OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

POLICE ACCOUNTABILITY BOARD
FAIR & IMPARTIAL POLICING IMPLEMENTATION SUBCOMMITTEE

Board Members Calavita (Chair), Moore, Owens, Ramsey;
Public Members Halpern, Lippman

Thursday, May 19, 2022
3:00 P.M.

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/87490457845. 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 **874 9045 7845**. 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**

2. **PUBLIC COMMENT**

   (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.)

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

   Review Berkeley Police Department's 3-pronged approach to traffic enforcement.

4. SCHEDULE NEXT MEETING DATE(S)

5. PUBLIC COMMENT

(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.)

6. ADJOURNMENT

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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 or (510) 981-4950.

Attachment A

Internal

Berkeley Police Department Memorandum

To: Captain Rico Rolleri, Professional Standards Division

From: Sergeant Peter Lee, Audits and Inspections Sergeant

Date: January 18th, 2022

Subject: Traffic Safety Working Group

Summary:
Attached are the Traffic Safety Working Group recommendations developed towards implementing the Fair and Impartial Policing Task Force's recommendation on ***"focusing the basis for traffic stops on safety and not just low-level offenses."***

Background:
On February 23rd, 2021 the City Council referred recommendations from the Mayor's Fair and Impartial Policing (FIP) to the Berkeley Police Department for implementation. One of these recommendations was to "focus the basis for traffic stops on safety and not just low-level offenses." In order to address this recommendation, a working group consisting of various members of the Police Department with varying levels of experience was formed. The group consisted of a representative from every unit at the Police Department, a member of the Police Association leadership, and the Berkeley Transportation Division Manager, who is also a core staff member of the Berkeley Vision Zero Program. The working group met bi-weekly from the beginning of May until the task was completed in August. The following are members of this working group:

- Sgt. Peter Lee (Professional Standards Division)
- Sgt. Joseph Ledoux (Professional Standards Division)
- Ofc. Matt Yee (Operations Division - Community Service Bureau)
- Ofc. Corey Bold (Operations Division - Weekday patrol)
- Ofc. Benjamin Phelps (Operations Division - Weekend patrol)
- Ofc. Greg Michalczyk (Operations Division - Downtown Task Force)
- Ofc. Daniel Quezada (Investigations Division - Detective Division)
- Ofc. Nikos Kastmiler (Investigations Division - Traffic Bureau)
- Lt. Jen Tate (Investigations Division - Traffic Bureau)
- Sgt. Darren Kacalek (Berkeley Police Association)
- Farid Javandel (Berkeley Transportation Division)

Implementation:
On May 21st and June 9th, 2021 Interim Chief Louis provided the Department with written temporary direction on traffic enforcement. The Chief provided statistics, primary collision factors and directed officers to focus on those safety violations wherever they are observed. The working group viewed the Chief's direction regarding primary collision factors and built upon that information by looking further into Berkeley specific collision data as well the National Highway Traffic Safety Administration data concerning vehicle collisions. Additionally, the working group considered various other serious traffic

safety violations observed, based on their professional experience and training, not just primary collision factors that emerged from the data snapshot in Berkeley. The working group determined that in addition to primary collision factors, other serious traffic safety violations exist that need to be focused on as an element to promoting a safe environment for pedestrians, bicyclists and vehicles travelling upon the roadways within the City of Berkeley.

The Working Group developed a three-prong approach that focuses on primary collision factors, community member reports and observations reported to the Berkeley Police Department and community caretaking. Community caretaking functions consider safety violations that aren't always noted as the primary collision factor but can be a significant contributing factor in serious collisions.

Prong # 1 - Primary Collision Factors (Berkeley specific data)
Vehicle code violations resulting in severe and fatal collisions in Berkeley.

- Unsafe speed
- Pedestrian right-of-way at crosswalks
- Failure to yield for turns
- Red light violations
- Stop sign violations

Prong # 2 – Community Reports
Responding to calls from community members.

- Possible DUI driver (car reportedly swerving)
- Driver that's fallen asleep at a red light
- A variety of unsafe driving incidents occurring
- CRIME involving vehicle
  - Hit and Run
  - Crime with get-away vehicle description

Prong #3 – Community Caretaking
Examples of violations that are safety concerns but not necessarily PCFs

- Seatbelt violations
- Distracted driving (hands free law)
- DUI

Establishing the violations that applied to prong #3 was the primary focus of the working group. The importance of these safety violations is that several of these violations are not considered as *primary* collision factors in collision investigation reports. However, many primary collision factors are a direct result of the several of the violations listed in this section. The following are statistics and concerns that the working group considered in determining the above examples of violations for prong #3:

Seatbelt Violations

- 47% of passenger vehicle occupants killed in the US in 2019 were unrestrained

- Seatbelts can reduce the risk of fatal injuries by 60%

https://www.nhtsa.gov/risky-driving/seat-belts

Distracted Driving

- 2,841 lives lost in 2018 because of distracted driving
- 3,142 lives lost in 2019 because of distracted driving

https://www.nhtsa.gov/risky-driving/distracted-driving
https://crashstats.nhtsa.dot.gov/Api/Public/Publication/813111

Driving Under the Influence/ NHTSA's 24 DUI cues

- 10,142 deaths were the result of someone DUI in 2019
- DUI was the PCF for 62 collisions in Berkeley from 2015 to 2021.
  - This caused 103 injured persons

https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813060

From: **Liza Lutzker** <liza.lutzker@gmail.com>
Date: Mon, Apr 18, 2022 at 9:23 AM
Subject: comments/concerns around the Traffic Safety Working Group memo re: implementation of the FIP recommendations to focus "traffic stops on safety"
To: Williams-Ridley, Dee <DWilliams-Ridley@cityofberkeley.info>, <jlouis@cityofberkeley.info>
Cc: Arreguin, Jesse L. <jarreguin@cityofberkeley.info>, Trachtenberg, Tano <TTrachtenberg@cityofberkeley.info>, Harrison, Kate <KHarrison@cityofberkeley.info>, Naso, Christopher <CNaso@cityofberkeley.info>, Ben Bartlett <bennybartlett@gmail.com>, James Chang <jchang@cityofberkeley.info>, Robinson, Rigel <rrobinson@cityofberkeley.info>, Chen, Angie <AChen@cityofberkeley.info>, Terry Taplin <ttaplin@cityofberkeley.info>, Aguilar-Canabal, Diego <daguilarcanabal@cityofberkeley.info>, Droste, Lori <ldroste@cityofberkeley.info>, <erpanzer@cityofberkeley.info>, Bellow, LaTanya <LBellow@cityofberkeley.info>, Buddenhagen, Paul <PBuddenhagen@cityofberkeley.info>, Wong, Jenny <JWong@cityofberkeley.info>, Kitty Calavita <kccalavi@uci.edu>, Nathan Mizell <nmizell@berkeley.edu>, Héctor Malvido <hectormalvido@gmail.com>, Perfecta Oxholm <perfecta_oxholm@berkeley.edu>, Garland, Liam <LGarland@cityofberkeley.info>, Javandel, Farid <FJavandel@cityofberkeley.info>

Dear Ms. Williams-Ridley and Chief Louis,

I write to you today as a coordinating committee member of Walk Bike Berkeley, a member of the City's initial community advisory working group on Vision Zero, a public health researcher, and a member of the BerkDOT coalition. I also serve as a Transportation Commissioner and served as a Commissioner on the Re-Imagining Public Safety Taskforce, but am writing to you today in my personal capacity.

Following the Council meeting on 3/8, during which BPD presented a quarterly update on implementation of the Fair and Impartial Policing (FIP) recommendations, a request was made for additional background materials and specific policies supporting the presented materials. On 3/25, Ms. Williams-Ridley issued a memo from BPD providing this further information (that memo is attached for your reference). Contained in the memo is a more detailed explanation of the three-prong approach the BPD Traffic Safety Working Group developed to provide officers with a framework for ensuring that traffic safety needs are the primary focus of traffic enforcement stops.

First and foremost, I am very glad to see this positive movement toward implementing a policy that will focus traffic stops on safety. Thank you to you both and all the participants of the Traffic Safety Working Group for moving this effort forward.

Second, while I am happy to see that the Working Group does include Deputy Director of Public Works, Mr. Farid Javandel, I do have a concern that the working group of 11 members consists of 10 BPD staff and only one non-BPD member. While this is certainly better than having no one from the Transportation Division present, I think it would be critical and slightly more balanced to include in this working group at least one other Transportation Division staff, ideally Eric Anderson, who is the City's Vision Zero coordinator and the person closest to our City's Vision Zero collision data and efforts.

Finally, and most importantly, I want to provide my comments and concerns surrounding the proposed three-prong approach to traffic enforcement, which is a step in the right direction but is in need of significantly more refinement before being written into policy and implemented. My comments are broken down by prong:

1. Prong # 1 - Primary Collision Factors (PCF): I am heartened to see this approach being clearly articulated - thank you. My main suggestion here is that this needs to specifically be focused on PCF by party at fault. This is because the VZ data show that the violations listed under this prong generally lead to severe and fatal injury when a driver is at fault (see page 38 of the VZ annual report), and this will ensure that, for example, BPD won't use this prong to pull over bicyclists for stop sign violations (which only caused 1 of 344 severe or fatal injuries over 10 years (0.3%), vs.12 caused by drivers (3.5%)).
2. Prong # 2 – Community Reports: this is an area I'm concerned could be expanded pretty greatly without a lot of oversight and also is really subject to "profiling by proxy."
    - Allowing community members to call in any sort of traffic concern and have that turn into a stop opens the door to a pretty wide variety of scenarios in which someone might be stopped, so at a minimum I think the working group needs pre-specify which calls for service will and won't be investigated under the heading "A variety of unsafe driving incidents occurring."
    - Regarding profiling by proxy, note that the Auditor's report show's a 4-4.6x disparity in stops for Black drivers in comparison to their share of the population when looking at officer-initiated stops, but this disparity jumps to a 6.3x disparity for "suspicious vehicle" stops, which are mostly responses to calls for service from the community (see Fig 20). Not only is the disparity for these stops nearly 50% higher than for our already disparate officer-initiated stops, but only 13% of these "suspicious vehicle" stops even resulted in a citation or arrest (82% result in a warning and 5% in no enforcement). Compare this to regular vehicle stops, where 42% result in citation or arrest (see Fig 23). I recommend there be a further investigation into what types of calls for service actually result in citation/arrest and then take a closer look at those to specify what stops are allowed under this prong.
3. Prong #3 – Community Caretaking: this is the category that worries me the most as being completely not driven by Berkeley data despite the fact that the local data exist to make it data-driven. The working group is on the right track to say that there are other factors that aren't considered PCFs that relate to the risk of a severe or fatal injury, but these factors should be driven by Berkeley data, which are already being collected: all three examples that are listed under this prong are data elements that are already collected on the CHP 555 collision report form (see page 2 - "safety equipment," "inattention codes," and "sobriety-drug physical.") The analysis used to determine which PCFs to stop for should be replicated for these additional factors of concern to see whether (and which) other violations that are recorded are actually associated with severe and fatal collisions in the city of Berkeley.
    - My most major concern in the list of examples given relates to seat belt use. While I am a strong proponent of seat belt use, I would venture to guess that lack of seat belts are most definitely NOT a factor in leading to severe and fatal collisions on local Berkeley streets.
        - First and foremost, the majority (65%) of severe injuries and fatalities are among pedestrians and bicyclists (see pg 8 of VZ report) - none of these people would be put less at risk by seat belt use by drivers. The data cited in the memo is national data, which includes crashes on (a) interstates and (b) rural roadways, where drivers driving at very high speeds represent a significant number of severe and fatal collisions. Seat belt use is super important here because injuries are to drivers, but in Berkeley, where speeds are lower and the risk is overwhelmingly to non-drivers, seat belt use seems

less relevant. But honestly, we don't need to guess because we have the data and we just need to actually look at it!

- Secondly, and especially since I suspect seat belt violations aren't really about improving traffic safety in Berkeley, enforcing seat belt violations as a primary reason to stop folks is definitely associated with racial disparities. The ACLU found that, in Florida, Black drivers were nearly twice as likely than White drivers to be stopped for a seat belt violation. More causal data come from a law change in South Carolina, where prior to 2006, police were not allowed to pull people over for seat belt violations as the primary reason for a stop, but in 2006, the law changed to allow "primary" enforcement of seat belt laws (i.e., police could pull folks over just for a seat belt violation, not just ticket them for seat belt violation after some other infraction like speeding). This study by some of my colleagues showed that, when this change in law took place, the number of stops went up overall (by 30%), but went up more for Black drivers than white drivers (the increase for Black drivers was 5% higher than for white drivers), suggesting that there is differential enforcement of seat belt policy for Black and White drivers.

- As another point, I am again worried that the working group lists three "examples" of stops that they might conduct under this prong, whereas I'd like to see a pre-specified list that they are limited to and are not allowed to go beyond. They can get this pre-specified list by analyzing Berkeley data to see where the problems are.

Even if these adjustments to the three-prong approach are made, there will undoubtedly still need to be further adjustments to allow for secular trends and feedback as this approach is implemented (i.e, the eventual list that gets decided upon would not need to be set in stone for posterity). Intead, built into this decision-making process should be some sort of clear periodic review and update schedule, maybe every three-five years, to ensure that changes in driver behavior and changes in law are appropriately incorporated into the mix.

Thank you for taking the time to consider this input. Please feel free to follow up with any questions or comments you may have.

Sincerely,
Liza Lutzker