OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING

Wednesday, January 12, 2022
7:00 P.M.

Board Members:

ISMAIL RAMSEY, CHAIR	REGINA HARRIS	NATHAN MIZELL
MICHAEL CHANG, VICE-CHAIR	JULIE LEFTWICH	JOHN MOORE III
KITTY CALAVITA	DEBORAH LEVINE	CHERYL OWENS

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: https://us02web.zoom.us/j/82237902987. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **822 3790 2987**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

1. **CALL TO ORDER & ROLL CALL** (5 minutes)

2. **APPROVAL OF AGENDA** (5 minutes)

3. **PUBLIC COMMENT** (TBD)

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

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

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

4. **APPROVAL OF MINUTES** (3 minutes)

   a. Special meeting of December 7, 2021.

   b. Regular meeting of December 8, 2021.

5. **CHAIR'S REPORT** (5 minutes)

   Update from Board member Mizell on Reimagining Public Safety Task Force.

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

   Status of complaints; NACOLE in-person conference debrief; other items.

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

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

8. **SUBCOMMITTEE REPORTS (discussion and action)** (10 minutes)

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

   a. Fair & Impartial Policing Implementation – (see Item 10.d. below.)

   b. Director Search.

   c. Regulations.

   d. Mental Health Response (Policy Complaint #7) – meeting to be scheduled.

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

   a. Further report on City Attorney conflict-of-interest issues. (10 minutes)

   b. Revision of Policy 425, Body Worn Cameras, to broaden access by PAB and ODPA. (15 minutes)

   c. Update from Police Department regarding the October 15 incident involving a gun on the Berkeley High Campus. (10 minutes)

   d. Vaccination status of BPD employees. (5 minutes)

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

    a. Nomination of PAB Chairperson and Vice-Chairperson (10 minutes)

    b. PAB Standing Rules (20 minutes)

       i.) Review Council's (Mayor's) proposed amendments to Standing Rules and approve or offer alternate revisions.

       From: City Council

       ii.) Authorize Chair and Vice-Chair to appear at City Council meeting regarding Standing Rules.

c. Automated License Plate Readers (ALPRs): Review BPD's proposed ALPR Use Policy and Councilmember Harrison's proposed revisions, and provide feedback. (20 minutes)

d. Recommendation from Fair & Impartial Policing (FIP) Implementation Subcommittee regarding access to BPD draft policies related to FIP. (10 minutes)
(To be delivered.)

e. Consider opening a policy review regarding authorizing paramedics to inject suspect with a substance (possibly a sedative). (10 minutes)
From: Interim Director

f. Policy Complaints #11 and #12: consider whether to open review of policies. (15 minutes)

11. PUBLIC COMMENT (TBD)

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

Closed Session

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

12. CONSIDER FINDINGS AND RECOMMENDATIONS OF INTERIM DIRECTOR IN COMPLAINT #5 AND DECIDE WHETHER A HEARING IS NEEDED

13. REVIEW ADMINISTRATIVE LAW JUDGES' CALOCA DECISIONS IN PRC COMPLAINTS #2484 AND #2485

End of Closed Session

14. ANNOUNCEMENT OF CLOSED SESSION ACTION (1 minute)

15. ADJOURNMENT (1 minute)

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

Communication Access Information (A.R. 1.12)
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer
Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5th Floor, Berkeley, CA.

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

POLICE ACCOUNTABILITY BOARD (PAB)
REGULAR MEETING ATTACHMENTS
JANUARY 12, 2022

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD

SPECIAL MEETING

MINUTES

(draft)

Tuesday, December 7, 2021, 7:00 P.M.

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

1. CALL TO ORDER & ROLL CALL BY VICE-CHAIR CHANG AT 7:05 P.M.

Present:	Board Member Ismail Ramsey (Chair) (arrived 8:19 p.m.) Board Member Michael Chang (Vice-Chair) Board Member Kitty Calavita Board Member Juliet Leftwich Board Member Deborah Levine Board Member Nathan Mizell Board Member John Moore Board Member Cheryl Owens
Absent:	Board Member Regina Harris
ODPA Staff:	Katherine J. Lee, Interim Director of Police Accountability
BPD Staff:	Scott Castle (BPA)

2. APPROVAL OF AGENDA

The agenda was approved by general consent

3. PUBLIC COMMENT

No speakers.

4. NEW BUSINESS (discussion and action)

a. Training: Meet and Confer; Meyers-Milias-Brown Act

Presentation by Timothy Davis, Partner, Burke, Williams & Sorensen, LLP, was made, and questions from Board members answered.

5. PUBLIC COMMENT

No speakers.

Closed Session

The Board will convene in closed session to meet concerning the following:

6. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Designated representatives: Jon Holtzman, Labor Negotiator; Katherine Lee; Interim Director of Police Accountability

Employee organization: Berkeley Police Association

End of Closed Session

7. ANNOUNCEMENT OF CLOSED SESSION ACTION

The Chair announced that no reportable action was taken.

8. ADJOURNMENT

Motion to adjourn the meeting.
Moved/Second (Leftwich/Calavita) **By general consent, the meeting was adjourned at 9:42 p.m.**

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Wednesday, December 8, 2021, 7:00 P.M.

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

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

Present:	Board Member Ismail Ramsey (Chair) Board Member Michael Chang (Vice-Chair) (left 7:19 p.m.) Board Member Kitty Calavita Board Member Juliet Leftwich Board Member Deborah Levine Board Member Nathan Mizell Board Member John Moore Board Member Cheryl Owens
Absent:	Board Member Regina Harris
ODPA Staff:	Katherine J. Lee, Interim Director of Police Accountability, Byron Norris, DPA Investigator
BPD Staff:	Interim Chief Jen Louis, Lt. Rob Rittenhouse, Sgt. Scott Castle (BPA), Ofc. Matthew Valle (BPA)

2. APPROVAL OF AGENDA

Motion to approve the agenda as modified to move Items 10.a. and 10.c. to after 9.c.
Moved/Second (Calavita/Levine) **Motion Carried by general consent**
Ayes: Calavita, Chang, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.
Noes: None Abstain: None Absent: Harris

3. PUBLIC COMMENT

There were 6 speakers.

4. APPROVAL OF MINUTES

a. Regular meeting of November 10, 2021.

Motion to approve Regular Meeting Minutes.
Moved/Second (Calavita/Moore) **Motion Carried by general consent**

b. Special meeting of November 17, 2021.

Motion to approve Special Meeting Minutes.
Moved/Second (Levine/Calavita) **Motion Carried by general consent**

5. CHAIR'S REPORT

Chair Ramsey reported:

-- Reminder to Board members to keep doing training.

-- At first meeting of 2022, nominations for Chair and Vice-Chair will be taken, so think about whether you're interested in running. Election at second meeting.

Board member Mizell's update on Reimagining Public Safety Task Force: Met last Thursday. Next meeting Jan. 6, 2022, at 6 p.m. Working on companion response to some of the consultant's recommendations.

6. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT

The Interim Director reported:

-- Two complaints filed since last meeting, by same person, but fail to state prima facie case. Staff will work with complainant.

-- *Caloca* decision on a PRC case was issued: administrative law judge upheld the PRC's findings.

-- First findings & recommendations from DPA were sent to the Chief, but IAB's investigation not done.

-- Next week, the Director, Mr. Norris, and Board members Moore and Levine will be attending the NACOLE conference in Tucson, AZ.

-- Training: reading materials have been made available electronically and via hard copy for those who asked for it. For all training not done in a meeting, send me an email to note hours and date for tracking and stipend purposes.

-- Mayor had some concerns over the Standing Rules; on action calendar of Council's Dec. 14 meeting. Extension of DPA's contract also on the agenda.

-- Staff has been exceptionally busy.

The Interim Director answered questions from Board members.

7. CHIEF OF POLICE'S REPORT

Interim Chief Louis reported:

-- Last week made 2 job offers; one to a lateral and one to entry-level officer. Now 8 in or entering field training. At 141 sworn on full duty. Still below 157 authorized.

-- City staff is 94% vaccinated with 5% granted accommodations or under review. Don't have stats for Police Dept.

-- Sent email to community addressing recent gun violence. [Posted online under supplemental materials.] 45 shootings this year v. 37 at this time last year. Trying to allocate limited resources in best way possible to address.

Interim Chief Louis answered questions from Board members.

8. SUBCOMMITTEE REPORTS (discussion and action)

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

a. Fair & Impartial Policing Implementation. Nothing to report.

b. Director Search – met Dec. 7. Co-chair Levine reported: Good meeting with Byers Group, the recruiting firm. Asked committee members about the qualifications, background, and experience of their ideal director candidate. Starting to create brochure. Invited to suggest possible candidates.

c. Regulations – met Nov. 30. Before end of January will probably have proposed permanent regulations. Next meeting to be scheduled.

d. Mental Health Response (Policy Complaint #7) – meeting to be scheduled.

Motion to suspend the rules and consider Item #9.d. next.
Moved/Second (Calavita/Moore) **Motion carried by general consent.**

9. OLD BUSINESS (discussion and action)

a. Further report on City Attorney conflict-of-interest issues.

Interim Director read message from Deputy City Attorney Harvey: anticipate document addressing attorney-client conflict questions will be ready next week.

b. Revision of Policy 425, Body Worn Cameras, to broaden access by PAB and ODPA.

Postponed to the next meeting.

c. Update from Interim Chief Louis regarding the October 15 incident involving a gun on the Berkeley High campus.

Lt. Rittenhouse gave an update.

d. Appoint additional members to Mental Health Response Subcommittee (Policy Complaint #7).

(Heard following Item #8.d.)

Elena Auerbach spoke about her qualifications to serve as a public member of this subcommittee.

Motion to appoint Elena Auerbach as a public member of the Mental Health Response Subcommittee

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

10. NEW BUSINESS (discussion and action)

a. Update from Interim Chief Louis regarding progress on implementing Council directives regarding Fair and Impartial Policing.

Interim Chief Louis gave a report and answered questions. No action.

b. Authorize Chair and Vice-Chair to appear at December 14, 2021 City Council meeting regarding PAB Standing Rules.

Motion to authorize Chair and Vice-Chair to appear at December 14, 2021 City Council meeting regarding PAB Standing Rules.
Moved/Second (Calavita/Mizell) **Motion Carried by general consent**

c. Vaccination status of BPD employees.

Interim Chief Louis gave a report and answered questions. No action.

d. Approve PAB regular meeting schedule for 2022.

Motion to approve proposed calendar except to move the second meetings in April and October to Tuesdays (April 26 and October 25), to avoid conflict with religious holidays.
Moved/Second (Levine/Calavita) **Motion Carried**
Ayes: Calavita, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.
Noes: None Abstain: None Absent: Chang, Harris

11. PUBLIC COMMENT

There were 3 speakers.

Closed Session

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

12. CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE OF COMPLAINT #3 (continued from Nov. 10, 2021 meeting)

Motion to reject administrative closure and move forward to an investigation.
Moved/Second (Mizell/Moore) **Motion Carried**
Ayes: Calavita, Leftwich, Levine, Mizell, Moore, and Owens.
Noes: Ramsey Abstain: None Absent: Chang, Harris

13. CONSIDER FINDINGS AND RECOMMENDATIONS OF INTERIM DIRECTOR IN COMPLAINT #1 AND DECIDE WHETHER A HEARING IS NEEDED

By general consent, the Board agreed to postpone consideration of this matter.

14. CONSIDER FINDINGS AND RECOMMENDATIONS OF INTERIM DIRECTOR IN COMPLAINT #2 AND DECIDE WHETHER A HEARING IS NEEDED

Motion to approve the Interim Director's findings and recommendations.
Moved/Second (Owens/Calavita) **Motion Carried**
Ayes: Calavita, Leftwich, Mizell, Moore, Owens, and Ramsey.
Noes: None Abstain: Levine. Absent: Chang, Harris

End of Closed Session

15. ANNOUNCEMENT OF CLOSED SESSION ACTION

The actions to reject the administrative closure in Complaint #3, postpone action in Complaint #1, and approve the Interim Director's findings and recommendations in #2 were announced.

16. ADJOURNMENT

Motion to adjourn the meeting.
Moved/Second (Leftwich/Calavita) **By general consent, the meeting was adjourned at 10:57 p.m.**

POLICE ACCOUNTABILITY BOARD SUBCOMMITTEES LIST 12-9-21			
Subcommittee	**Board Members**	**Chair**	**BPD Reps**
Regulations Formed 7-7-21	Calavita Chang Leftwich Owens Public: Kitt Saginor	**Chang**	Lt. Dan Montgomery
Director Search Formed 8-4-21	Levine Mizell Moore Public: Rivka Polatnick Marc Staton	Co-chairs **Levine** **Moore**	
Fair & Impartial Policing Implementation Formed 8-4-21	Calavita Moore Owens Ramsey Public: George Lippman Elliot Halpern Jamie Crook	**Calavita**	Sgt. Peter Lee
Mental Health Response Formed 11-10-21	Harris Levine Public: Elena Auerbach		Sgt. Joe LeDoux

Dpa > Policy > 0-PolicySubcom-Active > Current list

Body Worn Cameras

425.1 PURPOSE AND SCOPE

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

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

425.2 POLICY

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

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

425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

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

425.4 COORDINATOR

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

(a) Establishing a system for uploading, storing and security of recordings.

(b) Designating persons responsible for uploading recorded data.

(c) Establishing a maintenance system to ensure availability of BWCs.

(d) Establishing a system for tagging and categorizing data according to the type of incident captured.

(e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.

(f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.

(g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

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

425.5 MEMBER RESPONSIBILITIES

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

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

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

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

425.6 SUPERVISOR RESPONSIBILITIES

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

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

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

425.7 ACTIVATION OF THE BODY WORN CAMERA

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

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

(a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.

(b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.

(c) Self-initiated field contacts in which a member would normally notify the Communications Center.

(d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

(e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.

(f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

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

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

425.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS

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

(a) **Witnesses:** In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.

(b) **Victims:** Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.

1. **Domestic Violence Victims:** Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.

2. **Child Abuse and Sexual Assault Victims:** Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.

(c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

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

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

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

425.9 ACTIVATION IN CROWD CONTROL SITUATIONS

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

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

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

425.10 SURREPTITIOUS USE OF THE BWC

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

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

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

425.11 CESSATION OF RECORDING

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

(a) Discussion of tactical or confidential information with other law enforcement personnel.

(b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.

(c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.

(d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

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

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

425.12 EXPLOSIVE DEVICE

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

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

425.13 PROHIBITED USE OF BODY WORN CAMERAS

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

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

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

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

425.14 PROCESSING AND HANDLING OF RECORDINGS

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

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

425.15 RETENTION REQUIREMENTS

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

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

425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION

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

425.17 REVIEW OF RECORDINGS BY A MEMBER

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

425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

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

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

(b) Personnel uploading secured BWC video files shall not view the files unless authorized.

(c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.

(d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.

(e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

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

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

425.17.2 SUPERVISORY REVIEW

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

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

Recorded files may also be reviewed:

(a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.

(b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.

(c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.

(d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

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

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

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

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

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

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

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

(a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.

(b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.

(c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.

(d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.

(e) The evidence management system shall only be accessed on City premises.

(f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

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

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

425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY
This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

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

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

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

Lee, Katherine

From: Louis, Jennifer A.
Sent: Wednesday, December 22, 2021 2:17 PM
To: Lee, Katherine
Subject: Berkeley Police Department BWC retention schedule

Below is the current retention schedule. We have verified that any BWC video needed for the duration of the complaint filing period will be available. If a complaint arose regarding actions where video is held in any of the below categories, the evidence would be marked with the "Personnel Complaint" category and retained "until manually deleted"

Jen

Berkeley Police Department BWC retention schedule

Retention Categories	
NAME	DURATION
Civil / City / Non-Evidence	1 year
Consent / Aid	108 weeks
Detention / Warrant Only	108 weeks
Traffic Stop	108 weeks
Use of Force	108 weeks
Collision	2 years
Misdemeanor Evidence	2 years
Personnel / VSA	3 years
Felony Evidence	5 years
Training	60 days
Uncategorized	Until manually deleted
187 / Felony Sex Assault	Until manually deleted
Litigation	Until manually deleted
Officer Injury	Until manually deleted
OIS / Critical Incident	Until manually deleted
Pending Review	Until manually deleted
Personnel Complaint	Until manually deleted
z_Saved	Until manually deleted

Action Calendar – New Business

48. **Ratification of Police Accountability Board's Standing Rules**
From: Police Accountability Board
Recommendation: Review and approve Standing Rules of the Police Accountability Board.
Financial Implications: None
Contact: Katherine Lee, Interim Director of Police Accountability, (510) 981-4950
Action: Moved to Consent Calendar. Referred the item to the Police Accountability Board with the revisions submitted at the meeting by Mayor Arreguin.

Information Reports

49. **City of Berkeley, State Tobacco Prevention Program (STPP) Overview**
From: City Manager
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Received and filed.

Public Comment – Items Not Listed on the Agenda - 0 speakers.

Adjournment

Action: M/S/C (Arreguin/Robinson) to adjourn the meeting.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Harrison, Droste.

Adjourned at 11:13 p.m.

Communications – December 14, 2021

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.

Item #41: Proposed Ordinance Rescinding Ordinance 7,788-N.S. and Amending Paragraph 'NN' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code") to Restore Language Which Existed Prior to October 26, 2021
1. Patricia Hart and Hans Stahlschmidt

Support the Berkeley Plastic Bag Ordinance
2. 30 similarly-worded form letters

Solano-Peralta Park
3. Amber Turley
4. Carol Hirth

Office of the Mayor

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: **December 14, 2021**

Item Number: **# 48**

Item Description: **Ratification of the Police Accountability Board's Standing Rules**

Supplemental/Revision Submitted By: Mayor Arreguin

"Good of the City" Analysis:
The analysis below must demonstrate how accepting this supplement/revision is for the "good of the City" and outweighs the lack of time for citizen review or evaluation by the Council.

According to Article XVIII, Section 125 (13)(c) of the City Charter, "The [Police Accountability] Board shall establish rules of procedure governing the conduct of business, which shall be subject to ratification by the City Council."

On October 27, 2021 the PAB adopted permanent rules which are now before the City Council for ratification.

Mayor Arreguin is proposing amendments to Section J, "Appointment of Members of the Public to Subcommittees" to require an application process for members of the public to serve on Board subcommittees and other changes regarding the conduct of Board subcommittees.

Since the Board is currently without permanent standing rules, the "good of the City" requires acceptance of this Supplemental material so that the Council can consider these amendments and ratify permanent rules tonight. Standing rules are necessary for the orderly conduct of the Police Accountability Board, which was created by the voters in November 2020 and has been meeting since July 2021.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7100 TDD: 510.981.6903 Fax: 510.981.7199
E-Mail: Mayor@CityofBerkeley.info

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

Police Accountability Board
Standing Rules
Approved Oct. 27, 2021

Including Mayor's Proposed Amendments

A. PURPOSE

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

B. AMENDMENTS AND REVISIONS

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

C. AGENDA ITEMS – REGULAR MEETINGS

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

D. COMMUNICATIONS

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

E. MEETING PROCEDURES

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

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

F. PUBLIC COMMENT

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

G. POLICY COMPLAINTS AND REVIEWS

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

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

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

H. REGULAR MEETINGS

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

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

I. ELECTIONS

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

iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The Board secretary will assign "heads" and "tails."

3. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

1. In accordance with the City Charter, the Chair may appoint members of the public to subcommittees to which they have applied to through an open application process ~~in which they have expressed an interest~~. Candidates for the Board subcommittees must complete and file an application form with the Office of the Director of Police Accountability. Subcommittee vacancies shall be widely advertised and publicly posted. The Board will launch an initial application process to solicit interest from Berkeley residents who wish to serve on Board subcommittees. After the initial application period, the Board will accept applications on a rolling basis and make such appointments annually. Such appointments are subject to approval of the Board. ~~-~~Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; b) must submit an application detailing their interest and qualifications ~~-~~and ~~b~~c) present themselves at a Board meeting before or at the time of the appointment and speak on the public record on their intent to serve and what they will bring to the subcommittee work and deliberations. The Chair shall endeavor to appoint members to subcommittees in a manner that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for Board subcommittees, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.
2. Members of the public appointed to subcommittees are non-voting members and may not be selected to be the subcommittee Chair
3. Board members must constitute a majority of membership of any subcommittee~~, but a subcommittee may convene and conduct business even if Board members are not a majority of subcommittee members present~~. ~~However, a~~A quorum of voting members must be present to convene a meeting.
4. The term of appointment for members of the public appointed to subcommittees shall be one year and members can serve consecutive terms ~~shall not exceed the life of the subcommittee~~. If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the Chair, subject to the approval of the Board.

5. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
6. The Chair, subject to the approval of the Board, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
7. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a Board meeting.
~~7.~~8. In accordance with the City Charter, policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

K. MUTUAL AID AGREEMENTS

The Board shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the compendium of agreements made between the BPD and other law enforcement entities. The Board or the subcommittee may determine which agreements to review.

L. COMMENDATIONS OF BERKELEY POLICE DEPARTMENT PERSONNEL

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

5. A motion to commend or otherwise honor BPD personnel shall include the act or incident giving rise to the honor and describe how it meets the above criteria. The motion must receive a majority of affirmative votes of Board members present at the meeting to pass.
6. Following the meeting, the Board secretary shall communicate the Board's action in writing to the City Council, and shall also forward the commendation to the Chief of Police, with a request that the commendation or other honor be placed in the personnel file of each sworn officer or civilian employee commended.

###

Action Calendar – Public Hearings

6. **California Municipal Finance Authority Bond Financing for 2001 Ashby Avenue**
From: City Manager
Recommendation: Conduct a public hearing under the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Internal Revenue Code of 1986, as amended, and upon conclusion, adopt a Resolution approving the issuance of the bonds by the California Municipal Finance Authority (CMFA) for the benefit of the 2001 Ashby Avenue rental housing development.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Public Testimony: The Mayor opened the public hearing. 2 speakers.
M/S/C (Arreguin/Robinson) to close the public hearing.
Vote: All Ayes.

Action: M/S/C (Arreguin/Harrison) to adopt Resolution No. 70,143-N.S.
Vote: All Ayes.

Action Calendar – Old Business

7. **Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code**
(Continued from November 30, 2021) (Item Contains Supplemental Material)
From: City Manager
Recommendation: Adopt a Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.
Financial Implications: None
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000, Jennifer Louis, Police, (510) 981-5900
Action: Moved to Consent Calendar. Item continued to January 25, 2022.

Adjournment

Action: M/S/C (Arreguin/Robinson) to adjourn the meeting.
Vote: All Ayes.

Adjourned at 6:08 p.m.

Communications

- None

Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: November 30, 2021

Item Number: 27

Item Description: Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

Submitted by: Councilmember Harrison

The supplemental includes updates to the ALPR Use Policy as follows:

- Removes reference to Government Code Section 34090 consistent with SB 34 (providing for a local government to set ALPR retention limits).
- Clarifies that the definition of the State Stolen System includes the DMV's SVS database.
- Clarifies the type of data that is considered confidential pursuant to recent State Supreme Court rulings.
- Fixes inconsistency under the "Invasion of Privacy" section.
- Adds missing reference to state and federal law under "Use Based on a Protected Characteristic" section.
- Clarifies IT's role in maintaining accuracy and functionality of ALPR equipment.
- Further clarifies distinction between ALPR Read Images and ALPR Hits.
- Strikes extraneous language regarding Sworn Officer stolen vehicle verification procedures.
- Clarifies that ALPR data may only be shared with law enforcement or prosecutorial agencies as permitted by the Policy.
- Adds specific references to BMC sections under the auditing and oversight section.
- Adds other non-substantive changes.

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E-Mail: *kharrison@CityofBerkeley.info*

Surveillance Use Policy – Automatic License Plate Readers

1302.1 PURPOSE

This Surveillance Use Policy is legally-enforceable pursuant to BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for Parking Enforcement Operations and Parking Occupancy Analysis while recognizing the established privacy rights of the public.

1302.2 DEFINITIONS

"Alleged Parking Violation" means an alleged violation of time limits in parking areas designated by state and local law, or a violation of time limits and/or non-permit parking in the City's RPP zones.

"ALPR Read Image" means images of license plates, vehicles, wheels or any other incidentally captured image.

"ALPR Read" means computer-readable data captured by an ALPR Reader, including ALPR Read Image and associated ALPR Read Metadata. ALPR Reads are transient means to create potential government records, to include Parking Occupancy Analysis data and Enforced Citations~~, and therefore shall not be considered a government record itself pursuant to Government Code § 34090.6~~.

"ALPR Hit" means an Alleged Parking Violation or State Stolen ~~or Wanted~~ System alert resulting from computer generated analysis of ALPR Reads by the Genetec ALPR System resulting in an apparent:

(1) match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the State Stolen ~~or Wanted~~ System; or

(2) incongruence between an ALPR Read and permit information stored in the Passport Parking Management System.

"ALPR Read Metadata" means any image-based or other metadata, including but not limited to, global positioning system coordinates, block face information, tire position information, digitized license plates in alphanumeric characters, and timestamps.

"Automated License Plate Reader" or "ALPR" means one or more Genetec AutoVu mobile cameras affixed to Parking Enforcement Scooters and combined with computer software and algorithms to read and convert images of license plates, the characters they contain, and associated ALPR Read Metadata related to Parking Enforcement Operations or Parking Occupancy Analysis into computer-readable data.

"Deploy" or "Deployment" means any operation or use of ALPR Readers affixed to Parking Enforcement Scooters.

"Enforced ALPR Hit" means an Alleged Parking Violation confirmed by a Parking Enforcement Officer that results in the transmission of associated ALPR Read Image and ALPR Read Metadata to the Passport Parking Management System for storage in a database as a government record for the purpose of citation processing.

"Genetec ALPR System" means the computerized Genetec server and database that stores and pushes ALPR Read Metadata generated by ALPR Readers.

"Residential Parking Permits" or "RPP" means an annual, visitor, merchant or in-home care parking permit, typically represented by a vehicle's license plate, and associated with the City's Residential Parking Permit program across designated zones.

"Parking Enforcement Scooter" means the GO-4 three-wheeled parking enforcement vehicle.

"Parking Enforcement Officers" means employees of the City who work weekly rotations on Parking Enforcement Operations beats throughout the City and are properly trained to operate ALPRs and access the Genetec ALPR System.

"Parking Enforcement Operations" means Parking Enforcement Officer enforcement of parking regulations associated with local ordinances, the California Vehicle Code, and State Stolen ~~or Wanted~~ System enforcement through Parking Enforcement Scooter-based automated (ALPR) and non-automated means.

"Personally Identifiable Information" or "PII" means information:

(1) that directly identifies an individual (e.g., name, address, vehicle registration number, or other identifying number or code, telephone number, email address, etc.) or

(2) by which the City or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification.

"Parking Occupancy Analysis" means ongoing computational or algorithmic analyses performed by Passport Parking Management System or the City of Berkeley on ALPR Read Metadata regarding the occupancy of total parking spaces across commercial districts as part of goBerkeley, the City's data-driven, demand-responsive parking management program. ALPR Read Metadata data associated with Parking Occupancy Analysis shall not include any license plate or other PII information.

"Parking Permit Application" means an application submitted to the City for RPP or other permit that may include but is not limited to PII such as names, address, photo identification, vehicle registration (license plate and vehicle identification number), phone number and email address.

"Passport Automatic Occupancy Data Collection System" means the server and database whereby the Passport Parking Management System vendor, on behalf of the City, downloads, stores and transfers Parking Occupancy Analysis ALPR Read

Metadata stripped of any and all PII before being transferred to the goBerkeley program.

"Passport Parking Management System" means the servers and databases maintained by Passport Labs Incorporated, containing the database of the license plate numbers and other PII associated with Parking Permit Applications and Residential Parking Permits, and including historic parking citation data, to include Enforced Hits.

"PocketPEO" means a mobile device providing handheld ticket issuance and ALPR data reference capabilities.

"State Stolen ~~or Wanted~~ System" means information from the California Law Enforcement Telecommunications System's (CLETS) Department of Motor Vehicles (DMV) Stolen Vehicle System (SVS) database providing data regarding stolen vehicles.~~, and the Federal Bureau of Investigation's National Crime Information Center (NCIC) database of~~ and ~~wanted vehicles.~~

1302.3 AUTHORIZED AND PROHIBITED USES

Use of an ALPR is restricted to the purposes outlined below.

All data and images gathered by the ALPR are for official use by the Berkeley Police Department for Parking Enforcement Operations and may be retroactively queried in limited circumstances only as specified by this policy.

In addition, ALPR data may be used by the Finance, Information Technology (IT), Customer Service, and Public Works Departments only as specified ~~here~~in this policy, and consistent with Parking Enforcement Operations and Parking Occupancy Analysis. ~~Since such data may contain confidential information, it is not~~Data that is considered confidential under recent state Supreme Court rulings is not open to public review~~, except as specified~~.

Berkeley Police Department members or other Departments shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

Anyone who engages in an impermissible use of the Genetec ALPR system or associated scan files or hot lists may be subject to administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

(a) An ALPR shall only be Deployed and used for Parking Enforcement Operations, and Parking Occupancy Analysis.

(b) ALPR data strictly obtained from Parking Enforcement Operations retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits, may be used to support a specific criminal investigation only pursuant to a valid court order, subpoena, or a search warrant.

(c) The following uses of the Genetec ALPR System are specifically prohibited:

(1) Invasion of Privacy

~~Except when done pursuant to a court order, subpoena, or a search warrant, i~~It is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).

(2) Harassment or Intimidation

It is a violation of this Policy to use the Genetec ALPR system to harass and/or intimidate any individual or group.

(3) Use Based on a Protected Characteristic.

It is a violation of this Policy to use the ALPRs or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by state and federal law.

(4) Personal Use

It is a violation of this Policy to use the Genetec ALPR System or associated ALPR Read data or the State Stolen ~~or Wanted~~ System hot list~~s~~ for any personal purpose.

(5) First Amendment Rights

It is a violation of this Policy to use ALPRs or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

(6) Criminal Enforcement

It is a violation of this Policy to use or Deploy ALPRs to scan or canvass license plates in connection with any crime scene, patrol operation, or investigation.

(7) Use of Hot Lists

It is a violation of this Policy to use the Genetec ALPR System in conjunction with any hot list other than the State Stolen ~~or Wanted~~ System.

1302.4 DATA COLLECTION AND RETENTION

The Investigations Division Captain, or their designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's IT department and associated Genetec ALPR system providers/vendors as identified below.

IT's role will be limited to providing initial infrastructure set-up and accessing or viewing individual records or reports (potentially including PII or CLETS information as authorized by the Chief of Police), limited to the purposes of testing the accuracy of the equipment. Genetec ALPR System data provided to Parking Control Officers may also contain confidential CLETS information and is not open to public review.

ALPR information gathered and retained by the Berkeley Police Department may only be used and shared with prosecutors or other law enforcement agencies pursuant to a valid court order, subpoena, or a search warrant and as limited by this policy.

(a) ALPR Read Images

ALPR Read Images ~~and Metadata~~ resulting from ALPR Reads stored locally on Parking Control Officer Vehicle laptops and PocketPEO shall be purged at least nightly.

In no case shall ALPR Read Images resulting from ALPR Reads be transmitted to or stored in the Genetec ALPR System.

(b) ALPR Reads Not Resulting in ALPR Hits

All ALPR Read Metadata from ALPR Reads transmitted and stored in the Genetec ALPR System shall be purged within five (5) days consistent with the City's 72-Hour Rule (BMC Section 14.36.050).

In no case shall ALPR Read Metadata in the form of license plate data or other PII be transmitted to or stored in the Passport Automatic Occupancy Data Collection System.

(c) ALPR Hits

All ALPR ~~Read Images,~~ Metadata~~,~~ and Hits resulting from ALPR Reads stored locally on Parking Control Officer Vehicle laptops and PocketPEO shall be purged at least nightly.

In no case shall data associated with ALPR Hits be transmitted to or stored in the Genetec ALPR System, nor shall license plate data or other PII included as part of ALPR Read Metadata be transmitted to or stored by the City for Parking Occupancy Analysis (goBerkeley)~~, to include the Passport Automatic Occupancy Data Collection System or as City Department records~~.

(d) Unenforced ALPR Hits

All erroneous and unenforced ALPR Hit data and Read Metadata shall be purged locally at least nightly.

(e) Enforced ALPR Hits

Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management servers with a minimum retention period of one year ~~(Government Code § 34090.6)~~ and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless

it has become, or it is reasonable to believe it will become, evidence in a criminal action pursuant to a valid court order, subpoena, or a search warrant or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

1302.5 DATA ACCESS

(a) Only properly trained Parking Control Officers and information technology personnel are allowed access to the Genetec ALPR system or to collect ALPR information.

(b) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training, which shall include complying with this use policy.

(c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

(c~~d~~) If a Sworn officer is called to verify a stolen vehicle, i~~I~~f practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR Hit.

~~(e) Police will not take any police action that restricts the freedom of any individual based solely on an ALPR Hit unless it has been validated~~ as described above in ~~(d).~~

~~(1) Police need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.~~

~~(2) Prior to initiation of a stop of a vehicle or other intervention based on an ALPR Hit, Department members shall undertake the following:~~

~~(i) Verification of status on State Stolen or Wanted System.~~

~~An officer must receive confirmation from a Police Department Communications Dispatcher or other department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).~~

~~(ii) Visual verification of license plate number.~~

(d) Sworn Officers shall visually verify that the license plate of interest matches identically with the ALPR Read Image of the license plate number captured (ALPR Read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as an ALPR Hit in a specific State Stolen ~~or Wanted~~ System list are required to make a reasonable effort to

confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third-Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to impacts that may violate the First and Fourth Amendments and other potentially disparate or adverse impacts on any communities or groups.

The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for the purpose of federal immigration enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

1302.7 PUBLIC ACCESS

Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

1302.8 THIRD-PARTY DATA-SHARING

(a) Non-law enforcement requests for access to stored ALPR data related to parking management shall be processed according to this policy, and the Records Maintenance and Release Policy in accordance with applicable law.

(b) The ALPR data may be shared only with other law enforcement or prosecutorial agencies ~~for official law enforcement purposes or~~ as permitted by this policy and under no circumstances~~.~~ ~~ALPR data is subject to the provisions of BPD Policy 415, and hence may not~~ be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided by this policy and ~~in~~ the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations authorized by a court order, subpoena, or search warrant shall not be released to any local, state or

federal agency or entity without the express written consent of the City Manager and only in accordance with this Use Policy.

Third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 (2) (a).

1302.9 TRAINING AND ALPR ADMINISTRATOR

Training for the operation of ALPR technology shall be provided by BPD personnel. All BPD employees who utilize ALPR technology shall be provided a copy of this Surveillance Use Policy.

(1) The Investigations Division Captain shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

(i) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the Genetec ALPR system or to collect ALPR information.

(ii) Ensuring that training requirements are completed for authorized users. The Administrator shall ensure that members receive department-approved training for those authorized to use or access ALPRs (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

(iii) A description of how the Genetec ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.

(iv) Procedures for system operators to maintain records of access in compliance with Civil Code§ 1798.90.52 and this Use Policy~~.~~

(v) The title and name of the current designee in overseeing the ALPR operation.

(vi) Ensuring this policy and related procedures are conspicuously posted on the City's website.

1302.10 AUDITING AND OVERSIGHT

Genetec ALPR System audits will be conducted by the Professional Standards Bureau's (PSD) Audit and Inspections Sergeant pursuant to ~~Municipal Code Section~~BMC 2.99.020 4. k. on a regular basis, at least biannually.

(1) Any unauthorized access or data breach shall be reported immediately to the City Manager.

(2) The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and

any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained by PSD.

1302.11 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under their command to administer the day-to-day operation of the ALPR equipment and data.

Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL
for Supplemental Packet 1

Meeting Date: **November 30, 2021**

Item Number: **27**

Item Description: **Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code**

Submitted by: **Councilmembers Harrison and Hahn**

Amends Resolution to adopt a Surveillance Technology Use Policy for Automatic License Plate Readers as required by the Surveillance Technology Ordinance.

To date, Council deferred adoption of a Surveillance Use Policy pursuant to Sections 2.99.020 and 2.99.050 of the Ordinance for Automatic License Plate Readers, including in order to draft a policy with enhanced civil liberties protections. Berkeley Police Department Administrative Order #001-2016, prepared in 2016 before adoption of the Surveillance Ordinance, has served as a de facto ALPR policy, however Administrative Order #001-2016 is out of date and does not satisfy the specific requirements of the Surveillance Ordinance. Adoption of an earlier proposed update to the use policy for ALPRs was deferred by Council as it did not contain sufficient information about data retention and sharing and protection of civil liberties.

The attached Use Policy supersedes Administrative Order #001-2016 and satisfies the requirements of the Ordinance, including providing a legally-enforceable Surveillance Use Policy and enhanced civil liberties protections.

Use Policy Overview:

- Provides key definitions.
- Authorizes ALPR for Parking Enforcement Operations and Parking Occupancy Analysis.
- Enumerates specifically prohibited uses of ALPR that may impact civil liberties.
- Incorporates key provisions from BPD's previously proposed Policy 1302.

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- Addresses the Police Review Commission's concerns, as expressed in their September 11, 2019 letter to Council pursuant to Section 2.99.030, about the previously proposed Use Policy 1302.
- Specifies appropriate data retention periods for ALPR reads and hits.
- Specifies that personally identifiable ALPR data will not be sent to goBerkeley (as confirmed by Transportation Division staff) as part of Parking Occupancy Analysis.
- Specifies that ALPR data obtained from Parking Enforcement Operations, including data and metadata associated with ALPR Reads and Hits, may be used to support a specific criminal investigation only pursuant to a valid court order, subpoena, or a search warrant.
- Restates the City's policy of not sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement.
- Specifies that third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020.

RESOLUTION NO. ##,###-N.S.

A RESOLUTION ACCEPTING THE ANNUAL SURVEILLANCE TECHNOLOGY REPORT FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, BODY WORN CAMERAS, AND THE STREET LEVEL IMAGERY PROJECT AND ADOPTING A SURVEILLANCE TECHNOLOGY USE POLICY FOR AUTOMATIC LICENSE PLATE READERS

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"); and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Technology Reports satisfy the requirements of the Ordinance~~.~~; and

WHEREAS, Council deferred adoption of a Surveillance Use Policy pursuant to Sections 2.99.020 and 2.99.050 of the Ordinance for Automatic License Plate Readers in order to draft a policy with enhanced civil liberties protections, and heretofore Berkeley Police Department Administrative Order #001-2016, prepared in 2016 before passage of the Surveillance Ordinance, has served as a de facto ALPR policy; and

WHEREAS, the attached Use Policy supersedes Administrative Order #001-2016 and satisfies the requirements of the Ordinance, including providing a legally-enforceable Surveillance Use Policy and enhanced civil liberties protections.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby accepts the Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project and adopts a Surveillance Technology Use Policy for Automatic License Plate Readers.

Attachment
1. Surveillance Use Policy – Automatic License Plate Readers

Surveillance Use Policy – Automatic License Plate Readers

1302.1 PURPOSE

This Surveillance Use Policy is legally-enforceable pursuant to BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for Parking Enforcement Operations and Parking Occupancy Analysis while recognizing the established privacy rights of the public.

1302.2 DEFINITIONS

"Alleged Parking Violation" means an alleged violation of time limits in parking areas designated by state and local law, or a violation of time limits and/or non-permit parking in the City's RPP zones.

"ALPR Read Image" means images of license plates, vehicles, wheels or any other incidentally captured image.

"ALPR Read" means computer-readable data captured by an ALPR Reader, including ALPR Read Image and associated ALPR Read Metadata. ALPR Reads are transient means to create potential government records, to include Parking Occupancy Analysis data and Enforced Citations, and therefore shall not be considered a government record itself pursuant to Government Code § 34090.6.

"ALPR Hit" means an Alleged Parking Violation or State Stolen or Wanted System alert resulting from computer generated analysis of ALPR Reads by the Genetec ALPR System resulting in an apparent:

(1) match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the State Stolen or Wanted System; or

(2) incongruence between an ALPR Read and permit information stored in the Passport Parking Management System.

"ALPR Read Metadata" means any image-based or other metadata, including but not limited to, global positioning system coordinates, block face information, tire position information, digitized license plates in alphanumeric characters, and timestamps.

"Automated License Plate Reader" or "ALPR" means one or more Genetec AutoVu mobile cameras affixed to Parking Enforcement Scooters and combined with computer software and algorithms to read and convert images of license plates, the characters they contain, and associated ALPR Read Metadata related to Parking Enforcement Operations or Parking Occupancy Analysis into computer-readable data.

"Deploy" or "Deployment" means any operation or use of ALPR Readers affixed to Parking Enforcement Scooters.

"Enforced ALPR Hit" means an Alleged Parking Violation confirmed by a Parking Enforcement Officer that results in the transmission of associated ALPR Read Image and ALPR Read Metadata to the Passport Parking Management System for storage in a database as a government record for the purpose of citation processing.

"Genetec ALPR System" means the computerized Genetec server and database that stores and pushes ALPR Read Metadata generated by ALPR Readers.

"Residential Parking Permits" or "RPP" means an annual, visitor, merchant or in-home care parking permit, typically represented by a vehicle's license plate, and associated with the City's Residential Parking Permit program across designated zones.

"Parking Enforcement Scooter" means the GO-4 three-wheeled parking enforcement vehicle.

"Parking Enforcement Officers" means employees of the City who work weekly rotations on Parking Enforcement Operations beats throughout the City and are properly trained to operate ALPRs and access the Genetec ALPR System.

"Parking Enforcement Operations" means Parking Enforcement Officer enforcement of parking regulations associated with local ordinances, the California Vehicle Code, and State Stolen or Wanted System enforcement through Parking Enforcement Scooter-based automated (ALPR) and non-automated means.

"Personally Identifiable Information" or "PII" means information:

(1) that directly identifies an individual (e.g., name, address, vehicle registration number, or other identifying number or code, telephone number, email address, etc.) or

(2) by which the City or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification.

"Parking Occupancy Analysis" means ongoing computational or algorithmic analyses performed by Passport Parking Management System or the City of Berkeley on ALPR Read Metadata regarding the occupancy of total parking spaces across commercial districts as part of goBerkeley, the City's data-driven, demand-responsive parking management program. ALPR Read Metadata data associated with Parking Occupancy Analysis shall not include any license plate or other PII information.

"Parking Permit Application" means an application submitted to the City for RPP or other permit that may include but is not limited to PII such as names, address, photo identification, vehicle registration (license plate and vehicle identification number), phone number and email address.

"Passport Automatic Occupancy Data Collection System" means the server and database whereby the Passport Parking Management System vendor, on behalf of the City, downloads, stores and transfers Parking Occupancy Analysis ALPR Read

Metadata stripped of any and all PII before being transferred to the goBerkeley program.

"Passport Parking Management System" means the servers and databases maintained by Passport Labs Incorporated, containing the database of the license plate numbers and other PII associated with Parking Permit Applications and Residential Parking Permits, and including historic parking citation data, to include Enforced Hits.

"PocketPEO" means a mobile device providing handheld ticket issuance and ALPR data reference capabilities.

"State Stolen or Wanted System" means information from the California Law Enforcement Telecommunications System's (CLETS) Department of Motor Vehicles (DMV) Stolen Vehicle System (SVS) database providing data regarding stolen vehicles, and the Federal Bureau of Investigation's National Crime Information Center (NCIC) database of wanted vehicles.

1302.3 AUTHORIZED AND PROHIBITED USES

Use of an ALPR is restricted to the purposes outlined below.

All data and images gathered by the ALPR are for official use by the Berkeley Police Department for Parking Enforcement Operations and may be retroactively queried in limited circumstances only as specified by this policy.

In addition, ALPR data may be used by the Finance, Information Technology (IT), Customer Service, and Public Works Departments as specified herein and consistent with Parking Enforcement Operations and Parking Occupancy Analysis. Since such data may contain confidential information, it is not open to public review, except as specified.

Berkeley Police Department members or other Departments shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

Anyone who engages in an impermissible use of the Genetec ALPR system or associated scan files or hot lists may be subject to administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

(a) An ALPR shall only be Deployed and used for Parking Enforcement Operations, and Parking Occupancy Analysis.

(b) ALPR data strictly obtained from Parking Enforcement Operations, including data and metadata associated with ALPR Reads and Hits, may be used to support a specific criminal investigation only pursuant to a valid court order, subpoena, or a search warrant.

(c) The following uses of the Genetec ALPR System are specifically prohibited:

(1) Invasion of Privacy

Except when done pursuant to a court order, subpoena, or a search warrant, it is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).

(2) Harassment or Intimidation

It is a violation of this Policy to use the Genetec ALPR system to harass and/or intimidate any individual or group.

(3) Use Based on a Protected Characteristic.

It is a violation of this Policy to use the ALPRs or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by

(4) Personal Use

It is a violation of this Policy to use the Genetec ALPR System or associated ALPR Read data or State Stolen or Wanted System lists for any personal purpose.

(5) First Amendment Rights

It is a violation of this Policy to use ALPRs or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

(6) Criminal Enforcement

It is a violation of this Policy to use or Deploy ALPRs to scan or canvass license plates in connection with any crime scene, patrol operation, or investigation.

(7) Use of Hot Lists

It is a violation of this Policy to use the Genetec ALPR System in conjunction with any hot list other than the State Stolen or Wanted System.

1302.4 DATA COLLECTION AND RETENTION

The Investigations Division Captain, or their designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's IT department and associated Genetec ALPR system providers/vendors as identified below.

IT staff will not have the ability to access or view individual records or reports, as they may contain PII information they are not authorized to receive. Genetec ALPR System

data provided to Parking Control Officers may also contain confidential CLETS information and is not open to public review. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive PII or CLETS information.

ALPR information gathered and retained by the Berkeley Police Department may only be used and shared with prosecutors or other law enforcement agencies pursuant to a valid court order, subpoena, or a search warrant and as limited by this policy.

(a) ALPR Reads

ALPR Read Images and Metadata resulting from ALPR Reads stored locally on Parking Control Officer Vehicle laptops and PocketPEO shall be purged at least nightly.

In no case shall ALPR Read Images resulting from ALPR Reads be transmitted to or stored in the Genetec ALPR System.

(b) ALPR Reads Not Resulting in ALPR Hits

All ALPR Read Metadata from ALPR Reads transmitted and stored in the Genetec ALPR System shall be purged within five (5) days consistent with the City's 72-Hour Rule (BMC Section 14.36.050).

In no case shall ALPR Read Metadata in the form of license plate data or other PII be transmitted to or stored in the Passport Automatic Occupancy Data Collection System.

(c) ALPR Hits

All ALPR Read Images, Metadata, and Hits resulting from ALPR Reads stored locally on Parking Control Officer Vehicle laptops and PocketPEO shall be purged at least nightly.

In no case shall data associated with ALPR Hits be transmitted to or stored in the Genetec ALPR System, or license plate data or other PII included as part of ALPR Read Metadata be transmitted to or stored by the City for Parking Occupancy Analysis, to include the Passport Automatic Occupancy Data Collection System or as City Department records.

(d) Unenforced ALPR Hits

All erroneous and unenforced ALPR Hit data and Read Metadata shall be purged locally at least nightly.

(e) Enforced ALPR Hits

Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management servers with a minimum retention period of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless

it has become, or it is reasonable to believe it will become, evidence in a criminal action pursuant to a valid court order, subpoena, or a search warrant or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

1302.5 DATA ACCESS

(a) Only properly trained parking control officers and information technology personnel are allowed access to the Genetec ALPR system or to collect ALPR information.

(b) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

(c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

(d) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR Hit.

(e) Police will not take any police action that restricts the freedom of any individual based solely on an ALPR Hit unless it has been validated.

(1) Police need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.

(2) Prior to initiation of a stop of a vehicle or other intervention based on an ALPR Hit, Department members shall undertake the following:

(i) Verification of status on State Stolen or Wanted System.

An officer must receive confirmation from a Police Department Communications Dispatcher or other department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).

(ii) Visual verification of license plate number.

Officers shall visually verify that the license plate of interest matches identically with the ALPR Read Image of the license plate number captured (ALPR Read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as an ALPR Hit in a specific State Stolen or Wanted System list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to impacts that may violate the First and Fourth Amendments and other potentially disparate or adverse impacts on any communities or groups.

The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

1302.7 PUBLIC ACCESS

(a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.

(b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

1302.8 THIRD-PARTY DATA-SHARING

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as permitted by this policy. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations authorized by a court order, subpoena, or search warrant shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.

Third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 (2) (a).

1302.9 TRAINING AND ALPR ADMINISTRATOR

Training for the operation of ALPR technology shall be provided by BPD personnel. All BPD employees who utilize ALPR technology shall be provided a copy of this Surveillance Use Policy.

(1) The Investigations Division Captain shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

(i) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the Genetec ALPR system or to collect ALPR information.

(ii) Ensuring that training requirements are completed for authorized users. The Administrator shall ensure that members receive department-approved training for those authorized to use or access ALPRs (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

(iii) A description of how the Genetec ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.

(iv) Procedures for system operators to maintain records of access in compliance with Civil Code§ 1798.90.52.

(v) The title and name of the current designee in overseeing the ALPR operation.

(vi) Ensuring this policy and related procedures are conspicuously posted on the City's website.

1302.10 AUDITING AND OVERSIGHT

Genetec ALPR System audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant pursuant to Municipal Code Section 2.99 on a regular basis, at least biannually.

(1) Any unauthorized access or data breach shall be reported immediately to the City Manager.

(2) The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to Section 2.99, published on the City of Berkeley website in an appropriate location, and retained by PSD.

1302.11 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under their command to administer the day-to-day operation of the ALPR equipment and data.

Office of the City Manager

ACTION CALENDAR
December 14, 2021
(Continued from November 30, 2021)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police
LaTanya Bellow, Interim Deputy City Manager

Subject: Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy the annual reporting requirement as outlined in Section 2.99.070.

One of the reporting categories of the surveillance technology use is whether complaints have been received by the community about the various technologies. To date Berkeley Police Department Internal Affairs Bureau (IAB) has not received any external personnel complaints surrounding the use of Automatic License Plate Readers,

GPS Trackers, or Body Worn Cameras. External complaints from community members can be made in writing, via email, in person or via telephone. Complaints can be received with direct communication to Internal Affairs from the complainant and/or be received by any member of the Department and then forwarded through the chain of command. If a community member initiates a complaint against a subject employee and during the investigation it is determined the subject employee violated policy regarding the misuse of technology, an additional complaint is initiated by the Chief of Police.

Community members also have the right to initiate complaints against employees of BPD by reporting directly to the Police Accountability Board (PAB). The Director of Police Accountability notifies the Chief of Police when an investigation into a complaint is initiated by the PAB, which would prompt a parallel IAB investigation.

Attached to this staff report are Surveillance Technology Reports for Automatic License Plater Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project.

BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the four technologies, the Surveillance Technology Reports were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report.

The Surveillance Technology Use Policy for ALPR technology is still outstanding due Council questions about policy language, scheduling and directed focus during COVID-19. This item will be returned to the Council agenda in early 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

City Council is being requested to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution.

CONTACT PERSON
LaTanya Bellow, Interim Director of Information Technology (510) 981-6541
Jennifer Louis, Acting Chief of Police, (510) 981-5700
LaTanya Bellow, Interim Deputy City Manager, (510) 981-7012

ATTACHMENTS
1. Resolution

2. Body Worn Cameras
   a) Surveillance Technology Report: Body Worn Cameras
   b) Retention Schedule

3. Global Positioning System (GPS) Tracking Devices
   Surveillance Technology Report

4. Automated License Plate Readers
   Surveillance Technology Report: Automated License Plate Readers

5. Street Level Imagery Project
   Surveillance Technology Report: Street Level Imagery Project

RESOLUTION NO. ##,###-N.S.

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, BODY WORN CAMERAS, AND THE STREET LEVEL IMAGERY PROJECT

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"); and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Technology Reports satisfy the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby accepts the Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project.

Surveillance Technology Report: Body Worn Cameras

October 1, 2020 – Sept. 30, 2021

Description	A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing. Body Worn Cameras are used to capture video recordings of contacts between department personnel and the public, to provide an objective record of these events. These recording are used in support of criminal prosecutions, to limit civil liability, increase transparency and enhance professionalism and accountability in the delivery of police services to the community. Body Worn Camera (BWC) files are shared with the Alameda County District Attorney's office in support of prosecution for crime, and may be shared with other law enforcement agencies to support criminal investigations. **Policy regarding activation of the Body Worn Camera BPD Policy 425.7** Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein. The BWC shall be activated in any of the following situations: (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations. (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops. (c) Self-initiated field contacts in which a member would normally notify the Communications Center. (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence. (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording. (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person. **What data is captured by this technology:** BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC

recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

How the data is stored:
BWC videos are stored on a secure server. All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

Retention period of data:
See attached retention schedule.

Summary of Body Worn Camera Videos Uploaded Oct. 1, 2020 to Sept. 30, 2021:

Total Number of Videos	62,283
Total Hours of Videos	16,310
Total GB of BWC Videos	29,017

Summary of Digital Evidence Uploaded, Oct. 1, 2020 to Sept. 30, 2021:

Type	File Count	Size (GBs)
Audio	1,150	11.72
Document	737	2.38
Image	67,672	331.36
Other	1,292	157.71
Video*	67,865	30,086.75
Total	**138,716**	**30,589.92**

* Includes all uploaded BWC videos and all other videos booked into the evidence management system. Other videos include iPhone videos uploaded, security camera video, copies of BWC videos (for redaction, etc.), and any other videos.

Geographic Deployment	Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically. Body Worn Cameras are worn by all BPD uniformed officers city-wide at all times; BWCs are not deployed based on geographic considerations.
Complaints	A summary of each complaint, if any, received by the City about the Surveillance Technology. There have been no complaints about the deployment and use of Body Worn Cameras.
Audits and Violations	The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.

	File meta-data are routinely reviewed by our BWC manager, to ensure required metadata fields are completed. There have been no complaints with regards to violations of the Surveillance Use Policy.
Data Breaches	Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response. There have been no known data breaches or other unauthorized access to BWC data.
Effectiveness	Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes. Body Worn Cameras have proven effective in supporting criminal prosecutions, as video footage is available for all criminal prosecutions. Body Worn Cameras have been effective for training purposes, as footage can be reviewed in incident de-briefs. Body Worn Cameras have been extremely effective in support of Internal Affairs investigations and Use of Force Review.
Costs	Total annual costs for the Surveillance Technology, including personnel and other ongoing costs. The annual cost for the Body Worn Cameras, including cameras, replacement cameras, software, and Axon's secure digital evidence management system is approximately $204,000 per year over a five-year, $1,218,000 contract. There is one full-time employee assigned to the BWC program, an Applications Programmer Analyst II, at a cost of $168,940 per year, including benefits.

NAME	RETENTION DURATION
Uncategorized	Until manually deleted
187 / Felony Sex Assault	Until manually deleted
Civil / City / Non-Evidence	1 year
Collision	2 years
Consent / Aid	108 weeks
Detention / Warrant Only	108 weeks
Felony Evidence	5 years
Litigation	Until manually deleted
Misdemeanor Evidence	2 years
Officer Injury	Until manually deleted
OIS / Critical Incident	Until manually deleted
Pending Review	Until manually deleted
Personnel / VSA	3 years
Personnel Complaint	Until manually deleted
Traffic Stop	108 weeks
Training	60 days
Use of Force	108 weeks
z_Saved	Until manually deleted

Surveillance Technology Report: Global Positioning System Tracking Devices

October 1, 2019 – Sept. 30, 2020

Description	A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing. Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals. **What data is captured by this technology:** A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker identification label. The data does not contain any images, names of subjects, vehicle information or other identifying information on individuals. **How the data is stored:** The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access. **Retention period of data:** Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant. For the date range of 10-01-19 through 09-30-20 the Global Positioning System (GPS) "Electronic Stake Out" (ESO) devices were deployed on "bait" bicycles 52 times, resulting in 34 arrests, 4 eluded capture, 1 person was detained and not arrested, and in 13 deployments the bicycle was not stolen. This program was suspended in mid-March due to the COVID-19 pandemic. GPS "Slap-N-Track" (SNT) devices were used in three separate investigations during this reporting period: (1) An investigation of an individual for Sexual Exploitation, Child Pornography, and Distribution of Child Pornography. This suspect currently has a Federal warrant. (2) An investigation of a serial kidnap rape suspect. The suspect was arrested and charged. (3) An investigation into multiple suspects involved in a "Rolex" robbery series that involved the cities of Berkeley, Piedmont, and Orinda. Two devices were used on two different suspect vehicles during this investigation. Four suspects from the above cases were arrested and charged for their involvement in these robberies.

	Data may be shared with the District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement personnel as a part of an active criminal investigation; and other third parties, pursuant to a court order.
Geographic Deployment	Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically. GPS ESO-equipped bikes were deployed primarily in commercial districts across the city where bikes are frequently stolen. GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration.
Complaints	A summary of each complaint, if any, received by the City about the Surveillance Technology. There were no complaints made regarding GPS Trackers.
Audits and Violations	The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response. There were no audits and no known violations relating to GPS Trackers.
Data Breaches	Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response. There were no known data breaches relating to GPS Trackers.
Effectiveness	Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes. GPS Trackers continue to be very effective in apprehending bicycle thieves, many of whom are repeat offenders who've committed not only bike thefts, but other crimes as well, such as burglaries, auto burglaries, and vehicle thefts. SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond. GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s). The program was suspended in mid-March due to the COVID-19 pandemic. This program will likely resume once the pre-COVID bail schedule is re-established.
Costs	Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.

	The annual cost for the GPS Trackers' data service is $1,920. Further information regarding costs is contained in Policy 1301a, the Surveillance Acquisition Report. There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours is a fraction of the time it would take to do a full surveillance operation involving numerous officers. There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.

Surveillance Technology Report: Automated License Plate Readers

October 1, 2019 – Sept. 30, 2020

Description	A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing. Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City's Transportation Division uses anonymized information for purposes of supporting the City's Go Berkeley parking management program. ALPR use replaced the practice of physically "chalking" tires, which is no longer allowed by the courts. **What data is captured by this technology:** ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR). **How the data is stored:** The data is stored on a secure server by the vendor. **Retention period of data:** Collected images and metadata of hits are stored no more than 365 days. Metadata of reads are not stored more than 30 days. **Summary of ALPR Time Zone Enforcement Data** Read Data There was an average of 12,059 "Reads" per working day (Based on one month's data: 9/1/20/-9/30/20) Hit Data There were 44,068 "Hits" 14, 945 "Enforced Hits" resulted in citation issuance. 2,569 "Not Enforced" valid, enforceable hits resulted in no citation issued, based on PEO discretion. 26,554 Hits were not acted upon for a variety to reasons including but not limited to: 1) Customer comes out to move a vehicle. PEO's are directed not to issue that citation. 2) Officer gets to the dashboard and sees a permit not visible from a previous location. 3) Officer does a vehicle evaluation and confirms that the vehicle moved from the hit location (e.g. across the street within GPS range). 4) Stolen car. 5) Similar Plates. 6) 600-700 GIG cars- 100 revel scooters.

	7) Officers leave their LPR "on" collecting time zone enforcement data, but leave the area being enforced to drive to another location on another assignment, such as a traffic post at a collision scene. These hits are not enforced. Genetec is the vendor for the ALPR Time Zone enforcement system. A "read" indicates the ALPR system successfully read a license plate. The information that is generated when a plate is viewed by the ALPR camera is the license plate number, state and geographical (GPS) location it was viewed. A "hit" indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. At "hit" is when the "read" information is recognized as a license plate that matches, or does not match an entry in a list such as permit list or the stolen vehicle "hot list". In many cases, hits are "rejected" or "not enforced", meaning no enforcement action is taken, because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information or assignment which precludes citation. **Summary of ALPR Booting Scofflaw Enforcement Data** 0 vehicles booted from 10/1/19-9/23/20. The Berkeley Police Department no longer maintains the ALPR Booting Scofflaw Enforcement Program. The contract to provide this service became cost prohibitive and the city opted not to renew the contract with the vendor. The city returned to having each PEO working a beat again become responsible for recognizing when a license plate has accumulated five or more unpaid parking tickets. All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.
Geographic Deployment	Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically. Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.
Complaints	A summary of each complaint, if any, received by the City about the Surveillance Technology. There have been no complaints about to the deployment and use of Automated License Plate Readers.
Audits and Violations	The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response. There have been no complaints of violations of the ALPR Surveillance Use Policy.

Data Breaches	Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response. There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.
Effectiveness	Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes. ALPRs have proven effective in parking enforcement for time zone enforcement; the prior utilization of manually chalking car tires for time zone enforcement has been disallowed by court decision. ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.
Costs	Total annual costs for the Surveillance Technology, including personnel and other ongoing costs. The annual system maintenance cost for Genetec is $47,000. This cost is borne by the Transportation Division, which also purchased the ALPR units used in Time Zone Enforcement. Two new Genetec ALPR units were purchased during the period covered by this report. The two new units were purchased in order to equip the final two parking vehicles that did not have ALPR units attached to them. Genetec ALPR units are installed on 23 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.

Surveillance Technology Report:

Street Level Imagery Project

Description	**A description of all non-privileged and non-confidential information about the use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report will include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.** Street level imagery will be utilized exclusively by authorized City staff for infrastructure asset management and planning activities. The street level imagery of City infrastructure assets in the Public Right of Way that is provided to the City will not consist of information that is capable of being associated with any individual or group.
Geographic Deployment	**Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.** Street level imagery was collected by driving through the entire community over a three week period. It is accessible to the City through a proprietary third-party application, Street SmartTM.
Complaints	**A summary of each complaint, if any, received by the City about the Surveillance Technology.** There have been no complaints about the deployment and use of Street SmartTM.
Audits and Violations	**The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.** There have been no complaints with regards to violations of the Surveillance Use Policy.
Data Breaches	**Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.** There have been no known data breaches or other unauthorized access to Cyclomedia Street Level Imagery data.

Effectiveness	**Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.** Staff considered hiring contractors to use GPS in the field to create and update the infrastructure asset GIS data. This method is costly and time consuming. Cyclomedia's unique and patented processing techniques allow positionally-accurate GIS data to be collected in a cost-effective way and over a shorter period of time than a "boots on the ground" GPS field survey. The Imagery is being used to extract the following Citywide Infrastructure assets to create accurate and current Geographic Information Systems (GIS) data inventories: • Bus pads / stops • Maintenance Access Holes • Pavement Striping • Curb paint color • Parking meters • Pedestrian Signal • Pavement marking • Storm drains • Signs • Street trees • Traffic lights The street level imagery captured is also being used to: Create a street sign GIS layer with condition assessment to support compliance with the Manual on Uniform Traffic Control Devices Code and provide an accurate inventory of City signs. The existing sign inventory is contained in a spreadsheet that does not have accurate location data. Create a curb color layer with condition assessment to indicate where there are red, yellow, blue, white and green colors. This is critical to support Public Safety. Create pavement striping and paint symbol layers to support Transportation Planning and Vision Zero. ***Benefits Projected:*** The data from the street level imagery is being integrated into the City's work order and asset management system for planning activities and to document repair and maintenance. Planners can use the street level imagery provided to the City to take measurements remotely, such as sidewalk width and public right of way impacts at proposed development locations. City staff can use the street level imagery to plan the location of road markings for pedestrian crossings, bike lanes or other striping.

	City staff can remotely take accurate measurements of infrastructure assets to adequately plan for repair and replacement. City staff can use the street level imagery to enhance community engagement. The street level imagery can be used to identify and depict the impact of development such as an intersection restriping plan in order to article before and after conditions.
Costs	**Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.** The total cost of the system is $232,401 and is itemized below.

Year No.	Description	Cost	Notes
1	Licenses	$48,000	Resolution No: 69,482-N.S. 30JUN20
1	Professional Services for asset extraction	$139,401	Resolution No: 69,482-N.S. 30JUN20
2	Licenses and Support – One-Time	$45,000	Pending Council approval after imagery and data extraction work is completed Licensing Costs included in IT Cost allocation
3	License and Support – Ongoing Annual Costs	$3,000	Pending Council approval after imagery and data extraction work is completed Licensing Costs included in IT Cost allocation
Total Year 1-3		**$235,401**	

Chapter 2.99
ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

Sections:

2.99.010 Purposes.

A. Through the enactment of this Chapter, the City seeks to establish a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City's interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members.

B. Transparency is essential when the City is considering procurement and use of Surveillance Technology.

C. Although such technology may be beneficial to public order and safety, it has the potential to put both privacy and civil liberties at risk.

D. Decisions relating to Surveillance Technology should occur with strong consideration of the impact such technologies may have on civil rights and civil liberties, as with all rights guaranteed by the California and United States Constitutions.

E. Surveillance Technology may involve immediate, as well as ongoing, financial costs. Before the City acquires any Surveillance Technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.

F. Decisions regarding whether and how Surveillance Technologies should be funded, acquired, or used should be governed by the City Council as the elected representatives of the City.

G. In addition to applicable local, state, and federal law, legally enforceable safeguards, including robust transparency, oversight, and accountability measures, are important in the protection of civil rights and civil liberties.

H. Data reporting measures will enable the City Council and public to confirm that mandated civil rights and civil liberties safeguards have been strictly observed. (Ord. 7592-NS § 2 (part), 2018)

2.99.020 Definitions.

The following definitions apply to this Chapter:

1. "Surveillance Technology" means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 1(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

"Surveillance Technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in Section 1 (above):

a. Routine office hardware, such as televisions, computers and printers, that is in widespread public use and will not be used for any surveillance functions;

b. Handheld Parking Citation Devices, that do not automatically read license plates;

c. Manually-operated, portable digital cameras, audio recorders, and video recorders that are not to be used remotely and whose functionality is limited to manually capturing, viewing, editing and downloading video and/or audio recordings, but not including body worn cameras;

d. Devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles or thermal imaging cameras used for fire operations, search and rescue operations and missing person searches, and equipment used in active searches for wanted suspects;

e. Manually-operated technological devices that are not designed and will not be used to surreptitiously collect surveillance data, such as two-way radios, email systems and city-issued cell phones;

f. Municipal agency databases;

g. Medical equipment used to diagnose, treat, or prevent disease or injury, including electrocardiogram machines;

h. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity;

i. Stationary security cameras affixed to City property or facilities.

j. Personal communication device, which means a cellular telephone, a personal digital assistant, a wireless capable tablet or similar wireless two-way communications and/or portable Internet accessing device, that has not been modified beyond stock manufacturer capabilities, whether procured or subsidized by a City entity or personally owned, that is used in the regular course of conducting City business.

2. "Surveillance Technology Report" means an annual written report by the City Manager covering all of the City of Berkeley's Surveillance Technologies that includes all of the following information with regard to each type of Surveillance Technology:

a. Description: A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing;

b. Geographic Deployment: Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically;

c. Complaints: A summary of each complaint, if any, received by the City about the Surveillance Technology;

d. Audits and Violations: The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;

e. Data Breaches: Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;

f. Effectiveness: Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes;

g. Costs: Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.

3. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent Circumstances pursuant to Section 2.99.040 (2), of a type of Surveillance Technology that includes the following:

a. Description: Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;

b. Purpose: Information on the proposed purpose(s) for the Surveillance Technology;

c. Location: The general location(s) it may be deployed and reasons for deployment;

d. Impact: An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;

e. Mitigation: Information regarding technical and procedural measures that can be implemented to appropriately safeguard the public from any impacts identified in subsection (d);

f. Data Types and Sources: A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including "open source" data;

g. Data Security: Information about the steps that can be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure;

h. Fiscal Cost: The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, including to the extent practicable costs associated with compliance with this and other reporting and oversight requirements, as well as any current or potential sources of funding;

i. Third Party Dependence and Access: Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats;

j. Alternatives: A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology; and

k. Experience of Other Entities: To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities.

4. "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of each type of the Surveillance Technology that shall reflect the Surveillance Acquisition Report produced for that Surveillance Technology and that at a minimum specifies the following:

a. Purpose: The specific purpose(s) that the Surveillance Technology is intended to advance;

b. Authorized Use: The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;

c. Data Collection: Information collection that is allowed and prohibited. Where applicable, list any data sources the technology will rely upon, including "open source" data;

d. Data Access: A general description of the title and position of the employees and entities authorized to access or use the collected information, and the rules and processes required prior to access or use of the information, and a description of any and all of the vendor's rights to access and use, sell or otherwise share information for any purpose;

e. Data Protection: A general description of the safeguards that protect information from unauthorized access, including encryption and access control mechanisms, and safeguards that exist to protect data at the vendor level;

f. Civil Liberties and Rights Protection: A general description of the safeguards that protect against the use of the Surveillance Technology and any data resulting from its use in a way that violates or infringes on civil rights and liberties, including but not limited to potential disparate or adverse impacts on any communities or groups;

g. Data Retention: The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond such period;

h. Public Access: How collected information may be accessed or used by members of the public;

i. Third Party Data Sharing: If and how other City or non-City Entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;

j. Training: Training required for any employee authorized to use the Surveillance Technology or to access information collected;

k. Auditing and Oversight: Mechanisms to ensure that the Surveillance Use Policy is followed, technical measures to monitor for misuse, and the legally enforceable sanctions for intentional violations of the policy; and

l. Maintenance: The mechanisms and procedures to ensure maintenance of the security and integrity of the Surveillance Technology and collected information.

5. "Exigent Circumstances" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.

6. "Face Recognition Technology" means an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face. (Ord. 7676-NS § 1, 2019: Ord. 7592-NS § 2 (part), 2018)

2.99.030 City Council Approval Requirement.

1. The City Manager must obtain City Council approval, except in Exigent Circumstances, by placing an item on the Action Calendar at a duly noticed meeting of the City Council prior to any of the following:

a. Seeking, soliciting, or accepting grant funds for the purchase of, or in-kind or other donations of, Surveillance Technology;

b. Acquiring new Surveillance Technology, including but not limited to procuring such technology without the exchange of monies or consideration;

c. Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council; or

d. Entering into an agreement with a non-City entity to acquire, share or otherwise use Surveillance Technology or the information it provides, or expanding a vendor's permission to share or otherwise use Surveillance Technology or the information it provides.

2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology. No later than 30 days after receiving a Surveillance Use Policy for review, the Police Review Commission must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of such a policy, nor failure by the Police Review Commission to act, shall prohibit the City Manager from proceeding with its own review and potential adoption.

3. The City Manager must submit for review a Surveillance Acquisition Report and obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsections (1) (a)-(d).

4. Evidence received relating to the investigation of a specific crime that may have been generated from Face Recognition Technology but was not intentionally solicited shall not be a violation of this ordinance.

5. Notwithstanding any other provision of this Chapter, it shall be a violation of this ordinance for the City Manager or any person acting on the City Manager's behalf to obtain, retain, request, access, or use: i) any Face Recognition Technology; or ii) any information obtained from Face Recognition Technology, except for personal communication devices as defined by Section 2.99.020 or section 2.99.030(4). The inadvertent or unintentional receipt, access to, or use of any information obtained from Face Recognition Technology shall not be a violation of this subsection provided that the City Manager or any person acting on the City Manager's behalf does not request or solicit the receipt, access to, or use of such information, and all copies of the information are promptly destroyed upon discovery of the information, and the information is not used for any purpose.

The City Manager shall log the receipt, access to, or use of any such information in its Annual Surveillance Technology Report. The Surveillance Technology Report shall identify measures taken by the City to prevent the further transmission or use of any information inadvertently or unintentionally obtained through the use of Face Recognition Technology; provided, however, that nothing in this Chapter shall limit the ability to use such information in connection with a criminal investigation. (Ord. 7676-NS § 2, 2019; Ord. 7592-NS § 2 (part), 2018)

2.99.040 Temporary Acquisition and Use of Surveillance Equipment.

Notwithstanding the provisions of this Chapter, the City Manager may borrow, acquire and/or temporarily use Surveillance Technology in Exigent Circumstances without following the requirements in Sections 2.99.030 and

2.99.040. However, if the City Manager borrows, acquires or temporarily uses Surveillance Technology in Exigent Circumstances they must take all of the following actions:

1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged;

2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Surveillance Acquisition Report and Surveillance Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Sections 2.99.030 and 2.99.040; and

3. Include the Surveillance Technology in the City Manager's next annual Surveillance Technology Report. (Ord. 7592-NS § 2 (part), 2018)

2.99.050 Compliance for Existing Surveillance Technology.

The City Manager shall submit to the Action Calendar for the first City Council meeting in November of 2018 a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each Surveillance Technology possessed or used prior to the effective date of the ordinance codified in this Chapter. (Ord. 7592-NS § 2 (part), 2018)

2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns.

The City Council shall only approve any action described in Section 2.99.030, 2.99.040, or Section 2.99.050 of this Chapter after making a determination that the benefits to the community of the Surveillance Technology, used according to its Surveillance Use Policy, outweigh the costs; that the proposal will appropriately safeguard civil liberties and civil rights to the maximum extent possible while serving its intended purposes; and that, in the City Council's judgment, no feasible alternative with similar utility and a lesser impact on civil rights or civil liberties could be implemented. (Ord. 7592-NS § 2 (part), 2018)

2.99.070 Oversight Following City Council Approval.

The City Manager must submit to the Council Action Calendar a written Surveillance Technology Report, covering all of the City's Surveillance Technologies, annually at the first regular Council meeting in November. After review of the Surveillance Technology Report, Council may make modifications to Surveillance Use Policies. (Ord. 7592-NS § 2 (part), 2018)

2.99.080 Public Access to Surveillance Technology Contracts.

To the extent permitted by law, the City shall continue to make available to the public all of its surveillance-related contracts, including related non-disclosure agreements, if any. (Ord. 7592-NS § 2 (part), 2018)

2.99.090 Enforcement.

This Chapter does not confer any rights upon any person or entity other than the City Council to cancel or suspend a contract for a Surveillance Technology. The Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed $15,000 if they are personally obligated to pay such fees. (Ord. 7592-NS § 2 (part), 2018)

2.99.100 Whistleblower Protections.

All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016 and including any updates or replacements thereto, shall apply. (Ord. 7592-NS § 2 (part), 2018)

2.99.110 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance, is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional. (Ord. 7592-NS § 2 (part), 2018)

The Berkeley Municipal Code is current through Ordinance 7789-NS, passed October 26, 2021.

POLICY COMPLAINT FORM

Office of the Director of Police Accountability (DPA)

1947 Center Street, 5th Floor, Berkeley, CA 94704
Web: www.cityofberkeley.info/dpa
E-mail: dpa@cityofberkeley.info
Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Received by DPA
Date Received: NOV 02 2021
DPA Case #: 11

1

Name of Complainant: A. Bolton
Last First Middle

Mailing Address: _____
Street City State Zip

Primary Phone: ( ) _____ Alt Phone: ( ) _____

E-mail address: _____

Occupation: Occupied. Gender: Gendered. Age: Aged.

Ethnicity: ☐ Asian ☐ Black/African-American ☐ Caucasian

☐ Latino/Hispanic ☐ Multiethnic: _____ ☒ Other: _____

2

Identify the Berkeley Police Department (BPD) policy or practice you would like the Police Accountability Board to review.

Honesty. Ethics. Public trust.
Esp., re: Elder or dependent adult Abuse multi-department/agency team ("MDT") investigations, reporting, and remedies. Abuse continued, and continues, because of police misconduct by both acts and/or omissions, at least. Permit, Planning Department, Public Health, Transportation Dep, Public Works Department, Aging Disabled Departments, CA DMV, and related departments for better or best outcomes.

3

Location of Incident (*if applicable*) _____

Date & Time of Incident (*if applicable*) _____

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

1:00p-2:00p. Wed. Sept. 8, AD 2021. Made a ("BPD") Berkeley Police Dep. request for service call (from the City's Public Safety Bldg. (2100 MLK Jr. Way Berk CA) outside call box), regarding ongoing elder abuse, harassment and violence, with BPD dispatcher #. Later, met with BPD Officer at the front steps of City of Berkeley Public Safety Building (with security cameras rolling/documenting events). BPD Ofcr. was not able to take follow up report when complainant tried giving it, because the Ofcr. had nothing to write with nor write on nor was he prepared to write anything. So, shortly afterwards, when handed off to BPD Ofcr. , Ofcr. dishonestly stated when briefing Ofcr. , that the report was not taken, due to complainants' refusal to give a report. This blatant misconduct by Ofcr. of both concealment, and intentional misrepresentation (fraud or deceit) was deeply harmful, to say the least. And possibly worse, since this misconduct may still need reporting by Ofcr. to their supervisor(s) to rectify. Not acceptable, so far, as to how it's been handled. Needs further follow up. Including: Abusers, enablers, predators, groomers, undue influencers need to be held fully accountable (namely, Alphonzo & Rosetta & Mary C. Breland household, 1017 Allston Way Berkeley CA, their to-be-named criminal contractors; and, criminal collaborators: Erasmo & Natalia & Maya Guerrero households, 1013 Allston Way Berk. CA; Antonio Sanchez household, 1010 Allston Way Berk. CA, at least.)

6-24-21

4 What changes to BPD policy, practice, or procedure do you propose?

Better Training, Resourced, Best Practices: Elder/dependent adult Abuse investigations, reporting and remedies. Better supervision, preventing: Abuse continued, and continues, because of police misconduct. Better internal affairs reviews. Better recruiting. Fairness and good faith policy, practices, or procedures done fully. Public Health Best Practices approach. Certified Cultural competency, safety, and humility training. Multi-agency/ organizational /Board/ commission/ department team ('MDT') approach, as well, better outcomes for all. Complaint considered rightly in it's continuing violations context, i.e., this case is part of series of incidents of police officers and agents dishonesty/misconduct acts/ommissions. Elder/dependant adult abuse part of series of incidents, esp., May-October AD 2021. Some BPD Ofcrs./badge# involved: (Rpt#21-21934); (21-22411); (Rpt#21-42350), , at least.

5 Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Police Accountability Board in evaluating your complaint.)

• CA Civil Code sections 1709, 1710, 1711.
• New police transparency law, CA SB 1421, authored by Sen. Nancy Skinner. Esp., police misconduct related to dishonesty.
• Courts have noted time and again that integrity is a fundamental job requirement. For example, the court stated in Kolender v. San Diego County Civil Service Commission (2005) 132 Cal. App. 4th 716:
A deputy sheriff's job is a position of trust and the public has the right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. Honesty, credibility, and temperament are crucial to the performance of an officer's duties. Dishonesty is incompatible with the public trust.
This standard of conduct is based on the following fundamental principle enunciated in Christal v. Police Commission of the City and County of San Francisco (1939) 33 Cal. App.2d 564, 567:
[Peace] officers are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them.
"Dishonesty" has been defined as conduct that "connotes a disposition to deceive," and "an absence of integrity; a disposition to cheat, deceive, or defraud." Gee v. State Personnel Board (1970) 5 Cal. App. 3d 713, 718-719. Dishonesty "is not an isolated act; it is more a continuing trait of character." Gee, supra; Paulino v. Civil Service Commission of San Diego (1985) 175 Cal. App. 3d 962.
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6 **CERTIFICATION**

I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.

Signature of Complainant — Oct 29, AD 2021 — Date

7 **How did you hear about the Director of Police Accountability or Police Accountability Board?**

- [x] Internet
- [ ] Berkeley Police Dept.
- [ ] Newspaper: _____
- [ ] Referred by: _____
- [ ] Other: _____

6-24-21

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Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Received by DPA
Date Received: NOV 02 2021
DPA Case # 11

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Last First Middle

Mailing Address: _____
Street City State Zip

Primary Phone: ( ) _____ Alt Phone: ( ) _____

E-mail address: _____

Occupation: Occupied. Gender: Gendered. Age: Aged.

Ethnicity: ☐ Asian ☐ Black/African-American ☐ Caucasian
☐ Latino/Hispanic ☐ Multiethnic: _____ ☒ Other:

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- [ ] Newspaper: _____
- [ ] Referred by: _____
- [ ] Other: _____

6-24-21

POLICY COMPLAINT FORM

Office of the Director of Police Accountability (DPA)

1947 Center Street, 5th Floor, Berkeley, CA 94704
Web: www.cityofberkeley.info/dpa
E-mail: dpa@cityofberkeley.info
Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Received by DPA
Date Received: NOV 12 2021
DPA Case # 12

1

Name of Complainant: A. Bolton
Last First Middle

Mailing Address: _____
Street City State Zip

Primary Phone: ( ) ( ) _____ Alt Phone: ( ) _____

E-mail address: _____

Occupation: Occupied. Gender: Gendered. Age: Aged.

Ethnicity: ☐ Asian ☐ Black/African-American ☐ Caucasian
☐ Latino/Hispanic ☐ Multiethnic: _____ ☒ Other: _____

2

Identify the Berkeley Police Department (BPD) policy or practice you would like the Police Accountability Board to review.

Honesty. Ethics. Public trust.
Esp., re: Elder or dependent adult Abuse multi-department/agency team ("MDT") investigations, reporting, and remedies. Abuse continued, and continues, because of police misconduct by both acts and/or omissions, at least. Permit, Planning Department, Public Health, Transportation Dep, Public Works Department, Aging Disabled Departments, CA DMV, and related departments for better or best outcomes.

3

Location of Incident (*if applicable*) _____

Date & Time of Incident (*if applicable*) _____

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

4:00am-5:45am, Wed. Nov. 10, AD 2021. Request for service call made with ("BPD") Berkeley Police Dep. BPD Officer [illegible], responded to report of fire access(safety red zone)/resident's driveway blocked by 4x4 truck, CA license #46216U2, (unsafe condition) which was damaging resident's property. On arrival, near San Pablo/University, [illegible] investigated by flashlight from the seat of [illegible] vehicle. Although said CA lic #46216U2 was parking in violation, and, damaging property, Ofcr [illegible], did not rightfully cite, nor tow #46216U2 truck. Ofcr [illegible] left scene, U-turned at the end of the block. On return, he was met by complainant, who requested rightful ticketing. Ofcr [illegible] refused. Asked why? Angrily said, "no officer in his right mind would write a ticket for that" violation. Yet, in violation, and, given the ongoing context of elder abuse, harassment, violence, this Ofr [illegible] misconducts are magnified. Ask to record (i.e., body-cam) violations, Ofcr # [illegible] refused. Ask for his name, report #, supervisor info. He refused, & tried confusing matters. Stated right to know, so, Ofcr [illegible] wrote name/badge#/report#. But refused Sup. Info. Ask to notify APS Dir. Jennifer Stephens-Pierre, at (510) 577-1966, because this ongoing elder abuse/harassment matter needs her attention. Ofcr. [illegible] bias misconducts, of both evidence concealment and intentional misrepresentation (fraud/deceit) was harmful. Made worse, since Ofcr [illegible] boastfully dared his misconduct/acts or omissions be reported to his department. Later, requested another BPD officer return to cite violations, and, record evidence of violations, at least. But BPD [illegible] refused. Refused also to give any service request #, and, refused to use report #21-52080 by Ofcr [illegible] for or to refer further request. BPD # [illegible], call misconduct/abuse made matters harder, including disconnecting complainant calls. Later, called BPD # [illegible] who basically supported BPD # [illegible]. Afterwards, called BPD # [illegible], transferred call, left voice mail re: misconducts to #[illegible], and, Internal Affairs to follow up as well. Note, said #46216U2 violations, are part of #8Z89713, #4R0K740, #8JJA678, #8PKZ553 collection of ongoing vehicle related elder abuses/harassments, retaliations and violence, esp., throughout the weeks and past weekends, at least. Which police should rightfully make violators/abusers to stop. But no, that would be too much of the right thing to do. Not acceptable, how it's been handled. Needs further follow up. Including: Abusers, enablers, predators, groomers, undue influencers need to be held fully accountable (namely, [illegible] (BPD Retiree) & [illegible] (BPD Ofcrs pastor) Breland household, 1017 Allston Way Berkeley CA, their to-be-named criminal contractors; and, criminal collaborators: Erasmo & Natalia & Maya Guerrero households, 1013 Allston Way Berk. CA; Antonio Sanchez household, 1010 Allston Way Berk. CA, at least.)

4 What changes to BPD policy, practice, or procedure do you propose?

Better Training, Resourced, Best Practices: Elder/dependent adult Abuse investigations, reporting and remedies. Better supervision, preventing: Abuse continued, and continues, because of police misconduct. Better internal affairs reviews. Better recruiting. Fairness and good faith policy, practices, or procedures done fully. Public Health Best Practices approach. Certified Cultural competency, safety, and humility training. Multi-agency/ organizational /Board/ commission/ department team ('MDT') approach, as well, better outcomes for all. Complaint considered rightly in it's continuing violations context, i.e., this case is part of series of incidents of police officers and agents dishonesty/misconduct acts/ommissions. Elder/dependant adult abuse retaliation part of series of incidents, esp., May-November AD 2021. Some BPD Ofcrs./badge# involved: (Rpt#21-21934); (21-22411); (Rpt#21-42350), (#21-52080) at least.

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- CA Civil Code sections 1709, 1710, 1711.
- New police transparency law, CA SB 1421, authored by Sen. Nancy Skinner. Esp., police misconduct related to dishonesty.
- Courts have noted time and again that integrity is a fundamental job requirement. For example, the court stated in Kolender v. San Diego County Civil Service Commission (2005) 132 Cal. App. 4th 716:

A deputy sheriff's job is a position of trust and the public has the right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. Honesty, credibility, and temperament are crucial to the performance of an officer's duties. Dishonesty is incompatible with the public trust.

This standard of conduct is based on the following fundamental principle enunciated in Christal v. Police Commission of the City and County of San Francisco (1939) 33 Cal. App.2d 564, 567:

[Peace] officers are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them.

"Dishonesty" has been defined as conduct that "connotes a disposition to deceive," and "an absence of integrity; a disposition to cheat, deceive, or defraud." Gee v. State Personnel Board (1970) 5 Cal. App. 3d 713, 718-719. Dishonesty "is not an isolated act; it is more a continuing trait of character." Gee, supra; Paulino v. Civil Service Commission of San Diego (1985) 175 Cal. App. 3d 962.

- Obstruction of Justice in California.
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6 **CERTIFICATION**

I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.

Signature of Complainant	Nov. 11, AD 2021 Date

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- ☒ Internet
- ☐ Berkeley Police Dept.
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Date Received: NOV 12 2021
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1 Name of Complainant: A. Bolton
Last First Middle

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Street City State Zip

Primary Phone: ( ) ( ) _____ Alt Phone: ( ) _____

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Signature of Complainant — Nov. 11, AD 2021 — Date

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6-24-21

2022 Commission Meeting Dates

Name of Commission: Police Accountability Board

Commission Secretary: Katherine J. Lee

2022 Meeting Dates

Month	Meeting Day and Date	Time
January 2022	Wednesday 1/12/2022	7:00 pm
	Wednesday 1/26/2022	7:00 pm
February 2022	Wednesday 2/9/2022	7:00 pm
	Wednesday 2/23/2022	7:00 pm
March 2022	Wednesday 3/9/2022	7:00 pm
	Wednesday 3/23/2022	7:00 pm
April 2022	Wednesday 4/13/2022	7:00 pm
	Tuesday 4/26/2022	7:00 pm
May 2022	Wednesday 5/11/2022	7:00 pm
	Wednesday 5/25/2022	7:00 pm
June 2022	Wednesday 6/8/2022	7:00 pm
	Wednesday 6/22/2022	7:00 pm

Month	Meeting Day and Date	Time
July 2022	Wednesday 7/13/2022	7:00 pm
	Wednesday 7/27/2022	7:00 pm
August 2022	No Meeting	
September 2022	Wednesday 9/14/2022	7:00 pm
	Wednesday 9/28/2022	7:00 pm
October 2022	Wednesday 10/12/2022	7:00 pm
	Tuesday 10/25/2022	7:00 pm
November 2022	Wednesday 11/9/2022	7:00 pm
December 2022	Wednesday 12/7/2022	7:00 pm

commission@cityofberkeley.info
City Clerk Department
Please contact our office at (510) 981-6908 with any questions.

Police Accountability Board 2022 Regular Meeting Schedule

JANUARY						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
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30	31					

FEBRUARY						
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MARCH						
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APRIL						
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JUNE						
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JULY						
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AUGUST						
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NOVEMBER						
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DECEMBER						
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18	19	20	21	22	23	24
25	26	27	28	29	30	31

PAB Meeting

Note *Tuesday* meetings on **April 26 and Oct. 25** to avoid religious holiday conflict. City Council also meets on those dates.

City Council Meeting

City Holiday

Commissioner Attendance Report

For the period July 1 through December 31, 2021

nmission Name: Police Accountability Board

ecretary Name: Katherine J. Lee

	Commissioner Last Name	July	August	8-Sep	22-Sep	29-Sep	13-Oct	27-Oct	10-Nov	8-Dec
1	Calavita			Attended	Attended	Attended	Attended	Attended	Attended	Attended
2	Chang			Attended	Attended	Attended	Attended	Attended	Attended	Attended
3	Harris			Attended	Attended	Attended	Attended	Attended	Attended	Absent
4	Leftwich			Attended	Attended	Attended	Attended	Attended	Attended	Attended
5	Levine			Attended	Attended	Attended	Attended	Attended	Attended	Attended
6	Mizell			Attended	Attended	Attended	Attended	Attended	Leave of Absence	Attended
7	Moore			Attended	Attended	Attended	Absent	Attended	Attended	Attended
8	Owens			Attended	Attended	Attended	Attended	Attended	Attended	Attended
9	Ramsey			Attended	Attended	Attended	Attended	Attended	Attended	Attended

INSTRUCTIONS FOR COMPLETING THE FORM

This report tracks attendance of *current* commissioners at REGULAR commission meetings.
Special meetings and subcommittee meetings are NOT included.

1. Gather your 2021 REGULAR meeting dates and roster of current commissioners.
2. Enter dates of REGULAR meetings. Add columns as needed if you had more than one REGULAR meeting in a month.
3. Enter the names of your current commissioners in the column provided. Add rows if needed for commissions with more than 9 members.
4. For each meeting, select from the dropdown options to indicate whether the commissioner attended the meeting, had an approved *leave of absence* , an *excused absence for cultural or religious holidays* , or was *absent* . TIP: Click only *once* in a cell to view the dropdown menu.
5. For meetings held prior to a commissioner's appointment, choose "N/A"

Ashby VILLAGE

Aging Better. Together.

CALENDAR - EVENT VIEW

PROSPECTS FOR POLICE REFORM IN BAY AREA CITIES: RICHMOND, OAKLAND AND BERKELEY

When: Monday, January 24, 2022, 10:30 AM

Where: Zoom - https://us02web.zoom.us/j/89641296817

Category: Interest Group

RSVP BELOW

ADD TO MY CALENDAR

Registration is recommended

Everyone **No Fee**

zoom

ELDER ACTION

RSVP: info@ashbyvillage.org

When: Monday, January 24, 10:30 a.m.

Where: Zoom - https://us02web.zoom.us/j/89641296817

Open to: All

Prospects for Police Reform
in Bay Area Cities
New Perspectives from the Cities of
Richmond, Oakland and Berkeley

Calling **911** is the usual way people fearing threats to their safety reach out, and currently the 911 response is to send the police. However, there are times when this response is not appropriate.

The call may not concern a crime requiring police. A person may be going through a serious mental health crisis. It can involve long-term issues between domestic partners, problems with alienated youth, or a person undergoing trauma, such as homelessness or job loss. In some instances, a person may distrust police and be unwilling to call 911 or be unwilling to cooperate with an officer. On these occasions, the presence of a mental health professional rather than a police officer could defuse tension.

A number of East Bay cities have creative projects and new ideas for responding to these crises. At this event, we'll hear from a panel of those working on police reform in Richmond, Oakland and Berkeley.

The panelists include:
- Kitty Calavita, Berkeley Police Accountability Board
- Amy Coulter, Family Member and Mental Health Advocate
- Andrew Greenwood, Retired Berkeley Police Chief

- Claudia Jimenez, Member, Richmond City Council
- Rebecca Kaplan, Vice Mayor, Oakland
- Zach Norris, Outgoing Executive Director, Ella Baker Center

The panel will be moderated by Judy Appel of the Ashby Village Board of Directors.

The **Ashby Village Elder Action** committee and the **Berkeley Friends Meeting** are pleased to co-sponsor this panel at this time when police reform is a community topic of concern. Please RSVP above.

Ashby Village
1821 Catalina Ave
Berkeley, CA 94707
510 204 9200
info@ashbyvillage.org

Lee, Katherine

From: Louis, Jennifer A.
Sent: Monday, December 27, 2021 2:29 PM
To: Lee, Katherine
Subject: FW: FYSA: Holiday Shop with a Berkeley Cop video

Follow Up Flag: Follow up
Flag Status: Flagged

Good afternoon,

I wanted to share this with you and the PAB. This is one of our engagement events that are really rewarding for everyone involved.

Happy holidays,

Jen

From: White, Byron E.
Sent: Thursday, December 23, 2021 11:03 AM
To: All Police <dlPolice@cityofberkeley.info>
Subject: FYSA: Holiday Shop with a Berkeley Cop video

https://youtu.be/R0UshdwIxiQ

A special thanks to all of you who participated in this year's Shop with a Cop. Happy Holidays.

Officer Byron White #17
Public Information Officer
Berkeley Police Department
2100 MLK Jr. Way
Berkeley, CA, 94704
(510) 812-4082—cell/text
@OfficerByron
Mon—Thurs (excluding Holidays)

Follow us on:

NIXLE

Press Releases

From: Louis, Jennifer A.
Sent: Wednesday, December 1, 2021 6:28 PM
To: All Police <dlPolice@cityofberkeley.info>
Subject: Holiday Shop with a Berkeley Cop

Good evening,

This year our Department will once again host the "Holiday Shop with a Berkeley Cop" event. This year's event has been generously funded by the Berkeley Police Association and other private donations. This year BPD has collaborated again with the City of Berkeley Parks, Recreation and Waterfront (PRW) Department to provide 20 children from the PRW afterschool programs with the opportunity to purchase Christmas gifts for their families. These children were nominated by the PRW program and identified as scholarship recipients based on their income level.

This event will take place on **Wednesday, December 15, 2021** from 2:00 pm- 8:00 pm. BPD personnel will meet with the participating children at the Young Adult Project (YAP) located at 1730 Oregon Street, and provide a ride to the Target in Albany. BPD personnel will assist the children with the shopping spree before returning to the YAP to wrap their purchased gifts. Dinner will be provided to the children and participating BPD personnel that evening.

All staff, sworn and professional, are invited to participate. Signups for this in this event will be located on the overtime board.

If you have questions about the event or would like to donate wrapping paper supplies please reach out to anyone in CSB.

Jen

Jen Louis
Interim Chief of Police
Berkeley Police Department

Follow us on:

NIXLE Press Releases

The 27th Annual NACOLE Conference

"Civilian Oversight as a Permanent Part of Public Safety"

2021 In-Person Conference – Session Schedule

Sunday, December 12, 2021

Session	Time	Track	Event Description/Session Title
---	1:00 p.m. – 4:00 p.m.		Wellness Activities – See Information at Hotel
---	11:00 a.m. – 5:00 p.m.		Registration Desk Open
---	5:00 p.m. – 7:30 p.m.		Opening Reception

Monday, December 13, 2021

Session	Time	Track	Event Description/Session Title
---	8:30 a.m. – 9:30 a.m.		Opening Remarks and Presentation of the Speaker Gift
---	9:30 a.m. – 10:15 a.m.		Featured Speaker: Susan Hutson, Former Independent Police Monitor, New Orleans, LA
1	10:30 a.m. – 12:00 p.m.		General Session: Trauma, Resilience, and Oversight: Understanding the Impact of Trauma and Building Resilience Through Our Work
---	12:00 p.m. – 1:30 p.m.		Lunch on Your Own
2	1:30 p.m. – 3:00 p.m.		General Session: Focusing on this Moment: The State of Civilian Oversight of Law Enforcement
3	3:15 p.m. – 5:15 p.m.		General Session: Six Durations of a Split Second: The Killing of Harith Augustus

Tuesday, December 14, 2021

Session	Time	Track	Description/Session Title
4	8:30 a.m. – 10:00 a.m.		Concurrent Session: Environmental Disaster Planning for Jails and Prisons
5	8:30 a.m. – 10:00 a.m.		Concurrent Session: Creating Effective Civilian Oversight of Law Enforcement
6	10:15 a.m. – 11:45 a.m.		Concurrent Session: Oversight of Women Prisoners
7	10:15 a.m. – 11:45 a.m.		Concurrent Session: Road to Civilian Oversight in Miami-Dade County
---	12:00 p.m. – 1:30 p.m.		NACOLE Keynote Speaker and Awards Luncheon, featuring Michael Horowitz, Inspector General, U.S. Department of Justice
8	1:30 p.m. – 3:00 p.m.		Concurrent Session: Violence in the Jails: Causes, Effects; and Accountability
9	1:30 p.m. – 3:00 p.m.		Concurrent Session: Reforming Existing Oversight Agencies

Tuesday, December 14, 2021 (continued)

Track Legend:

Reform and Innovation | Jail & Prison Oversight | Strengthening the Work of Oversight | Collaboration

Please note, this schedule is subject to change. Last Updated: November 23, 2021

Session	Time	Track	Description/Session Title
10	3:15 p.m. – 5:00 p.m.		Concurrent Roundtable Discussion: Next Steps for Jail and Prison Oversight
11	3:15 p.m. – 5:00 p.m.		Concurrent Roundtable Discussion: Effective and Sustainable Growth in Civilian Oversight of Law Enforcement

Wednesday, December 15, 2021

Session	Time	Track	Description/Session Title
12	8:30 a.m. – 10:00 a.m.		Concurrent Session: Partnering Law Enforcement with Mental Health Social Workers in Community Co-Response
13	8:30 a.m. – 10:00 a.m.		Concurrent Session: Building Bridges Between Community and Police Through Sentinel Event Review
14	10:15 a.m. – 11:45 a.m.		Concurrent Session: Conducting Investigations in a Politically and Racially Charged Environment
15	10:15 a.m. – 11:45 a.m.		Concurrent Session: Systemic Review – A Case Study of Reviews of Police Response to Protests
---	12:00 p.m. – 1:30 p.m.		Lunch on Your Own
16	1:30 p.m. – 3:00 p.m.		Concurrent Session: Oversight and Collective Bargaining: Overcoming Accountability Obstacles
17	1:30 p.m. – 3:00 p.m.		Concurrent Session: Oversight Resources – A Case Study of the Effects of Major Events on Civilian Oversight Agencies
18	3:15 p.m. – 5:00 p.m.		Roundtable Discussion: Attendee-Driven Roundtable Topics
---	6:30 p.m. – 9:00 p.m.		Sankofa Reception

Thursday, December 16, 2021

Session	Time	Track	Event Description/Session Title
19	8:30 a.m. – 10:00 a.m.		General Session: Ethics and Civilian Oversight
20	10:15 a.m. – 11:45 a.m.		General Session: The Role of the DOJ in Law Enforcement, Jail and Prison Reform
---	12:00 p.m.		Conference Concludes

Track Legend:

Reform and Innovation | Jail & Prison Oversight | Strengthening the Work of Oversight | Collaboration

Please note, this schedule is subject to change. Last Updated: November 23, 2021

Presentation for NACOLE Annual Conference

Reforming Existing Oversight Agencies

December 14, 2021

Katherine Lee
Interim Director of Police Accountability
Berkeley, California

Reform of Oversight in Berkeley, California

Police Review Commission
(refers to appointed Commissioners and staff)

April 1973 – June 2021

Police Accountability Board
and
Office of the Director of Police Accountability

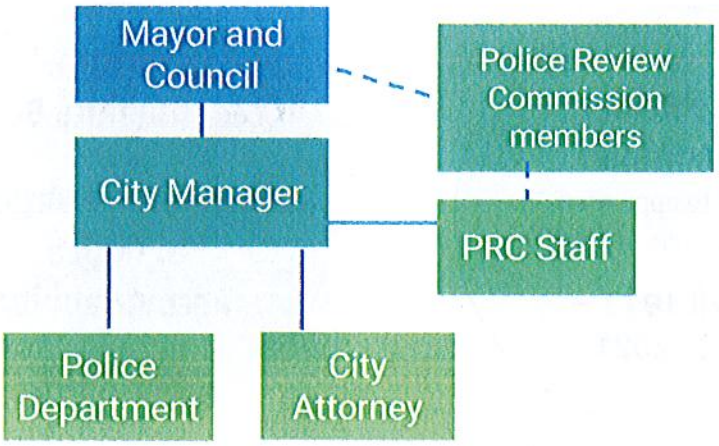
July 2021

Police Review Commission

Ordinance No. 4644

- Enabling ordinance established by voter initiative
- Mission – promote public trust of police through independent, objective oversight of police department
- Investigatory model
- Faced immediate legal challenge

City of Berkeley organization chart (partial) with PRC



Police Review Commission

Other aspects and need for reform

- Policy recommendations are advisory only
- Findings after investigation of complaints are advisory only
- Only 120 days from investigation to discipline
- Standard of proof = "clear and convincing" evidence
- Only "aggrieved parties" may file
- Access to police department records limited
- Jurisdiction over sworn employees only

Charter Amendment

Key milestones

September 2016	November 2017	June 2018	July 2018
Proposal to Council	**Council to PRC**	**PRC to Council**	**Council Action**
Councilmember proposal to have the City Manager develop a restructured oversight agency. Council tables indefinitely.	Council directs PRC to develop a proposal for a restructured oversight agency	After convening subcommittee to draft a proposed Charter amendment, PRC submits proposal to Council.	Council revises PRC proposal; directs City Manager to meet and confer with affected unions over it.

Charter Amendment

Key milestones, cont'd

July 2018	April 2020	July 2020	November 2020
Proposed Council Action	**City Manager to Council**	**Further Council Action**	**Ballot Measure II**
No action taken on recommendation to place Charter amendment on the November 2018 ballot.	City Manager presents Charter amendment resulting from meet-and-confer to Council, which votes to put on November 2020 ballot	Council resolution: if ballot measure passes, put into operation by July 1, 2021 instead of January 1, 2022.	Measure to amend City Charter to establish new civilian oversight agency appears on ballot.

Measure II v. 2018 PRC proposal

Council approved	Modified	Modified
Amend Charter: Board and staff independent of City Manager	Investigation/discipline timeline 240 days (v. 1 year proposed)	Director brings findings & recommendations to approve or decide to hold hearing
"Preponderance of evidence" standard	Use City Attorney; outside counsel only if conflict	Recommend whether discipline; and level in serious cases
Broad access to records + subpoena power	Director serves at pleasure of Council, not Board	No review of IAB complaints but complainant can appeal to Director
Mayor/Council nominate Board member; approval by all	Jurisdiction over sworn officers only	Policy: advisory only

External factors

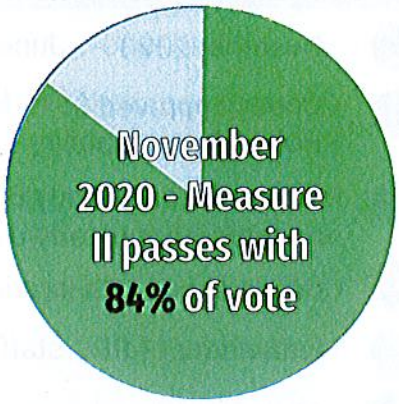
March 2020 - COVID-19 negatively affects gov't revenues

May 25, 2020 - Murder of George Floyd

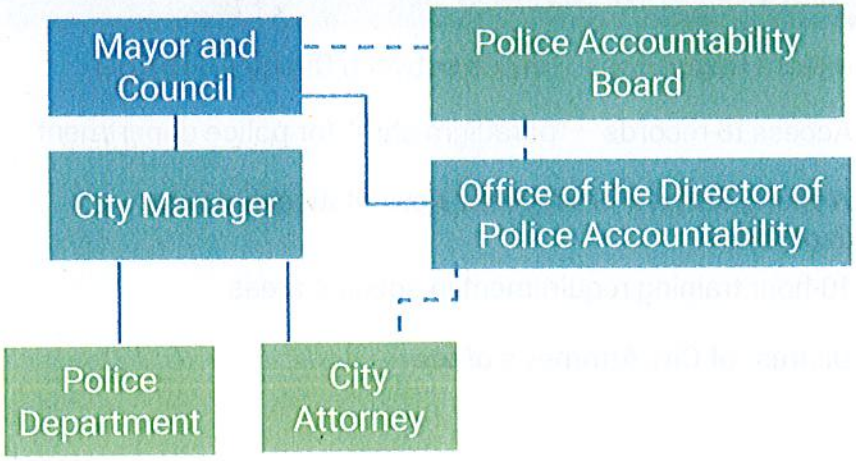
Voters willing to increase gov't budget?

National reckoning re racial justice, police accountability

Result



City of Berkeley organization chart (partial) with Police Accountability Board and Ofc. of Director of Police Accountability



Charter Amendment - implementation

How's it going?

- November 2020 – June 2021 planning for transition
- Council approved $1.1M budget for new Office of the Director of Police Accountability
- Police Accountability Board members nominated/approved June 2021
- Council approved Interim DPA for 6-month term
- Remainder of PRC staff serving as interim ODPA staff
- Recruitment under way for permanent Director

Charter Amendment - implementation

How's it going?

- Interim Regulations – divide between Director and Board
- Access to records – "paradigm shift" for police department
- Working out new procedures; new relationship with department
- 40-hour training requirement in specific areas
- Distrust of City Attorney's office

Charter Amendment - implementation

How's it going?

Katherine Lee
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An officer fired a Taser at Kevin Piskura's chest for 11 seconds. He went into cardiac arrest and later died. A consultant working for Taser wrote:

NOV. 1, 2011... there is no support for speculations that the minimal amount of current and charge delivered into a human body by an X26 ECD discharge ... is likely, or even medically or scientifically possible, to directly cause clinically significant adverse effects ...

The family sued, and the case settled out of court.

Officers in Phoenix held Miguel Ruiz in a neck hold. Asked in court about the possible dangers of this type of restraint, a doctor testifying as an expert witness for the city said:

MAY 30, 2017There are no short-term or long-term effects. It doesn't cause brain damage or brain injury.

A jury found in favor of the officers.

In 2019, deputies shocked Kevin Niedzialek twice with a stun gun and pushed him facedown into the ground. After he died, a doctor hired by the county wrote:

JAN. 18, 2021... we have found no scientific evidence ... that a restraint position in a prone, chest-down, or prone hobbled position causes or contributes to asphyxiation or associated death.

The family sued, and the case is ongoing.

How Paid Experts Help Exonerate Police After Deaths in Custody

Inside the self-reinforcing ecosystem of people who advise, train and defend officers. Many accuse them of slanting science and perpetuating aggressive tactics.

By Jennifer Valentino-DeVries, Mike McIntire, Rebecca R. Ruiz, Julie Tate and Michael H. Keller
Dec. 26, 2021

When lawyers were preparing to defend against a lawsuit over a death in police custody in Fresno, Calif., they knew whom to call.

Over the past two decades, Dr. Gary Vilke has established himself as a leading expert witness by repeatedly asserting that police techniques such as facedown restraints, stun gun shocks and some neck holds did not kill people.

Officers in Fresno had handcuffed 41-year-old Joseph Perez and, holding him facedown on the ground, put a spinal board from an ambulance on his back as he cried out for help. One officer sat on the board as they strapped him to it. The county medical examiner ruled his death, in May 2017, a homicide by asphyxiation.

Dr. Vilke, who was hired by the ambulance provider, charged $500 an hour and provided a different determination. He wrote in a report filed with the court this past July that Mr. Perez had died from methamphetamine use, heart disease and the exertion of his struggle against the restraints.

Dr. Vilke, an emergency medicine doctor in San Diego, is an integral part of a small but influential cadre of scientists, lawyers, physicians and other police experts whose research and testimony is almost always used to absolve officers of blame for deaths, according to a review of hundreds of research papers and more than 25,000 pages of court documents, as well as interviews with nearly three dozen people with knowledge of the deaths or the research.

Their views infuriate many prosecutors, plaintiff lawyers, medical experts and relatives of the dead, who accuse them of slanting science, ignoring inconvenient facts and dangerously emboldening police officers to act aggressively. One of the researchers has suggested that police officers involved in the deaths are often unfairly blamed — like parents of babies who die of sudden infant death syndrome.

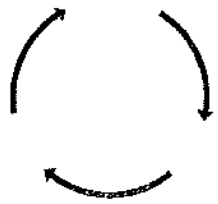
The experts also intersect with law-enforcement-friendly companies that train police officers, write police policies and lend authority to studies rebutting concerns about police use of force.

Together they form what often amounts to a cottage industry of exoneration. The dozen or so individuals and companies have collected millions of dollars over the past decade, much of it in fees that are largely underwritten by taxpayers, who cover the costs of police training and policies and the legal bills of accused officers.

Many of the experts also have ties to Axon, maker of the Taser: A lawyer for the company, for example, was an early sponsor of the Institute for the Prevention of In-Custody Deaths, a commercial undertaking that is among the police-friendly entities, and some of the experts have worked as consultants for Axon; another has served on Axon's corporate board.

The New York Times identified more than 100 instances of in-custody deaths or life-threatening injuries from the past 15 years in which experts in the network were hired to defend the police. The cases were nearly all civil lawsuits, as the officers involved were rarely charged with crimes. About two-thirds of the cases were settled out of court; of the 28 decided by judges or juries, 16 had outcomes favoring the police. (A handful of cases are pending.)

Beyond the courtroom, the individuals and businesses have offered instruction to thousands of police officers and medical examiners, whose cause-of-death rulings often help determine legal culpability. Lexipol, a Texas-based business whose webinars and publications have included experts from the network, boasts that it helped write policy manuals for 6,300 police departments, sometimes suggesting standards for officers' conduct that reduce legal liability. A company spokeswoman said it did not rely on the researchers in making its policies.



Law enforcement
buys training, policy and equipment from

Companies and organizations
that often pay,
fund or promote

Experts and researchers
whose research and testimony have been used to defend

Law enforcement
[etc.]

The self-reinforcing ecosystem underscores the difficulty of obtaining an impartial accounting of deaths in police custody, particularly in cases involving a struggle, where the cause of death is not immediately clear. The Times reported earlier this year that outside criminal investigations of such cases can be plagued with shortcuts and biases that favor the police, and that medical examiners sometimes tie the deaths to a biological trait that would rarely be deemed fatal in other circumstances.

Some researchers and doctors in this ecosystem who responded to questions from The Times said they did not assist law enforcement but provided unbiased results of scientific research and opinions based on the facts of each case. Several pointed to research demonstrating that police struggles overall have an exceedingly low risk of death. They also highlighted health issues that could cause deaths in such circumstances, including drug use, obesity, psychological disturbances and genetic mutations that may predispose people to heart problems.

Some also criticized research and medical opinions that found that police techniques might cause or contribute to deaths, suggesting these were flawed. They also pointed out that other academic papers have been written by people who testify against law enforcement in such cases.

"Sensationalism, without offering scientifically demonstrated better control techniques, adds no benefit, and merely exacerbates the existing tensions between law enforcement and the society at large," said Mark Kroll, a biomedical engineer who has backed the idea of an "arrest-related death syndrome" as an explanation of the deaths.

Others in the network, including Dr. Vilke, said it was wrong to characterize their work as favoring the police, and suggested The Times's analysis misrepresented it. "I would

disagree," Dr. Vilke said when The Times shared its findings with him. Another of the experts, Dr. Steven Karch, sent papers suggesting Black males and people exerting themselves were generally more likely to have sudden cardiac death.

Lawyers for Derek Chauvin, the former Minneapolis police officer who was ultimately convicted in last year's murder of George Floyd, also drew upon the same network of researchers and experts. In particular, they turned to the defense of prone restraint, a technique in which officers subdue subjects facedown, as happened to Mr. Floyd. The work of Dr. Kroll, who has a Ph.D in electrical engineering but no medical degree, was cited by the Chauvin defense as proof that putting body weight on someone facedown does not cause asphyxia.

The experts have been called on to defend a broad range of other police techniques, including Taser shocks and neck holds. Medical examiners and investigators have also relied on the research:

Image

Omaha officers used a Taser a dozen times when detaining Zachary Bear Heels in 2017. A paid expert testified that the stun gun could not have contributed to the man's death.

- Omaha police officers used a Taser 12 times when detaining Zachary Bear Heels in 2017 and punched him repeatedly in the head and neck. Dr. Kroll, who sits on Axon's corporate board, testified in the criminal trial that the stun gun could not have contributed to the death of Mr. Bear Heels, a 28-year-old with bipolar disorder and schizophrenia. He also wrote a report in the civil case that is under seal.

- Officers in Phoenix held Miguel Ruiz in a neck hold and shocked him multiple times with a stun gun in 2013. In a civil case over Mr. Ruiz's death, Dr. Vilke attested to the

safety of neck holds that cut off blood flow to the head by compressing arteries, and another researcher, Dr. Charles Wetli, discussed excited delirium, a condition that some doctors say can suddenly kill drug users or the mentally ill.

- Sheriff's deputies in Kern County, Calif., handcuffed David Silva in 2013, bloodied him with batons, tied his hands and feet together behind his back, and pushed him facedown into the ground. Two physicians in the expert network, Dr. Karch and Dr. Theodore Chan, agreed with the coroner's finding that Mr. Silva did not asphyxiate; Dr. Chan cited studies he had done on the subject.

Dr. Chan, who works in San Diego with Dr. Vilke, is also serving as an expert witness in the lawsuit over the death of Mr. Perez in Fresno. Citing his own research, he stated that there was "no evidence" that such weight on a person's back could contribute to asphyxiation.

According to court documents, Mr. Perez had recently taken methamphetamines when police saw him behaving erratically. They handcuffed and tried to calm him, at one point putting a towel under him to keep him from injuring his face.

Image

Officers in Fresno, Calif., held a handcuffed Joseph Perez facedown and placed a spinal board on his back as he cried out.Credit...Fresno Police Department

After an ambulance arrived, they placed a backboard on top of him and an officer sat on it. In a deposition, the officer said he had been trained that doing so posed no danger of asphyxia. A captain from the department said in the case that the training had relied on an article by Dr. Kroll.

"The problem is that when officers get sued in these cases," said Neil Gehlawat, the lawyer for Mr. Perez's family, the cadre of researchers insist that "'no one can die this way,' and then officers start to believe it."

Mr. Perez's sister, Michelle Perez, said that watching the video of his death was "terrifying" and that she didn't understand why officers would push him facedown and sit on him.

"I just kept thinking, 'Get off of him!'" she said. "There could have been some kind of different tactic."

CLICK TO UNMUTE

In your opinion, why does, if you could perhaps explain it in layman's terms, why and how does Mr. Perez die, according to you?
Sure. In layman's terms, he was very agitated due to his methamphetamine use.
He was hypermetabolic, meaning he was very — his heart rate was up, his temperature was up.
He was agitated and resisting and struggling.
And on top of that, he had an abnormal heart, which was enlarged and also had significant atherosclerotic disease of two vessels that were up to 80% blocked.
And by his agitation, which creates an acidosis, his diseased heart and the methamphetamine with the irritation that also can cause the heart —

**all those things contributed to causing
a sudden cardiac event.
Do you believe or is it your opinion
to any degree of scientific certainty
that Mr. Perez would have died of his abnormal heart
condition
but regardless of the encounter
with law enforcement?
With his temperature of 105 and his degree
of agitation and his behavior, I
believe he would have died at some point, yes.**

Testimony by Dr. Gary Vilke in the Joseph Perez case, responding to questions from the lawyer Thomas Seabaugh. *Taylor & Ring*

Shaping the Science

The physicians, scientists and researchers who come to the defense of law enforcement officers often cite experiments conducted on volunteers. They shock them with Tasers, douse them with pepper spray or restrain them facedown on the ground.

Their published findings are usually the same: that there is no evidence that the actions have enough of an effect to cause death.

A Times analysis of more than 230 scientific papers in the National Library of Medicine database published since the 1980s showed those conclusions to be significantly different from those published by others, including studies about restraints, body position and excited delirium.

Nearly three-quarters of the studies that included at least one author in the network supported the idea that restraint techniques were safe or that the deaths of people who had been restrained were caused by health problems. Only about a quarter of the studies that did not involve anyone from the network backed that conclusion. More commonly, the other studies said some restraint techniques increased the risk of death, if only by a small amount.

The few studies by the group that found problems with police techniques focused on deaths in which Tasers ignited gas fumes or caused people to fall and hit their heads.

Dr. Vilke's first report on police restraint was funded by a $33,900 grant from San Diego County during a lawsuit over the 1994 death of Daniel Price. A woman reported seeing odd behavior from Mr. Price, 37, who had taken methamphetamines; officers restrained him facedown, his hands and feet tied together.

As part of their research, Dr. Vilke and others hogtied healthy volunteers. They observed that measurements of their lung functions decreased by up to 23 percent, which they

concluded was not clinically significant because similar levels of diminished lung capacity could still be considered normal. The judge in the Price case cited the research when he dismissed the lawsuit.

TRIAL TESTIMONY DECLARATION OF DR. TOM NEUMAN As concerns, a knee in Price's back, whether after the hogtie or before the hogtie, if having a knee in your back caused asphyxia after struggle, along with being overweight, and being on your stomach, I think we can safely say that there would not be a single professional wrestler alive today.

The study and others have been challenged by some scholars and physicians because they are based on controlled conditions that are unlike real life, said Justin Feldman, a social epidemiologist at Harvard University who studies patterns of deaths in law enforcement custody.

"There's a fundamental problem in terms of study design," he said. "They're not using people with more severe mental and physical disabilities. They're not doing it with people who have taken drugs. When they're testing Tasers, they aren't using them as many times as you might see in some deaths."

When their studies appeared in peer-reviewed publications, the network of experts acknowledged that their work had limitations. But when discussing the research in court, or during trainings and elsewhere, some of them used more expansive language, did not mention conflicting work, or said they had fully refuted scholars who disagreed.

In the Fresno lawsuit and others, for example, Dr. Chan repeatedly wrote that Dr. Donald Reay, a former medical examiner in King County, Wash., had concluded that hogtying "does not produce any serious or life-threatening respiratory effects" — omitting the crucial phrase "in normal individuals." Other physicians in the network consistently left off that phrase when repeating the quote, although Dr. Reay maintained that such restraints could be fatal in some instances.

Dr. Chan did not respond to a question about the quotation.

Papers by researchers outside the network were more frequently balanced — finding, for example, that some restraint positions are generally safe while others can cause statistically significant changes in breathing. Another recent paper used new computer imaging technology to measure lung function and found that it was affected during restraint.

In their own writings and when asked about these papers, some scientists in the network dismissed them. They said papers that found "statistically significant" effects were inadequate because the changes were not "clinically significant" enough to be considered health problems in the participants. (Some other scientists said choosing test subjects who would be more likely to face such distress would generally not be ethically permitted in experiments.) They said some experiments with Tasers on animals could not be used to

draw conclusions about humans. And several suggested that some of the other papers should be scrutinized because they were written by doctors who testified against police.

Dr. Kroll said in a 2019 webinar that "the science has completely debunked" the claim that pushing someone facedown could contribute to asphyxiation. In the session, conducted by Lexipol and titled "Arrest Related Deaths: Managing Your Medical Examiner," he suggested that such deaths were outside the control of officers.

"Decades ago we used to prosecute mothers for crib deaths and sudden infant death syndrome, and then we figured out it really wasn't their fault," he said at one point in the training session, adding later: "Hopefully in the future we'll have something like sudden infant death syndrome, just 'arrest related death syndrome' so we don't have to automatically blame the police officer."

A spokeswoman for Lexipol, which was co-founded by a lawyer who had previously hired Dr. Chan to defend police officers, said an upcoming webinar would discuss recent court rulings that found extended prone restraint to be excessive force in some circumstances.

"We are not in the business of determining such science-based decisions" about whether prone restraint is dangerous, the spokeswoman, Shannon Pieper, said in an email.

Some of the scientists are fierce defenders of their approach, vigorously challenging anyone who suggests an alternative finding. They submit letters to the editors of medical journals that publish the opposing research, discredit it in textbooks they write and routinely dismiss it as "junk science" in public forums.

One cardiologist, Dr. Peyman Azadani, said in an interview that he was intimidated by the pushback. In a 2011 academic paper, he reviewed studies by authors associated with Taser and found they were far more likely than others to conclude that the devices were safe.

Dr. Azadani said two people who identified themselves as being affiliated with Taser had approached him about the research during a medical conference.

"They knew everything about my background, and they told me I was destroying my future," he recalled.

Having recently immigrated from Iran at the time, Dr. Azadani was concerned about making waves, he said, so he removed his name from subsequent papers and then changed research subjects.

In a statement, Axon said it had no information about the incident but did not condone such behavior. The company said it promoted research into its devices out of a concern for safety, and Dr. Kroll, who makes more than $300,000 a year as a member of Axon's corporate board, pointed to a more recent study that found no correlation between Taser funding and safety determination.

A Network Forms

Dr. Wetli, a former Miami medical examiner who died last year, was among the first to publish research that launched what has become an industry of sorts defending police officers. He wrote in the 1980s about men who had taken cocaine and died, many while being subdued by the police. He attributed the deaths to a condition he called excited delirium, when someone becomes aggressive from a mental illness or psychoactive drugs.

Later, in 1994, two former law enforcement officers, Michael A. Brave and John G. Peters Jr., described in a paper what they called custody death syndrome. The condition, they wrote, had "no apparent detectable anatomical cause" but could be associated with excited delirium or other vague diagnoses.

In describing the death of a hypothetical suspect, they focused on potential liability: "You immediately cringe at the thought of the critical scrutiny you will soon be facing by the media, by council officials and by special interest groups," they wrote.

The two men later became affiliated with both the Institute for the Prevention of In-Custody Deaths and Americans for Effective Law Enforcement, another group that provides legal resources for officers. Mr. Brave also became a lawyer for Taser.

In the early 2000s, as Tasers were adopted more widely, studies about them proliferated. A group of researchers led by Dr. Jeffrey Ho in Minneapolis pioneered the work. In their initial study, funded in part by Taser, they shocked volunteers for five seconds and concluded that measurements of heart health did not change.

For years, Dr. Ho has worked in emergency medicine at Hennepin Healthcare, as a part-time sheriff's deputy and, until 2019, as the medical director for Axon.

Taser was also present at the creation of the Institute for the Prevention of In-Custody Deaths, which was founded in 2005 by Mr. Peters.

In an interview, Mr. Peters said he started the business because so many deaths were being blamed on Tasers, which he characterized as one of many misguided criticisms of police conduct. The institute conducts research and training that often rebuts the criticism and is one of several commercial forums that draw like-minded researchers about law enforcement behavior.

"When we first started teaching this stuff back in the '90s, it was all pepper spray deaths," he said. "Well, then they did the science and showed that of all the people who died, only two may have been associated with pepper spray. So that issue went away. Then positional asphyxia popped up. So we did a little bit of work in that area and then that quieted down."

Taser provided some early funding to the institute in exchange for training programs, Mr. Peters said, and one of its initial sponsors was Mr. Brave, who joined Taser's legal department around the same time.

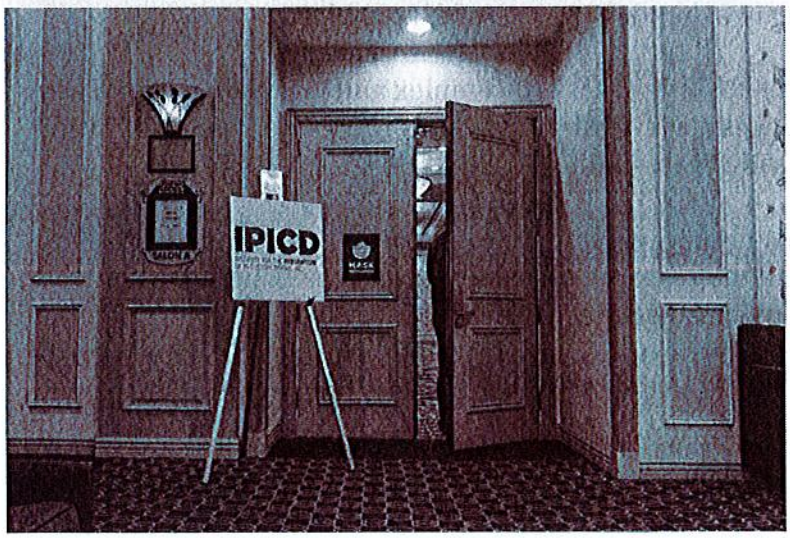
"We put him on the board the first year so we would have a connection to information at Taser," Mr. Peters said.

The institute had also worked closely with Deborah C. Mash, a neuroscientist who has written papers about excited delirium. When Dr. Mash was affiliated with the University of Miami, Mr. Peters and Taser representatives recommended that medical examiners send brain tissue samples from people who had died in police custody to her lab for testing. The Times found a handful of instances in which medical examiners relied on these test results to determine that someone had died of excited delirium as well as one case in which the results were used to rule it out.

Dr. Mash left the university in 2018. In an email to The Times, she said she tells officers that excited delirium is a medical emergency and that the proper response is to immediately request emergency medical help.

Another private company that lends expert support for the police, the Force Science Institute, has promoted research and commentary by Dr. Kroll, including a paper he wrote with Mr. Brave and Dr. Karch that tested law enforcement officers pressing their knees into a prone person's back. They said their results did not support the theory that this could cause asphyxia.

The business of supporting law enforcement can be lucrative. Not all of the researchers testify frequently in court, but when they do, experts associated with the network typically earn $500 to $1,000 an hour for testimony and depositions. Lexipol charges thousands of dollars to review and write policies for police departments. The Institute for the Prevention of In-Custody Deaths also charges for its training programs and promotes its business partners.



Experts from the network presented at the $695-a-head conference held last month in Las Vegas by the Institute for the Prevention of In-Custody Deaths. Credit...Joe Buglewicz for The New York Times

At the institute's annual conference in Las Vegas last month, law enforcement officers, lawyers and physicians attended presentations, some by experts in the network, on such topics as ways to subdue or restrain a suspect, and how to manage publicity when someone is injured or dies in custody. The price of admission: $695.

One-Sided Track Record

The Times found that, with rare exceptions, when members of this network weigh in on a case in court, they side with the police.

In court documents and testimony, some of them have acknowledged their one-sided track record.

"That's like trying to retain Columbus to testify that the Earth is flat," Dr. Tom Neuman, a retired emergency medicine physician in San Diego, said in 2018 when asked if relatives of people who had died in police custody would ever hire him as an expert.

In a deposition this past summer, Dr. Vilke said it had been 20 years since he had last testified that an officer was likely to have contributed to a death. In an email to The Times, he said that he had "no independent recall" about specific earlier work, and "would disagree" that his work over the past 20 years almost always found that law enforcement was not to blame.

Mr. Peters, who founded the training institute, is an exception. He has testified regularly on behalf of people harmed in police encounters, or their families, but his testimony has been limited to whether police procedures were followed. After Mr. Floyd was killed in Minneapolis, Mr. Peters released a video statement saying that putting a knee on a someone's neck should not be permitted under any use-of-force policy.

Making determinations on death-in-custody cases is a complex and inexact process. The people being detained in the instances reviewed by The Times were often on drugs or in psychological distress, and some had severe medical conditions.

But in death after death, The Times found, actions by law enforcement officers fell well outside the controlled conditions in the research the experts cited to exonerate them. Occasionally, the experts used identical language in different cases to rebut allegations and suggest alternative explanations for the deaths. They also emphasized common ailments like heart disease, or leaned heavily on the poorly understood notion of excited delirium.

DR. VILKE'S REPORT IN THE PEREZ CASE It should be noted that in the video Mr. Perez could be heard at least once saying, "I can't breathe" right after the backboard was placed on his back before Detective Calvert sat on the board.

At face value, one might think this evidence that Mr. Perez could not breathe or ventilate. However, when evaluating the video, Mr. Perez was clearly moving air in and out of his lungs at this time, talking loudly, and had no clinical evidence of ventilatory restriction at the time he was saying this. What was likely happening is that Mr. Perez was having a cardiac event not a pulmonary event.

DR. VILKE'S REPORT IN THE BARRERA CASE THE FOLLOWING MONTH

(DIFFERENCES HIGHLIGHTED) It should be noted that in the video that after being handcuffed on laying on the ground, Mr. Barrera could be heard stating, "I can't breathe" shortly after he asked for some water. At face value, one might think this evidence that Mr. Barrera could not breathe or ventilate. However, when evaluating the video, Mr. Barrera was clearly moving air in and out of his lungs very well, talking loudly, and had no clinical evidence of ventilatory restriction at the time he was saying this. What was likely happening is that Mr. Barrera was having a cardiac event not a pulmonary event.

In 2010, officers in Palm Desert, Calif., responding to a 911 call found 48-year-old Robert Appel delusional. Multiple officers pinned him facedown with their knees. When they turned him over after what the officers described as a short time, he was dead. Dr. Vilke blamed cardiac arrest caused by undiagnosed kidney failure.

Mathew Ajibade hit his girlfriend in January 2015 while experiencing what his family described as a manic bipolar episode. Deputies in Savannah, Ga., beat him, handcuffed him, put him in a restraint chair with a spit mask over his face and shocked him four times in the groin with a Taser.

Image

Mathew Ajibade was beaten, restrained and repeatedly shocked with a Taser. Two experts from the network offered two different alternative causes of death.

Dr. Mash and Dr. Wetli both reported that the actions had not led to Mr. Ajibade's death. Dr. Mash blamed natural causes associated with his bipolar disorder and said he exhibited signs of excited delirium, while Dr. Wetli said it was related to sickle cell trait, a typically benign condition in which a person carries one of the two genes that together cause sickle cell disease.

Assessing the effectiveness of the opinions exonerating the police is difficult because most cases settle or are decided without explanation.

But several cases reviewed by The Times suggest that the research has had far-reaching effects — influencing investigator decisions in death inquests and giving officers assurance that their methods are safe. Some of the experts' legal statements and educational materials they have prepared for police called safety warnings by Taser and other law enforcement groups outdated or needlessly conservative.

In a deposition in April, the sheriff in Riverside County, Calif., cited studies backed by the law-enforcement-leaning experts to explain why his deputies held people facedown after handcuffing them. The sheriff, Chad Bianco, described the position as "the absolute safest place for any subject."

Two years ago, deputies working for Sheriff Bianco found Kevin Niedzialek, 34, bleeding from a head wound and behaving strangely after taking methamphetamines. They shocked him twice with a Taser, and held him facedown.

When they rolled him onto his back, Mr. Niedzialek was unresponsive. He died the next day.

Produced by Eden Weingart

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Police Policy for Sale

Lexipol, a private for-profit company, has quietly become one of the most powerful voices in law enforcement policymaking in the country.

Scott Morris Feb 13, 2019

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Gabriel Gomez Maciel was driving to church in Spokane, Washington, in 2014, when a minivan T-boned his pickup truck. The minivan driver apologized to Gomez, called police, and told the responding officer that he was at fault. But when the officer arrived, she detained Gomez while she contacted U.S. Border Patrol to ask about his immigration status.

According to a lawsuit filed by the Northwest Immigrant Rights Project and the American Civil Liberties Union of Washington, the officer kept Gomez there for nearly 90 minutes before Border Patrol agents arrived. Gomez had committed no crime and had no criminal history, and the officer didn't ask him any questions about his immigration status, according to the suit. Still, he was taken into Border Patrol custody and jailed for a month.

City officials said Gomez's detention was permitted under Spokane Police Department policy, which said, "officers may detain foreign nationals solely for alleged undocumented presence in the U.S. if the U.S. Immigration and Customs Enforcement (ICE) is contacted and can respond to take custody within a reasonable time." The ACLU argued that the policy violated the Fourth Amendment's protections from unreasonable search and seizure and the Washington state constitution. Last year, Spokane reached a settlement with Gomez and agreed to change its policies.

But identical language remains in place at law enforcement agencies across the country.

The policy was written by Lexipol, a California-based company that says it provides policies for approximately 3,400 police, fire, and correctional agencies in 35 states. It has grown rapidly over the last 15 years and saturated California, where its clients include more than 90 percent of law enforcement agencies. It's impossible to know just how far Lexipol's reach has spread as the company declines to provide a list of clients, saying that it is proprietary information. But according to an analysis published last year in the Texas Law Review, "although there are other private, nonprofit, and government entities that draft police policies, Lexipol is now a dominant force in police policymaking across the country."

As a result, a large portion of American police policy is now being drafted by a little-known private company with no public oversight.

The company has warned against changes meant to reduce excessive force and hold officers accountable.

The company, which now has more than 200 employees, was founded in 2003 by Bruce Praet and Gordon Graham, two former law enforcement officers who later became attorneys, and businessman Dan Merkle. Before founding Lexipol, Praet was an attorney for the Los Angeles police union and the Orange city attorney's office, where he handled police litigation.

In an interview, Praet rejected the ACLU's allegations that Lexipol's immigration policies were ever unconstitutional or illegal.

Lexipol advertises itself as a time-saver. Instead of drafting and adapting their own policies, departments can simply outsource the job to Lexipol, which pledges to protect agencies from lawsuits by keeping them up to date with the latest court decisions and legislation. To some city officials who rely on the policies, the appeal of the service is the updates and industry best practices it pledges to provide. The company's terms and conditions specify that Lexipol is not liable for its policies, leaving its clients responsible if the policies are challenged in court, like in Spokane.

But a risk management approach doesn't always square with better policing. In fact, Lexipol's focus on vaguer, more flexible policies can shield officers from accountability and hinder reform, legal experts say.

'Antiquated and counterproductive'

Since nationwide protests over police shootings of Black people erupted in 2014, civil rights groups and policy experts have called for greater oversight and community participation in police policymaking. Police officers are typically given a lot of freedom to decide how and when to use force or arrest someone, so internal policy manuals tend to be the most direct way to regulate officers' conduct—especially when they include strict guidelines on how to respond to particular situations.

A comprehensive report by a task force that President Barack Obama convened in the wake of the 2014 protests called on police departments to "collaborate with community members, especially in communities and neighborhoods disproportionately affected by crime," and to develop policies on issues like use of force and racial profiling.

Lexipol maintains that its policies incorporate a range of recommendations for best practices. But the company has warned against changes meant to reduce excessive force and hold officers accountable.

Alan Schlosser, an attorney with the ACLU of Northern California, said Lexipol's policies are "in some ways antiquated and counterproductive in terms of the direction that we would hope that police departments around the country have been moving."

In a 2017 blog post on Lexipol's website, Praet urged agencies not to make policy changes based on the National Consensus Policy on Use of Force, a model policy published by 11 law enforcement organizations, including the Fraternal Order of Police and the International Association of Chiefs of Police. Praet warned against using words like "shall" and "necessary," which would make particular provisions mandatory rather than optional for officers.

"While 'de-escalation' has become the latest buzzword and is conceptually advisable, agencies must exercise extreme caution when mandating action with the use of inflexible 'shalls,'" Praet wrote.

Praet argues against any policy that goes beyond the standard set by the U.S. Supreme Court, which established that officers' use of force should be evaluated on whether the force was "objectively reasonable" to an officer on the scene.

> They're designed for maximum protection against civil liability. It's not maximum protection of civil rights. – Andrea Pritchett, founder of Berkeley CopWatch and member of the Berkeley police review commission

"On a broader basis, agencies should not become more restrictive than what officers have learned to function under as dictated by the Supreme Court," Praet told The Appeal.

Lexipol has also argued against prohibitions on shooting into vehicles, a reform that many departments—including the NYPD since 1972 —have enacted.

"It's striking to me because it's a moment the organization placed litigation risks above what a wide range of policy experts have declared is good policy to reduce police killings," said Joanna Schwartz, who co-wrote the Texas Law Review analysis of Lexipol with Ingrid Eagly.

Lexipol's client base may be especially in need of good policy to reduce police killings. The *Washington Post* found that nearly three-quarters of departments that had at least one killing were in jurisdictions with 50 officers or fewer, and those smaller agencies are more likely to be Lexipol subscribers, according to Schwartz and Eagly's California analysis. Large jurisdictions like San Francisco or New York have the resources to draft their own policies and often incorporate robust civilian oversight.

Meanwhile, nonprofit groups have crafted their own policy guides for law enforcement agencies interested in reform. Schwartz points to the Black Lives Matter-affiliated Campaign Zero, which crafted a model use-of-force policy that incorporates practices from a number of major police departments, and the Immigrant Legal Resource Center, which published a guide featuring policies from several jurisdictions that protect immigrants from federal immigration enforcement. New York University School of Law's Policing Project also publishes policies based on input from community members, social scientists, and other experts.

"Most experts agree that police policymaking should draw from multiple sources," Schwartz and Eagley wrote, "including input from local community members regarding their experiences with

police, best practices recommended by policing experts, research about the impact of various policies, and analyses of the costs and benefits of different approaches."

Cutting out the community

Berkeley, California, was long considered a model of community-based policymaking that drew from a range of these sources. But since September, the city's police department has been issuing more standardized policies from Lexipol. Berkeley formed an independent, civilian-run Police Review Commission in 1973 to make recommendations on department policy. But many general orders written in collaboration with the commission over decades are being tossed, and commission members say they are overwhelmed reviewing hundreds of pages of policies from the Lexipol manual.

"They're not waiting for PRC approval for anything as far as I can tell," said Andrea Pritchett, a police review commissioner and the founder of Berkeley Copwatch. "And to be honest it's hard to tell what actual policies are in effect at this point, whether it's the old general orders or if they're just going ahead and training officers on some of the Lexipol policies."

The department says it has incorporated some commission recommendations and will make other adjustments to Lexipol policy. For example, Berkeley police spokesperson Officer Byron White said changes to the department's use-of-force policy, required by a 2017 settlement in a lawsuit over Black Lives Matter protests in 2014, would be incorporated into the Lexipol policy. He also said language would be retained from the department's orders on First Amendment activities and racial profiling once those policies are adopted.

"We believe the community deserves a police agency with up-to-date policies that are in line with industry standard best practices," White said. "Lexipol provides the Berkeley Police Department with regular policy updates in response to new legislation, new case law, and/or the evolving best practices from around the country."

> The company instructed officers to consider English proficiency to establish reasonable suspicion that a detainee has committed an immigration violation.

While Lexipol provides largely identical policy language to its subscriber agencies, Praet objects to the use of the word "boilerplate," saying that the policies are intended to be customizable by their client agencies. "We encourage them if they want to have civilian participation to customize policy," Praet said.

But in Pritchett's view, the policies she has seen from Lexipol focus on protecting the department rather than residents.

"They're designed for maximum protection against civil liability. It's not maximum protection of civil rights," Pritchett said of the Lexipol policies. "I find it to be very disappointing that the good work done by so many members of the community over so many years has been uniformly just tossed out."

Protecting the police

It's not clear whether the company is succeeding in protecting departments.

Even before the Spokane settlement, Lexipol's policies were called into question. In a 2015 policy update, the company instructed officers to consider English proficiency to establish reasonable suspicion that a detainee has committed an immigration violation. In 2017, the ACLU of Southern California sent a letter to Praet warning him that this and other elements of the policy encouraged profiling and illegal detentions in violation of the Fourth Amendment.

Lexipol has since updated its immigration policy in California to comply with the passage of Senate Bill 54, the "sanctuary state" law limiting cooperation between local law enforcement and federal immigration enforcement. In an interview with The Appeal, Praet reiterated that he disagreed with the ACLU's analysis. When asked if Lexipol still provided the same language to agencies in other states, Praet said, "Other states don't have SB 54."

A review of publicly available Lexipol policies found some that still allow officers to consider English proficiency, including in agencies in Arizona, Colorado, Illinois, Indiana, Maryland, Minnesota, Missouri, Ohio, Oklahoma, Washington and Wisconsin. Some of those agencies had updated their policies as recently as November, and the policy even remains in place in some cities in California.

The company's marketing material says agencies that use Lexipol are subject to fewer claims and pay out less money than agencies that do not. "If we can ensure that an agency is operating under current legal standards or best practices, then necessarily they're less vulnerable to liability," Praet said.

The company provided a one-page infographic showing agencies that use Lexipol paid 67 percent less for monetary legal claims and had 37 percent fewer claims than agencies that do not, based only on data from agencies in Colorado. It also said agencies that switched to Lexipol saw a 48 percent reduction in amounts paid and 45 percent reduction in claims, based only on agencies in Oregon. Lexipol says it is still conducting studies in other states.

Schwartz told The Appeal that Lexipol would not provide her with any underlying data to support claims that paying for its policies saves money in potential lawsuits. "It may be true but we have no verification that it is," she said.

Lexipol, however, won't become more transparent unless its subscribers demand it or governments regulate it, Schwartz said.

"Lexipol is making very significant profits off of local law enforcement agencies and local jurisdictions, and those agencies and jurisdictions are not demanding more transparency and are not demanding better info on lawsuit filings and payouts," Schwartz said. "Subscribers have a powerful hand if they use it to demand Lexipol be more transparent."