



Reimagining Public Safety Task Force

REIMAGINING PUBLIC SAFETY TASK FORCE SPECIAL MEETING

Wednesday, May 19, 2021
6:00 PM

| | |
|----------------------------------|--|
| District 1 - Margaret Fine | Youth Commission - Nayo Polk |
| District 2 - Sarah Abigail Ejigu | Police Review Commission - Nathan Mizell |
| District 3 - boona cheema | Mental Health Commission - Edward Opton |
| District 4 - Paul Kealoha Blake | Berkeley Community Safety Coalition - Todd Walker |
| District 5 - Dan Lindheim | Associated Students of U. California - Alecia Harger |
| District 6 - La Dell Dangerfield | At-Large - Alex Diaz |
| District 7 - Barnali Ghosh | At-Large - Liza Lutzker |
| District 8 - Pamela Hyde | At-Large - Frances Ho |
| Mayor - Hector Malvido | |

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Reimagining Public Safety Task Force will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/83826470218>. If you do not wish for your name to appear on the screen, then 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 **(669) 900 9128** and Enter Meeting ID: **838 2647 0218**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Please be mindful that all other rules of procedure and decorum will apply for Commission meetings conducted by teleconference or videoconference.

AGENDA

Preliminary Matters

1. Roll Call
2. Public Comment (*speakers will be limited to two minutes*)
3. Approval of Minutes
Draft minutes for the Commission's consideration and approval
 - Meeting of May 13, 2021

Discussion/Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. Public comments are limited to two minutes per speaker.

- Election of Chairperson
- Fair and Impartial Policing Presentation – Fair and Impartial Policing Working Group
- Fair and Impartial Policing Implementation of Recommendations – Jennifer Louis,
Interim Police Chief
- BerkDoT Overview – Liam Garland, Director of Public Works
- Subcommittee Discussion

Subcommittee Reports

Each report should be limited to 15 minutes.

- Policing, Budget & Alternatives to Policing – Members Opton, Ghosh, cheema, Dangerfield,
Lindheim, Mizell, Harger, Hyde
- Community Engagement – Members Fine, Harger, Malvido, Lutzker, Ejigu, Blake

Items for Future Agenda

Adjournment

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.

Any writings or documents provided to a majority of the Reimagining Public Safety Task Force regarding any item on this agenda are on file and available upon request by contacting the City Manager's Office attn: Reimagining Public Safety Task Force at psf@cityofberkeley.info, or may be viewed on the City of Berkeley website: <http://www.cityofberkeley.info/commissions>.

Written communications addressed to the Reimagining Public Safety Task Force and submitted to the City Manager's Office by 5:00 p.m. the Friday before the meeting will be distributed to members of the Task Force in advance of the meeting. Communications to the Reimagining Public Safety Task Force 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 the Reimagining Public Safety Task Force, 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 to the secretary of the task force. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary for further information.



COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at (510) 981-6418 (V) or (510) 981-6347(TDD) at least three business days before the meeting date.

Reimagining Public Safety Task Force Contact Information:

David White and Shamika Cole

Co-Secretaries, Reimagining Public Safety Task Force

City of Berkeley

2180 Milvia Street, 5th Floor

Berkeley, CA 94704

rpstf@cityofberkeley.info (email)

ANNOTATED AGENDA SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

Tuesday, February 23, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81676274736>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **816 7627 4736**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call: 4:06 p.m.

Present: Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani

Councilmember Kesarwani present at 4:13 p.m.

Action: M/S/C (Arreguin/Wengraf) to adopt a special rule for this meeting to limit public comment to one minute per speaker, with the option to yield time up to a total of four minutes.

Vote: Ayes – Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent - Kesarwani

Action Calendar – New Business

1. **Report and Recommendations From Mayor’s Fair and Impartial Policing Working Group**
From: Mayor Arreguin (Author), Councilmember Harrison (Author)
Recommendation:
 1. Accept and acknowledge the report from the Fair and Impartial Working Group (Attachment 1).
 2. Direct the City Manager to implement the following recommendations summarized below and detailed in full in Attachment 1, with at minimum, quarterly progress updates to the Police Accountability Board (PAB) and/or the Working Group.
 - Focus traffic stops on safety
 - Use a clear, evidence-based definition for stops of criminal suspects
 - Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
 - Eliminate stops for low-level offenses
 - Implement an Early Intervention System (EIS) and a risk-management structure
 - Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group
 - Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole
 - Require written consent for all consent searches
 - Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)
 - Fire racist police officers identified through social media and other media screens
 - Address Profiling by Proxy (Council develop & pass CAREN policy)
 - Require regular analysis of BPD stop, search, and use of force data
 - Make resources on police-civilian encounters more publicly available such as RAHEEM.org
 - Adopt Compliance and Accountability Mechanisms; -Hire consultant to develop implementation plan
 - For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complaint process with PAB
 3. Refer the following recommendations summarized below and detailed in full in Attachment 1 to be included in the process to reimagine public safety:

Action Calendar – New Business

-Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins

-Conduct a baseline community survey

4. Refer the following recommendations summarized below and detailed in full in Attachment 1 to the Police Review Commission, to be taken up by the Police Accountability Board when it is established

-Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4

-Require enhanced annual implicit bias training for police

-Accelerate Crisis Intervention Team (CIT) activity

5. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway:

-Fund and implement a specialized care unit for mental health crises

-Conduct a Capacity Study of police calls and responses and use of officer time outside of case work

6. Refer \$50,000 to the FY 2022 budget process for a consultant to develop an implementation plan as described in Attachment 1 and other minor costs the Department may confer

Financial Implications: See report

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

Action: 40 speakers. M/S/C (Arreguin/Harrison) to:

1. Accept and acknowledge the report from the Mayor's Fair and Impartial Policing Working Group;
2. Acknowledge and appreciate the work already completed or underway by the City Manager's Office and Police Department to implement policing reforms including:
 - Adoption and implementation of Policy 401, Fair and Impartial Policing
 - Public reporting of stop data on the BPD Open Data Portal
 - Initiation of the Center for Policing Equity study
 - Implementation of the Body Worn Camera Program
 - Early adoption of Racial and Identity Profiling Act (RIPA) data collection and reporting
 - Updates to the Use of Force Policy, Policy 300
 - Development and passage of Measure II to create a new Police Accountability Board
 - Launching of the Public Safety Reimagining process
3. Refer to the City Manager to implement the following recommendations summarized below, with quarterly progress updates to the City Council and Police Review Commission/Police Accountability Board (when established):

Implement a new evidence-based Traffic Enforcement Model

 - Focusing the basis for traffic stops on safety and not low-level offenses;
 - Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects;
 - Reaffirming and clarifying that the Berkeley Police Department will use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
 - Minimize or de-emphasize as a lowest priority stops for low-level offenses.

Action Calendar – New Business

Implement Procedural Justice Reforms

- Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops;
- Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback;
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole;
- Address Profiling by Proxy (PAB Policy Development, Dispatcher Training);
- Fire racist police officers identified through social media and other media screens;
- Require regular analysis of BPD stop, search, and use of force data;
- Make resources on police-civilian encounters publicly available such as through RAHEEM.org;
- For any individual detained, BPD officers shall provide a business card with info on the commendation and complaint process with PAB and Berkeley Police Department.

Request that the City Manager report back at a Council Work Session in three months with budget estimates for implementation (to be considered along with the FY 22 budget process), information on legal and operational considerations, and a short-term action plan of recommendations which can be implemented without the hiring of a consultant, and those that will require the assistance of a consultant and additional resources.

Compliance and Accountability Mechanisms

- The City Manager will create an implementation plan with the assistance of a consultant that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group's policy proposal. Long-term monitoring and assessments will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
 - The implementation plan will be presented to the Berkeley City Council for approval. Once the plan is approved by the City Council, the consultant's work is finished. Long-term monitoring and assessment will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
4. Refer the following recommendations summarized below to the Reimagine Public Safety process:
 - Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins
 - Conduct a baseline community survey.
 5. Refer the following training recommendations summarized below to the Police Review Commission, to be taken up by the Police Accountability Board when it is established, and consider the resources required to implement this expanded training:
 - Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4
 - Require enhanced annual implicit bias training for police
 - Accelerate Crisis Intervention Team (CIT) activity

Action Calendar – New Business

- Refer to the PRC/PAB to consider a departmental policy on requiring written consent for person searches and report back in 6 months.
6. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway and have been completed:
 - BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;
 - Fund and implement a specialized care unit for mental health crises;
 - Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.
 7. Refer \$50,000 to the FY 2022 budget process for a consultant to assist the City Manager/Police Department in the implementation of these recommendations and other minor costs the Department may confer; and also refer to the FY 2022 budget process a line item for police training for the new evidence-based stop program (costs to be determined by BPD).

Vote: All Ayes.

Adjournment

Action: M/S/C (Robinson/Taplin) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 7:07 p.m.

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #1: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group

1. Elizabeth Ferguson

Supplemental Communications and Reports 3

Item #1: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group

2. Material, submitted by Mayor Arreguin
3. Presentation, submitted by the Police Department
4. Janice Schroeder
5. Thomas Luce
6. Ben Gerhardstein, on behalf of Walk Bike Berkeley
7. Diana Bohn
8. Sivan Orr
9. Ali Lafferty

10. Allegra Mayer
11. Chimey Lee
12. Moni Law



To: Members of the City Council

From: Mayor Jesse Arreguín and Councilmember Kate Harrison

Subject: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group

RECOMMENDATIONS

1. Accept and acknowledge the report from the Fair and Impartial Working Group (Attachment 1)
2. Direct the City Manager to implement the following recommendations summarized below and detailed in full in Attachment 1, with at minimum, quarterly progress updates to the Police Accountability Board (PAB) and/or the Working Group
 - Focus traffic stops on safety
 - Use a clear, evidence-based definition for stops of criminal suspects
 - Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
 - Eliminate stops for low-level offenses
 - Implement an Early Intervention System (EIS) and a risk-management structure
 - Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group
 - Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole
 - Require written consent for all consent searches
 - Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)
 - Fire racist police officers identified through social media and other media screens
 - Address Profiling by Proxy (Council develop & pass CAREN policy)
 - Require regular analysis of BPD stop, search, and use of force data
 - Make resources on police-civilian encounters more publicly available such as RAHEEM.org

- Adopt Compliance and Accountability Mechanisms
 - Hire consultant to develop implementation plan
 - For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complaint process with PAB
3. Refer the following recommendations summarized below and detailed in full in Attachment 1 to be included in the process to reimagine public safety:
 - Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins
 - Conduct a baseline community survey
 4. Refer the following recommendations summarized below and detailed in full in Attachment 1 to the Police Review Commission, to be taken up by the Police Accountability Board when it is established
 - Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4
 - Require enhanced annual implicit bias training for police
 - Accelerate Crisis Intervention Team (CIT) activity
 5. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway:
 - Fund and implement a specialized care unit for mental health crises
 - Conduct a Capacity Study of police calls and responses and use of officer time outside of case work
 6. Refer \$50,000 to the FY 2022 budget process for a consultant to develop an implementation plan as described in Attachment 1 and other minor costs the Department may confer

RATIONALE FOR RECOMMENDATIONS

The working group organized its policy proposals into five council actions to ensure swift action on the measures directly related to reducing racial disparities, to avoid duplicating

efforts in parallel processes on public safety, and to ensure sufficient follow-up and oversight to build public trust.

Recommendation 2: Direct the City Manager to implement recommendations summarized above and detailed in full in Attachment 1, with at minimum, quarterly progress updates to the PAB and/or the Working Group (see list in recommendations above)

These recommendations received consensus support from the working group and were identified as top priorities for action. Many of these proposals are drawn from the best practices and recommendations provided by experts that spoke to the working group throughout their process. Additionally, the working group recommended quarterly progress updates on the implementation of these recommendations. These progress updates will be valuable for oversight and will allow for the department to share the efficacy of these efforts in reducing disparities, which will be easier to track and evaluate with the new RIPA data collection system.

Recommendation 3: Refer the recommendations summarized above and detailed in full in Attachment 1 to be included in the process to reimagine public safety

These proposals extend beyond the working group's focus on racial disparities in policing and are appropriate to consider in the process the City has initiated to reimagine public safety where there will be robust community engagement efforts.

Recommendation 4: Refer the following recommendations summarized above and detailed in full in Attachment 1 to the Police Review Commission, to be taken up by the Police Accountability Board when it is established

These recommendations, which relate to additional training for BPD are supported by the working group but require further consideration by the city's police oversight body. Additional training will require more resources to either coordinate with outside entities or to build internal capacity, which the Council will need to balance against other priorities.

Recommendation 5: Acknowledge and reaffirm the following recommendations summarized above and detailed in full in Attachment 1 that are already underway

The working group believes that these efforts can have an impact on reducing racial disparities. However, since the working group began formulating their recommendations, efforts to implement a specialized care unit and to conduct a

capacity study are already underway in the city. The working group supports and reaffirms these efforts.

Recommendation 6: Refer \$50,000 to the budget process for a consultant to develop an implementation plan as described in Attachment 1

The working group was clear that efficient and effective implementation of these recommendations is critical to reducing disparities and meeting the City's goal of fair and impartial policing. The working group believes the process would be more effective if facilitated by a consultant at a cost of approximately \$50,000. To that end, pages 8-9 in the The Mayor's Working Group on Fair and Impartial Policing Policy Proposals (Attachment 1) outlines a compliance and accountability mechanism that includes the hiring of an experienced consultant to draft an implementation plan. The plan should include a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group's policy proposal. Regardless of allocation, all of these recommendations have already been agreed to and can move forward without significant new resources. The working group acknowledges and expects that long-term monitoring and assessment will be the responsibility of the police oversight body.

BACKGROUND

The Mayor along with Councilmembers Harrison and Robinson convened the Fair and Impartial Policing Working Group on Thursday, November 14, 2019. The purpose of the Working Group was to analyze relevant information and develop a report and departmental action plan with short-term and long-term steps to address disparities in police stops, searches, use of force, and yield rate from stops, and to build a foundation for a subsequent community processes to build trust between Berkeley Police and the community. The working group met twice monthly from January through March 2020 when it suspended its work temporarily due to the COVID-19 pandemic. The working group resumed in May and continued meeting regularly via Zoom video conferencing through December when it finalized its recommendations via a consensus decision making process.

History of Council Action on Fair and Impartial Policing

The concept of "Fair and Impartial" policing has a long history in Berkeley, arising from anecdotal and statistical data regarding racially disparate policing outcomes.

In June 2014, the Council voted unanimously to approve a policy prohibiting racial profiling,¹ and On December 31, 2014, BPD issued General Order B-4 prohibiting racial profiling by law enforcement officers, clarifying the circumstances in which officers can consider race, ethnicity and other demographics, and to reinforcing procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way.² These new policies required officers to internally report demographic and other statistical data about vehicle and pedestrian stops.

In 2015, community advocates concerned with perceived disparities in policing, analyzed police stop data acquired through a Public Records Act request and found evidence for disparate policing outcomes in Berkeley.³ BPD subsequently contracted with the Center for Policing Equity (CPE), an academic non-profit focused on providing police departments and communities with actionable stop data analysis, to better understand Berkeley's data. In June 2017, Council voted to release a draft version of the study, which BPD provided in July 2017 and detailed further statistical evidence of racially disparate outcomes across police use of force and vehicle and pedestrian stops.⁴

In response to the CPE report and community feedback, Council took various unanimous legislative actions to address disparities, including:

1. Direction to City Manager to overhaul BPD Use of Force Policy with various deadlines (10/31/17);⁵
2. Direction to City Manager to track and address racial disparities with various deadlines (11/14/17);⁶

¹ Nico Correia, "Anti-racial profiling policy passes unanimously in Berkeley City Council," The Daily Californian, June 18, 2014, <https://www.dailycal.org/2014/06/18/anti-racial-profiling-policy-passes-unanimously-berkeley-city-council/>.

² "General Order B-4." *Berkeley Police Department General Order B-4*, December 31, 2014, https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/GO%20B-04_12-31-14.pdf.

³ Trevor Greenan, "Civil rights leaders say Berkeley police disproportionately stop, search underrepresented minorities" The Daily Californian, September 30, 2015, <https://www.dailycal.org/2015/09/30/civil-rights-leaders-say-berkeley-police-disproportionately-stop-search-people-of-color/>.

⁴ Draft Interim Center for Policing Equity Report, July 14, 2017, [https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/CPE%20Draft%20Report%2007142017\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/CPE%20Draft%20Report%2007142017(2).pdf).

⁵ Berkeley City Council Meeting Annotated Agenda, "Direct the City Manager and the Berkeley Police Department Regarding the Berkeley Police Department's Use of Force Policy" October 31, 2017, https://www.cityofberkeley.info/Clerk/City_Council/2017/10_Oct/Documents/10-31_Annotated.aspx.

⁶ The Council voted unanimously to "[d]irect the City Manager to track yield, stop, citation, search and arrest rates by race, develop training programs to address any disparities found, and implement policy and practice reforms that reflect cooperation between the Berkeley Police Department ('BPD'), the Police Review Commission ('PRC') and the broader Berkeley community" and that the "City Manager will report findings in September 2018 and annually thereafter, using anonymized data." Council followed up with additional legislation including legislation to update the department's use of force policies. See Berkeley

3. Appropriation of \$50,000 for BPD to hire a Data Analyst (12/5/17).⁷

In response to a lack of progress towards addressing referrals to the City Manager and a related Police Review Commission report entitled *To Achieve Fairness and Impartiality*, Council unanimously adopted legislation on April 24, 2018 requiring a written Departmental Action Plan to study and address disparate policing outcomes. Council also directed that the City Manager convene a task force/working group, including representatives of the BPD, Berkeley Police Association, PRC, interested community organizations (particularly of constituencies of color), and academic experts, to ensure that the final plan was “effective and broadly accepted.”⁸ Council stipulated that the working group and action plan process would convene upon the issuance of the final CPE report, be run by a professional mediator/facilitator, and that the group would report back with an action plan within one year’s time.

Although the final CPE report was released in May 2018,⁹ the City Manager neither convened the working group nor did the Department release an action plan. Councilmember Harrison also submitted a supplemental Council informational report on October 30, 2018 noting the absence of a City Manager report on racial disparities findings as required by November 14, 2017 Council motion.¹⁰ The first report was to coincide with the 2018 Crime Report.

Ahead of the May deadline for the City Manager to present a Departmental Action Plan, the Police Chief on behalf of the City Manager submitted an April 30, 2019 referral

City Council Meeting Annotated Agenda, “Direct the City Manager to analyze and address disparate racial outcomes in policing and implement policy and practice reforms,” November 14, 2017, https://www.cityofberkeley.info/Clerk/City_Council/2017/11_Nov/Documents/11-14_Annotated_Agenda.aspx.

⁷ “Mayor’s Recommendations for Allocation of Unassigned General Fund Excess Equity,” December 5, 2017, https://www.cityofberkeley.info/Clerk/City_Council/2017/12_Dec/Documents/2017-12-05_Item_B2_Mayor%E2%80%99s_Recommendations_-_Supp.aspx.

⁸ Berkeley City Council Meeting Annotated Agenda, “Accept and Acknowledge Report from the Berkeley Police Review Commission, ‘To Achieve Fairness and Impartiality,’ and Refer Key Recommendations to the City Manager for Policy Development and Consideration in September 2018 Report to City Council,” April 24, 2018, https://www.cityofberkeley.info/Clerk/City_Council/2018/04_Apr/Documents/04-24_Annotated.aspx.

⁹ Final Center for Policing Equity Report, May 20, 2019, https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2018/Berkeley%20Report%20-%20May%202018.pdf

¹⁰ “Informational Report about Absence of City Manager Report on Racial Disparities Findings as Required by November 14, 2017 Council Motion -2018 Mid-Year Crime Report,” Councilmember Harrison, October 30, 2018, https://www.cityofberkeley.info/Clerk/City_Council/2018/10_Oct/Documents/2018-10-30_Supp_1_Reports_Item_29_Supp_Harrison_pdf.aspx.

response regarding the status of various Council disparate policing referrals.¹¹ The report briefly noted that the Department was still seeking a request for proposal to “support analysis of stop data, to create tools to facilitate data analysis, to foster community, and to create a community engagement strategy.” This update was provided more than year and a half from the first Council referral to address racial disparities, and after various other missed deadlines.

Council referred the Chief’s response to the Public Safety Committee, and on June 3, 2019 the Committee voted unanimously, in recognition of a lack of progress to date and the urgency of the matter at hand that the Mayor supplant the City Manager and convene the task force in “an expeditious manner” and as outlined in the April 2018 Council referral.¹²

Fair and Impartial Working Group Development and Process

At the July 23, 2019 Council Meeting, Mayor Arreguín announced that he would independently convene a task force through his office on an ad hoc basis with assistance from the offices of Councilmember Harrison and Robinson.¹³ Building from the council referral, the Mayor convened a group with the following community representatives: Elliot Halpern (ACLU Northern California), Mansour Id-Deen (NAACP), Héctor Malvido (Latinxs Unidos de Berkeley), Izzy Ramsey and Kitty Calavita (Police Review Commission), Nathan Mizell (UC Berkeley ASUC and PRC), Perfecta Oxholm (PhD candidate at UC Berkeley¹⁴, [Moni Law \(Berkeley Community Safety Coalition\)](#), and Jim Chanin (Civil Rights Attorney). The Mayor met multiple times with the City Manager and Chief Greenwood in developing a framework for the working group and discussing a work plan. Chief Greenwood and his Staff were invited to all meetings, and the group had consistent participation from Chief Greenwood, Captain Rolleri, Lieutenant Montgomery, Lieutenant Tate, and Officer Matt Yee. Goldman Public Policy

¹¹ “Referral Response: Update on Various Referrals and Recommendations Regarding Stop Data Collection, Data Analysis and Community Engagement,” Berkeley Police Department, April 30, 2019, https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-30_Item_29_Referral_Response_Update_on_Various.aspx

¹² Berkeley City Council Public Safety Committee Meeting Annotated Agenda, “Referral Response: Update on Various Referrals and Recommendations Regarding Stop Data Collection, Data Analysis and Community Engagement,” June 3, 2019, <https://www.cityofberkeley.info/uploadedFiles/Clerk/2019-6-3%20Annotated%20Agenda%20-%20Public%20Safety.pdf>

¹³ Berkeley City Council Meeting Annotated Agenda, “Referral Response: Update on Various Referrals and Recommendations Regarding Stop Data Collection, Data Analysis and Community Engagement (Reviewed by the Public Safety Committee),” July 23, 2019, https://www.cityofberkeley.info/Clerk/City_Council/2019/07_Jul/Documents/07-23_Annotated_Agenda_pdf.aspx

¹⁴ Perfecta Oxholm, PhD Student, <https://gspp.berkeley.edu/directories/phd-students/perfecta-oxholm>

student Arlo Malmberg was brought on to the BPD team to assist with data analysis. Leadership from the Berkeley Police Association were invited to all meetings but did not attend.

At its first meetings the working group chose Izzy Ramsey as the Chair, and developed a work plan. The working group organized their work into five phases and invited relevant subject matter experts locally and nationally to speak to the group to inform their research and recommendations. Key takeaways from the working group meetings and presentations for each phase are summarized below. For a more detailed meeting by meeting account, minutes, and in some cases full meeting recordings and presentations, are in the publicly accessible google drive.¹⁵

Phase 1: Establishing Process and Information Gathering

- The working group focused on building a common understanding of past work surrounding this issue and progress that has been made in this field.
- The group reviewed the open data portal to understand how data is currently collected and presented.
- The group provided feedback on draft RFP language for BPD to hire a professional facilitator. Ultimately, it was determined that there was not a sufficient need and the money was reallocated to support Arlo Malmberg's data analysis for the department.
- Councilmember Harrison presented an overview of outstanding referrals related to fair and impartial policing.¹⁶
- The group reviewed a spreadsheet of relevant council referrals and received a progress update on each item from BPD.¹⁷

Phase 2: Quantitative Analysis

- The group discussion included analysis of possible drivers of disparities, the disparity themselves, appropriate metrics to analyze disparities, and policies that can be implemented to ensure fair and impartial policing.
- Jack Glaser, Professor at UC Berkeley, an expert in the field of bias, stereotyping, and racial profiling provided the group with an overview on the

¹⁵ Mayor's Fair and Impartial Working Group Google Drive,
<https://drive.google.com/drive/folders/19xsOXIJvYtXQzaeJZzmSg2Mk3pJT6JYq?usp=sharing>

¹⁶ Kate Harrison, "Key Council Referrals" January 22, 2020,
https://drive.google.com/file/d/10EjYrd7EzExXlfmA2gVsX8-LtXrr2_-O/view?usp=sharing,

¹⁷ Spreadsheet on Fair and Impartial Policing Items, January 24, 2020
<https://drive.google.com/file/d/18ofsjsFAE7r3k-3REmVYU5nncQtCrZxL/view?usp=sharing>

drivers of disparities in policing.¹⁸ Key drivers of disparity include deployment patterns, crime category priorities, officer bias, complaint bias and the possibility of higher rates of offending among certain racial groups.

- Perfecta Oxholm, working group member, and PhD candidate at UC Berkeley working with Professor Glaser presented her analysis of stop data using the open data portal.¹⁹ Her analysis reviewed all the available metrics from the time the CPE report was published to present day and found similar trends with the exception of 2018 when staffing levels were at a historic low.
- George Lippman presented his memo “Racial Disparities in Berkeley Policing” (Attachment 6).
- There was robust discussion about the challenges in using census data as a baseline measurement for analyzing disparities. Ultimately, the group acknowledged that using yield rates, the ratio between stops and arrests or contraband seized was among the key metrics to analyze disparities and bias until more refined data was available through the new RIPA system implemented in October 2020. The idea is that in the absence of discrimination or bias, officers should cite and arrest people of color at the same rates as white people.
- Arlo Malmberg and Officer Matt Yee presented BPD’s a beta version of a fair and impartial policing data dashboard, which included analysis of yield rates, a “veil of darkness test,” and a measurement of implicit bias in officer deployment. The presentation acknowledged that there are disparities according to yield rates, and there is evidence that officer decisions may be biased.²⁰

Phase 3: Qualitative Analysis

- Originally, the working group hoped to conduct surveys and listening sessions to gather qualitative input on experience with the Berkeley Police Department. With limited staff resources to support this effort, a subcommittee of working group members formed in February to do outreach through community based organizations. These efforts were complicated and ultimately postponed due to COVID-19, however some of the recommendations speak to the continued desire to gather qualitative input on the relationship of community members and the BPD.

¹⁸Jack Glaser, “Understanding Disparities in Police Stops” February 5, 2020, <https://drive.google.com/file/d/1nJp1jIBKFVYHKtw633cwJQ5rjqWdjgOL/view?usp=sharing>

¹⁹ Perfecta Oxholm, “Hit Rate Analysis, Berkeley Police Department Data February 2015-July 2019” February 2020, <https://drive.google.com/file/d/1xlg9uY7vGqAEnrjchHzeC-wukCF6-DN9/view?usp=sharing>

²⁰ Arlo Malmberg and Matt Yee, BPD Data Dashboard Screenshots, June 2020, <https://drive.google.com/file/d/1AvUFZwLM0X6y1XksTJd0s1POCo5FPJ9R/view?usp=sharing>

Phase 4: Formulating Recommendations

- The working group held several meetings in the summer of 2020 to listen to presentations on best practices to reduce disparities in stops and searches and improve police and community relations. Expert recommendations were incorporated into a list of high-level recommendations. A subcommittee of the civilian working group members developed these into a detailed report with rationales for each recommendation.
- BPD presented on piloting a new approach, called “Problem Oriented Policing” to address disparities with a data-driven focus.²¹ The goal of this approach is to limit stops that provide low public safety value and enhance data-driven policing to deploy officers more appropriately.
- Dr. Frank Baumgartner, Professor of Political Science at University of North Carolina at Chapel Hill, author of the book *Suspect Citizen*, presented to the group. Dr. Baumgartner encouraged the group to consider whether current police policies generate enough public safety value to warrant the impact that a stop and search has on an individual and a community. He provided two concrete recommendations, which the group ultimately incorporated: (1) reduce the number of people pulled over for investigatory stops that are not safety-related, and (2) require people to sign a written consent form before officers search their vehicle.²²
- Oakland Police Captain Chris Bolton gave a presentation to the group titled “Precision-Based Approaches to More Legitimate Policing.” Captain Bolton’s presentation provided an overview of how police under his command in North Oakland reduced stops of black people from 58% to 35% in two years without a corresponding increase in crime. He emphasized the importance of clear leadership, utilization of data, and a risk-management program to review trends in officer behavior and community crime.²³²⁴
- Former Stockton Police Department Captain Scott Meadors, presented training on procedural justice, implicit bias and trust building, which he has been a leader in statewide. He emphasized teaching about the history of American policing, and that each trust-building workshop must be built on the unique community

²¹ Berkeley Police Department, “Addressing Racial Disparities in Enforcement Outcomes”, July 1, 2020, https://drive.google.com/file/d/1x5NZzT9F6AZaArl_kEFyAYItB7q8Ka20/view?usp=sharing

²² Frank Baumgartner, *Suspect Citizens* Ch. 9 “Reforms that Reduce Alienation and Enhance Community Safety”, <https://drive.google.com/file/d/17I0vaDd1GOOxqV3zEvUu4eXxeWkT24Tn/view?usp=sharing>

²³ Captain Chris Bolton, “Precision Based Approaches to More Legitimate Policing” July 15, 2020, https://drive.google.com/file/d/1XuRt3Qo-_Ty5SL06Gh9rWK3s8zmlZ5Xl/view?usp=sharing

²⁴ Fair and Impartial Working Group Meeting Recording, July 15, 2020 <https://drive.google.com/file/d/1sbTwwY2EAMj9pFDythECFsXPTdnXZ0Ph/view?usp=sharing>

circumstances. There is no one-size fits all approach. Mr. Meador's work has been featured in the New York Times, and Citylab.²⁵

- Brandon Anderson presented to the group about his non-profit Raheem, an independent service for reporting police conduct in the United States. When people report to Raheem, they do three things: (a) file a complaint on their behalf, (b) connect them to local advocacy groups, and (c) connect them to free legal representation. Raheem has developed a widget to allow reporting from third-party websites to have true community-centered reporting. The working group ultimately recommended the City use Raheem or something similar, and also Anderson's suggestion of requiring police to provide a business card that includes information on how to file a complaint.²⁶²⁷

Phase 5: Developing Final Report and Next Steps

- The subcommittee of the working group provided their draft recommendations to the whole group and requested written feedback by BPD. The working group spent several meetings discussing each recommendation in detail.
- After these discussions, the subcommittee developed a revised set of proposals and a full account (Appendix C) of how BPD feedback was incorporated into the recommendations. The working group meetings were extended and postponed several times to provide time for additional dialogue and feedback on revised recommendations.
- The working group finalized the report through a consensus process. They first identified the recommendations that had complete agreement. Then, they worked through the list of proposals and made revisions on the recommendation itself and/or the recommended Council action to achieve agreement.
- During this final phase, BPD implemented its new data collection system to comply with RIPA. The department provided the group a walkthrough on how the new custom data collection system will work and the group asked questions on the data categories and method of collection.²⁸²⁹

²⁵Michael Friedrich, "A Police Department's Difficult Assignment: Atonement" Citylab, October 23, 2019, <https://www.citylab.com/equity/2019/10/police-violence-history-community-trust-reconciliation/600544/>
Tina Rosenberg, "A Strategy to Build Police-Citizen Trust" New York Times Opinion, July 26, 2016, <https://www.nytimes.com/2016/07/26/opinion/a-strategy-to-build-police-citizen-trust.html>

²⁶ Fair and Impartial Working Group Meeting Minutes, August 5, 2020
<https://docs.google.com/document/d/1Yg6x32rCaWa38z427608t9ttXB51oZBg9DUNEQ4U8Jo/edit>

²⁷ About Raheem, <https://www.raheem.ai/en/about>

²⁸ Berkeley Police Department, "AB 953 Racial and Identity Profiling Act of 2015 (RIPA)", September 16, 2020 <https://drive.google.com/file/d/1yZ-9n4qJZQyM80tK1yTN6o1BRexF5WLz/view?usp=sharing>

²⁹Berkeley Police Department, RIPA App Presentation Screenshots, September 16, 2020
<https://drive.google.com/file/d/1PzwJrZjXAMJCNbQqB7-lIG2wOJtZal3G/view?usp=sharing>

ENVIRONMENTAL IMPACT

There are no direct environmental impacts as a result of adopting the working group's recommendations.

FINANCIAL IMPLICATIONS

\$50,000 to hire a consultant to develop an implementation plan. Additional costs include staff time to implement the recommendations and provide updates.

CONTACT PERSON

Jesse Arreguín, Mayor, (510) 981-7100

Attachments:

1. The Mayor's Working Group on Fair and Impartial Policing Policy Proposals
2. Cover Letter, Members of Fair and Impartial Working Group, December 17 2020
3. ~~Dissent Letter~~ - "[Dissenting Opinion on the Accountability Mechanism](#)" by Nathan Mizell, Perfecta Oxholm, Héctor Malvido, and Jim Chanin, December 23, 2020
4. Center for Policing Equity Report,
5. PRC Report
6. "Racial Disparities in Berkeley Policing, Explanation of Statistical Methodology", January 30, 2020 George Lippman
7. "Key Points - BPD Stop Data", December 6, 2019, George Lippman
8. "Racial Disparities in Berkeley Policing, Update on Pandemic Period, March 15 to June 12, 2020" George Lippman, June 19, 2020
9. "Berkeley Protest Curfew Resulted in More Racialized Policing, BPD Stop Disparities: May 31 through June 2, 2020" George Lippman, July 4, 2020
10. Spreadsheet of Outstanding Referrals, January 24, 2020
11. Berkeley Police Department Stop Data March 15- June 2020
12. Berkeley Police Department Stop Data March 15--June 12, Pt. 2

The Mayor's Working Group on Fair and Impartial Policing Policy Proposals

Developing and implementing reforms that will effectively reduce existing racial disparities requires changes at several levels. The following recommendations include setting new policy, updating institutional structures, and mandating individual accountability. Their implementation and ongoing effectiveness require supportive leadership, transparency and police accountability.

Executive Summary. Mayor's Working Group on Fair and Impartial Policing (hereafter, "the working group") focused on reducing racial disparities in stops and searches and improving community relationships damaged by the racially disparate practices in stops and searches.

This report advances the following recommendations for BPD practices:

- Focus on public safety and eliminate stops for low-level offenses not directly impacting public safety.
- Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.
- Institute annual implicit bias training and scenario-based training for California Penal Code 13519.4, prohibiting racial or identity profiling.
- Establish a truly effective Early Intervention System and risk management process to ensure department accountability and identify officers who are outliers in stops, searches, dispositions, and outcomes.
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.
- Require written consent for consent searches.
- Include evaluations of cultural competence in hiring and promotion, and fire officers who have expressed racist attitudes and/or are identified as members of racist groups.

The report also advances these recommendations for the Berkeley City Council and/or the City of Berkeley:

- Hire a consultant to create a plan for monitoring and reporting on the implementation of these recommendations.
- Ensure the creation of a Specialized Care Unit with crisis-response field workers, as included in the recent contract for a community-process to establish an SCU.
- Ensure a robust community engagement process, including annual surveys and community forums
- Require quarterly analysis of stop, search, and use of force data by City Auditor and/or the PRC.
- Adopt and carry out the compliance and accountability system outlined in this document.

Proposed Actions

Table 1 provides a proposed action for each recommendation in the body and appendices of this draft report.

| <u>Action</u> | <u>Recommendations</u> |
|---|--|
| Direct the City Manager to implement key recommendations, with at minimum, quarterly progress reports to the PAB and/or the Working Group | <ul style="list-style-type: none"> • Focus traffic stops on safety • Use a clear, evidence-based definition for stops of criminal suspects • Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria • Eliminate stops for low-level offenses • Implement an Early Intervention System (EIS) and a risk-management structure • Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group • Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole • Require written consent for all consent searches • Address Profiling by Proxy (PAB Policy Development, Dispatcher Training) • Fire racist police officers identified through social media and other media screens • Address Profiling by Proxy (Council develop & pass CAREN policy) • Require regular analysis of BPD stop, search, and use of force data • Make resources on police-civilian encounters more publicly available such as RAHEEM.org • Adopt Compliance and Accountability Mechanisms <ul style="list-style-type: none"> a. Hire consultant to develop implementation plan • For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complain process with PAB |
| Refer to be included in the process to reimagine public safety | <ul style="list-style-type: none"> • The City should create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized and includes a basic report card and quarterly neighborhood check-ins • Conduct a baseline community survey. |
| Refer to the Police Accountability Board | <ul style="list-style-type: none"> • Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4 • Require enhanced annual implicit bias training for police • Accelerate Crisis Intervention Team (CIT) activity |
| Follow-up with PAB and/or Fair and Impartial Working Group | <ul style="list-style-type: none"> • Evaluate the impact of these proposals on racial disparities in stops and searches, using regular updates to stop and search data • Conduct a regular community survey and annual community forums on Police and Public Safety |
| Recommendations already underway | <ul style="list-style-type: none"> • Fund and implement a specialized care unit for mental health crises • Conduct a Capacity Study of police calls and responses and use of officer time outside of case work |
| Outstanding - No Action Recommended | <ul style="list-style-type: none"> • Include community member participation and feedback in the hiring process • Include the following for Performance Appraisal Reports |

Reducing Disparities in Vehicle, Pedestrian, and Bicycle Stops & Searches:

1. Focus traffic stops on safety

According to Dr. Frank Baumgartner's 2018 book, *Suspect Citizens*, "Safety stops are those aimed at enforcing the rules of the road to decrease the likelihood of an accident" (pg. 191). The types of stops falling into this traffic safety category may include:

- Excessive speeding¹
- Running a stop sign or stop light
- Unsafe movement
- Driving while intoxicated

2. Use a clear, evidence-based definition for stops of criminal suspects

Dr. Baumgartner's analysis² reveals that "investigatory stops" (stops that use a minor infraction as a pretext for investigating rather than to prevent or reduce dangerous behavior pgs. 53-55) allow for the most officer discretion and open the possibility of implicit bias or "reliance on cultural heuristics" (pg. 191). Based on analyses of more than 9 million stops, Baumgartner's team found that 47% were investigatory and that they added substantially to the racial disparity statistics. Thus, investigatory stops and stops of criminal suspects shall be restricted to those made because the person and/or vehicle fits a description in relation to a specific crime.^{3,4}

Since the Oakland Police Department (OPD) has implemented evidence-based methods, the number of African American civilians stopped by the OPD has declined. Since Oakland Police Department has implemented evidence-based methods, the number of African American civilians stopped has declined from 19,185 in 2017 to 7,346 in 2019, a drop of 62% and a stop disparity rate reduction of almost 60%,⁵ with no corresponding increase in crime (Captain Chris Bolton presentation, 7/15/2020).

3. Use race and ethnicity as relevant factors when determining law enforcement action only when provided as part of a description of a crime and suspect that is credible and relevant to the locality and timeframe of the crime and only in combination with other specific descriptive and physical characteristics.^{6,7}

Specific descriptive and physical characteristics may include, for example: the gender, age, height, weight, clothing, tattoos and piercings of the suspect, the make and model of the car, and the time and location of the crime. Simple race and ethnicity alone are not

¹ <https://www.idrivesafely.com/dmv/california/laws/traffic-tickets-and-violations/>, <https://www.martenslawfirm.com/blog/2015/november/what-is-excessive-speeding/>

² *Suspect Citizens*, pp. 190-192

³ Eberhardt, J. L. (2016). *Strategies for change: Research initiatives and recommendations to improve police-community relations in Oakland, Calif.* Stanford University

⁴ This definition was created by Dr. Jennifer Eberhardt in collaboration with the Oakland Police Department.

⁵ This is the percentage of African American stops within all discretionary non-intel led stops made by Police Area 2 officers fell from 76% in September 2017 to 31% in September 2018

⁶ Southern Poverty Law Center, 10 Best Practices for Writing Policies Against Racial Profiling

⁷ CA Penal Code

satisfactory as bases for reasonable suspicion under the law, and amount to racial profiling.

4. Eliminate stops for low-level offenses

According to the presentation to the Working Group by Captain Bolton of the OPD, Oakland significantly reduced stops for these low-level, non-public safety related offenses, resulting in a reduction in the number of African Americans being stopped and a reduced stop-disparity rate, with no effect on crime rates (homicides and injury shootings went down during the same period). There is often overlap between “investigatory stops” and “stops for low-level offenses,” as the latter may be used as a pretext for investigation. The types of stops falling into these categories may include:

- Equipment violations
- Not wearing a seat belt
- Improper use of high beams
- Violating a regulation (e.g. expired license tags)
- Stop purposes recorded as “other”

5. Implement an Early Intervention System (EIS) and a risk-management structure

These measures to ensure individual accountability have operated successfully in Oakland and many other localities for some time. They involve identifying officer outliers in stops, searches, and use of force and their outcomes and examining the reasons for racial disparities. Existing software programs to assist BPD in implementing an EIS could be utilized or BPD can build its own system.

These programs operate to identify officers who are a danger either to themselves or to the public. They are referred to as “risk management” systems because they help limit the financial liability of the City and hence its taxpayers. They may address a broad range of concerns, but in this document, we only consider their use with regard to racial disparities. Elements of this process include the following steps:

- a. Evaluate and assess stop incidents for legality and enforcement yield.
- b. Analyze data to determine whether racial disparities are generalized across the force or are concentrated in a smaller subset of outlier officers or squads/groups of officers. To the extent that the problem is generalized across the department, supervisors as well as line officers should be re-trained and monitored, and department recruitment, training, and structure should be reviewed. In addition, department policy should be examined for their impacts.
- c. Where disparities are concentrated in an individual or a group of officers, with no race-neutral legitimate evidence for this behavior in specific cases, initiate an investigation to determine the cause for the disparity. Evaluate whether there are identifiable causes contributing to racially disparate stop rates and high or low rates of resulting enforcement actions exhibited by outlying officers. Determine and address any trends and patterns among officers with disparate stop rates. In the risk management process, the responsible personnel in the chain of

DRAFT

command reviews and discusses the available information about the subject officer and the officer's current behavior.

- d. Absent a satisfactory explanation for racially disparate behavior, monitor the officer.. Options for the supervisor in these cases include reviewing additional body-worn camera footage, supervisor ride-alongs, and other forms of monitoring. Further escalation to intervention, if necessary, may include a higher form of supervision, with even closer oversight. If performance fails to improve, command should consider other options including breaking up departmental units, transfer of officers to other responsibilities, etc. The goal of this process is to achieve trust and better community relations between the department as a whole and all the people in Berkeley. Formal discipline is always a last resort unless there are violations of Department General Orders, in which case this becomes an IAB matter.
- e. Identify officers who may have problems affecting their ability to make appropriate judgments, and monitor and reduce time pressures, stress and fatigue on officers.
- f. An outside observer from the PRC shall sit in on the risk management and/or EIS program. Reports from these meetings, or other accurate statistical summary, can be given to the commission without identifying any officers' names.
- g. Report the results of this data analysis quarterly.

6. Immediately release the following data to the Working Group:

- a. All data given to the Center for Policing Equity (CPE) - This data includes:
 - i. Calls for Service (January 1, 2012 - December 2016)
 - ii. Use of Force Data (January 1, 2012 - December 31, 2016)
 - iii. Crime Report Data (January 1, 2012 - December 31, 2016)
- b. STOP DATA - this data shall include information on "call type," similar to the data used by the Center for Policing Equity. The timeframe would be January 1, 2012 to present.
- c. USE OF FORCE DATA - This data was used in the analysis presented in the CPE report. Along with the CPE data, it would be helpful to have more recent Use of Force data. The timeframe would be January 1, 2012 to present.
- d. DEIDENTIFIED STOP & ARREST DATA - To determine if there are any problematic patterns among certain officers, or perhaps pairs of officers, data that we can be attached to anonymized individuals. The timeframe for this data would be January 1, 2012 to present.
- e. ADDITIONAL ARREST DATA - Currently, the Open Data Portal posts arrest data from January 1, 2015. The timeframe for this data would be January 1, 2012 to present day.
- f. ADDITIONAL CALLS FOR SERVICE - Currently, Calls for Service data are posted for the last 180 days. The timeframe for this data would be January 1, 2012 to present.

7. Limit warrantless searches of individuals on supervised release status, including probation, Post Release Community Supervision (PRCS), and parole, absent evidence of imminent danger

California is one of a handful of states that allow high-discretion, suspicionless searches of probationers and parolees. The following was passed by the Police Review Commission on 9/23/2020 and the Working Group endorses this approach:

“In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion. However, under Berkeley policy, officers shall not detain and search a person on probation or parole solely because the officer is aware of that person’s probation or parole status.

The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions, should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime.”

8. Require written consent for all consent searches

Baumgartner (pp. 195-209) and his team found that in cities requiring written consent to perform a consent search, these searches declined by 75%. Since people of color are disproportionately the subjects of these searches, it makes sense that a significant reduction would lead to fewer consent searches for people of color.

Examining three cities in North Carolina, Baumgartner found that in cities where there was resistance by leadership to the new written-consent policy, there was a substitution effect, such that as consent searches went down, probable cause searches went up. However, the substitution effect seemed to be directly correlated with leadership priorities. The chapter concludes, “We showed that a combination of leadership directives and simple initiatives can alter the relationship a department can have with their community” (pg. 213). *This speaks to the need for clear buy-in from BPD leadership.* The Working Group recommends that the BPD adopt the written consent form used in North Carolina, a copy of which can be found [here](#).

9. For any individual detained, BPD officers shall provide a business card with the following information on the back

- a) A website similar to RAHEEM that collects information on police-civilian encounters.⁸
- b) Contact information for filing a complaint with the PRC or its successor, the Police Accountability Board.

⁸ <https://www.raheem.ai/en/>

10. Address Profiling by Proxy⁹

Police should not be dispatched to calls that are motivated by caller bias or malintent, e.g., a claim that someone is suspicious with no corroborating reason.¹⁰ These types of calls harm police-community relationships and undermine the authority of the police. To protect against profiling by proxy the police department shall:

- a. work with PRC and other appropriate agencies to formulate a policy that defines and remedies profiling by proxy.
- b. enhance Dispatcher training to evaluate calls and add implicit bias training for 911 Dispatch.

An article on profiling by proxy by the Vera Institute of Justice recommends including 911 Dispatch in implicit bias training as a method for reducing issues with profiling by proxy. Anti-bias training will also help Dispatchers become aware of their own biases. For example, when they receive calls about behavior the complainant may dislike but is not illegal—e.g., “too many” black teenagers in the public park.¹¹

Hiring & Evaluation

The successful hiring and evaluation of police officers is an important part of creating a healthy and high-functioning police department. The types of people the department hires, and the effective evaluation of police officers are important in determining police department culture. Researchers on policing have repeatedly found that organizational culture is the single most important determinant of officer behavior.¹² Human Resource Management research supports including the evaluation for cultural competency as important in improving agencies. The key components for a high degree of cultural competency are: awareness, attitude, knowledge, skills.

11. Fire racist police officers identified through social media and other media screens

A third-party agency, hired by the City of Berkeley, or agency outside the police department should screen police officers and potential new hires’ social media accounts for racist or violent comments, affiliations to racist groups whether public or private, including private groups expressing racist or violent rhetoric.

- a. BPD shall immediately fire all identified officers who have engaged in racist or violent actions or commentary online.
- b. A social media screen of officer online conduct shall be done annually.

⁹ Profiling by proxy may occur “when an individual calls the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against—e.g., ethnic and religious minorities, youth, homeless people” (retrieved from The Vera Institute of Justice).

¹⁰ Captain Bolton of the Oakland Police Department made improvements on profiling by proxy using an approach that educated citizens on focusing on criminal behavior instead of suspicion when calling police.

¹¹ “[Avoiding 'profiling by proxy'](https://www.vera.org/blog/police-perspectives/avoiding-profiling-by-proxy),” Vera Institute of Justice, March 13, 2015, <https://www.vera.org/blog/police-perspectives/avoiding-profiling-by-proxy>

¹² [Organizational Culture and Police Misconduct](#)

Recommendations for Council

Community Engagement and Feedback - When the City of Berkeley pledged to consider reducing funding for the police department by 50%, it also committed itself to shifting to new and alternative methods of community safety. To effectively understand and implement new and alternative safety practices and services, the City of Berkeley must look to its residents for ongoing insight and feedback. The City must collect and utilize regular community feedback to inform the city on community investment priorities including police department policies and practices and future direction. To that end:

12. Address Profiling by Proxy¹³

To protect against profiling by proxy City Council should:

- a. Introduce profiling by proxy legislation similar to [CAREN Act](#) in SF, which would hold residents accountable for using police in a biased manner.
- b. Issue a quarterly review of data from 911 Dispatch, for the PRC or City Auditor to help understand the extent of calls from community members presenting 'biased' suspicions."

13. Require regular analysis of BPD stop, search, and use of force data

The City Auditor and/or PRC shall update the [analysis](#) of BPD data completed by the [Center for Policing Equity](#) and the PRC and publish the results on the BPD website every quarter. This report shall include stop, search, and use of force analysis. —

Ensuring Timely and Effective Implementation:

Since the fall of 2017, the police department has received 37 separate policy or legislative directives to address the racially disparate treatment of City of Berkeley residents. Those directives are the result of extensive and on-going racial disparities in police department stops, searches, and use of force. As of the drafting of this report, at least 30 of those directives remain outstanding with **no plan** for implementation.

We respectfully recognize that the role of the Mayor's Working Group on Fair and Impartial Policing is to advise the Berkeley City Council and staff. We recognize that we are not in a position to make final decisions; rather, our role is to offer advice and recommendations to the Council. The Mayor's Working Group is committed to ensuring that the policy recommendations outlined in this proposal are not added to the long list of unaccomplished directives. Therefore, we have included an accountability system with our policy proposal. This accountability system

¹³ When an individual calls the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against—e.g., ethnic and religious minorities, youth, homeless people; retrieved from The Vera Institute of Justice

will ensure that the changes necessary to establish fair and impartial policing and rebuild public trust occur.

Compliance and Accountability Mechanisms:

- A. Working in partnership with the Mayor's Working Group on Fair and Impartial Policing and within six months from approval of the proposal (extended for good cause), the City Manager hires an experienced consultant to help draft an implementation plan that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the working group's policy proposal.
 - i. If a consultant is not hired within six months from approval of the proposal, the Council should move to item "E" below.
 - ii. If a consultant is not hired within six months (extended for good cause), the working group should remain formally organized by the Mayor until a consultant is hired and a plan is approved.
- B. The Working Group, Police Chief, and the consultant will create an implementation plan that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group's policy proposal. Long-term monitoring and assessments will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
- C. The implementation plan will be presented to the Berkeley City Council for approval. Once the plan is approved by the City Council, the consultant's work is finished. Long-term monitoring and assessment will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
- D. The City Manager and the Berkeley Police Chief should do everything within their power to implement the items outlined in the plan and timeline set forth and approved by City Council.
- E. The City Council should set the implementation of this plan as a priority in the annual evaluation of the city manager.
- F. If the City Manager does not ensure that the Police Department implements the plan in accordance with the timeline, the City Manager should be held accountable.
 - i. In the event of a new Berkeley Police Department Chief: the Mayor's Working Group, on Fair and Impartial Policing, the new Police Chief and the City Manager shall meet and agree upon an updated timeline to monitor, assess, and report on the implementation of the items outlined in the plan approved by City Council.
 - ii. In the event of a new City Manager: the Working Group, the Berkeley Police Chief, and the new City Manager shall meet and agree upon an updated timeline to monitor, assess, and report on the implementation of the items outlined in the plan approved by City Council.

If these recommendations are adopted and implemented promptly, we expect that the disparate stop data can show significant improvement in the near future. We expect the City Manager and the Police Chief to implement these programs with enthusiasm and dedication, as they reflect the constitutional imperative of equal protection under the law.

DRAFT

Appendix A: Additional Recommendations

The following recommendations are also supported by the working group, which suggests referring them to the reimagining process and/or follow-up with the Police Accountability Board and the Fair and Impartial working group. See table 1 for recommended actions.

14. Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4

- a. The training must include specific, relevant examples of prohibited actions and how to conduct law enforcement activities in an unbiased manner.¹⁴
- b. MILO and VIRTRA are two such scenario-based training programs¹⁵
- c. An independent observer shall review the training and report back to the PRC or its successor on the quality of the training.

15. Require enhanced annual implicit bias training for police

There is scant scientific evidence that implicit bias training works to change implicit biases over the long-term. However, agency-wide, enhanced, and well-executed training that occurs on a regular basis could have a positive effect on the cultural environment of the police department and on expectations for behavior. Regular, required implicit bias training provides an expression of institutional support for fairness, which is important in improving relationships across groups¹⁶and improving agency culture.

- a. Officers should receive intensive anti-racism and implicit bias training as part of their core instruction in the first 90 days of employment, and an annual 'refresher' course.
- b. An independent observer shall attend the training and report back to the PRC on the quality of the training.

16. Accelerate Crisis Intervention Team (CIT) activity

- a) Require 40 hours of CIT training in the first year of employment.
- b) Collect data on CIT calls to allow BPD to make informed decisions about staffing and deployment so that a CIT officer is available for all shifts in all districts to respond to every CIT call.
- c) Develop a CIT reporting system so that each deployment of a CIT officer is well documented. CIT officers should submit narrative reports of their interactions with persons in crisis so the appropriateness of the response can be evaluated in an after-action analysis.
- d) Implement an assessment program to evaluate the efficacy of the CIT program as a whole and the performance of individual CIT officers. A portion of a CIT officer's performance review should address skill and effectiveness in CIT situations.

¹⁴ [CA Penal Code](#)

¹⁵ MILO in an Oakland setting

¹⁶ Allport, G. W., Clark, K., & Pettigrew, T. (1954). The nature of prejudice.

17. The City of Berkeley should conduct annual community forums on Police and Public Safety:

- a. Identifying community-based leaders and impacted individuals for control of the envisioning process.
- b. Placing the process under the Office of the Mayor, not the City Manager. Upon establishment of the Police Accountability Board, place the process under the auspices of the Police Accountability Board.
- c. Including the creation of community-based measures of safety as part of the first round of the envisioning process.¹⁷
- d. Once community-based measures of safety are created, including these measures in the annual community survey (see item 17) and publishing the data as per item 17b.

18. The City of Berkeley should conduct an annual community survey.

Sample surveys include the [Milwaukee survey](#) and the [Dallas survey](#).

- a. Data collected should be shared publicly via the City of Berkeley website or an online community dashboard.

19. The City should create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized and includes:

- a. A basic “Report Card,” in collaboration with the PRC or its successor the Police Accountability Board, based on community feedback for each reform. This will enable the Department to take the ‘community’s temperature’ on how the implementation of the reforms are being perceived by the public.
- b. Quarterly neighborhood ‘check ins’ for relationship building .

20. Conduct a Capacity Study

- a. Release data including but not limited to 911 dispatch calls, BPD stops and interventions, written reports, and body-worn camera footage to the City Auditor and/or PRC for analysis.¹⁸
- b. Conduct an audit on officer down time to determine the percentage of police time spent outside of responding to calls for service and how police officers spend this time. Share this information with the City Auditor and/or PRC for analysis for use in the capacity study.
- c. Conduct an audit of police overtime to determine the factors that contribute to the use of overtime .

¹⁷ This process should follow or be modeled after the [Everyday Peace Indicators](#) process

¹⁸ This study could be time-limited and would not have to be a comprehensive analysis of internal data; a random sample done correctly would suffice to determine how best to restructure the response to a variety of problematic situations.

- d. Identify what percentage of calls for service require a unique police response and what percentage of calls could be better served by an alternative response with the goal to focus police response on issues that can best be responded to by police officers.
- e. These data can also assist in identifying calls suspected of profiling by proxy.

21. Fund and implement a specialized care unit for mental health crises

Fully fund and implement the specialized care unit as swiftly as possible in order to remove mental health and homeless encounters from the responsibility of BPD. Research has found that individuals with mental illness are at a higher risk of police stops, use of force,¹⁹ and a fatal police encounter.²⁰ These disparities increase for Black and Latinx individuals. Specialized mental health crisis units are a safer option for those experiencing a mental health crisis than a police response and a more cost-effective use of public resources.²¹ The Council's July 14, 2020 decision to create a Specialized Care Unit will better serve people in Berkeley experiencing a mental health crisis. The Working Group supports transitioning away from police as first responders to 911 calls related to mental health and towards trained, unarmed mental health first responders.

The Berkeley Community Safety Coalition in collaboration with Councilmember Bartlett are developing a proposal related to a pilot program transitioning away from sworn police as first responders to professional mental health first responders. The Working Group supports this effort.

22. Make resources on police-civilian encounters more publicly available, including:

- a. A website similar to RAHEEM that collects information on police-civilian encounters.²²
- b. Contact information for filing a complaint with the PRC or its successor.

23. Evaluate the impact of these proposals on racial disparities in stops and searches, using regular updates to stop and search data

¹⁹ [Mental Illness, Police Use of Force, and Citizen Injury](#)

²⁰ [Deaths of people with mental illness during interactions with law enforcement](#)

²¹ [CAHOOTS Media Guide, 2020](#)

²² <https://www.raheem.ai/en/>

Appendix B: No Action Recommended

The following recommendations were proposed and discussed at the working group but no action is recommended by the Council.

1. Include community member participation and feedback in the hiring process

For all potential sworn officer hires interviewed by BPD, Berkeley residents should be included in the hiring process. For example, citizens of Berkeley should be allowed, in an equitable manner, to participate in Berkeley Police Department orals boards for prospective police officers or some comparable interview process.

2. Include the following for Performance Appraisal Reports

As the current Performance Appraisal Reports General Order P-28 requires, objectives of the report are to provide for fair and impartial personnel decisions, and to provide an objective and fair method for the measurement and recognition of individual performance according to prescribed guidelines.²³

- a. Officers should exhibit cultural competency and anti-racist conduct, and that should be included in their City of Berkeley Performance Appraisal Report (Police Sworn-Operations Division Personnel²⁴)
- b. Add to standards 1 and 2 of the Performance Appraisal Report as follows:
 - i. Provides excellent customer service and represents the Department well as a culturally competent and anti-racist officer
 - ii. Is respectful of both the people they serve and the people they serve with, in a culturally competent and anti-racist manner
 - iii. All officers should aspire for an “Above Average” “Exceeds Expectations” or “Exemplary Performance” mark each year with “Meets Minimum Standards” as the basic floor (with expected increase in performance level in subsequent years)

3. Include community and peer input into the annual review of sworn police officers.

For all BPD sworn officers, Berkeley residents should be included in the annual review process. For example, citizens of Berkeley should be allowed, in an equitable manner, to provide feedback into the annual review of Berkeley police officers.

²³ Previous language “a. An amendment to General Order P-28 would add a reference to 'cultural competency' and reassurances by the community that the officers are evaluated on their conduct in relationship to a person's gender, race, ethnicity, religion or gender identity/orientation. B. Performance Evaluation, Section B, page 2; #1 and #2 include language of cultural competency “

²⁴ [on p. 2 of 8 under Section “B” “Professionalism.”](#)

Appendix C – Incorporation of BPD Feedback

Please note: quoted text in this section references written feedback on the working group draft proposal provided by Chief Greenwood of the Berkeley Police Department.

Focus traffic stops on safety.

The BPD are in agreement with this item. In July 2020, representatives from BPD (Officer Matthew Ye and Arlo Malmberg) presented a “problem-oriented policing” strategy to the working group. Further, Captain Bolton of the Oakland Police Department presented an intelligence-led policing strategy to the working group. According to Captain Bolton, OPD was able to significantly reduce stops for low-level and non-public safety related offenses using an intelligence-led policing strategy, resulting in a 70% reduction in the number of African Americans being stopped with no effect on crime rates. BPD stated they plan to “establish a formal strategy focusing officers’ discretionary stops on intelligence-based and traffic safety stops.”

Additional updates include: the sample list of stops falling into the category of unsafe driving behavior was updated based on BPD feedback; the working group deleted a reference made to “misdemeanor” stops as BPD pointed out that most traffic violations are “infractions” and not misdemeanors.

Use a clear, evidence-based definition for stops of criminal suspects.

BPD stated they plan to establish a formal strategy focusing officers’ discretionary stops on intelligence-based stops. Chief Greenwood stated that an “intelligence based stop strategy aligns with [use of a clear, evidence-based definition for stops of criminal suspects].”

The BPD strategy as described focuses on general “intelligence” related to crime patterns. The BPD strategy does not respond to specific descriptions of perpetrators, nor is it clear what types of intelligence BPD would be using for stops of criminal suspects. An intelligence-based stop strategy can and should be implemented in concurrence with the items outlined in the working group’s proposal. However, the working group is not convinced by Chief Greenwood’s response that the BPD strategy will effectively address this item. The Working Group is recommending a shift in stop policy to address issues with racial disparities in stops. The BPD response as well as the strategy they have offered has not provided evidence there will be any shift from the status quo.

Use race and ethnicity as relevant factors when determining law enforcement action only when provided as part of a description of a crime and suspect that is credible and

relevant to the locality and timeframe of the crime and only in combination with other specific descriptive and physical characteristics.

BPD stated “overall agreement” with this recommendation. BPD did not directly address the specific recommendation that race and ethnicity be used *only* in combination with other descriptive features of the individual or alleged offense. BPD wrote “[d]epending on circumstances, simple race and sex in a description can be sufficient for a terry [sic] stop.” It is the working group’s understanding that, absent other factors, race is insufficient to constitute the reasonable suspicion required for a Terry stop (i.e. detaining an individual based on reasonable suspicion of illegal activity, including the ability to handcuff and search the outer clothing of the individual detained). Furthermore, BPD’s feedback that “In a 1538 Motion to Suppress hearing, the court makes a determination if there [sic] factors associated with a detention are sufficient,” is inappropriate in this context. While the statement is factually accurate, the purpose of this recommendation is to establish a stop policy based on the Constitution, not to place the burden on civilians to go to court for relief.

Eliminate stops for low-level offenses

In response, BPD stated the plan to establish a formal strategy focusing officers’ discretionary stops on intelligence-based stops. Further, BPD stated, “We would support our Intelligence Based Stop Strategy through increasing our analysis capability, so that more information can be more efficiently provided to officers, Officers working in this manner would be more likely to have a higher yield even when making fewer stops, because of their focus on crime investigations.” It remains unclear to the working group how BPD plans to increase their analysis capacity or how that would impact racial disparities in stops.

In responses to items throughout the draft working group policy proposal, BPD referenced an early transition to the data collection methods required by the California Racial and Identity Profiling Act (RIPA). BPD announced an early transition to data collection methods in line with RIPA requirements at an October 2020 working group meeting. As of the writing of this report, data collected according to RIPA standards (hereafter “RIPA data”) has not been released on the BPD open data portal.

It is important to note: using the data currently available on the open data portal, a hit rate cannot be calculated. Hit rates are commonly used to measure the presence of racial bias in searches. A hit rate is calculated by dividing contraband found during a search (e.g. weapons, drugs, etc.) by the total numbers of searches, within racial categories (e.g. Black or white). The logic of the hit rate is straightforward: in the absence of discriminatory behavior, officers should find contraband on searched minorities at the same rate as on searched whites. A similar hit rate indicates a similar standard for searches is being used across different groups. If searches of racial minorities turn up contraband at lower rates than searches of whites, this suggests there is a double standard, where minorities are being stopped and searched on the basis of less evidence. BPD did not collect contraband information before the transition to RIPA. Therefore, there was no way to calculate a true hit rate during the period the working group met. Transitioning to RIPA will be helpful to determine racial bias in search decisions, but it does not

provide information on racial bias in stop decisions. Most importantly, the collection of RIPA data does not directly address or work to mitigate existing racial disparities.

In a previous draft, this item included a reference to BerkDOT, but we removed it after BPD pointed out that inclusion was an unnecessary addition.

We also deleted a recommendation that officers provide those they stop with a reason for the stop, since BPD feedback cited section 14 of the T-3 Traffic Enforcement policy which requires officers to provide “explanation of the circumstances giving rise to the enforcement contact.”

Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4.

BPD responded that it “conducts all mandated training.” However, the working group item recommends including scenario-based training with relevant examples of what is prohibited, and includes an independent observer. This addition of specific scenario-based training is not currently mandated by the state, and it is this specific scenario-based training that the working group is recommending. This recommendation for specific scenario-based training comes from the Southern Poverty Law Center, “10 Best Practices for Writing Policies Against Racial Profiling.”

Require enhanced annual implicit bias training for police.

BPD agrees with the importance of implicit bias training and stated officers currently get implicit bias training while in training academy. BPD also cited budget constraints would limit the department’s ability to provide annual implicit bias training. The working group understands the constraints of budget cuts, but anticipates that some of the recommendations proposed here (e.g. eliminating stops for many low-level infractions) may free up resources for this important training that has the potential to trigger the kind of cultural shifts that are necessary.

This item also includes a policy recommendation that an independent observer attend the training and report back to the police oversight body (the PRC or its successor). Chief Greenwood stated he was open to the idea of an outside observer but had concerns that difficult conversations might be chilled by outside observers. The working group understands and appreciates these concerns.

Implement an Early Intervention System (EIS) and a risk-management structure.

Chief Greenwood's feedback expressed interest in this approach and in learning how the Oakland program works, stating “Open to learning about how Oakland does this work. Learning how the analysis works will help us understand the resources needed to do this work.” In response, a member of the working group put Chief Greenwood in touch with the OPD official in charge of that program. To date he has not taken advantage of that opportunity.

Further, BPD feedback references RIPA data, stating “With the collection of RIPA data, we will have richer data to examine. This will help us focus on data on stops, searches, and yields.” According to the National Police Foundation, in their report, *Best Practices in Early Intervention*

DRAFT

System Implementation and Use in Law Enforcement Agencies, an “early intervention system [EIS] is a personnel management tool designed to identify potential individual or group concerns at the earliest possible stage so that intervention and support can be offered in an effort to redirect performance and behaviors toward organizational goals. The ideal purpose of an EIS is to provide officers with resources and tools in order to prevent disciplinary action, and to promote officer safety, satisfaction and wellness.”

The collection and analysis of RIPA data could be helpful to identify *racial implications* related to identified individual or group red flag behavior. However, the collection of RIPA data does not meet two core components of an EIS system: 1) identify potential individual or group red flag behavior (as early as possible), and 2) intervene to redirect performance and behaviors toward organizational goals. In short, the collection of RIPA data does nothing to address this item.

The working group considers this recommendation for an EIS and risk management system to be among its top priorities.

Immediately release the following data to the Working Group:

All data given to the Center for Policing Equity (CPE) - This data includes:

- a. Calls for Service (January 1, 2012 - December 2016)
- b. Use of Force Data (January 1, 2012 - December 31, 2016)
- c. Crime Report Data (January 1, 2012 - December 31, 2016)

STOP DATA - this data shall include information on “call type,” similar to the data used by the Center for Policing Equity. The timeframe would be January 1, 2012 to present.

USE OF FORCE DATA - This data was used in the analysis presented in the CPE report. Along with the CPE data, it would be helpful to have more recent Use of Force data. The timeframe would be January 1, 2012 to present.

DEIDENTIFIED STOP & ARREST DATA - data that we can be attached to anonymized individuals. The timeframe for this data would be January 1, 2012 to present.

ADDITIONAL ARREST DATA - Currently, the Open Data Portal posts arrest data from January 1, 2015. The timeframe for this data would be January 1, 2012 to present day.

ADDITIONAL CALLS FOR SERVICE - Currently, Calls for Service data are posted for the last 180 days. The timeframe for this data would be January 1, 2012 to present.

The BPD responded by referring to RIPA data collection, stating “RIPA data and current BPD officers seems to be the best path forward.” BPD also states, “Approximately 50 officers have been hired since late 2016,” and, “BPD staff are working on a number of technical projects, and resources are limited, especially after recent budget deferrals.”

Based on conversations related to this item which occurred in formal working group sessions, the working group believes the BPD comment related to the hiring of 50 officers was intended to communicate that the BPD department before 2016 (reflected in the CPE data), is different from the BPD today. The working group believes this may be true. The best way to determine if this

DRAFT

is true is to have access to the data we have requested so we can determine if there have been any measurable shifts in the racial disparities found by CPE.

It is important to note that a member of the working group used publicly available BPD stop data to redo a portion of the CPE analysis. This publicly available stop data was from 2015 to 2019. Therefore, this data included the two years of the CPE report (2015 - 2016) and two and a half years after the CPE report (2017-2019). This analysis was presented to the working group. This analysis found persistent racial disparities in stops and searches during this time. In other words, the pattern of racial disparities found in the CPE analysis persisted through 2019, over two years after the CPE report was released. It is also important to note that this analysis only includes stops and searches. It does not include an analysis of use of force. A complete CPE redo has not been possible because **BPD has never released any data to the working group.**

The working group understands budgetary constraints are impacting BPD. Further, the working group understands that it is possible BPD does not have some of the data we request, e.g. de-identified stop and arrest data. When BPD has made it clear they do not have the data, we have updated our data requests. For example, an early draft of the working group's policy proposal included a request for weapons and contraband data. BPD has made clear they do not have weapons and contraband data, so the working group removed this data request from our final proposal.

For the remaining data requests, BPD has not provided a compelling reason for why they have not released this data. At the very least, BPD should be able to turn over all the data that was shared with CPE as this data has already been put into a format which allowed it to be shared. Moreover, BPD feedback that, "BPD staff are working on a number of technical projects," seems to indicate that BPD has staff capable of providing and perhaps already working on the data we request.

The Working Group agrees that RIPA data will be useful going forward. However, this item speaks to data from the past, beginning in 2012, and includes data given to the CPE as well as additional data. For the City Council to determine if and how the policy shifts implemented in this proposal have been effective in reducing racial disparities, it must have data from before the implementation of RIPA and this data must be more extensive than stop and search data. The data the working group has requested in this proposal would allow City Council to properly measure the impacts of the policy changes outlined in this proposal. RIPA data will help create a richer picture but in isolation it cannot tell us any information about changes to racial disparities that result from the policy changes outlined in this proposal.

Limit warrantless searches of individuals on supervised release status, including probation, Post Release Community Supervision (PRCS), and parole, absent evidence of imminent danger

BPD agrees with this recommendation which has passed the PRC with BPD collaboration.

Require written consent for all consent searches

BPD agreed with this item and cited the collection of RIPA data. Chief Greenwood's feedback states, "BPD will make it a policy that the department's existing consent search form shall be used when consent to search is sought by an officer. Existing body worn camera policy already captures the consent request interaction. RIPA data will specifically address this issue: Data will indicate when a consent search was performed, and what the outcome (yield) is providing specific data for analysis. The data will support understanding of how often it occurs, the circumstances under which it occurs, and the outcomes."

In mid-December, the Working Group received a copy of the consent form used by the BPD; however, as noted above in #8, the Working Group recommendation is that the BPD adopt the written consent used in North Carolina. It is imperative that any consent form be used consistently and include the printed name and signature of the person consenting to the search as well as clear indications of what property the person consents to search, rather than blanket statements that the consent includes all aspects of the person and their property.

Additionally, while the written feedback did not make this distinction, conversations with Chief Greenwood at Working Group meetings indicated that perhaps BPD focus for written consent was on car or traffic searches only. This policy item recommendation includes all searches-- traffic, pedestrian, bike, etc.

The Working Group acknowledges that body worn cameras may capture the consent process but does not support only the use of body worn cameras to capture this process. The intent of this item is to require written consent for any person, or their property, undergoing a consent search.

The Working Group agrees RIPA data collection will be helpful in determining if there are racial disparities in stops and searches. However, RIPA data collection is not a substitute for a written consent.

Accelerate Crisis Intervention Team (CIT) activity

BPD agrees with this response. However, Chief Greenwood states, "Class availability is limited. Budget and resource constraints may impact this as well, as overtime is restricted to backfill for officers' absence due to training." The working group considers that accelerating current CIT activity as critically important.

For any individual detained, BPD officers shall provide a business card that displays with the following information on the back:

- a. A website similar to RAHEEM that collects information on police-civilian encounters
- b. Contact information for filing a complaint with the PRC or its successor, the Police Accountability Board.

BPD feedback states, "Open to idea, but with balance: perhaps a link to an online survey, provide info on commendations as well as how to file complaints with PRC and IAB." The

working group supports the collection of both positive and negative feedback on police civilian contacts.

Address Profiling by Proxy

BPD supports this item.

Include community member participation and feedback in the hiring process

BPD provided no written feedback on this item. However, in a formal working group session Chief Greenwood expressed concerns about including community participation in the hiring process for all BPD staff. The proposal was updated to include community member participation only in the hiring process related to sworn officers.

Include the following for Performance Appraisal Reports

- a. Officers should exhibit cultural competency and anti-racist conduct, and that should be included in their City of Berkeley Performance Appraisal Report (Police Sworn-Operations Division Personnel), on p. 2 of 8 under Section “B” “Professionalism.”
- b. Add to standards 1 and 2 of the Performance Appraisal Report as follows:
 - i. Provides excellent customer service and represents the Department well as a culturally competent and anti-racist officer
 - ii. Is respectful of both the people they serve and the people they serve with, in a culturally competent and anti-racist manner
 - iii. *All officers should aspire for an “Above Average” “Exceeds Expectations” or “Exemplary Performance” mark each year with “Meets Minimum Standards” as the basic floor (with expected increase in performance level in subsequent years).*

BPD provided no written feedback to this item. This item was updated based on verbal feedback Chief Greenwood gave during a formal working group session.

Include community and peer input into the annual review of sworn police officers.

Based on BPD feedback, this item was updated. Previous language was as follows: Include a “360 Degree Review Form” completed by December 30th each year after an Annual Community Forum. The working group updated the item to account for the lack of familiarity at BPD with a 360 review process as well as to incorporate peer review into the annual review process.

Fire racist police officers identified through social media and other media screens.

- a. BPD shall immediately fire all identified officers who have engaged in racist or violent actions or commentary online.
- b. A social media screen of officer online conduct shall be done annually.

BPD agrees with this item. In response, BPD cited existing policies in place to discipline or terminate an employee. However, Chief Greenwood stated a need to check if or how these policies are related to racist behaviors. Further, Chief Greenwood pointed towards the existing

DRAFT

screening process and background checks for hiring. Lastly, other members of BPD expressed concerns that social media screens might violate legal protections.

The working group has not received clarification on if or how existing disciplinary policies relate to racist behavior of officers. The working group would like clarity on this process. Further, if policies are in place to discipline an officer engaged in racist behavior this still does not address the issue of identifying officers engaged in racist behavior. This item is designed to identify if BPD officers are engaged in racist online activity and states clearly any officers so identified should be terminated. The working group does not recommend that Council accept any other action than termination for any officer found to have engaged or currently engage in racist behavior.

Additionally, this item is not requesting BPD violate privacy laws of potential or existing employees. Comments made on an electronic app, chat room, social media group, etc. are not protected by privacy laws or the constitution. A screen of social media platforms is routinely done by employers today. According to a 2018 CareerBuilder survey, "70% of employers use social media to screen candidates during the hiring process, and about 43% of employers use social media to check on current employees." Regular social media screens are a routine practice today. A third party that specialized in social media screens is well aware of legalities of the screening process, which is one reason why the FIP working group suggested a third party, not BPD, conduct the screening process.

Of Note:

The working group removed one item based on BPD feedback. The original item read: Officers shall prominently display identification. This item was updated with new language that read: Officers violating penal code (CA 830.10) shall be severely disciplined. Finally, the working group removed this item completed based on feedback from BPD.

Appendix D - Unfulfilled Council Mandates to BPD

Following on the publication by the CPE and the PRC of their respective reports on BPD stop, search, and use of force data, the Berkeley City Council gave specific policy direction to staff to address racial disparities apparent in that data.

At the onset of the Fair and Impartial Working Group in the fall of 2019, mayoral staff noted the following directions that had not been carried out by the City Manager or Chief of Police. Significantly, these directions remain unfulfilled as of August 2020:

I. Council referral from Nov. 14, 2017, to be completed by September 2018 and annually thereafter.

1. Direct the City Manager to track yield, stop, citation, search and arrest rates by race, develop training programs to address any disparities found, and implement policy and practice reforms that reflect cooperation between the Berkeley Police Department (“BPD”), the Police Review Commission (“PRC”) and the broader Berkeley community. The City Manager will report findings in September 2018 and annually thereafter, using anonymized data. [NOTE: BPD responded that they are addressing this via RIPA work, but it has still not been done.]

2. Tracking Yield rates

- a. Analyze whether officer-initiated or in response to calls for service or warrants.
 - b. Focus on reasons for disparate racial treatment and to identify any outliers.
- [NOTE: BPD responded that they are addressing this via RIPA work, but it has still not been done.]

3. Consider any other criteria that would contribute to a better understanding of stops, searches, citations and arrests and the reasons for such actions. [NOTE: BPD responded that they are addressing this via RIPA work, but it has still not been done.]

4. Consulting and cooperating with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values. Work closely with the PRC, providing the commission all legally available information that may be helpful to designing reforms.

5. Once released, BPD should analyze the final Center for Policing Equity report and propose improvements as needed. [NOTE: CPE final report was released in May 2018.]

None of these items, which are now nearly three years old, were ever accomplished

II. Council referral from April 24, 2018

1. Create, Present and Execute a Departmental Action Plan **by April 30, 2019.**

DRAFT

2. Officer Identification. Develop a policy requiring officers to identify themselves by their full name, rank and command and provide it writing (e.g. a business card) to individuals they have stopped, as in Oakland, New York, Providence, and San Jose.
3. Review and Update BPD Policy Surrounding Inquiries to Parole and Probation Status.
4. Enhance Search Consent Policies.
5. Collect Data on Terry Stops/Searches and Citations [NOTE: Remains undone. BPD responded that they are addressing this via RIPA work, but it has still not been done.]
6. BPD Data Dashboard.
7. Enhance Existing "Early Warning" Systems

None of these items, which are over two years old, were ever accomplished

III. CPE recommendations from early 2018

1. We recommend that BPD monitor search and disposition outcomes across race, and arrest and disposition outcomes associated with use of force. In particular, BPD should collect and share data with respect to contraband (distinguishing among drugs, guns, non-gun weapons, and stolen property) found during vehicle or pedestrian searches, and that it analyze data about charges filed resulting from vehicle and pedestrian stops. [NOTE: BPD responded 4/2019 that they are addressing this via RIPA work but it has still not been done.]
2. We recommend that BPD more clearly track, analyze, and share data with respect to whether law enforcement actions are officer-initiated, or responses to calls for service. [NOTE: BPD responded 4/2019 that they are addressing this via RIPA work but it has still not been done.]
3. We recommend that BPD continue to affirm that the egalitarian values of the department be reflected in the work its officers and employees do. [NOTE: Chief responded in 4/2019 message, saying they address in ongoing training, but their own heavily disparate stop and force data suggests that more needs to be done and that the ongoing training may be insufficient.]
4. We recommend that BPD consult and cooperate with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values. [NOTE: See Council referrals above. Also referred to Working Group and to July 14 2020 community engagement process.]
5. We recommend BPD track yield rates (of contraband found at searches). [NOTE: BPD responded 4/2019 that they are addressing this via RIPA work but it has still not been done.]
6. We recommend that BPD monitor patrol deployments, using efficient and equitable deployment as a metric of supervisory success. One way to promote equitable contact rates is to monitor racial disparities (not attributable to non-police factors such as crime) and to adjust patrol deployments accordingly.
7. We recommend that BPD track crime trends with neighborhood demographics in order to ensure that response rates are proportional to crime rates.

DRAFT

8. We recommend that BPD engage in scenario-based training on the importance of procedural justice and the psychological roots of disparate treatment in order to promote the adoption of procedural justice throughout the organization, and to protect officers from the negative consequences of concerns that they will appear racist. [NOTE: Chief responded in 4/2019 message to say the department completed procedural justice training, but their own heavily disparate stop and force data suggests that more needs to be done and that the procedural justice training may be insufficient.]
9. We recommend that values-based evaluations of supervisors be developed to curb the possible influence of social dominance orientation on the mission of the department. CPE research has found a significant relationship between social dominance orientation and negative policing outcomes in many police departments.
10. We recommend that BPD training include clear messaging that racial inequality and other invidious disparities are not consistent with the values of BPD. [NOTE Chief responded in 4/2019 message, said they address in ongoing training, but their own heavily disparate stop and force data suggests that more needs to be done and that the ongoing training may be insufficient.]
11. We recommend leveraging the Police Review Commission, as well as ensuring inclusion from all groups in the community, to help review relevant areas of the general orders manual and provide a more integrated set of policies with clear accountability and institutional resources. [NOTE: Chief responded in 4/2019 message, saying they address in ongoing PRC subcommittee work.]

The Fair and Impartial Policing Working Group has received three contemporaneous studies of the BPD's stops as published on the City's Open Data Portal. The following patterns emerge from this data as shown in these studies:

1. Berkeley's stop rate for African Americans is over three times greater than Oakland's. Annually, African Americans are stopped by police according to BPD records at a rate of 32.7% (3,083 stops of African Americans compared to 10,331 African American Berkeley residents). In Oakland, the corresponding stop rate is 10.4% (10,874 compared to a total of 104,310 African American Oakland residents).
2. During the first 13 weeks of the Covid-19 pandemic from March 15 to June 12, the disparity between stops of Black and White civilians in Berkeley skyrocketed. African American stops were exactly 50% of total 608 stops at 304, with White stops were 143 for 23.52% of all stops. Taking into account the low number of African Americans residing in Berkeley, the disparities are even starker: African American stops are about 42.7 per 1,000 of their population, where White stops are about 2.9 per 1,000, a disparity of 14.5 to 1, twice the disparity in 2018.
3. The discriminatory stops exploded under the Black Lives Matter curfew at the end of May. In three days from May 31 to June 2, 92 African Americans and 18 Latinx people were pulled over by Berkeley police, compared to just 18 White people. This is a disparity in raw numbers of five to one. Based on stops per 1,000 of ethnic population,

DRAFT

Black civilians were nearly 35 times more likely to be stopped than Whites during the curfew.

There has been no meaningful response from the BPD to either confirm and account for the disparities, convincingly explain why the critical analysis is incorrect, or give some alternative interpretation of the data. Instead the department has simply ignored the data and the evidence that it discriminates in its treatment of Black, Latinx, and White civilians. BPD representatives quibble over side issues such as whether the data is skewed by stops of Black people coming into Berkeley from outside, or a theory that police are being nice to Black people by issuing them only warnings whereas they ticket White civilians in similar circumstances. The recommendations made in this document will uncover the true cause of the stark racial disparities, and indicate a path to correct them.

The Fair and Impartial Working Group does not want its recommendations to go the way of prior recommendations and directives from the City Council, CPE, and PRC. As shown above, the City Manager and Chief of Police have failed to execute the policies set by the elected officials. The City Council must ensure that staff act promptly to bring Berkeley policing into compliance with constitutional principles, particularly equal protection under the law.



Public Works Commission

AGENDA
May 19, 2021

To: Reimagining Public Safety Task Force
From: Liam Garland, Public Works Director
Submitted by: Shamika Cole, Co-Secretary
David White, Co-Secretary
Subject: Reimagining Public Safety/BerkDOT

INTRODUCTION

The July 14, 2020 omnibus package to reimagine public safety included a referral to the City Manager to:

- a) pursue the creation of a Berkeley Department of Transportation (BerkDOT) to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs, and infrastructure, and
- b) identify and implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations.

In addition to instilling a racial justice lens in transportation programs and services, the referral's stated purpose was "to separate traffic enforcement from the police," "reduce traffic enforcement as a tool for enhancing traffic safety," and to "shift traffic enforcement, parking enforcement, crossing guards, and collision response & reporting away from policed officers—reducing the need for police interaction with civilians..."

By this report, staff seeks the Reimagining Public Safety Task Force's input and advice on a) research and analysis conducted to date, b) input solicited from the Public Works Commission, Transportation Commission, and public speakers and incorporated herein, and c) a draft phased approach to explore possible next actions. This work raises important questions about how the current Public Works department and the City's transportation functions are—and should be—organized, and how a racial justice lens can be applied across transportation-related programs and projects.

The referral component to reduce and/or eliminate stops based on minor traffic violations is at the core of the original omnibus package approved by City Council. The Mayor's Fair and Impartial Policing Working Group submitted recommendations to City

Council at a special meeting held on Tuesday, February 23, 2021.¹ The City Council unanimously adopted recommendations from the Fair and Impartial Policing Working Group that will result in a new, evidence-based traffic enforcement model that focuses traffic stops on safety, such as running a red light, rather than lower level offenses, such as minor equipment violations. The City Council also approved the implementation of procedural justice reforms including, but not limited to, the implementation of an early intervention system and requiring written consent for certain searches.² BPD is in the early stages of defining, developing, and implementing these measures.

This staff report complements the efforts of the Fair and Impartial Policing Working Group, lays out initial background and approaches to the creation of a BerkDOT, and explores opportunities to shift functions into this new department or division, as well as potential new positions or functions. In particular, staff seeks further input from the Task Force on the following questions:

- What near term actions should be prioritized?
- What areas of future research and/or due diligence should staff focus on?
- What is missing from the analysis and possible actions?
- Which of the three organizational approaches to a BerkDOT provided below align best with the City Council's referral and the City's adopted strategic and other plans (e.g., Berkeley Strategic Transportation Plan, Vision Zero, and recently-adopted Pedestrian Plan), both in the short and long term?

This staff report concludes with a list of proposed actions phased in over time. These actions support establishment of a BerkDOT that translates City Council's direction (and staff's intent) into racially just, equitable, sustainable, and accessible transportation policies, programs, services, and projects. The phased actions explored in this report are considered for inclusion in Annual Appropriation Ordinance #1 in December 2021, the two-year budget adopted by June 30, 2022, or future budget adoptions.

BACKGROUND

Public Safety Reimagining Process. On July 14, 2020, the Berkeley City Council made a historic commitment to reimagine the City's approach to public safety with the passage of an omnibus package of referrals, resolutions, and directions.³

¹ https://www.cityofberkeley.info/Clerk/City_Council/2021/02_Feb/Documents/2021-02-23_Special_Item_01_Report_and_Recommendations_pdf.aspx.

² Please see the annotated agenda for the February 23, 2021 Special Meeting of the City Council, which can be found at the following -

https://www.cityofberkeley.info/Clerk/City_Council/City_Council_Agenda_Index.aspx.

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-14_Annotated_Agenda_pdf.aspx

On December 15, 2020, the City Council authorized the City Manager to enter into a contract with the National Institute of Criminal Justice Reform (NICJR) to conduct research, analysis, and use its expertise to develop reports and recommendations for community safety and police reform as well as plan, develop, and lead an inclusive and transparent community engagement process to help the City achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley. NICJR's scope and contract documents are complete.⁴

On January 19, 2021, City Council amended the enabling legislation for the Reimagining Public Safety Task Force. Appointments have been made from the City Council, Mental Health Commission, Police Review Commission, and Youth Commission, and three "At-Large" appointments confirmed by City Council on March 9, 2021.⁵

The Task Force met on February 18, March 11, April 9, April 29, and May 13, and covered topics ranging from the consultants workplan; community survey; calls-for-service analysis and framework; and overviews of the Police Department, priority dispatch, new and emerging models of community safety, and specialized care unit.

Public Works and Police Departments. Today, Public Works includes 320 full time employees (FTEs) across seven divisions. The divisions of Transportation, Engineering, Zero Waste, and Administration report to the Public Works Director. The Facilities, Streets & Utilities, and Equipment Maintenance divisions report to an Operations Manager who, in turn, reports to the Director.

The Transportation Division has 43 FTEs and is responsible for the following functions: traffic engineering, planning and design of transportation-related capital improvement projects, off- and on-street parking management, and transportation planning, policies, and programs, e.g., Vision Zero. In January 2018, traffic maintenance and parking meter maintenance were shifted from the Streets and Utilities Division to the Transportation Division. This division's breadth of functions is well beyond that of transportation divisions in similarly sized cities.

Both the Transportation and Engineering Divisions currently sit on the 4th Floor of 1947 Center Street. The permanent repair of streets and sidewalks is planned and executed by the Engineering Division with 2.5 full time engineers. Smaller, temporary street and sidewalk repairs are made through our Streets and Utilities Division Operations by two separate units of 13 FTEs. These units work out of the City's Corporation Yard, as does our Facility Management Division and its nearly 7 FTEs handling streetlight maintenance and repair.

⁴ https://www.cityofberkeley.info/Clerk/City_Council/2020/12_Dec/Documents/2020-12-15_Supp_2_Reports_Item_7_Supp_CMO_pdf.aspx

⁵ https://www.cityofberkeley.info/Clerk/City_Council/2021/01_Jan/Documents/2021-01-19_Item_18_Revisions_to_Enabling_Legislation_for_Reimagining.aspx

Today, all traffic enforcement functions are housed within the Traffic Bureau of the Police Department's Investigation Division. The Traffic Bureau includes all traffic enforcement functions, parking enforcement, traffic control, serious injury collision investigations and review, collision data functions, and crossing guards. The Traffic Bureau currently sits at 841 Folger and this substation will soon move to 125 University.

Current Plans and Programs for Racial Justice and Equity. The City of Berkeley set a goal in its strategic plan to “[c]hampion and demonstrate social and racial equity,” which is an especially important goal for Public Works. The 2020 end of year workforce report showed the department was 63% African American and Latino (and 77% non-white), 92% of that year's new hires were non-white, and 78% of staff promoted were non-white. While racially diverse, that report also showed only 16% of the department was female and only 38% of management was non-white, suggesting more work was needed in our department's gender diversity and having management reflect the racial diversity of the department's staff.

In recent years, the Transportation Division sought to more explicitly incorporate racial justice into transportation policies, projects, and services. The Berkeley Strategic Transportation (BeST) Plan adopted in 2016 prioritized capital projects by whether those projects would increase transportation choices for disadvantaged communities. The Vision Zero Plan adopted in March 2020 documented racial disparities in severe and fatal traffic injuries, and it acknowledged racial and economic inequities associated with traffic enforcement. As a result, the Vision Zero Plan emphasized improvements to traffic safety through engineering solutions over enforcement, and it called for an equitable enforcement policy before making any Vision Zero-related enforcement changes.

The first set of Healthy Streets established during the COVID-19 pandemic were selected from bicycle boulevards in traditionally underserved neighborhoods. Most recently, the Pedestrian Plan adopted in January 2021 built on the work of Vision Zero to document that black pedestrians are twice as likely to be victims of traffic violence as white pedestrians. The Pedestrian Master Plan uses redlining maps to prioritize safety improvements in these historically underserved neighborhoods.

Other aspects of Public Works' services aid equity and racial justice in Berkeley, including:

- The Clean Cities Unit abates illegal dumping, trash, and debris, especially in and around encampments, and many of these locations are in historically underserved areas;
- An existing Disability Services Specialist helps ensure the accessibility of new improvements, existing infrastructure, and current Public Works services;
- Most repairs of the City's sewers, streets, streetlights, and sidewalk are completed without regard to the adjacent property owner's ability to pay; our

stormwater and sewer fees are eligible for relief under the City's Very Low Income Fund; and, in the proposed budget, Public Works has recommended extending relief from sewer charges for more low income families; and

- Public Works, Public Works Commission, and Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee are proposing to City Council on June 1 revisions to the street rehabilitation policy that specifically address racial justice and equity through the creation of an Equity Zone where paving repairs are prioritized. If adopted, Public Works will explore broader applicability of this zone to our sidewalk, streetlight, and other maintenance and repair services.

The department is at an inflection point. A new director was hired in July 2020 and since that time, the department has adopted [top goals and projects](#),⁶ drafted [performance measures](#),⁷ and sought more open lines of communication with the department's Commissions. An all-staff survey has been completed, showing the department faces a significant staff morale challenge. One driver of the morale challenge is a persistent vacancy rate of 15%+. The high vacancy rate diminishes the department's ability to deliver programs, leads to delays in implementing projects, and leaves the remaining staff shouldering a larger work burden. The work burdens are only increasing. The department is leading up the effort to turn Vision 2050 into reality; accelerate conversion of our fleet and facilities to all-electric; construct a whole range of T1 and other capital projects; and develop comprehensive plans for our street lights, paving, green infrastructure, and storm drains. All while Public Works and IT are working together on the simultaneous replacement of three key internal asset management systems without which a modern Public Works or Transportation department cannot operate.

As a result of these significant opportunities and challenges, Public Works is initiating a process to adopt a strategic plan in the next fiscal year. The plan will help clarify the department's core mission, values, priorities over the next five years, including how the department's staffing, programs, and projects can advance racial justice and equity.

APPROACHES

To inform the approaches presented in this staff report, interviews were held with director-level staff of Transportation and Public Works departments in Los Angeles, Minneapolis, Oakland, Denver, Ft. Collins, and Cambridge. These cities were selected for their variety of organizational, political, and governance structures. These conversations revealed different ways to structure a department, and how some cities were applying a racial justice lens to their transportation (and other) work. The

⁶ https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_General/FY20-21%20Berkeley%20PWD%20Goals%20and%20Projects-Sep%202020.pdf

⁷ https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_General/CoB%20Performance%20Measures%20041921.pdf

interviews showed there are many different ways to organize, and pros and cons associated with each method of organization.

At a high-level, there are three approaches to a new BerkDOT. Each of these presents an opportunity to refine the mission and overall organization of functions within the Transportation Division and the Public Works Department, and to carry out any new functions assigned by the City Council or reorganized within Public Works. The three approaches are:

A. Establish the existing Public Works' Transportation Division as BerkDOT:

This option would retain the existing Public Works department and structure, revamp the current *Division* of Transportation as BerkDOT, and create a new Deputy Director for Transportation reporting to the Public Works Director. Public Works' FY 21/22 budget request includes the adjustment of a current position to Deputy Director for Transportation. This would confirm the centrality of transportation in the department.

B. Remake Public Works into the Department of Transportation & Infrastructure (BerkDOTI):

This option would create a new BerkDOTI, subsume the existing Public Works Department into it, and the department's mission would focus on stewardship of the City's transportation system and public right-of-way, as well as the safety of the public in using streets and sidewalks. The functions of the remade department would include discrete lines for Transportation, Utilities, and Administration. Within these lines, a new Deputy Director for Transportation would be created, while infrastructure services such as storm water, sewer, and Zero Waste would remain in a newly configured Utilities division. This option still allows for intra-departmental coordination between planners and engineers by retaining an overall singular department under the oversight of a unified administrative structure. It elevates the new department's transportation programs and services to the whole of the public right-of-way, consistent with Vision 2050's positioning of the right of way as the *Public Commons*. An integrated BerkDOTI department would allow for ongoing coordination between functions affecting all aspects of transportation and non-transportation services in the public right-of-way, and a single point of contact for inter-departmental coordination.

C. Create a new, stand-alone BerkDOT that subsumes the current Division of Transportation and leaves a separate, stand-alone Public Works Department:

This would shift transportation functions out of Public Works into a standalone, new department oriented around a mission inclusive of transportation services and projects. Transportation operations, safety, and maintenance functions

would be transferred to this new stand-alone BerkDOT, while non-transportation capital project delivery and utilities such as storm, sewer, and Zero Waste would remain in the Public Works department. While duplicating back-office requirements, this structure may offer a more focused mission and vision, and resolution of items at the level of City Manager, not Department Director.

Mission and Vision. Each of these options presents an opportunity to sharpen the mission of our transportation work and deliver racially just, equitable, accessible, safe, and environmentally sustainable transportation programs, services, and projects. A stand-alone BerkDOT with a new Director reporting to the City Manager may provide the opportunity to start from scratch and create a whole new vision for transportation in this City. This also may provide the Public Works' department an opportunity to sharpen and improve its mission. On the other hand, the City's transportation and infrastructure visions are evident through the City Council's adoption of existing and recent plans, such as Vision 2050 (2020), BeST (2018 and update 2021), pedestrian plan (2021), and Vision Zero (2020). There may be conflict between Vision 2050's envisioning of the right of way as a public commons, and its implementation depending on two separate, stand-alone departments. It also may be the case that these adopted plans do not sufficiently capture Berkeley's transportation and infrastructure vision. If that is the case, then a new stand-alone BerkDOT may help chart whatever that new vision may be.

Prioritization and Coordination. A new stand-alone BerkDOT reporting to the City Manager or Deputy City Manager may elevate the transportation function's importance among many other competing priorities in the City. However, two separate departments will require staff currently sitting in the same department—with direct opportunities and incentives to collaborate—to be in stand-alone separate departments with more divergent priorities and more difficulty in coordination.

Transition Costs: Each of these organizational options would have different cost implications. Creating a wholly new stand-alone DOT alongside a stand-alone Public Works department is the highest cost option. Staff's initial estimate is \$750,000, mostly based on Oakland's experience creating a new DOT from its Public Works Department. These are hard costs related to hiring a new Director; building the required HR, payroll, and finance functions; consultant support for the change effort; and ancillary costs related to the new department, such as updates to the website, municipal code, letterhead, and work clothing. The ongoing operating costs for future years are in the range of \$500,000-\$750,000 annually.

Standing up a new department will incur significant non-financial costs, especially in time and effort. Interviews with other DOTs suggest this is an intense two-year process to stand up the organization and another two to three years until it is a cohesive organization. It would involve significant need to bridge and manage the transition with staff, collaboratively build a new department culture, and reorganize career advancement pathways in the workplace. Logistics are important, too. Staff are not

aware of building space that may accommodate a new stand-alone BerkDOT. In addition, the necessary investments in time and effort may require tradeoffs that slow down or put at risk other high-priority projects, e.g., Vision 2050, Vision Zero, T1, November 2022 infrastructure-focused revenue measure, and implementation of the BeST, Bicycle, and Pedestrian Plans.

The BerkDOTI option of a remade Public Works department with transportation, utility, and administration lines is estimated to cost less than \$150,000, mostly related to one position upgrade (Deputy Director, Transportation), hard costs related to the name change, and some support for the change efforts. Given the department's intention to undergo strategic planning next year, there may be an opportunity to leverage this process to support the BerkDOTI change effort. There would be limited ongoing additional operating costs for future years.

The option of creating BerkDOT out of the existing Transportation Division, and remaining within Public Works, is likely to involve similar cost as the BerkDOTI option as it includes similar actions, e.g. position upgrade, name change costs, and change efforts.

City Council could consider covering these costs through budget reductions to the Berkeley Police Department, reductions to other departments' budgets, or with additional General Fund resources. However, the source of funds does not change the fact that these three approaches have different cost impacts. Similarly, it is possible that as the number of sworn personnel in traffic enforcement is reduced, those savings are shifted into transportation programs and/or services. However, those savings may be speculative, as costs related to the civilian traffic enforcement unit and/or automated enforcement are very likely to rise.

Under any of these structures, there will be additional costs associated with implementing new policies or programs. This could include automated enforcement programs with staffing required for citation processing and review, a new specialist staffing for public engagement and racial justice programs, etc.

Implementation Risks. Many reorganizations fail or take much longer than planned. According to a 2016 Harvard Business Review study, more than 80% of reorganizations fail to deliver the hoped for value in the time planned, and 10% can cause real damage to the organization. The creation of a separate, stand-alone BerkDOT with a separate stand-alone Public Works Department entails the most risk of failure and/or delay. A BerkDOT subsuming Public Works entails low to moderate risk. Creating the BerkDOT out of the existing Transportation Division, and keeping it within Public Works, is low risk. To mitigate these risks, the changes might be made incrementally, allowing for smaller course corrections to address issues that may arise and preserving options moving forward.

City Size. Few cities of Berkeley's size have a stand-alone DOT. Nor do most cities of Berkeley's size have the breadth of transportation functions already assigned to the existing Transportation Division within Public Works.

Racial justice lens. Staff's view is that any of these organization approaches could apply an improved racial justice lens to transportation programs, and none of the approaches provide distinct benefit over the others in advancing racial justice and equity.

Shifting functions. Staff's view is that any of these organizational approaches could facilitate shifting of functions as explored later in this staff report, and none is uniquely configured for a particular shifting of functions.

SHIFTING FUNCTIONS

The BerkDOT referral incorporated into the City Council's omnibus package adopted on July 14, 2020 stated the following:

A Department of Transportation in the City of Berkeley could shift traffic enforcement, parking enforcement, crossing guards, and collision response & reporting away from police officers—reducing the need for police interaction with civilians—and ensure a racial justice lens in the way we approach transportation policies, programs, and infrastructure. It would also ensure a focus on transportation that is separate and apart from public works issues, fitting for the importance of transportation as an issue of concern to Berkeley and as a key component of our greenhouse reduction goals.

There are a variety of transportation-related functions within the City of Berkley which are performed by:

1. Sworn, uniformed officers (e.g., police officers assigned either to Patrol Division or the Traffic Bureau);
2. Non-sworn, uniformed personnel (e.g., parking enforcement officers);
3. Civilian personnel (e.g., crossing guards); and
4. Civil engineers, transportation engineers, transportation planners, and operations and maintenance staff.

Below, each function is assessed for possible shift into any of the three BerkDOT approaches described above.

Traffic Enforcement

The original referral suggested shifting traffic enforcement to a new BerkDOT. However, California Vehicle Code section 21100 appears to delegate authority to localities to enforce traffic laws by means of "traffic officers," which are further defined by Penal Code Section 830, et seq., as sworn police officers. Thus, enforcement of traffic

violations set forth by non-sworn personnel could violate existing state law. Until state law changes, such a shift in function outside of BPD may be preempted.

The City Council adopted a resolution on December 15, 2020, requesting the California legislature enact legislation to give cities greater flexibility in traffic enforcement. Staff has considered prioritizing near-term action to develop a plan for standing up a civilian traffic enforcement unit. However, given the content of the state law change is likely to be important for the particulars of how such a unit is structured and organized, staff suggests the civilian traffic enforcement unit be considered a longer term action, and that this action be triggered when there is a change in state law. In the meantime, the City could engage in discussion with state legislators about potential legislation on this topic. When such a state law change does occur, staff would evaluate the legislation and prepare a plan for City Council discussion with the aim that Berkeley thoroughly evaluate and engage the community and its employees over the potential to establish a civilian traffic enforcement unit.

Other state law changes might alter the nature of traffic enforcement, as well. Current state law prohibits automated enforcement of speeding violations. Assembly Bill (AB) 550 would permit several cities to initiate pilots of automated enforcement of speeding violations⁸. On May 11, 2021, the Council took formal action to support AB 550 and urge that the City of Berkeley be included as a pilot location. Similar to red light cameras, photo speed enforcement could reduce the need for traffic stops and the associated interactions between police officers and drivers, while providing effective enforcement against speeding, which is the traffic violation most likely to contribute to several or fatal traffic injuries especially among pedestrians. The degree to which automated speed enforcement could be administered by non-sworn staff would depend on the enabling legislation. AB 550 currently calls for violators to be subject to civil penalties and the availability of diversion programs.

Given the legal hurdles to a civilian traffic enforcement unit and automated enforcement, staff suggest prioritizing advocacy for state law changes in the near-term, and, over the longer term, develop practical plans and policies to implement state law changes when they occur. As suggested in Vision Zero, the City's adoption of a Vision Zero Enforcement Policy could help explain and further detail the City's approach to enforcement as a tool of last resort, provide guidance for the implementation of automated enforcement, and ensure the lens of racial justice and equity is incorporated into enforcement efforts.

Crossing Guards

Berkeley Function Today

Crossing guards are civilian personnel within the Police Department who help ensure safe routes to school and Vision Zero functions, which are important citywide priorities.

⁸ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB550

There are currently 15 part-time crossing guards, equivalent to 3.7 FTEs, working during school arrival and departure times. Crossing guards do not enforce the law, rather they enhance safety by stopping traffic and escorting children across an intersection.

Other Cities' Experiences

Some cities, such as Los Angeles and Cambridge, MA, employ crossing guards through the Transportation and/or Public Works department; other cities that house crossing guards in the Police Department, such as the City of Oakland, are considering moving them to OakDOT in response to similar conversations around racial justice in traffic enforcement. Another model is schools overseeing the crossing guard functions with the City providing some portion of funding, which is the case in Fort Collins, CO.

Potential Options for Berkeley

Crossing guards could move into BerkDOT with minimal disruption. Shifting that staff to a new department will require a BerkDOT staff person to take on a new supervisory role, which could require new training. Within BerkDOT, crossing guards could be assigned to school sites based on racial equity and Vision Zero priorities. Including crossing guards in BerkDOT could have the positive effect of bolstering local relationships between BerkDOT and local schools and communities.

There are some impacts to BPD's operations of moving crossing guards to BerkDOT. By removing this function, it means severing a visible tie between elementary school staff, local residents, and BPD. Otherwise, the impacts are not significant. This change could be accomplished in the budget proposed for adoption in June 2022.

Parking Enforcement

Berkeley Function Today

Parking Enforcement Officers are non-sworn, uniformed officers within the Police Department. These officers support the City's parking program, which is stewarded by Public Works and the officers are funded out of the Public Works' on-street parking fund. (Citation revenue goes to the General Fund.) There are currently 24 FTE parking enforcement officers, supervisors, and a manager within BPD's Traffic Bureau.

The City of Berkeley's current [parking program](#) offers a payment plan for low income persons, and a fee waiver for low-income citation recipients who request an appeal hearing.

Other Cities' Experiences

Other cities, both large and small, manage parking enforcement under the Transportation and Public Works departments: examples include Los Angeles, Fort Collins, CO, Cambridge, MA, and Orlando, FL. Some parking enforcement staff maintain inter-departmental connections and access to shared communication systems with Police Departments where there are concerns for staff safety. For example, the OrlandoDOT has a parking enforcement function, and parking enforcement staff share a

radio frequency with the Police Department. Some cities, such as Los Angeles, have qualified relief programs to address the burden of parking fines on low-income residents, such as the [Community Assistance Parking Program](#).

Potential Options for Berkeley

The parking enforcement function could move into BerkDOT, which would be a major shift in terms of the number of employees and their day-to-day interface with the Police Department. Parking enforcement staff currently sit within PD offices, and their trainings and career development paths are through PD.

Shifting this function to a new BerkDOT would require investment and training in the newly transitioned staff on the BerkDOT mission and career advancement paths, and new management and supervisory capacity within BerkDOT to absorb responsibility for the parking enforcement staff. Given that the Transportation Division is currently 43 FTEs, this shift would increase this organization's size by more than 50%. It poses some logistical challenges, too, as BPD Traffic Unit's staff and parking enforcement's staff currently sit with one another in the same location, and there is not an obvious solution for co-locating parking enforcement staff and existing transportation division staff given significant space constraints at the City's Corporation Yard.

Such a shift would have significant impacts on BPD and its 24 parking enforcement staff. BPD would lose important members of its team, and parking enforcement staff themselves would have a more difficult time keeping up communication with the Police Department for backup requests, which occur weekly. Nearly one-half of parking enforcement officers participated as public speakers when the Public Works Commission heard this BerkDOT item, and expressed a strong sentiment that affiliation with PD helped them feel safer in their work and strong opposition to any move outside of PD.

As suggested by several Public Works Commissioners, staff proposes further dialogue with the parking enforcement officers themselves. After that dialogue, staff would return to City Council for discussion on whether the parking enforcement function should sit within PD.

Paving

Berkeley Function Today

Public Works has 2.5 engineers who put together the paving plan, and then do the public procurement for the annual paving and sidewalk repair projects. Another engineer or inspector is involved in the construction management and inspection of the improvements. All of these staff are in the Engineering Division, and consult regularly with Transportation's planning unit to ensure coordination with the various transportation plans.

Other Cities' Experiences

Both OakDOT and Minneapolis include some paving functions. Both pothole repair and designing and bidding contracts for paving are held within OakDOT. However, the paving and capital project construction management function is still held within Oakland's separate Public Works department. In Los Angeles, the paving function is housed in Streets LA, a division of Public Works, not LADOT. Cambridge, MA also does not house paving functions in its Transportation, Parking, and Traffic Department; instead, the Community Development Department prepares the paving plan, and Public Works completes the paving.

Potential Options for Berkeley

The existing configuration results in collaboration on paving between engineers in Public Works' Engineering Division, and engineers and planners in the Transportation Division. Moving this function to the BerkDOT has the potential to realize more opportunities for Vision Zero, Bicycle Plan, and Pedestrian Plan improvements in the course of paving. However, the paving budget faces an annual funding shortfall of more than \$10 million for basic pavement maintenance, not to mention the improvements suggested by the Vision Zero, Bicycle Plan, and Pedestrian Plan. Thus, these opportunities to use our paving program to further the goals of our transportation plans may be more vision than reality. In addition, even if this function moves to Transportation, significant coordination with the Engineering Division will be required to ensure consideration of sewer, green infrastructure, storm drain, and other utility projects occurring in the streets. Staff believes that the coordination between Transportation Planning and paving engineers has improved over the past several years, but agree more improvement and coordination is needed. What is less clear is whether improvement will come from an organizational decision—either moving the paving planning function from Engineering into Transportation's planning unit or moving transportation planners into Engineering's Pavement Unit—or bringing in new revenue into paving through a November 2022 infrastructure-focused revenue measure. The latter would be the most significant action the City Council could take to ensure our paving program advanced our BeST, Vision Zero, Pedestrian, and Bike Plan's goals. Staff could return to City Council as part of the budget adopted in June 2022 with a discussion of where the paving planning function might sit.

Collision Investigation**Berkeley Function Today**

Today, BPD's Traffic Bureau sworn officers are responsible for traffic collision investigations. This includes forensic functions, determining why and how the crash occurred, data collection on victim information, and the state of existing street safety infrastructure. No Public Works or Transportation staff participate in that data collection. Collision investigation invariably requires sworn officers to collect witness statements and evidence, conduct analysis, and develop a report, all of which are governed by state vehicle code. In addition, collisions can happen at any time of day or night and police staff with assigned vehicles are on duty 24/7 in the field and enable rapid response.

Other Cities' Experiences

Collision investigation functions are conducted by police departments, and in many cities there is limited data sharing and collaboration in data collection, which can be a barrier to data-driven Vision Zero work. A few cities have built partnerships with police departments to share crash investigation functions as it pertains to transportation engineering. Director-level partnerships with the police department has allowed some cities, such as Fremont, CA, to share more Vision Zero-related traffic data.

Potential Options for Berkeley

Many of the forensic functions of crash investigation are important for the Police Department to carry out. Increased collaboration between BerkDOT and the Police Department through sharing of some collision investigation functions could improve traffic safety. Bringing BerkDOT planners and engineers into the process to assess site context and transportation infrastructure issues in the field during investigation is likely to lead to better understanding of why crashes occurred and may help identify opportunities to improve infrastructure to improve safety outcomes in the future. This also advances the City's Vision Zero focus, and encourages direct access to police reports and other disaggregated data for purposes of Vision Zero analysis and monitoring, which includes an assessment of racial disparities in traffic safety. Improved information sharing could occur within existing structures and progress is already being made. The most important near-term action to promote this information sharing and safety improvements would be the hire of a new staff member into BerkDOT to support the Vision Zero program and codify this interdepartmental coordination. A request for this FTE will be included in the budget proposed in June 2022.

Traffic Control**Berkeley Function Today**

Both sworn officers and parking enforcement officers provide special traffic control during major planned events today, such as festivals, marches and protests, and other large-scale events, and also during emergencies, such as street flooding, large structure fires, and during high wildfire-risk periods. Public Works, BPD, and parking enforcement staff frequently coordinate on traffic controls, including temporary signage and barricades often planned by Traffic Engineers and deployed by Traffic Maintenance staff.

Other Cities' Experiences

In other cities, both sworn and non-sworn uniformed officers can carry out traffic control functions. In San Francisco, parking enforcement officers have traffic control functions as part of their regular duties, which includes directing traffic during both planned events and critical incidents. In Minneapolis, the Regulatory Services department provides uniformed personnel for traffic control functions, which include rush hour traffic management, emergency response to traffic control needs via 311, and support for special events.

Potential Options for Berkeley

Event-related traffic control could be provided by non-sworn, uniformed personnel for planned events in Berkeley. Parking enforcement personnel provide this function today. Non-sworn, uniformed officers could also provide some or perhaps all emergency-related traffic control. Consideration would need to be given to time of day and week to ensure availability of appropriate staff, and ensuring proper training of non-sworn staff conducting planned and emergency related traffic control.

3. Racial Justice in Transportation Policies, Programs, and Infrastructure

Ensuring a racial justice lens in transportation policy, programs, and infrastructure would mean that all decisions, procedures, and guidelines that govern transportation in this City would affirmatively work to reduce the burdens of racial inequities and mitigate structural harm put on people of color, and create streets where people are safe, experience belonging, and can thrive.

From listening to the input received so far and considering other organizations approaches, staff see three important opportunities moving forward. First, establish a BerkDOT that uses racial and social justice and safety data to improve safe and equitable access to mobility and helps reduce traffic violence, economic violence, and risk of institutional violence experienced by the most vulnerable users of the public streets and sidewalks.

Second, embed the racial justice lens in BerkDOT through one of two potential organizational approaches:

- A. **Racial Justice and Equity Division within BerkDOT:** The Racial Justice and Equity Division could be a separate division within any of the three BerkDOT approaches, at the same organizational level as project delivery, maintenance, or administration. The division may be staffed with one or two people, and those staff working across divisions, similar to how engineers and planners already work across divisions and functions today.
- B. **Deputy Director of Transportation, Racial Justice, and Equity:** The racial justice function could move up a tier in the organizational chart to assign that function to a newly titled, Deputy Director of Transportation, Racial Justice, and Equity. This would elevate the transportation and racial justice functions and accountability in the organizational hierarchy. It might then mean that existing staff take on day-to-day responsibility for racial justice functions, with approval and strategy provided by the Deputy Director for Transportation, Racial Justice, and Equity. This position could still be supplemented with a Racial Justice Specialist position as an assistant to the Deputy Director.

The organizational structure of the racial justice function within BerkDOT might also consider the size of Berkeley's city government and BerkDOT itself. For example, the division itself might contain one FTE; however, regardless of the number of FTEs, creating a division within an organizational chart on equal footing with other departmental functions elevates its importance in the department's mission. Under either approach, it will be important to ensure that people of color, and especially African Americans, have clear and well-used career pathways.

Public Works' budget proposed for adoption in June 2021 includes an adjustment for a Deputy Director of Transportation, so Option B is readily achievable and does not preclude a change later to Option A.

Third, as suggested by various contributors in the public process to date, incorporating a racial justice lens into transportation work requires in-depth examination, discussion, training, and action. This work has an aspect that is inward-facing and focused on our staff and their experiences and career pathways. It also must focus on BerkDOT's services, programs, and projects delivered to the community. For that reason, staff propose using the assistance of an expert to lead the internal examination, discussion, training, and action that would culminate in the development of a *Racial Justice and Equity Action Plan, Part 1*. A budget request for Annual Appropriation Ordinance #1 in December 2021 would fund this third-party's work. *Part 2* would examine the department's services, programs, and projects, and identify the areas and actions where more progress is required. This work would be proposed for inclusion in the budget adopted June 2023.

INPUT RECEIVED FROM COMMISSIONS TO DATE

This report reflects input provided by the Transportation Commission, Public Works Commission, and public speakers at both commission meetings. Prior versions of this report incorporated this specific feedback from the Transportation Commission. More has been provided on the purpose and vision of the omnibus package and BerkDOT referral, and the report provides more focus on near-term actions to change transportation's mission, vision, programs, services, and projects and ensure they are imbued with a racial justice lens. There is more background and explanation on the civilian traffic enforcement unit, and City Council's direction to focus traffic stops on safety and eliminate stops for minor traffic violations. Greater detail has been provided on automated enforcement, inclusion of career pathways for people of color, and the cost implications of the three organizational approaches,.

Several Transportation Commissioners suggested crossing guards and parking enforcement were functions that should be moved to a BerkDOT sooner rather than later. Staff incorporated a suggestion to re-work the near-term and longer-term actions into a phased approach.

There was consensus at the Public Works Commission and its public speakers that the revised staff report responded to much of the Transportation Commission's feedback. There was a consensus that enforcement as a method of improving traffic safety should be a tool of last resort within the City's toolbox. There was not consensus on the organizational approach to BerkDOT or on which functions might be prioritized for shifting into BerkDOT. Some commissioners wanted to learn more about how BerkDOT might be informed by a strong, transparent public engagement process. On this latter point, staff are exploring on-the-street, intercept surveys and/or public opinion surveys to be conducted this summer in order to engage and learn from traditionally underrepresented and underserved members of the community.

PHASED APPROACH

The phased approach described below combines the direction set by Council in the original omnibus package, the input received to-date, and the constraints of our existing budget, commitments, laws, and bandwidth. The order and phasing of the approach is designed to preserve opportunities for the City to speed up or slow down along the way.

Phase 1: July 1, 2021-June 30, 2022

| | |
|----------|--|
| Ongoing | Coordinate with PD on implementation of precision policing and major v. minor stops. Monitor state legislative proposals and be prepared to engage and advocate for automated enforcement. |
| Jun 2021 | Proposed budget includes Deputy Director of Transportation, Racial Justice, and Equity. |
| Jul | Opinion and/or intercept surveys to solicit input on BerkDOT. |
| Dec | Submit budget request in AAO#1 for expert support on <i>Racial Justice and Equity Action Plan, Part 1</i> , focused on staff and career pathways. |
| Jan 2022 | Berkeley <u>Division</u> of Transportation stood up as BerkDOT with lead Deputy Director of Transportation, Racial Justice, and Equity. |
| Jun | Potential budget proposals implementing various aspects of BerkDOT and submit request for new Vision Zero staff member to coordinate with PD on data sharing and collision analysis. |

Phase 2: July 1, 2022-June 30, 2023

| | |
|----------|--|
| Jul 2022 | Report to City Council on results of legislative advocacy on civilian traffic enforcement and automated enforcement, and if automated enforcement on speeding enabled by change in state law, plan for implementing. |
| Dec | Council considers adoption of Vision Zero enforcement policy. Complete <i>Racial Justice and Equity Action Plan, Part 1</i> . |

- Jan 2023 City Council discusses possibility of creating civilian traffic unit. This discussion and deliverable is wholly dependent on state law changes permitting such action.
- Jun Report to Transportation Commission on equity of City's existing parking fines and rates, and possible revisions.

Phase 3: July 1, 2023-June 30, 2025

- Dec 2023 Complete *Racial Justice and Equity Action Plan, Part 2*, focused on programs, services, and projects.
- Jun 2024 Update to Council on progress to date and seeking direction on final BerkDOT organizational structure (enhanced division, BerkDOTI, or stand-alone BerkDOT), civilian traffic enforcement unit, and equity policies.
- Jun 2025 Final report closing BerkDOT referral.

Attachment:

- 1: Budget and Position Inventory

Attachment 1: FTEs and Budget for Existing BerkDOT-related Functions

Total potential FTEs **99.95** *Total Costs* \$ **49,627,069**

PW Engineering/Streets

Implementing capital projects to maintain 216 miles of street and 300 miles of sidewalk

| | | | | | |
|----------------------------|------------|-----------|--------------------|-----------|-------------------|
| Associate Civil Engineer | 1 | \$ | 143,157.66 | | |
| Assistant PW Engineer | 1 | \$ | 123,956.56 | | |
| Supervising Civil Engineer | 0.5 | \$ | 81,070.50 | | |
| Total | 2.5 | \$ | 348,184.72 | \$ | 660,534 |
| | | | Nonpersonnel Costs | \$ | 330,267 |
| | | | Capital Costs | \$ | 11,010,303 |
| | | | Total | \$ | 12,001,104 |

PW Transportation

Improve traffic safety, encourage transit use, bicycling and walking, and address transportation issues. Capital projects include parking facilities; street improvements; traffic calming measures; and bicycle and pedestrian infrastructure improvements.

| | | | | | |
|-----------------------------|---------------------------------------|-----------|---------------------|------------|-------------------|
| Management | Transportation Manager | 1 | \$ | 177,577.71 | |
| | Administrative Secretary | 1 | \$ | 88,553.50 | |
| | Administrative Assistant | 1 | \$ | 88,293.71 | |
| | Assistant Management Analyst | 1 | \$ | 89,820.02 | |
| Parking (off and on-street) | Parking Services Manager | 1 | \$ | 130,562.85 | |
| | Senior Planner | 1 | \$ | 126,667.01 | |
| | Assistant Management Analyst | 4 | \$ | 359,280.08 | |
| | Accounting Office Specialist II | 1 | \$ | 69,366.54 | |
| | Parking Meter Maint & Collection Supv | 1 | \$ | 91,188.45 | |
| | Parking Meter Maintenance Worker | 6 | \$ | 391,547.52 | |
| | Parking Meter Mechanic | 5 | \$ | 369,082.50 | |
| | | | | | |
| CIP Engineering | Associate Civil Engineer | 2 | \$ | 286,315.32 | |
| | Supervising Traffic Engineer | 1 | \$ | 165,189.86 | |
| Traffic Engineering | Assistant Traffic Engineer | 2 | \$ | 250,942.02 | |
| | Associate Traffic Engineer | 2 | \$ | 286,315.32 | |
| | Engineering Inspector | 1 | \$ | 106,362.46 | |
| | Traffic Engineering Assistant | 1 | \$ | 86,079.55 | |
| Planning | Principal Planner | 1 | \$ | 143,078.83 | |
| | Senior Planner | 1 | \$ | 126,667.01 | |
| | Associate Planner | 2 | \$ | 219,506.56 | |
| | Assistant Planner | 1 | \$ | 90,424.05 | |
| Traffic Maintenance | Traffic Maintenance Supervisor | 1 | \$ | 91,188.45 | |
| | Traffic Maintenance Worker I | 3 | \$ | 202,701.42 | |
| | Traffic Maintenance Worker II | 2 | \$ | 147,742.40 | |
| Total | 43 | \$ | 4,184,453.14 | \$ | 7,938,238 |
| | | | Nonpersonnel Costs | \$ | 4,175,377 |
| | | | Capital Costs | \$ | 12,500,000 |
| | | | Total | \$ | 24,613,615 |

PW Streets/Sidewalk Operations

Performs spot repairs on the City's maintain 216 miles of street and 300 miles of sidewalk

| | | | | | |
|----------------------|---------------------------------|-----------|--------------------|------------|------------------|
| Management | Senior PW Supervisor | 1 | \$ | 111,161.44 | |
| | PW Supervisor | 1 | \$ | 96,565.46 | |
| Streets / Asphalt | Skilled laborer | 2 | \$ | 143,751.72 | |
| | Construction Equipment Operator | 1 | \$ | 81,359.20 | |
| | Laborer | 2 | \$ | 135,228.28 | |
| Sidewalks / Concrete | PW Supervisor | 1 | \$ | 96,565.46 | |
| | Concrete Finisher | 2 | \$ | 86,386.35 | |
| | Skilled Laborer | 1 | \$ | 71,875.86 | |
| | Laborer | 2 | \$ | 135,228.28 | |
| | | | | | |
| Total | 13 | \$ | 958,122.05 | \$ | 1,817,633 |
| | | | Nonpersonnel Costs | \$ | 300,000 |
| | | | Total | \$ | 2,117,633 |

PW Signals and Streetlighting

Maintains signals and traffic controls at 140 intersections and 8,000 LED streetlights.

| | | | | | |
|------------------------------|-------------|-----------|-------------------|-----------|------------------|
| Electrician | 4 | \$ | 411,091.20 | | |
| Lead Electrician | 2 | \$ | 219,648.00 | | |
| Senior Electrical Supervisor | 0.75 | \$ | 97,022.18 | | |
| Total | 6.75 | \$ | 727,761.38 | \$ | 1,360,914 |
| | | | Streetlights | \$ | 1,377,731 |

| | | |
|--------------|-----------|------------------|
| Signals | \$ | 896,755 |
| Capital Cost | \$ | 1,050,000 |
| Total | \$ | 4,685,399 |

PD-Investigations Division

The Traffic Unit's Motorcycle Officers focus on community safety through traffic law enforcement, investigation of serious injury/fatality traffic collisions; DUI enforcement, and coordinating grantfunded focused enforcement efforts. The Parking Unit's Parking Enforcement Officers enforce applicable State and Local codes which regulate parking and provide traffic control and support, e.g. Special Events or incident scene management.

| | | | | | | |
|---------------------|-----------------------------------|-------------|-----------|---------------------|-----------|------------------|
| Parking Enforcement | Parking Enforcement Manager | 1 | \$ | 114,869.25 | | |
| | Parking Enforcement Officer | 21 | \$ | 1,492,580.46 | | |
| | Parking Enforcement Supervisor | 2 | \$ | 84,899.98 | | |
| | Total | 24 | \$ | 1,692,349.69 | \$ | 1,692,350 |
| | | | | Nonpersonnel Costs | \$ | 1,638,945 |
| Traffic Bureau | School Crossing Guard | 3.7 | | 145987.2 | | |
| | Lieutenant | 1 | \$ | 178,231.87 | | |
| | Sergeant | 1 | \$ | 148,483.71 | | |
| | Motor Officer | 4 | \$ | 515,017.16 | | |
| | Assistant Management Analyst/OSII | 1 | \$ | 89,820.02 | | |
| | Total | 10.7 | \$ | 1,077,539.96 | \$ | 1,077,540 |
| | | | | Nonpersonnel Costs | \$ | 1,800,483 |
| | | | | Total | \$ | 6,209,318 |

| | | | | |
|-----------------------------|--------------|--------------------|-----------|-------------------|
| Total potential FTEs | 99.95 | Total Costs | \$ | 49,627,069 |
|-----------------------------|--------------|--------------------|-----------|-------------------|