



Police Accountability Board
Office of the Director of Police Accountability

**Subcommittee on Policy and Practices relating to
the Downtown Task Force and Bike Unit Allegations**

RELEVANT BPD POLICIES & SUMMARIES

DISCLAIMER: These comprehensive summaries and excerpts of Berkeley Police Department (BPD) policy are included merely for educational and informational purposes. While the contents of this document have been verified to the best of our abilities, we cannot guarantee that there are no mistakes or errors in the summary of each respective policy. For BPD's complete policy and training materials, please visit their website at: [Policy & Training Materials | City of Berkeley \(berkeleyca.gov\)](https://www.berkeleyca.gov/policy-and-training-materials)

Electronic Communication

204.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the proper use and application of the Department's electronic communication systems by employees of this department. Electronic communication is a tool available to employees to enhance efficiency in the performance of job duties and is to be used in accordance with generally accepted business practices and current law (e.g., California Public Records Act). Messages transmitted over the Department's electronic communication systems must only be those that involve official business activities or contain information essential to employees for the accomplishment of business-related tasks and/or communication directly related to the business, administrations or practices of the Department.

204.2 EMAIL RIGHT OF PRIVACY

All email messages, including any attachments, that are transmitted over department networks are considered department records and therefore are department property. The Department reserves the right to access, audit or disclose, for any lawful reason, any message including any attachment that is transmitted over its email system or that is stored on any department system.

The email system is not a confidential system since all communications transmitted on, to or from the system are the property of the Department. Therefore, the email system is not appropriate for confidential communications. If a communication must be private, an alternative method to communicate the message should be used instead of email. Employees using the Department's email system shall have no expectation of privacy concerning communications utilizing the system.

Employees should not use personal accounts to exchange email or other information that is related to the official business of the Department.

204.3 CHECKING EMAIL AND THE CRIME FORUM

Employees shall check their email and Crime Forum accounts for new messages or posts at least two times each duty shift.

- (a) It is recommended that the accounts be checked close to the beginning and end of each shift in order to maximize the employee's exposure to new email messages and crime information.

When requested by the sender of a message, or as otherwise necessary or appropriate, employees shall respond to received email in a timely fashion.

Mis-addressed email should be sent back to the original sender with an advisement that the message was mis-addressed.

Employees may forward or re-distribute copies of email messages only when doing so fulfills a legitimate work-related purpose.

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204.4 PROHIBITED USE OF EMAIL

Sending email messages which are derogatory, defamatory, obscene, disrespectful, sexually suggestive, harassing or in any other way inappropriate, is prohibited and may result in discipline.

Email messages addressed to the entire department should only be used for official business related items that are of particular interest to all users. Personal advertisements are not acceptable. Email messages addressed to the entire city must be approved by the Chief of Police or City Manager.

204.5 SECURITY

It is a violation of this policy to transmit a message under another employee's name. Employees are strongly encouraged to log off the network when their computer is unattended.

Employees should protect the security of their network, email and Crime Forum accounts by regularly changing their passwords.

Employees shall not share their passwords with any other individual.

The unauthorized use, or attempted use, of another employee's password, computer files or email without that person's expressed consent is prohibited.

An employee who observes another person use a departmental communication system inappropriately shall immediately notify their supervisor, or if unavailable, the next person in their chain of command.

204.6 EMAIL RECORD MANAGEMENT

Email may, depending upon the individual content, be considered a public record under the California Public Records Act and must be managed in accordance with the established records retention schedule and in compliance with state law.

BPD POLICY 204 – ELECTRONIC COMMUNICATION

Summary of Section 204.1 – Purpose and Scope

This section covers the purpose and scope of BPD policy 204. It identifies the purpose of this policy as being to establish guidelines for the proper use and application of electronic communication systems by BPD staff. The implied definition of “electronic communication systems” is a device or platform that would allow BPD staff to communicate through the electronic transmittal of messages. Messages can include but are not limited to, emails or text messages. This section goes on to establish the first guideline to this policy which is that all messages sent over BPD-owned electronic communication systems must only be used for official business activities.

Summary of Section 204.2 – Email Right of Privacy

This section states that the BPD email system is not confidential and that any emails and their respective attachments are considered department records and property. This gives BPD the right to access, audit, or disclose, under any lawful reason, any content that was transmitted over its email system or stored within the department system. As a result, it is discouraged that employees use email to transmit confidential information or that they use personal email accounts to exchange emails or other information related to the official business of the BPD.

Summary of Section 204.3 – Checking Email and the Crime Forum

This section provides employee guidelines for email etiquette. Employees are directed to check their email at least twice during their shift and respond in a timely fashion to emails that require a timely response. BPD employees are further directed to notify the sender of a misaddressed email that their message was sent to the incorrect individual. Lastly, employees may forward or re-distribute copies of email messages so long as it is relevant to their work.

Summary of Section 204.4 – Prohibited Use of Email

This section prohibits BPD employees from sending email messages which are derogatory, defamatory, obscene, disrespectful, sexually suggestive, harassing, or in any other way inappropriate. Furthermore, BPD employees are prohibited from using their emails for personal advertisements or addressing the entire city without approval from the Chief of Police or City Manager. Email messages to the entire BPD must be related to official business and be of interest to all users.

Summary of Section 204.5 – Security

This section prohibits employees from transmitting any email messages under another employee's name and directs them to take several measures to ensure no one else can access their personal information. Such measures include protecting their network and passwords to important accounts.

Summary of Section 204.6 – Email Record Management

This section states that an email may be considered to be a public record under the California Public Records Act and must therefore be managed following retention schedules and compliance with state law.

Search and Seizure

311.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Berkeley Police Department personnel to consider when dealing with search and seizure issues.

311.2 POLICY

It is the policy of the Berkeley Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Officers seeking a consent search should obtain written consent on a *Berkeley Police Department Consent Search Form*, unless an officers safety or exigency issue exists. When either of the

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aforementioned exist, the officer shall obtain the consent on body worn camera (BWC) and document the reason in the MDT/incident/case report.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

311.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:
 1. Another officer or a supervisor should witness the search.
 2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

311.5 ASKING IF A PERSON IS ON PROBATION OR PAROLE

In an effort to foster community trust, officers should not ask if a person is on probation or parole when a person has satisfactorily identified themselves, either verbally or by presenting identification documents.

Officers may determine probation or parole status through standard records checks conducted in the course of a traffic safety or investigative stop. Officers should only ask when necessary to:

- (a) Protect the safety of others, the person detained, or officers;
- (b) Further a specific law enforcement investigative purpose (for example, sorting out multiple computer returns on a common name);
- (c) To confirm probation and parole status subsequent to a records check.

If an officer needs to ask the question, "Are you on probation or parole?" the officer should do so while treating the person with dignity and respect, and being mindful that people may take offense at the question.

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311.6 WARRANTLESS SEARCHES OF INDIVIDUALS ON SUPERVISED RELEASE SEARCH CONDITIONS

In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement purpose or rehabilitative purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.

Individuals contacted or detained who are found to be on searchable Supervised Release for Violent Offenses¹ may be searched pursuant to the terms of their Supervised Release conditions. The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions for those on supervised release for nonviolent crimes², should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime or which demonstrate that the individual is connected in some way to criminal activity or that the individual is an imminent threat to officer or citizen safety. In the conduct of all such detentions and searches, officers shall consciously avoid the application of bias, shall not use such detentions or searches as a means to harass or annoy, and shall not conduct such detentions and searches in a manner that targets or is discriminatory toward any protected class.

1. *Offenses involving the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, and the use of force or threats to public safety. Battery on a Peace Officer (Penal Code § 243(b)), Reckless Evasion in a Vehicle (Vehicle Code § 2800.2(a)), or a violent felony as defined in Penal Code § 667.5(c)., fall into the categories of violent crimes, weapons offenses, sex crimes and/or crimes involving threats to public safety in accordance with state law.*
2. *"Non-Violent Offenses" are defined as offenses in which violence or use of a weapon or threat to life safety is not a factor.*

311.7 DOCUMENTATION

Officers shall document, via MDT disposition, Field Interview, Incident or Case Report, any search of a person, vehicle or location. Officers should consider documenting, as applicable, the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

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Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.

BPD POLICY 311 – SEARCH AND SEIZURE

Summary of Section 311.1 – Purpose and Scope

Federal and state laws provide constitutional protections from unreasonable search and seizure. The purpose of this policy is to provide BPD personnel with guidance as to how to proceed in instances dealing with search and seizure¹.

Summary of Section 311.2 – Policy

This section states that it is BPD policy to respect the fundamental privacy rights of individuals and that any searches and seizures must comply with relevant federal and state laws. To ensure that these rights are respected, BPD will provide personnel with the necessary training and tools to do so.

Summary of Section 311.3 – Searches

The U.S. Constitution provides that a warrant is generally required for law enforcement to engage in a search. This section outlines exceptions to that policy where a warrant may not be required. Those exceptions and their definitions are the following:

- *Valid Consent*: This means that an individual voluntarily gives a law enforcement officer permission to search, oftentimes with a limited scope (e.g. a search of your person or home)
- *Incident to a lawful arrest*: When an individual is arrested, a law enforcement officer may search the immediate area for the interest of the officer's safety, preservation of evidence, or to prevent escape.
- *Legitimate community caretaking interests*: A search exception under this category is intended to serve a larger community purpose. Such examples include searching a property during a wellness check in case an individual requires emergency aid,
- *Vehicle searches under certain circumstances*: Unlike other forms of property, vehicles can be searched without a warrant so long as there is probable cause to do so. For example, if an officer notices an illegal item in a person's passenger seat, they may conduct a search of the entire vehicle for other illegal items. The presence of one illegal item makes it probable that other illegal items are within the vehicle.
- *Exigent circumstances*: Law enforcement officers may engage in a search of property under pressing circumstances. These circumstances may include but are not limited to, entering a home to engage in a pursuit, providing emergency assistance, or in the interest of preserving life.

¹ Article I, Section 13 of the California Constitution States: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized."

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The guidance provided by this policy is that officers should generally seek to obtain consent for a search in the absence of a warrant and should consult with a supervisor if they have questions before deciding how to act.

Summary of Policy 311.4 – Search Protocol

This section outlines some general protocols for officers to implement during searches. These protocols state that officers should:

- a) Conduct searches with dignity and courtesy.
- b) Explain to the subject the reason for the search.
- c) Conduct searches in a way that is careful of a person's private property and minimizes damage.
- d) Attempt to obtain keys, combinations, or passcodes when searching a locked property to minimize the amount of damage.
- e) Summon an additional officer if the subject is of the opposite sex or, in the case when this is not practical, summon a supervisor to witness the search and avoid areas where a weapon could not reasonably be concealed.

Summary of Policy 311.5 – Asking if a Person is on Probation or Parole

This section advises officers not to ask individuals if they are on probation or parole unless:

- a) They are doing so to protect the safety of others, the detained person, or officers;
- b) Further an investigative purpose (e.g. identifying the correct computer return for a common name);
- c) Or to confirm probation and parole status after a records check is conducted.

If the officer must ask, they are advised to do so in a matter that preserves the subject's dignity and respect as some people may take offense to the question.

Summary of Policy 311.6 – Warrantless Searches of Individuals on Supervised Release Search Conditions

California law allows for warrantless searches of individuals on probation, parole, Post Release Community Supervision, or other supervised releases as a condition of their probation. This section tells officers to only conduct these searches to further a legitimate law enforcement or rehabilitative purpose and these searches shall not be conducted in any way that may be arbitrary, capricious, or harassing in fashion.

Individuals who are contacted or detained and are found to be on searchable Supervised Release for Violent Offenses, may be searched based on the terms of their supervised release conditions. For individuals who are on searchable Supervised Release for Non-violent Offenses, there must be objective facts that create a reasonable suspicion that an individual may have committed a crime, be in the process of committing a crime, is about to commit a crime, or is in some way connected to a crime.

Any detentions and searches of individuals must be conducted without bias, shall not be used as a means to harass or annoy, and shall not be conducted in a manner that targets or is discriminatory against any protected class (race, religion, sex/gender, etc.).

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Summary of Policy 311.7 – Documentation

This section states that officers shall document any search of a person, vehicle, or location and should consider documenting the following information:

- The reason for the search
- Any efforts use to minimize the intrusiveness of any search (e.g. asking for permission).
- Any injuries or damage.
- All steps are taken to secure property
- The result of the search (e.g. any illegal items found)
- If the person was of the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the information of any witness officers.

Supervisors are responsible for reviewing the final report and ensuring that the report is accurate, that actions are documented, and that current legal requirements and department policy have been met.

Discriminatory Harassment

314.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

314.2 POLICY

The City of Berkeley (City) prohibits harassment on the basis of sex, race, age, religion, color, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, pregnancy, sexual orientation, gender, gender identity, gender expression, military and veteran status, and any other classifications protected by state or federal law.

All employees (as well as applicants, unpaid interns or volunteers, and persons providing services pursuant to a contract) are guaranteed the right to a work place free of hostility and intimidation based on any of the above-referenced protected classifications.

The City will neither tolerate nor condone harassment of employees by managers, supervisors, co-workers, elected/appointed officials, or persons with whom the City has a business, service, or professional relationship.

The City prohibits retaliation defined below, against an individual who reports, files a complaint of, or otherwise opposes conduct he or she reasonably believes to be unlawful harassment, retaliation, or assists in the investigation of a complaint.

For purposes of this policy, Retaliation refers to taking a materially adverse action against an employee on the above-listed grounds. A materially adverse action includes, but is not limited to, the denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, and discharge. Adverse actions may also include threats, reprisals and adverse treatment that in the circumstances could dissuade or intimidate a reasonable person from raising a concern about a workplace condition or activity.

314.3 DEFINITIONS

Definitions related to this policy include:

314.3.1 DISCRIMINATION

The Department prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law.

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Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment can include making derogatory comments; making crude and offensive statements or remarks; making slurs or off-color jokes, stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters, or material; making inappropriate physical contact; or using written material or department equipment and/or systems to transmit or receive offensive material, statements, or pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

314.3.2 SEXUAL HARASSMENT

The Department prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment, position or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

314.3.3 ADDITIONAL CONSIDERATIONS

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles or standards, including:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the California Fair Employment and Housing Council guidelines.
- (b) Bona fide requests or demands by a supervisor that a member improve his/her work quality or output, that the member report to the job site on time, that the member comply with City or department rules or regulations, or any other appropriate work-related communication between supervisor and member.

314.4 RESPONSIBILITIES

This policy applies to all department personnel. All members shall follow the intent of these guidelines in a manner that reflects department policy, professional law enforcement standards and the best interest of the Department and its mission.

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Members are encouraged to promptly report any discriminatory, retaliatory or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher-ranking supervisor or manager. Complaints may also be reported directly to the City's Equal Employment Opportunity and Diversity (EEO) Officer, the Chief of Police, the Professional Standards Division Captain or the City Manager.

Any member who believes, in good faith, that he/she has been discriminated against, harassed or subjected to retaliation, or who has observed harassment or discrimination, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with resolution as stated below.

314.4.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of each supervisor and manager shall include, but are not limited to:

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment or retaliation.
- (c) Ensuring that his/her subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- (e) Making a timely determination regarding the substance of any allegation based upon all available facts.
- (f) Notifying the Chief of Police in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment or retaliation no later than the next business day.

314.4.2 SUPERVISOR'S ROLE

Supervisors and managers shall be aware of the following considerations:

- (a) Behavior of supervisors and managers should represent the values of the Department and professional law enforcement standards.
- (b) False or mistaken accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members or issuing discipline, in a manner that is consistent with established procedures.

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314.4.3 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment or retaliation are encouraged to contact a supervisor, a manager, the Chief of Police, the Professional Standards Division Captain, the City Manager, the City's Equal Employment Opportunity and Diversity (EEO) Officer, or the California Department of Fair Employment and Housing (DFEH) for further information, direction or clarification (Government Code § 12950).

314.5 INVESTIGATION OF COMPLAINTS

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Department that all complaints of discrimination, retaliation or harassment shall be fully documented and promptly and thoroughly investigated.

314.5.1 SUPERVISOR RESOLUTION

Members who believe they are experiencing discrimination, harassment, or retaliation should be encouraged to inform the individual that the behavior is unwelcome, offensive, unprofessional, or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing the member's concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

314.5.2 FORMAL INVESTIGATION

If the complaint cannot be satisfactorily resolved through the process described above, a formal investigation will be conducted.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint or for offering testimony or evidence in any investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include, but is not limited to, details of the specific incident, frequency and dates of occurrences and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed or retaliated against because of their protected status, are encouraged to follow the chain of command but may also file a complaint directly with the City's Equal Employment Opportunity and Diversity (EEO) Officer, Chief of Police, Professional Standards Division Captain or the City Manager.

314.5.3 ALTERNATIVE COMPLAINT PROCESS

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Department. Members who believe that they have been harassed, discriminated against, or retaliated against are entitled to bring complaints of employment discrimination to

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federal, state, and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

314.6 DOCUMENTATION OF COMPLAINTS

All complaints or allegations shall be thoroughly documented on forms, or memoranda, and in a manner designated by the Chief of Police. The outcome of all reports shall be:

- (a) Approved by the Chief of Police and,
- (b) Maintained in accordance with the department's established records retention schedule.

314.6.1 NOTIFICATION OF DISPOSITION

The complainant and/or victim will be notified in writing of the disposition of the investigation.

314.7 WORKING CONDITIONS

The Support Services Division Captain or the authorized designee should be responsible for reviewing facility design and working conditions for discriminatory practices. This person should collaborate with other City employees who are similarly tasked (2 CCR 11034).

314.8 CONTACTS

City of Berkeley Equal Employment and Diversity Officer

2180 Milvia St., 1st Floor, Berkeley, CA 94704 - (510) 981-6811

In addition to contacting the EEO for the City, employees may also direct their complaints to the following agencies:

- California Department of Fair Employment and Housing: 1515 Clay Street, Suite 701, Oakland, CA 94612 - (510) 286-4095 or (800) 884-1684
- Equal Employment Opportunity Commission - Oakland Local Office, Oakland Federal Building: 1301 Clay Street, Suite 1170, North Tower, Oakland, CA 94612 - (510) 637-3230 or (800) 669-4000

There are time limits for filing complaints with the DFEH and EEOC. Employees are advised to contact the DFEH or EEOC directly to obtain information on the time limits for filing complaints with these agencies.

314.9 REQUIRED POSTERS

The Department shall display the required posters regarding discrimination, harassment and transgender rights in a prominent and accessible location for members (Government Code § 12950).

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314.10 TRAINING

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that the member has been advised of this policy, is aware of and understands its contents, and agrees to abide by its provisions during the member's term with the Department.

All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents, and agree that they will continue to abide by its provisions.

314.10.1 STATE-REQUIRED TRAINING

The Personnel and Training Sergeant should ensure that employees receive the required state training and education regarding sexual harassment, prevention of abusive conduct, and harassment based on gender identity, gender expression, and sexual orientation as follows (Government Code § 12950.1; 2 CCR 11024):

- (a) Supervisory employees shall receive two hours of classroom or other effective interactive training and education within six months of assuming a supervisory position.
- (b) All other employees shall receive one hour of classroom or other effective interactive training and education within six months of their employment or sooner for seasonal or temporary employees as described in Government Code § 12950.1.
- (c) All employees shall receive refresher training every two years thereafter.

If the required training is to be provided by the Civil Rights Department online training courses, the Personnel and Training Sergeant should ensure that employees are provided the following website address to the training course: <https://calcivilrights.ca.gov> (Government Code § 12950; 2 CCR 11023).

314.10.2 TRAINING RECORDS

The Personnel and Training Sergeant shall be responsible for maintaining records of all discriminatory harassment training provided to members. Records shall be retained in accordance with established records retention schedules and for a minimum of two years (2 CCR 11024).

BPD POLICY 314 – DISCRIMINATORY HARASSMENT

Summary of Policy 314.1 – Purpose and Scope

This section identifies the general purpose of policy 314 as being to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation.

Summary of Policy 314.2 – Policy

This section outlines the City of Berkeley's (City) policy against discrimination based on several protected classes² and guarantees the rights of all employees to work in a place free of hostility and intimidation based on any of the defined protected classifications. It also states that the City does not tolerate nor condone any harassment of employees by any city employee or entity with whom the City has a business, service, or professional relationship. Lastly, the City prohibits retaliation against any individual who reports, files a complaint, or otherwise opposes conduct that they may reasonably believe to be unlawful harassment, or retaliation, or assists in the investigation of a complaint.

Summary of Policy 314.3 – Definitions

This section defines the following terms:

- 1) Discrimination
- 2) Sexual Harassment
- 3) Additional Considerations

Summary of Policy 314.4.- Responsibilities

This section provides the following guidelines for supervisors:

- 1) Supervisor Responsibilities – The responsibilities of each supervisor include but are not limited to:
 - a. Continually monitor the work environment and strive to ensure that it is free from all types of unlawful discrimination, including harassment and retaliation.
 - b. Be proactive in acting within their work units to prevent or minimize instances of discrimination, harassment, or retaliation.
 - c. Ensuring that their staff/subordinates understand this policy
 - d. Ensuring that members who make complaints or who speak up against unlawful discrimination practices are protected from retaliation and that their reports are kept confidential to the extent possible.
 - e. Make timely determinations of any allegations based on all available facts.
 - f. Notify the Police Chief in writing of the circumstances of any reported allegation or observed acts of discrimination, harassment, or retaliation no later than the next business day.

² Sex, race, age, religion, color, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, pregnancy, sexual orientation, gender, gender identity, gender expression, military or veteran status, and any other classifications protected by state or federal law.

DISCLAIMER: These comprehensive summaries and excerpts of Berkeley Police Department (BPD) policy are included merely for educational informational purposes. While the contents of this document have been verified to the best of our abilities, we cannot guarantee that there are no mistakes or errors in the summary of each respective policy. For BPD's complete policy and training materials, please visit their website at: [Policy & Training Materials | City of Berkeley \(berkeleyca.gov\)](https://www.berkeleyca.gov/policy-and-training-materials)

- 2) Supervisor's role – The role of supervisors and managers is to be aware of the following considerations:
 - a. The behavior of supervisors and managers should represent the values of the Department and professional law enforcement standards (lead by example).
 - b. False or mistaken accusations of discrimination, harassment, or retaliation can have negative effects on the careers of innocent members.
- 3) Questions or Clarification – This section state that any member with questions about what constitutes discrimination, sexual harassment, or retaliation are encouraged to consult with their supervisor.

Summary of Policy Section 314.5 – Investigation of Complaints

This section provides guidelines and procedures for resolving any complaints of discrimination, harassment, or retaliation. It directs supervising members to take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. All complaints of this nature are to be fully documented and investigated through the following means:

- 1) Supervisor Resolution – Under this section, members who believe they are experiencing discrimination, harassment, or retaliation are encouraged to speak with a supervisor to inform them of any unwelcome, offensive, unprofessional or inappropriate behavior. A member should seek assistance from a supervisor or manager who is of a higher rank than the alleged transgressor if their issue cannot be resolved by their immediate supervisor.
- 2) Formal Investigations – If the issue cannot be resolved by a supervisor resolution, a formal investigation will be conducted. This section outlines some general guidelines for the investigation. Members are encouraged to go through the chain of command to report any allegations but they can also file a complaint directly through the City's Equal Employment Opportunity and Diversity (EEO) Officer, Chief of Police, Professional Standards Division Captain, or the City Manager.
- 3) Alternative Complaint Investigations – This section states that although there are internal processes, members have the right to file complaints of employment discrimination to federal, state, and/or local agencies responsible for investigating such allegations. Members should be conscious of specific time limitations that apply to the filing of these complaints and that this policy does not affect those filing requirements.

Summary of Policy Section 314.6 – Documentation of Complaints

This section states that all complaints and allegations shall be thoroughly documented on forms, or memoranda, and in a manner designated by the Chief of Police. The outcome of these reports shall be approved by the Chief of Police and kept following the BPD record retention schedule. Both the complainant and/or victim will be notified of the outcome of an investigation.

Summary of Policy Section 314.7 – Working Conditions

This section tasks the Support Services Division Captain or their authorized designee with the responsibility of reviewing facility design and working conditions for discriminatory practices.

Summary of Policy Section 314.8 – Contacts

This section provides the contact information for the entities to that members may file complaints.

Summary of Policy Section 314.9 – Required Posters

This section states the BPD shall display the required posters regarding discrimination, harassment, and transgender rights in a prominent and accessible location.

Summary of Policy Section 314.10 – Training

This section describes the training procedures around this policy and states that members will receive annual training. It also outlines state requirements for discriminatory harassment training and the procedure for maintaining relevant training records.

Standards of Conduct

321.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Berkeley Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

321.2 POLICY

The continued employment or appointment of every member of the Berkeley Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

321.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

321.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

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The person countermanning the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

321.3.2 SUPERVISOR RESPONSIBILITIES

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

- (a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
- (b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
- (c) Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.
- (d) The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

321.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Employees shall at all times be courteous and civil to the public and to one another. They shall be quiet, orderly, attentive and respectful and shall exercise patience and discretion in the performance of their duties.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

321.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

321.5.1 LAWS, RULES AND ORDERS

- (a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.

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- (b) Disobedience of any legal directive or order issued by any department member of a higher rank.
- (c) Violation of federal, state, local or administrative laws, rules or regulations.

321.5.2 ETHICS

- (a) Using or disclosing one's status as a member of the Berkeley Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.

321.5.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM

Discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful.

321.5.4 RELATIONSHIPS

- (a) Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- (b) Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
- (c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (d) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- (e) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member

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knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.

321.5.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.
- (e) Failure to sign in/out for duty on the timesheet, unless specifically authorized by a supervisor.

321.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.
 - 1. Members of this department shall not disclose the name, address or image of any victim of human trafficking except as authorized by law (Penal Code § 293).
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away or appropriating any Berkeley Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.
- (e) Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

321.5.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- (d) Unauthorized sleeping during on-duty time or assignments.

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- (e) Failure to notify the Department within 72 hours of any change in name, residence address or contact telephone number(s).

321.5.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.
- (c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.
- (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
- (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
 - (a) While on department premises.
 - (b) At any work site, while on-duty or while in uniform, or while using any department equipment or system.
 - (c) Gambling activity undertaken as part of an officer official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (g) Entering any place of amusement while on duty, except when necessary in the performance of duty or periodic inspection.
- (h) Improper political activity including:
 - (a) Unauthorized attendance while on-duty at official legislative or political sessions.
 - (b) Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
- (i) Engaging in political activities during assigned working hours except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.

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- (j) Joining or participating in any employee organization except an employee organization which is composed solely of peace officers which concerns itself solely and exclusively with the wages, hours, working conditions, welfare and advancement of academic and vocational training in furtherance of the police profession and which is not subordinate to any other organization.
- (k) Failure to secure the permission of a Commanding Officer before placing any material on a Departmental bulletin board.
- (l) Using departmental business cards for anything other than official business.
- (m) Any act on- or off-duty that brings discredit to this department.

321.5.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency that may result in criminal prosecution or discipline under this policy.
- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.
- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- (e) Engaging in horseplay that reasonably could result in injury or property damage.
- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
- (g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
- (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
- (i) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.
- (j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
- (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
- (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.

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- (m) Incurring unauthorized expense - Employees shall not knowingly and intentionally incur any unauthorized Departmental expense or liability without approval of a superior officer or supervisor when necessary under emergency conditions.
- (n) Failure to provide information to citizens - Employees shall comply whenever possible with requests by citizens for public information. If necessary, they shall direct such persons to the nearest location where information may be obtained.
- (o) Failure to Identify - Employees on official business shall identify themselves as Berkeley Police employees or officers. When requested, employees shall promptly state their name, rank and badge number, except when disclosure of identity could compromise safety and/or an investigation (i.e., riot situations, undercover operations, etc.).
- (p) Failure to maintain communication, when on duty or officially on call - Employees who are on duty or officially on call shall be directly available by normal communication or shall keep their office, supervisor, or commanding officer informed of the means by which they may be reached when not immediately available.
- (q) Any other on-- or off--duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

321.5.10 SAFETY

- (a) Failure to observe or violating department safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
- (e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
- (f) Unsafe or improper driving habits or actions in the course of employment or appointment.
- (g) Any personal action contributing to a preventable traffic collision in the course of employment or appointment.
- (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

321.5.11 INTOXICANTS

- (a) Reporting for work:
 - 1. Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.

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- (b) Possession:
 - 1. Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.
 - 2. Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.
- (c) Intoxicants on-duty:
 - 1. Use of Intoxicants. Except as necessary in the performance of an official assignment, having the odor of an alcoholic beverage on the person, clothing, or breath, being under the influence of alcohol or other intoxicants, or the consumption of alcohol or other intoxicants while on duty is strictly prohibited.
 - 2. A Command Officer must give prior approval for any use of alcohol in the performance of an official assignment.
- (d) Prescription medication:
 - 1. Employees may use prescription medications, except medical marijuana, while on duty pursuant to the specific instructions of a physician who has advised the employee that the prescribed medication in the amount actually ingested does not adversely affect the employee's ability to safely perform their duties, including tasks that require physical coordination, mental alertness and sound judgment, such as, operating office equipment and driving a vehicle, or, in the case of sworn officers, making detentions/arrests and handling weapons.
- (e) Use of marijuana:
 - 1. Possession of marijuana, including medical marijuana, or being under the influence of marijuana on or off-duty is prohibited and may lead to disciplinary action.
- (f) Intoxicants in uniform:
 - 1. No employee off duty and in uniform, or in any part of uniform dress, shall:
 - i. Consume any alcoholic beverage or other intoxicant in public view or in any place accessible to the public;
 - ii. Be in public with the odor of an alcoholic beverage on the person, clothing, or breath; or
 - iii. Be under the influence of alcohol or other intoxicants.
- (g) Intoxicants off-duty:
 - 1. No off-duty employee shall consume any alcoholic beverage or other intoxicant to an extent which renders one unfit to report for one's next regular tour of duty (including having the odor of an alcoholic beverage on the person), which results in the of violation of any law, or which results in the commission of an obnoxious or offensive act which might tend to discredit the Department.

BPD POLICY 321 – STANDARDS OF CONDUCT

Summary of Policy Section 321.1 – Purpose and Scope

This section states that the purpose of the policy is to establish standards of conduct that are consistent with the values and mission of the Berkeley Police Department and are expected of all department members. However, expected standards are not limited to those listed within this policy and other requirements and additional guidance have to be considered.

Summary of Policy Section 321.2 - Policy

This section defines the general policy as being the conditions for continued employment with the Berkeley Police Department. Members are expected to follow these guidelines and failure to do so, whether on- or off-duty, may be cause for disciplinary actions.

Summary of Policy Section 321.3 – Directives and Orders

This section states that all members must comply with lawful directives and orders from any department supervisor or person with the authority to provide a directive or order. This section also provides guidelines on the following:

- 1) **Unlawful or Conflicting Orders** – This section establishes guidelines for what is considered to be an unlawful order and what to do in situations with conflicting orders. In the case of an order that appears to be unlawful, members are advised that they are not required to obey and that following an unlawful order is not a defense against any civil, criminal, or disciplinary action. If a member suspects that an order may be unlawful, members have to ask for clarification on the order from their supervisor or someone of higher authority. In cases of conflicting orders, members must respectfully inform their supervisor of the conflict and obtain clarification that the new order must be followed in place of the older one. In this case, a member who follows a conflicting lawful order after having asked for clarification, will not be accountable for disobedience of the initial order. In cases where taking the time to clarify an order would jeopardize the safety of an individual, the conflicting order may be followed.
- 2) **Supervisor Responsibilities** – This section outlines the responsibilities of supervisors and managers in ensuring standards of conduct.

Summary of Policy Section 321.4 – General Standards

This section states that members must act in accordance with the law, both on- and off-duty, and be readily familiar with the policies and procedures of the department. Members have to be courteous and civil to the public and one another.

Summary of Policy Section 321.5 – Causes for Discipline

This section list some of the reasons that a member of the Department can be disciplined. However, causes for discipline are not limited to the items mentioned in this section. The

purpose is to simply illustrate some of the potential causes for discipline. Please refer to subsections 321.5.1 to 321.5.11 for more details.

Information Technology Use

322.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the proper use of department information technology resources, including computers, electronic devices, hardware, software and systems.

322.1.1 DEFINITIONS

Definitions related to this policy include:

Computer system - All computers (on-site and portable), electronic devices, hardware, software, and resources owned, leased, rented or licensed by the Berkeley Police Department that are provided for official use by its members. This includes all access to, and use of, Internet Service Providers (ISP) or other service providers provided by or through the Department or department funding. This does not include body worn cameras, see the Body Worn Cameras Policy for information regarding their use.

Hardware - Includes, but is not limited to, computers, computer terminals, network equipment, electronic devices, telephones, including cellular and satellite, pagers, modems or any other tangible computer device generally understood to comprise hardware.

Software - Includes, but is not limited to, all computer programs, systems and applications, including shareware.

Temporary file, permanent file or file - Any electronic document, information or data residing or located, in whole or in part, on the system including, but not limited to, spreadsheets, calendar entries, appointments, tasks, notes, letters, reports, messages, photographs or videos.

322.2 POLICY

It is the policy of the Berkeley Police Department that members shall use information technology resources, including computers, software and systems, that are issued or maintained by the Department in a professional manner and in accordance with this policy.

322.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to emails, texts, or anything published, shared, transmitted, or maintained through file-sharing software or any internet site that is accessed, transmitted, received, or reviewed on any department computer system.

The Department reserves the right to access, audit, and disclose, for whatever reason, any message, including attachments, and any information accessed, transmitted, received, or reviewed over any technology that is issued or maintained by the Department, including the department email system, computer network, and/or any information placed into storage on any department system or device. This includes records of all keystrokes or Web-browsing history made at any department computer or over any department network. The fact that access to a database, service, or website requires a username or password will not create an expectation of privacy if it is accessed through department computers, electronic devices, or networks.

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The Department shall not require a member to disclose a personal username or password for accessing personal social media or to open a personal social website; however, the Department may request access when it is reasonably believed to be relevant to the investigation of allegations of work-related misconduct (Labor Code § 980).

322.4 RESTRICTED USE

Members shall not access computers, devices, software or systems for which they have not received prior authorization or the required training. Members shall immediately report unauthorized access or use of computers, devices, software or systems by another member to their supervisors or Watch Commanders.

Members shall not use another person's access passwords, logon information and other individual security data, protocols and procedures unless directed to do so by a supervisor.

322.4.1 SOFTWARE

Members shall not copy or duplicate any copyrighted or licensed software except for a single copy for backup purposes in accordance with the software company's copyright and license agreement.

To reduce the risk of a computer virus or malicious software, members shall not install any unlicensed or unauthorized software on any department computer. Members shall not install personal copies of any software onto any department computer.

When related to criminal investigations, software program files may be downloaded only with the approval of the information systems technology (IT) staff and the member's supervisor.

No member shall knowingly make, acquire or use unauthorized copies of computer software that is not licensed to the Department while on department premises, computer systems or electronic devices. Such unauthorized use of software exposes the Department and involved members to severe civil and criminal penalties.

Introduction of software by members should only occur as part of the automated maintenance or update process of department- or City-approved or installed programs by the original manufacturer, producer or developer of the software.

Any other introduction of software requires prior authorization from IT staff and a full scan for malicious attachments.

322.4.2 HARDWARE

Access to technology resources provided by or through the Department shall be strictly limited to department-related activities. Data stored on or available through department computer systems shall only be accessed by authorized members who are engaged in an active investigation or assisting in an active investigation, or who otherwise have a legitimate law enforcement or department-related purpose to access such data. Any exceptions to this policy must be approved by a supervisor.

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322.4.3 INTERNET USE

Internet access provided by or through the Department shall be strictly limited to department-related activities. Internet sites containing information that is not appropriate or applicable to department use and which shall not be intentionally accessed include, but are not limited to, adult forums, pornography, gambling, chat rooms and similar or related Internet sites. Certain exceptions may be permitted with the express approval of a supervisor as a function of a member's assignment.

Downloaded information shall be limited to messages, mail and data files.

322.4.4 OFF-DUTY USE

Refer to the Personal Communication Devices Policy for guidelines regarding off-duty use of personally owned technology.

322.5 PROTECTION OF AGENCY SYSTEMS AND FILES

All members have a duty to protect the computer system and related systems and devices from physical and environmental damage and are responsible for the correct use, operation, care, and maintenance of the computer system.

Members shall ensure department computers and access terminals are not viewable by persons who are not authorized users. Computers and terminals should be secured, users logged off and password protections enabled whenever the user is not present. Access passwords, logon information, and other individual security data, protocols, and procedures are confidential information and are not to be shared. Password length, format, structure, and content shall meet the prescribed standards required by the computer system or as directed by a supervisor and shall be changed at intervals as directed by IT staff or a supervisor.

It is prohibited for a member to allow an unauthorized user to access the computer system at any time or for any reason. Members shall promptly report any unauthorized access to the computer system or suspected intrusion from outside sources (including the internet) to a supervisor.

322.6 INSPECTION OR REVIEW

A supervisor or the authorized designee has the express authority to inspect or review the computer system, all temporary or permanent files, related electronic systems or devices, and any contents thereof, whether such inspection or review is in the ordinary course of his/her supervisory duties or based on cause.

Reasons for inspection or review may include, but are not limited to, computer system malfunctions, problems or general computer system failure, a lawsuit against the Department involving one of its members or a member's duties, an alleged or suspected violation of any department policy, a request for disclosure of data, or a need to perform or provide a service.

The IT staff may extract, download or otherwise obtain any and all temporary or permanent files residing or located in or on the department computer system when requested by a supervisor or during the course of regular duties that require such information.

BPD POLICY 322 – INFORMATION TECHNOLOGY USE

Summary of Policy Section 322.1 – Purpose and Scope

The purpose of this policy is to provide guidelines for the proper use of department information technology. This section defines the following terms: Computer system, hardware, software, and respective file categories (temporary, permanent).

Summary of Policy Section 322.2 – Policy

The policy is that BPD members use technology issued or maintained by the department in a professional manner and by the terms of this policy.

Summary of Policy Section 322.3 – Privacy Expectation

This section states that members forfeit any expectation of privacy concerning electronic communications that are accessed, transmitted, received, or reviewed on any department computer system. BPD also reserves the right to access, audit, and disclose any communication and/or information sent through or stored on a device issued or maintained by the department, including databases that require password entry. However, BPD shall not require members to disclose personal login information used to access social media unless it is reasonably believed to be relevant to the investigation of allegations of work-related misconduct³.

Summary of Police Section 322.4 – Restricted Use

This section states that members should not access any information technology systems for which they have not been authorized to use or have the required training. Members are required to report any unauthorized use of these systems by another member to their supervisor or watch commander. The following restrictions apply to information technology systems:

- 1) Re: Software – Members are directed to not copy or duplicate any copyrighted or licensed software in violation of the respective company's copyright and license agreement. Members should not download any software without the approval of the information systems technology (IT) staff or the approval of the member's supervisor. This is structured this way for cybersecurity purposes.
- 2) Re: Hardware – Department hardware should be used strictly for department-related business and should not be used for other purposes unless there is approval from a supervisor.
- 3) Re: Internet Use – The Department's internet connection shall be used only for department-related activities and no member shall access websites not appropriate or applicable to department needs. Such websites are listed as adult forums, pornography, gambling, chat rooms, and similar websites. There may be certain exceptions but they must be approved by the member's supervisor.
- 4) Re: Off-Duty Use – This section refers to BPD Policy 701.

³ This is allowed by Labor Code Section 980 subsection C which states "Nothing in this section shall affect an employer's existing rights and obligations to request an employee to divulge personal social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding."

DISCLAIMER: These comprehensive summaries and excerpts of Berkeley Police Department (BPD) policy are included merely for educational informational purposes. While the contents of this document have been verified to the best of our abilities, we cannot guarantee that there are no mistakes or errors in the summary of each respective policy. For BPD's complete policy and training materials, please visit their website at: [Policy & Training Materials | City of Berkeley \(berkeleyca.gov\)](https://www.berkeleyca.gov/policy-training)

Summary of Policy Section 322.5 – Protection of Agency Systems and Files

This section states that members have to protect computer systems and related systems and devices from damage and are responsible for their correct use and upkeep. The “Duty to Protect” is an obligation by officers to ensure that technology systems are used correctly and by only those authorized to use them.

Summary of Policy Section 322.6 – Inspection or Review

This section grants supervisors or authorized designees the authority to inspect or review information technology systems and outlines under what circumstances they may do so.

Fair and Impartial Policing

401.1 PURPOSE AND SCOPE

This policy is intended to reaffirm the commitment of the Berkeley Police Department to fair and impartial policing; to clarify the circumstances in which officers can consider race, ethnicity and other demographics; and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way.

California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This policy explicitly prohibits racial profiling and other biased policing. This policy describes the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in making law enforcement decisions.

401.1.1 DEFINITIONS

Definitions related to this policy include:

Bias-based policing - Any police-initiated action that relies on the race, ethnicity or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being engaged in criminal activity.

401.2 POLICY

Investigative detentions, traffic stops, arrests, searches and property seizures by officers will be based on a standard of reasonable suspicion or probable cause. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause.

Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities except when officers are:

- (a) Seeking specific person(s) who have been described in part by any of the above listed characteristics, or
- (b) The person(s) are being sought for a specific law enforcement purpose.

Discrimination or harassment based on a trait or class described above is considered a “serious allegation” of misconduct.

401.3 RESPONSIBILITY TO REPORT AND TAKE CORRECTIVE ACTION

Employees who become aware of another employee engaging in biased policing shall adhere to reporting procedures set forth in the Discriminatory Harassment Policy.

A supervisor or command officer who becomes aware of biased policing shall adhere to notification and administrative procedures set forth in the Personnel Complaints Policy.

All reports of biased policing shall be investigated in accordance with the Personnel Complaints Policy.

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Fair and Impartial Policing

401.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Chief of Police or the authorized designee shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and reported annually to the DOJ (Penal Code § 13012; Penal Code § 13020).

401.4.1 DEMOGRAPHIC DATA PROCEDURES

All sworn officers shall provide demographic statistical data once for each individual as listed below:

- (a) All vehicle and bicycle detentions.
- (b) All pedestrian detentions
- (c) Anytime anyone is detained, regardless of the cause
- (d) Anytime anyone is searched regardless of the cause.

Officers shall provide demographic statistical data pursuant to the requirements of the RIPA statute, AB 953.

401.5 ADMINISTRATION

Each year, the Operations Division Captain shall review the efforts of the Department to prevent racial or biased based profiling and submit an overview, including public concerns and complaints, to the Chief of Police.

The annual report should not contain any identifying information about any specific complaint, member of the public or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors should review the annual report and discuss the results with those they are assigned to supervise.

401.6 TRAINING

Training on racial or bias-based profiling and review of this policy should be conducted as directed by the Personnel and Training Bureau.

- (a) All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of racial or bias-based profiling.
- (b) Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- (c) Each sworn member of this department who received initial racial or bias-based profiling training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial, identity and cultural trends (Penal Code § 13519.4(i)).

BPD POLICY 401 – FAIR AND IMPARTIAL POLICING

Summary of Policy Section 401.1 – Purpose and Scope

This section states that the purpose of this policy is to reaffirm the commitment of BPD to fair and impartial policing; clarify the circumstances where an officer can consider race, ethnicity, and other demographics; and reinforce procedures that serve to assure the public that BPD is providing service and equitably enforcing laws. This section also defines the term “Bias-based policing.”

Summary of Policy Section 401.2 – Policy

This policy section states that all investigative detentions, traffic stops, arrests, searches, and property seizures by officers must be made on a standard of reasonable suspicion and must be able to articulate the specific facts and circumstances to support their suspicion or probable cause. Officers are not allowed to use race, ethnicity, national origin, or other protected statuses in the performance of their duties unless they are doing so for the following reasons:

- a) They are seeking a specific person(s) who was described in part by any of the above-listed characteristics.
- b) The person(s) are being sought for a specific law enforcement purpose

Under these policies, using any of the protective statuses in absence of the above exceptions can be considered a “serious allegation” in terms of misconduct.

Summary of Policy Section 401.3 – Responsibility to Report and Take Corrective Action

This section states that an employee who becomes aware of another employee engaging in biased policing has to report it based on the procedures of the Discriminatory Harassment policy. Supervisors and command officers, have to apply the procedures outlined in the Personnel Complaints Policy which also states that all reports of biased policing have to be investigated in accordance with the same Personnel Complaints Policy.

Summary of Policy Section 401.4 – Reporting to California Department of Justice

This section states that the Chief of Police or an authorized designee has to ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers are collected and reported annually to the DOJ. This data includes search and detention data.

Summary of Policy Section 401.5 – Administration

This section states that the Operations Division Captain has to review the efforts of the Department to prevent racial or biased based profiling and submit an annual report that provides an overview, including public concerns and complaints, to the Chief of Police. Supervisors are to review this report and discuss the result with their subordinates.

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Summary of Policy Section 401.6 – Training

This section states that training on racial or bias-based profiling and the review of this policy should be conducted as directed by the Personnel and Training Bureau.

Personal Communication Devices

701.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued or funded by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

This policy generically refers to all such devices as Personal Communication Devices (PCDs) but is intended to include all mobile telephones, personal digital assistants (PDAs), wireless capable tablets and similar wireless two-way communications and/or portable Internet access devices. PCD use includes, but is not limited to, placing and receiving calls, text messaging, blogging and microblogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

701.2 POLICY

The Berkeley Police Department allows members to utilize department-issued or funded PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. Any department-issued PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy.

The inappropriate use of a PCD while on-duty may impair officer safety. Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or after duty hours for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under applicable public records laws.

Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory personnel.

701.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to any communication accessed, transmitted, received or reviewed on any PCD issued or funded by the Department/Office and shall have no expectation of privacy in their location should the device be equipped with location detection capabilities (see the Information Technology Use Policy for additional guidance).

701.3.1 CALIFORNIA ELECTRONIC COMMUNICATIONS PRIVACY ACT (CALECPA)

No member is authorized to be the sole possessor of a department-issued PCD. Department-issued PCDs can be retrieved, reassigned, accessed or used by any member as directed by a supervisor without notice. Member use of a department-issued PCD and use of a personal PCD at work or for work-related business constitutes specific consent for access for department purposes. Prior to conducting an administrative search of a PCD, supervisors should consult legal counsel to ensure access is consistent with CalECPA (Penal Code § 1546; Penal Code § 1546.1).

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701.4 DEPARTMENT-ISSUED PCD

Depending on a member's assignment and the needs of the position, the Department may, at its discretion, issue or fund a PCD. Department-issued or funded PCDs are provided as a convenience to facilitate on-duty performance only. Such devices and the associated telephone number shall remain the sole property of the Department and may be subject to inspection or monitoring (including all related records and content) at any time without notice and without cause.

701.5 PERSONALLY OWNED PCD

Members may carry a personally owned PCD while on-duty, subject to the following conditions and limitations:

- (a) Permission to carry a personally owned PCD may be revoked if it is used contrary to provisions of this policy.
- (b) The Department accepts no responsibility for loss of or damage to a personally owned PCD.
- (c) The PCD and any associated services shall be purchased, used and maintained solely at the member's expense.
- (d) The device shall not be utilized to record or disclose any business-related information, including photographs, video or the recording or transmittal of any information or material obtained or made accessible as a result of employment with the Department, without the express authorization of the Chief of Police or the authorized designee.
- (e) All work-related documents, emails, photographs, recordings or other public records created or received on a member's personally owned PCD should be transferred to the Berkeley Police Department and deleted from the member's PCD as soon as reasonably practicable but no later than the end of the member's shift.

Except with prior express authorization from their supervisor, members are not obligated or required to carry, access, monitor or respond to electronic communications using a personally owned PCD while off-duty. If a member is in an authorized status that allows for appropriate compensation consistent with policy or existing memorandum of understanding or collective bargaining agreements, or if the member has prior express authorization from his/her supervisor, the member may engage in business-related communications. Should members engage in such approved off-duty communications or work, members entitled to compensation shall promptly document the time worked and communicate the information to their supervisors to ensure appropriate compensation. Members who independently document off-duty department-related business activities in any manner shall promptly provide the Department with a copy of such records to ensure accurate record keeping.

701.6 USE OF PCD

The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:

- (a) Members may use a PCD to communicate with other personnel in situations where the use of radio communications is either impracticable or not feasible. PCDs should

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not be used as a substitute for, as a way to avoid, or in lieu of regular radio communications.

- (b) Members are prohibited from taking pictures, audio or video recordings or making copies of any such picture or recording media unless it is directly related to official department business. Disclosure of any such information to any third party through any means, without the express authorization of the Chief of Police or the authorized designee, may result in discipline.
- (c) Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

701.7 SUPERVISOR RESPONSIBILITIES

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that members under their command are provided appropriate training on the use of PCDs consistent with this policy.
- (b) Monitoring, to the extent practicable, department-issued PCD use in the workplace and taking prompt corrective action if a member is observed or reported to be improperly using a department-issued PCD.
 - 1. An investigation into improper conduct should be promptly initiated when circumstances warrant.
 - 2. Before conducting any administrative search of a member's personally owned device, supervisors should consult with the Chief of Police or the authorized designee.

701.8 USE WHILE DRIVING

The use of a PCD while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Officers operating emergency vehicles should restrict the use of these devices to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to use the PCD.

Members who are operating department vehicles that are not authorized emergency vehicles shall not use a PCD while driving unless the device is specifically designed and configured to allow hands-free use. In an emergency, a wireless phone may be used to place an emergency call to the Department or other emergency services agency (Vehicle Code § 23123; Vehicle Code § 23123.5). Hands-free use should be restricted to business-related calls or calls of an urgent nature.

701.9 OFFICIAL USE

Members are reminded that PCDs are not secure devices and conversations may be intercepted or overheard. Caution should be exercised while utilizing PCDs to ensure that sensitive information is not inadvertently transmitted.

POLICY 701 – PERSONAL COMMUNICATION DEVICES (PCDs)

Summary of Policy Section 701.1 – Purpose and Scope

The purpose and scope of this policy are to establish guidelines for the use of cell phones and other communication devices. The scope of the policy includes all devices that are issued or funded by the department or personally owned by a member, while on duty or when used for authorized work-related purposes. “Use” in this case includes, but is not limited to, placing and receiving calls, text messages, emailing, accessing sites or services on the internet, and more.

Summary of Policy Section 701.2 – Policy

The general policy of the BPD is to allow members of the department to use department-issued and funded PCDs and to possess their devices in the workplace, with limitations, use of department-issued PCD used on- or off-duty in any manner reasonably related to BPD’s business are subject to monitoring and inspection consistent with the standards of this policy. Additionally, the use of personal devices either on-duty or after-duty hours for business-related activities may subject the member and their records to civil or criminal discovery or disclosure under applicable public records law.

Summary of Policy Section 701.3 – Privacy Expectation

Members forfeit any expectation of privacy regarding communications on any BPD-issued or funded device and do not have an expectation of privacy as to their location if their device has location detection.

Summary of Policy Section 701.4 – Department-Issued PCD

This section states that BPD can issue personal communication devices at its discretion to facilitate the work of its members. The devices and associated information remain the sole property of the Department and may be subject to inspection or monitoring at any time without notice and cause.

Summary of Police Section 701.5 – Personally Owned PCD

This section states that members are allowed to carry their devices while on duty but are subject to certain conditions and limitations. Members are not obligated or required to carry, access, monitor, or respond to electronic communications using their devices while off-duty. The policy goes on to further state that members who are authorized and/or directed to, can be compensated for their off-duty, department-related activities.

Summary of Policy Section 701.6 – Use of PCD

This section outlines Department protocols for the use of PCDs. Those protocols are the following:

- a) A PCD is not a substitute for radio communications but may be used when the use of the radio would be impractical or not feasible.
- b) Members are prohibited from taking pictures, audio or video recordings, or making copies of such media unless it is directly related to their official business.

Disclosure of this material without authorization of the Chief or an authorized representative may result in discipline.

- c) Using PCDs to harass, threaten, coerce, or otherwise engage in inappropriate conduct with any third party is prohibited.

Summary of Policy Section 701.7 – Supervisor Responsibilities

This section outlines the responsibilities of supervisors around CPDs. Supervisors are expected to ensure proper training for members under their command around the use of PCD and monitor the use of those devices to the extent practical. If devices are used in violation of this policy, supervisors are to take prompt corrective action.

Summary of Policy Section 701.8 – Use While Driving

This section states that the use of PCDs while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Officers operating emergency vehicles should restrict the use of these devices for emergencies and should otherwise stop the vehicle at an appropriate location to use the PCD.

Summary of Policy Section 701.9 – Official Use

This section directs members to use caution when using PCDs as they are not secure devices and conversations may be intercepted or overheard. Caution is required to ensure that sensitive information is not inadvertently transmitted.

Employee Speech, Expression and Social Networking

1029.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

1029.1.1 APPLICABILITY

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

1029.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Berkeley Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

1029.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect the safety of the Berkeley Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

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- Disclosing a photograph and name or address of an officer who is working undercover.
- Disclosing the address of a fellow officer.
- Otherwise disclosing where another officer can be located off-duty.

1029.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

To meet the department's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees. Examples may include:
 1. Statements that indicate disregard for the law or the state or U.S. Constitution.
 2. Expression that demonstrates support for criminal activity.
 3. Participating in sexually explicit photographs or videos for compensation or distribution.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Department. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Berkeley Police Department.
- (f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department for financial or personal gain, or any disclosure of such materials without the express authorization of the Chief of Police or the authorized designee.
- (g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches,

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marked vehicles, equipment or other material that specifically identifies the Berkeley Police Department on any personal or social networking or other website or web page, without the express authorization of the Chief of Police.

- (h) Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or department-owned, for personal purposes while on-duty, except in the following circumstances:
 - 1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
 - 2. During authorized breaks such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees should take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

1029.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or officer associations, employees may not represent the Berkeley Police Department or identify themselves in any way that could be reasonably perceived as representing the Berkeley Police Department in order to do any of the following, unless specifically authorized by the Chief of Police (Government Code § 3206; Government Code § 3302):

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or officer associations), is affiliated with this department, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Berkeley Police Department.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or officer associations, on political subjects and candidates at all times while off-duty.

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However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

1029.5 PRIVACY EXPECTATION

Employees forfeit any expectation of privacy with regard to e-mails, texts or anything published or maintained through file-sharing software or any Internet site (e.g., Facebook, MySpace) that is accessed, transmitted, received or reviewed on any department technology system.

The Department reserves the right to access, audit and disclose for whatever reason any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department. This includes the department e-mail system, computer network or any information placed into storage on any department system or device.

It also includes records of all key strokes or web-browsing history made at any department computer or over any department network.

The fact that access to a database, service or website requires a user name or password will not create an expectation of privacy if it is accessed through a department computer or network. However, the Department may not require an employee to disclose a personal user name or password or open a personal social website, except when access is reasonably believed to be relevant to the investigation of allegations of work related misconduct (Labor Code § 980).

1029.6 CONSIDERATIONS

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Chief of Police or authorized designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- (b) Whether the speech or conduct would be contrary to the good order of the Department or the efficiency or morale of its members.
- (c) Whether the speech or conduct would reflect unfavorably upon the Department.
- (d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of the Department.

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1029.7 TRAINING

Subject to available resources, the Department should provide training regarding employee speech and the use of social networking to all members of the Department.

POLICY 1029 – EMPLOYEE SPEECH, EXPRESSION, AND SOCIAL NETWORKING

Summary of Policy Section 1029.1 – Purpose and Scope

The purpose and scope of this policy are to address issues with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the department. However, this policy is not intended to prohibit or infringe upon any communication, speech, or expression that is protected by law.

Summary of Policy Section 1029.2 – Policy

This policy states that because public employees occupy a position of trust in the community, it is important that there be some limitations on their speech and expression. To do so, BPD will carefully balance the individual's rights against the department's needs and interests and exercise a reasonable degree of control over its employees' speech and expression.

Summary of Policy Section 1029.3 – Safety

This section directs officers to carefully consider the implication of their speech or any other form of expression when using the Internet as speech and expression may have negative impacts on their safety or that of their fellow officers.

Summary of Policy Section 1029.4 – Prohibited Speech, Expression, and Conduct

This section outlines prohibited speech, expression, and conduct intended to meet the department's safety, performance, and public trust needs. Please refer to the complete policy section for more detail.

Summary of Policy Section 1029.5 – Privacy Expectation

This section states that employees forfeit any expectation of privacy concerning e-mails, texts, or anything that is published or maintained through file-sharing software or any social media site that is accessed, transmitted, received, or reviewed on any department technology system. The Department may not require that an employee disclose a personal user name or password or open a personal social website, except when there is a reasonable belief that the contents may be relevant to an investigation of allegations of work-related misconduct.

Summary of Policy Section 1029.6 – Considerations

This section list the considerations that the Chief of Police or the authorized designee should consider before granting authorization for any speech of conduct that is prohibited under this policy. See the complete policy for the detailed list.

Summary of Policy Section 1029.7 – Training

This section states that BPD should provide training regarding employee speech and the use of social networking to all members of the department as long as there are resources to do so.

EARLY WARNING SYSTEM

1041.1 PURPOSE

The purpose of this Order is to establish policy and procedures for an informal performance review and intervention program, the “Early Warning System” (EWS). The program monitors employee performance that may be inconsistent with professional police conduct and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues and correction of these issues through constructive counseling sessions rather than the formal disciplinary process.

1041.2 POLICY

All employees shall participate in the EWS program and comply with the guidelines set forth in this Order.

Participation in the EWS program shall not be deemed punitive, nor a formal disciplinary process.

- (a) Notwithstanding the initiation of the EWS process, the Department retains its right and responsibilities with regard to investigation of policy violation and enforcement of employee discipline.

1041.3 PROCEDURES

Employee behavior or performance that is subject to EWS review includes, but is not limited to:

- (a) Poor attendance and/or abusive use of leave;
- (b) Multiple formal sustained or not sustained complaints;
- (c) Multiple informal complaint inquiries;
- (d) Multiple use of force incidents;
- (e) Multiple obstructing/resisting arrest incidents;
- (f) Multiple vehicle collisions; and,
- (g) Substandard conduct/performance concerns observed by a superior officer.
- (h) Irregular demographic stop data on pedestrian, bike, and vehicle enforcement, while considering the factors of the assignment (geographical area of the city the officer is working, the specific detail/assignment, and the nature of enforcement).

The Racial and Identify Protection Act (RIPA) data will be available to supervisors in the form of an electronic data dashboard. This will provide supervisors and commanders with the ability to review stop data created by officers assigned under their span of control. The individual stop data for individual officers should be considered a personnel record as it may provide supervisory guidance for specific officer stop data, if necessary. The public release of any RIPA data will remain anonymized as previously agreed upon Meet and Confer with the Berkeley Police Association and provisions of Government Code 3300 et.al.

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EARLY WARNING SYSTEM

Supervisors, commanders and managers shall monitor the activity of their subordinate employees to identify actual or perceived unprofessional behavior and/or substandard performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police via the Chain of Command.

Personnel assigned to the Internal Affairs Bureau (IAB) shall monitor all formal and informal allegations of employee misconduct received by their office for behavior or performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police.

Personnel assigned to the Support Services Division Report Review Detail shall forward to the Chief of Police copies of all reports pertaining to:

- (a) Obstruction/resisting arrests cases (i.e., Penal Code §§148, 69, etc.)

Administrative reports regarding use of force shall be forwarded to the Chief of Police as directed in Policy 300.

1041.4 MANAGEMENT OF PROGRAM RECORDS

The Office of the Chief of Police shall be responsible for aggregation and administrative management of information, data and records associated with the EWS program.

- (a) The administrative assistant assigned to the Office of the Chief of Police shall be responsible for preparing a quarterly report summarizing information and activities associated with the EWS program for use in administrative review.

Information, data and records associated with the EWS program are used for personnel purposes. Accordingly, they are confidential personnel files and not public records.

Documents, data and records shall be maintained by the Office of the Chief of Police for a period of two (2) years.

Access to EWS records shall be restricted to the supervisor, commander and/or manager involved in the monitoring of a particular employee, subject to the approval of the Chief of Police.

- (a) An individual employee may be granted access to EWS records that pertain to him/her.

1041.5 ADMINISTRATIVE REVIEW BOARD

The Chief of Police will convene a quarterly Review Board comprised of all Division Commanders to review program records to determine if initiation of the EWS Program is recommended.

Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program.

1041.6 INITIATION OF EWS PROGRAM

Upon the direction of the Chief of Police, an informal counseling meeting will be held that may include:

- (a) The subject employee;

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- (b) The employee's supervisor;
- (c) An Internal Affairs Bureau sergeant;
- (d) The employee's Lieutenant; and,
- (e) The employee's Division Commander, who shall preside over the meeting.

Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.

- (a) If the meeting cannot be scheduled during the employee's regularly scheduled working hours, personnel participating while off-duty shall be compensated with compensatory time (minimum time as may be authorized by the employee's MOU) or, with Division Commander approval, allowed to flex an equal amount of time within that same work week.

The subject employee may have one fellow employee accompany him/her to the counseling meeting.

- (a) The accompanying employee's presence is allowed to offer general support to the subject employee, not to be an active participant in the counseling meeting.

As in general supervisor counseling meetings, the employee shall be informed of the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response.

The subject employee may be given information regarding the City of Berkeley Employee Assistance Program.

No formal document will be generated referencing this meeting, and the meeting shall not be deemed a punitive or disciplinary proceeding against the employee. There shall be no permanent record of the meeting.

POLICY 1041 – EARLY WARNING SYSTEM

Summary of Policy Section 1041.1 – Purpose

This order establishes policy and procedures for an informal performance review and intervention program, the “Early Warning System” (EWS). The EWS is intended to assist the department in identifying employee performance issues and correcting them through constructive counseling sessions rather than formal discipline processes.

Summary of Policy Section 1041.2 – Policy

All employees have to participate in EWS and comply with the guidelines of this policy. The EWS is not a formal disciplinary process and should not be looked at as a system intended to punish. However, the EWS process does not mean that the department forfeits its right and responsibility concerning investigating policy violations and enforcing employee discipline.

Summary of Policy Section 1041.3 – Procedures

This section outlines the procedure for the EWS system and lists behavior and performance that is subject to EWS review. See the complete policy for more details.

Summary of Policy Section 1041.4 – Management of Program Records

This section states that the Office of the Chief of Police is responsible for the aggregation and administrative management of information, data, and records associated with the EWS program. The Office of the Chief of Police will produce a quarterly report summarizing information and activities of EWS. The retention schedule is identified as being two years and the records will be restricted to the supervisor, commander, and/or manager involved in the monitoring of the subject employee.

Summary of Policy Section 1041.5 – Administrative Review Board

This section states that the Chief of Police will convene a quarterly Review Board comprised of all of the division commanders to review program records to determine if the EWS program is recommended for initiation.

Summary of Policy Section 1041.6 – Initiation of EWS Program

This section outlines the process to initiate an EWS program and identifies who can and/or must participate in the process. See the complete policy for more details.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 31, 1989

GENERAL ORDER R-4

**SUBJECT: RESPONSIBILITY AND ACCOUNTABILITY OF DELEGATED
AUTHORITY**

PURPOSE

- 1 - The purpose of this General Order is to define that responsibility which is commensurate with authority and to establish accountability for the use of delegated authority.

POLICY

- 2 - It is the policy of the Berkeley Police Department that inherent with delegated authority is the latitude to make decisions and take the necessary actions to satisfy the requirements of each assigned position. Commensurate with the authority, each employee will accept the responsibility for the use, misuse, or failure to use that authority.

PROCEDURES

- 3 - Supervisors will be held accountable for the performance of employees under their immediate control.
- 4 - When delegating, the following guidelines shall be considered:
 - (a) Delegation is a function and tool of good management and, when appropriate, Supervisors have the discretion and responsibility to delegate to subordinates.
 - (b) When authority is delegated, it shall be the responsibility of the Supervisor to ensure the subordinate has the power to act and has the ability to carry out the assignment. Correspondingly, no one shall be assigned responsibility for work without being delegated authority to direct the manner of its performance.
 - (c) Supervisors should advise subordinates that they will be held accountable for the exercise of the delegated authority.
 - (d) Although the subordinate may be held accountable for his/her actions, nothing in this policy absolves the Supervisor from ultimate responsibility and accountability for the supervision of subordinates and the use of delegated authority.

References: CALEA Standards
Municipal Police Administration

GENERAL ORDER R-4 – RESPONSIBILITY AND ACCOUNTABILITY OF DELEGATED AUTHORITY

Summary of General Order R-4

The purpose of this General Order (GO) is to define the general responsibilities of members with delegated authorities as well as establish accountability measures for those individuals. The policy set by this GO is that the BPD can delegate orders to members to allow them to make decisions and take necessary actions to complete the responsibilities of their position. Members who have been delegated authority are accountable for the performance of the employees under their immediate control. This order does provide the ability to delegate tasks under certain considerations.