91.7	43	90.5	83	78.8	29	89.7	43	85.6	81	88.9	20	60.0
Harassment, transporting, custody of prisoner	7,192	87.7	1,276	92.0	726	86.8	454	89.9	532	88.9	483	87.7	414	84.3	2,109	86.8	420	73.1
Investigating suspicious person/circumstance	8,547	86.2	1,408	85.3	968	84.8	687	88.8	438	82.9	437	89.5	320	81.3	913	89.2	166	88.0
Arrest & citation	748	81.4	107	83.2	24	70.8	19	89.3	14	74.6	4	79.0	10	80.0	55	81.8	12	83.3
Handling persons with mental illness	2,215	78.7	500	81.2	269	78.5	257	83.9	154	74.0	154	76.0	218	68.1	425	81.6	78	75.6
Traffic stop/stop	4,487	85.4	918	78.4	606	87.1	515	85.0	318	84.2	234	91.0	294	85.2	1,232	87.3	167	88.6
All other	7,841	84.1	2,302	86.8	941	87.2	833	87.4	485	90.2	371	84.8	504	81.9	2,120	85.2	315	79.7

<sup>1</sup>Officers reported in the national UCR Program can be cleared by arrest or exceptional means (when elements beyond law enforcement's control prevent the agency from placing formal charges against the offender). Percent cleared may include clearances for previous years' offenses.

Traffic stops account for ~ 8.4% of Officer assaults in 2019

Source

## Why Officers use Certain Tactics During Traffic Stops

Traffic stops are generally recognized within the law enforcement community as one of the most dangerous tasks Officers do.

- Unpredictable
- Can rapidly evolve to violent encounter
- The tactical advantage is with the driver because they can plan and act.
  - Officers have reactionary disadvantage.

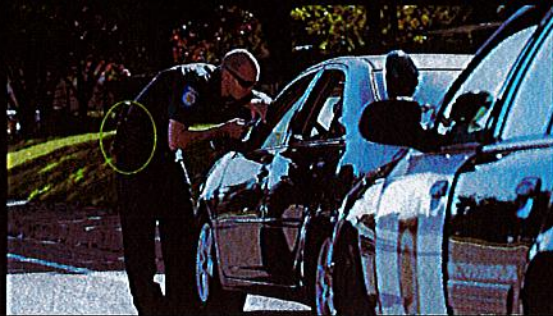


## Vehicle and Officer Offset



Vehicle offset gives Officers a "safety bubble" from passing vehicles.

Gun side away from driver



## Passenger Side Approach

### • Pros:

- Driver not expecting passenger side approach
- Keeps Officer out of traffic lanes

Different view of interior of the vehicle/glovebox

Less vulnerable if vehicle flees



### Cons:

- Sight/smell/signs of DUI are less apparent
- Can be hard to hear/speak to driver

Have to momentarily turn back to the car on approach or cross in-between vehicles

Takes more time to reach the driver

## Motorcycle Traffic Stops

More vulnerable

Motorcycles offer very little protection from gunfire

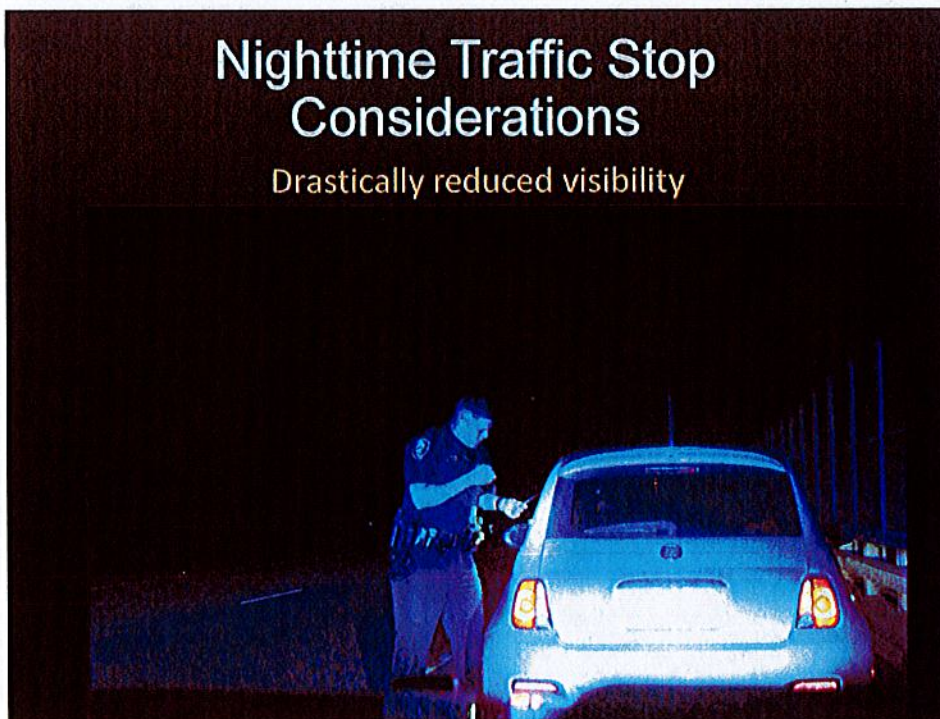


No "safety bubble" from larger police vehicle

This is generally why motorcycle officers prefer passenger side approach

## Nighttime Traffic Stop Considerations

Drastically reduced visibility



Spotlights provide some visibility on the vehicle but overall visibility at night is drastically reduced



## DUI Enforcement & Recognition

- NHTSA
  - Scientifically validated research in 1970's in conjunction with LE.
    - Lead to the development of 24 DUI "cues".
      - Broken down in to 4 categories:
        1. Problems in maintaining proper lane position.
        2. Speed and braking problems.
        3. Vigilance problems.
        4. Judgement problems.

Source: NHTSA

## DUI Enforcement & Recognition

### DWI DETECTION GUIDE

Weaving plus any other cue:  $p =$  at least .65

Any two cues:  $p =$  at least .50

#### Problems Maintaining Proper Lane Position $p = .50-.75$

- Weaving
- Weaving across lane lines
- Straddling a lane line
- Swerving
- Turning with a wide radius
- Drifting
- Almost striking a vehicle or other object

#### Speed and Braking Problems $p = .45-.70$

- Speeding problems (too far, too short, or too jerky)
- Accelerating or decelerating for no apparent reason
- Varying speed
- Slow speed (10+ mph under limit)

#### Vigilance Problems $p = .55-.65$

- Driving in opposing lanes or wrong way on one-way
- Slow response to traffic signals
- Slow or failure to respond to officer's signals
- Stopping in lane for no apparent reason
- Driving without headlights at night
- Failure to signal or signal inconsistent with action

#### Judgment Problems $p = .35-.90$

- Following too closely
- Improper or unsafe lane change
- Illegal or improper turn (too fast, jerky, sharp, etc.)
- Driving on other than the designated roadway
- Stopping inappropriately in response to officer
- Inappropriate or unusual behavior (throwing, arguing, etc.)
- Appearing to be impaired

Source: NHTSA

## DUI Enforcement & Recognition

### Post Stop Cues $p \geq .85$

- Difficulty with motor vehicle controls
- Difficulty exiting the vehicle
- Fumbling with driver's license or registration
- Repeating questions or comments
- Swaying, unsteady, or balance problems
- Leaning on the vehicle or other object
- Slurred speech
- Slow to respond to officer or officer must repeat
- Providing incorrect information, changes answers
- Odor of alcoholic beverage from the driver

$p \geq .50$  when combined with any other cue:

- Driving without headlights at night
- Failure to signal or signal inconsistent with action

The probability of detecting DWI by random traffic enforcement stops at night has been found to be about 3 percent (.03).

Source: NHTSA



## DUI Enforcement & Recognition

- Scientifically Validated DUI FSTs.
  - Horizontal Gaze Nystagmus (HGN)
  - Walk and Turn Test (WAT)
  - One leg stand Test (OLS)
- Non-Scientifically Validated DUI FSTs.
  - Finger to Nose
  - Romberg Balance Test

Source: NHTSA Training Manual

## DUI Enforcement & Recognition

- Horizontal Gaze Nystagmus
  - Involuntary jerking movement of the eye
    - 3 "cues" for each eye (6 total)
      - Does not smoothly follow a moving object
      - Distinct and sustained nystagmus at maximum deviation
      - Onset of nystagmus prior to 45 degrees
  - 4 or more "cues" – 88% accurate B.A.C.  $\geq$  .08%

Source: NHTSA Training Manual

## DUI Enforcement & Recognition

- Walk and Turn Test
  - Divided attention involving two phases
    - 1) Instruction and 2) Walking
  - 8 "cues" total
    - Cannot keep balance during instructions
    - Starts walking too soon
    - Uses arms for balance
    - Steps offline
    - Does not touch heel to toe during steps
    - Stops walking during the test
    - Incorrect turn
    - Incorrect number of steps
  - 2 or more "cues" – 79% accuracy B.A.C.  $\geq$  .08%

Source: NHTSA Training Manual

## DUI Enforcement & Recognition

### One Leg Stand Test

- Divided attention – Two phases: instructions & balancing
  - 4 "cues" total
    - Sways while balancing
    - Puts foot down during balancing
    - Hops while balancing
    - Using arms for balance
  - 2 or more "cues" – 83% accuracy B.A.C.  $\geq$  .08%

Source: NHTSA Training Manual

Thank You

Questions?

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Email: [jtate@cityofberkeley.info](mailto:jtate@cityofberkeley.info)  
Desk: 510-981-5983

