BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
REGULAR MEETING

BERKELEY CITY COUNCIL SPECIAL MEETING

Monday, June 3, 2019
10:30 AM

2180 Milvia Street, 1st Floor - Cypress Room

Committee Members:

Councilmembers Ben Bartlett, Susan Wengraf, and Rigel Robinson

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes for Approval - May 6, 2019

Committee Action Items

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

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

Committee Action Items

2. Referral Response: Update on Various Referrals and Recommendations Regarding Stop Data Collection, Data Analysis and Community Engagement
From: City Manager
Referred: April 30, 2019
Due: October 15, 2019
Recommendation: Review and provide feedback on the Berkeley Police Department responses to inter-related Council and Police Review Commission referrals, reports and recommendations, including the Center for Policing Equity report recommendations, regarding stop data collection, data analysis, community engagement, and related topics.
Financial Implications: See report
Contact: Andrew Greenwood, Police, 981-5900

3. Alternative Compliance Measures to Achieve Fire Safety in Existing Live/Work Spaces
From: Councilmembers Robinson and Harrison
Referred: May 13, 2019
Due: October 28, 2019
Recommendation: Refer to the City Manager to develop alternative code compliance measures for nontraditional live/work spaces, in order to improve residential safety without displacing existing communities. Given the current shortage of affordable housing, Staff should consider how to enact a policy of leniency towards existing structures which may not be in complete compliance with city permits. Staff should seek methods to incentivize incremental safety renovations without exposing communities to eviction concerns.
Financial Implications: Staff time
Contact: Rigel Robinson, Councilmember, District 7, 981-7170

Committee Action Items

4. Recommendation to Install an Outdoor Public Warning System (Sirens) and Incorporate It Into a Holistic Emergency Alerting Plan
From: Disaster and Fire Safety Commission
Referred: May 14, 2019
Due: October 29, 2019
Recommendation: We recommend that City of Berkeley immediately begin the process to purchase, install, and maintain an outdoor public warning system (sirens) as a supplement to other alert and warning technologies within our boundaries and coordinated with abutting jurisdictions and Alameda County.
This installation should be accompanied by the following: - ongoing outreach and education so that the public will understand the meaning of the sirens and what to do when they hear a siren; - development of a holistic alert protocol, incorporating sirens as an additional option among the available suite of alerting methods; - staff training and drills on alerting procedures; - development of a testing and maintenance plan that will ensure the system is fully operational while avoiding unnecessary or excessive noise pollution in the City; - outreach to deaf and hard of hearing residents to encourage them to opt-in for alerting that meets their communication needs. This may include distributing weather radios or other in-home devices with accessibility options for people with disabilities.
This recommendation does not specify the number, type, or location of sirens; City staff should determine the most cost-effective system that achieves the goals described in this recommendation. This may include either mobile or fixed-location sirens.
Financial Implications: See report
Contact: Keith May, Commission Secretary, 981-3473

5. Adopt an Ordinance Amending Berkeley Municipal Code Chapter 2.99 to Prohibit City Use of Face Recognition Technology
From: Councilmember Harrison
Referred: May 28, 2019
Due: November 12, 2019
Recommendation: Adopt an ordinance amending Berkeley Municipal Code Chapter 2.99 to prohibit the City from acquiring, retaining, requesting, accessing, or using: (1) any face recognition technology, or (2) any information obtained from face recognition technology.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, 981-7140

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

Items for Future Agendas

- **Discussion of items to be added to future agendas**

Adjournment

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This is a meeting of the Berkeley City Council Public Safety Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Public Safety Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Public Safety Committee meeting.

Written communications addressed to the Public Safety Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.

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, 981-6900.

COMMUNICATION ACCESS INFORMATION:
This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

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I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 30, 2019.

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

01

BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE REGULAR MEETING MINUTES

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

Monday, May 6, 2019
10:30 AM

2180 Milvia Street, 1st Floor - Cypress Room

Committee Members:

Councilmembers Ben Bartlett, Susan Wengraf, and Rigel Robinson

Roll Call: 10:31 a.m. Councilmember Robinson absent.

Public Comment on Non-Agenda Matters – 1 speaker.

Minutes for Approval

1. Minutes for Approval - March 4, 2019

Action: M/S/C (Wengraf/Bartlett) to approve the minutes of March 4, 2019.
Vote: Ayes – Bartlett, Wengraf; Noes – None; Abstain – None; Absent – Robinson.

Committee Action Items

2. Referral Response: Update on Various Referrals and Recommendations Regarding Stop Data Collection, Data Analysis and Community Engagement
From: City Manager
Referred: April 30, 2019
Due: October 15, 2019
Recommendation: Review and provide feedback on the Berkeley Police Department responses to inter-related Council and Police Review Commission referrals, reports and recommendations, including the Center for Policing Equity report recommendations, regarding stop data collection, data analysis, community engagement, and related topics.
Financial Implications: See report
Contact: Andrew Greenwood, Police, 981-5900
Action: 4 speakers. Discussion held. Item continued to the next meeting.

Unscheduled Items

- **None**

Adjournment

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

Adjourned at 10:51 a.m.

I hereby certify that this is a true and correct record of the Public Safety Committee meeting held on May 6, 2019.

_____
Rose Thomsen, Deputy City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

Office of the City Manager

02

ACTION CALENDAR
April 30, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Subject: Referral Response: Update on Various Referrals and Recommendations Regarding Stop Data Collection, Data Analysis and Community Engagement

RECOMMENDATION

Review and provide feedback on the Berkeley Police Department responses to inter-related Council and Police Review Commission referrals, reports and recommendations, including the Center for Policing Equity report recommendations, regarding stop data collection, data analysis, community engagement, and related topics.

INTRODUCTION

This report provides information regarding Council's November 14, 2017 Referral to "track yield rates, develop training to address disparities found through the yield rates, and implement policy and practice reforms that reflect cooperation between the Police Department and broader Berkeley community." This report further provides information on related recommendations from additional referrals and reports, from Council, the Police Review Commission, and the Center for Policing Equity.

BACKGROUND

The collection and analysis of stop data and force data has been the subject of several related Council referrals, including a report from the Police Review Commission and a report from the Center for Policing Equity. These reports have many common, related, or overlapping recommendations. A substantial list appears in Appendix A.

In 2017 and 2018, Department resources, capacity, competing priorities, and an unprecedented staffing shortage impacted progress on some of these recommendations.

Implementation of BPD's Body Worn Camera program was among the highest priorities in 2018, and the program is now fully implemented. Numerous referrals and recommendations call for implementation and/or use of camera footage to support training. Officers have recorded well over 28,000 videos since October 2018. Videos have already proven useful as learning tools, as evidence in criminal matters, and of great value in reviewing uses of force, as well as complaints of misconduct.

CURRENT SITUATION AND ITS EFFECTS

The Department plans include several projects that will address the recommendations and referrals. These projects are further described below.

Given these recommendations primarily concern car and pedestrian stops, and are based on data up to 2016, it should be noted that Department stop activity has declined over the past two years, likely due in part to staffing shortages, fewer motorcycle officers doing traffic enforcement, and other factors. Between 2017 and 2018: overall car stops declined 31%, while pedestrian stops were down 28%. Since virtually all of the recommendations arise from older data, and are related to officers' actions during these stops, consideration of the recent data must be made in the context of more recent reduced stop activity.

Fundamentally, the Department will continue to strive to police in a manner that is respectful, fair, equitable, constitutional, and with a focus on proactive attention to safety, along with appropriate accountability. The on-going analysis of the previous stop data remains valuable, and the context of the data is equally important to consider.

Project work will be undertaken, along with planned activities included in the biannual budget planning process, throughout 2019 and beyond. While numerous factors could impact progress on these, the Department will prioritize completing the projects described below.

1. Collecting Additional Stop Data; Preparing for RIPA Requirements

The Department recognizes the benefits of gathering additional data, and will soon be working on the best methods to achieve this goal of additional data collection.
BPD currently collects stop data through using a six-character data string that is attached to each Computer Aided Dispatch (CAD) incident. The resulting data is posted on the City's Open Data Portal in its raw form.

Far more impactful are the impending mandates of California's 2015 Racial and Identity Profiling Act, commonly known as RIPA. The RIPA legislation requires the collection of at least 19 (nineteen) categories of data, as compared to six currently collected by BPD. The Department's existing data collection method is not able to capture the data required by RIPA. The Department will be required to collect the RIPA-specified data set on Jan. 1, 2022. Larger agencies are already collecting RIPA data, using a variety of different solutions to meet RIPA requirements.

In an effort to position our Department to become an early adopter of the coming RIPA requirements, the Department is committed to implementing a data collection protocol that meets or exceeds RIPA requirements. To that end, a workgroup has been established to examine other agencies' methods for collecting data, and compare those solutions to the configurable software module currently possessed by BPD. This group will recommend a solution, and the Department will move forward with implementation. Ideally, this solution will not only capture RIPA data, but also any additional data that the Department may wish to collect.

The Department's currently licensed software includes a configurable module which could be used for officers to capture data, but staff is concerned that module's utility may be limited by a lack of interface with the computer aided dispatch system, resulting in challenges caused by numerous pieces of data having to be entered manually by officers. Manual entry of location data is problematic, as such data should properly be "geo-verified" and resulting data would need to be reviewed and validated prior to use for analysis.

Current data collected and the 2019 RIPA Template are included as Appendix A of this report. The difference is extremely impactful to data collection efforts.

Collecting this substantial amount of additional data for each car and pedestrian stop will impact operations, as officers will spend much more time entering data than the current practice of advising dispatch. The Department will work to mitigate these challenges to the greatest extent possible through the user interface design, including if possible integration with CAD to automatically populate fields such as date, time, officer, location, et al. A desired solution will minimize officer time, while using systems integration to increase and enhance data integrity.

2. Community Engagement and Data Analysis
Several recommendations focus on data analysis and community engagement in order to build trust, increase contact, and strengthen department-community relations.

Community engagement is an organizational priority, and is seen as an opportunity to not only share information, such as the data collected during stops, but to share contextual information about police activity. Our department's mission is to safeguard our diverse community. Given that mission, and the work we do in service to that mission, the department is seeking opportunities to share and discuss the data, and also to understand the perspectives of our diverse community on the fundamental question of what makes a community feel safest in their neighborhoods.

The department seeks to secure assistance to support analysis of stop data, to create tools to facilitate data analysis, to foster creation of a task force to review and discuss the data, including discussion with the community, and to create a community engagement strategy that builds on the Department's engagement activities. This work is being done through the RFP process, and will help to address a number of recommendations.

In addition, the Department will continue to provide data to the Center for Policing Equity, and continue to engage with CPE in the challenging problem of determining best analytical frameworks. CPE's report delivered in 2018 provoked questions of how best to analyze and interpret data from stops, and these questions remain unresolved. Continued work with CPE is desired to gain understanding from the data and analytical approaches.

The Department will improve the Open Data Portal's available stop data by converting all stop data from a six character string into six individual data fields on the Open Data Portal, thereby providing data in a more useful form. The Department seeks to make available on the Portal easy-to-use tools for the examination of posted data.

3. Force Policy Update; Data Collection; Release of Aggregated Data
Several recommendations relate to updating the Department's Use of Force policy, and to summarize reporting of use of force data.

To accomplish this, the Department will complete of the Use of Force policy revision, after which a new software system will be implemented for force reporting. This software will capture all use of force data. Summary Force Data will be reported to the Police Review Commission on a regular basis, and is anticipated to be placed on the Open Data Portal.

Use of Force Policy Revision; Software Implementation*

Task	Responsible	Timelines
Reconvened workgroup completing updated language within existing policy, to incorporating Council Referral	Workgroup including Operations, Use of Force Subject Matter Experts, Information Technology, Internal Affairs, Berkeley Police Association Rep.	Mid-May
Legal review	Legal, Chief	Mid-late May
PRC review	PRC, Chief	End of May
BPA Meet and Confer (as necessary)	BPA, Chief, Legal, HR	End of May, early June
Finalize Policy	Chief	Early June
Council Report	Chief/Staff	Late June
Implementation of Use of Force software system	Internal Affairs, DoIT	Late June
Implement Use of Force Data on Open Data Portal	DoIT	Late June

*Some tasks and timelines may overlap

4. Policy and Trainings as needed to address disparities
Several recommendations concern development of departmental policies and training to address disparities in policing as indicated through the data.

Any policy and training development would build upon a considerable body of current policy and previous related training.

The Berkeley Police Department has a long history of policies which reflect our commitment to constitutional policing without racial profiling, which is prohibited under Penal Code 13519(4)(f). Applicable policies include, for example:

Policy 401, Fair and Impartial Policing (formerly General Order B-4)
Police Regulation 282 Non-discrimination/Equal Employment;
Police Regulation 255 Obedience – Laws and Orders
Police Regulation 257 Enforcement of Law – Impartiality
Police Regulation 200 Misconduct – Duty to Report
Police Regulation 201 Misconduct –Supervisory and Command Officer Responsibilities
General Order P-26 Personnel Complaint Procedure
General Order H-4 Hate Crime Policy and Procedure

The Department has a long history of training to increase awareness—and thereby mitigate— the potential impacts of implicit bias, and to support policing which is based on treating people with dignity and respect, while avoiding an over-reliance of force in safeguarding our community, including, in part:

Procedural Justice Training 2017-2018
Fair and Impartial Policing training sessions 2010-2016
Tactical De-escalation Training 2016
Crisis Intervention Training 2011-present, ongoing
POST Biased-based Policing 2014

ENVIRONMENTAL SUSTAINABILITY

Implementation of software and software enhancements may assist with the data sharing via electronic formats thereby reducing the need for paper, supplies, ink and staff time to compile some information requests.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

RIPA Data Collection software costs are dependent on research, evaluation and comparison to the department's existing currently licensed software. Consultant costs estimated at $50,000. All projects require significant staff time.

CONTACT PERSON

Andrew Greenwood, Chief of Police, (510) 981-5700

ATTACHMENTS

1. Appendix A – Referrals and Recommendations, with notes
2. Appendix B – BPD Stop Data currently collected; RIPA Requirements

Appendix A: Referrals and Recommendations

Appendix A: Referrals and Recommendations

Notes in **(BOLD)** at the end of numerous recommendations denote ongoing or planned project work to address the recommendations. Many recommendations will be addressed through the same project, e.g. the RIPA implementation, Use of Force Policy, etc.

Referral to Address Disparate Racial Treatment and Implement Policy and Practice Reforms
November 14, 2017, Item 24

1. Tracking Yield rates **(RIPA)**
    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.
2. Consider any other criteria that would contribute to a better understanding of stops, searches, citations and arrests and the reasons for such actions. **(RIPA)**
3. Develop training programs to address the organizational causes of any disparate treatment and outcomes by race uncovered by yield rates above, in accordance with the City's body worn camera policy, through examination of footage on police body cameras (e.g. more scenario-based training on procedural justice and the roots of disparate treatment, expanded de-escalation training.) **(RIPA)(TRAINING)**
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. **(CONSULTANT; COMMUNITY ENGAGEMENT)**
5. Once released, BPD should analyze the final Center for Policing Equity report and propose improvements as needed.

PRC Report and Recommendations, "To Achieve Fairness and Impartiality"
April 24, 2018, Item 38a

A. Data Collection and Analysis Enhancements **(RIPA)**
    1. Add specific data elements to those already tracked. Maintain and analyze demographic data. Enhance the current web display for readability.
    2. Report trends regularly to PRC and City Council. Report stop data by officer (stripped of identifying information).
    3. Hire a data manager/analyst. **(BUDGET)**
    4. Enhance ability to correctly identify ethnicity of individuals.
    5. Report every use of force. **(FORCE POLICY & REPORTING)**
B. Address racial disparities shown in the data (**RIPA)(ANALYSIS)**
    1. Monitor stop, search, and enforcement/disposition outcomes across race.

2. Determine if disparities are generalized or reside in a subset of the department and develop effective mitigations including policy reviews, staff support, counseling and training, or other as appropriate.
3. Work closely with PRC to develop mitigations and track progress.
4. Develop early warning systems to minimize future problems of biased policing.

C. Body Worn Cameras **(Program implemented)**

1. Accelerate full deployment of body cameras.
2. Use camera footage to train officers and evaluate policies.

D. Other departmental steps

1. Partner with academic institutions.
2. Increase support for officer wellness and safety. **(DEPT WELLNESS PROGRAMS; GRANT SOUGHT)**
3. Strengthen informed consent procedures for search. (**RIPA)(POLICY)**
4. Strengthen requirements for officers to identify themselves. **(POLICY)**

E. Community relations **(CONSULTANT; COMMUNITY ENGAGEMENT)**

1. Prepare detailed action plan to build trust in and accessibility to the department, focused on communities of color.
2. Consult and cooperate with the broader community to develop and implement policy and practice reforms.
3. Increase positive community contact.

PRC Report and Recommendations, "To Achieve Fairness and Impartiality"
Referring Key Recommendations to the City Manager
April 24, 2018, Item 38b, Supp. 1

1. Departmental Action Plan **(DESCRIBED IN THIS ITEM)**
2. Officer Identification **(POLICY)**
3. Review and update BPD Policy surrounding Inquiries to Parole and Probation Status **(RIPA)(POLICY)**
4. Enhance Search Consent Policies **(RIPA)(POLICY)**
5. Reporting Data on the Public Data Portal **(ODP)**
6. Simplifying Public Data Portal Data Structure **(ODP)**
7. Collect Data on Frisks and Summons (in Berkeley: Pedestrian stops, Citations) **(RIPA)**
8. BPD Data Dashboards
9. Enhance Existing "Early Warning" Systems

Center for Policing Equity Recommendations
May 9, 2018

1. We recommend changing the use of force data capture protocol to register every use of force by BPD officers, regardless of weapon use, injury, or complaint. **(FORCE POLICY & REPORTING)**
2. 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. **(RIPA)**

3. We recommend that BPD collect and share more detailed data with respect to use of force. In particular, we recommend that it collect and analyze data about whether the and how the person resisted arrest, and about charges filed against persons involved in use of force incidents. **(FORCE POLICY & REPORTING)**
4. 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. **(RIPA)**
5. We recommend that BPD continue to affirm that the egalitarian values of the department be reflected in the work its officers and employees do. **(ONGOING, MISSION, POLICY)**
6. 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. **(CONSULTANT; COMMUNITY ENGAGEMENT)**
7. We recommend BPD track yield rates (of contraband found at searches). **(RIPA)**
8. 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.
9. We recommend that BPD track crime trends with neighborhood demographics in order to ensure that response rates are proportional to crime rates.
10. 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. **(PROCEDURAL JUSTICE TRAINING COMPLETED)**
11. 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.
12. We recommend that BPD trainings include clear messaging that racial inequality and other invidious disparities are not consistent with the values of BPD. **(TRAININGS & POLICIES IN PLACE)**
13. 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. **(ONGOING PRC SUBCOMMITTEE WORK)**

Direct the City Manager Regarding the Berkeley Police Department's Use of Force Policy
October 31, 2017, Item 26

1. Enhance BPD's use of force policy statement; and
2. Create a definition of use of force; and
3. Require that all uses of force be reported; and
4. Categorize uses of force into levels for the purpose of facilitating the appropriate reporting, investigation, documentation and review requirements and
5. Require Use of Force Report to be captured in a manner that allows for analysis; and
6. Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission and Council.
   (FORCE POLICY & REPORTING)

Appendix B:

BPD Data currently collected

DISPOSITION CODE (SIX DIGIT CODE)					
AM3WCN					
1. Race	2. Gender	3. Age	4. Reason	5. Enforcement	6. Car Search
A Asian B Black H Hispanic W White O Other	M Male F Female	1 <18 2 18-29 3 30-39 4 >40	I Investigation T Traffic R Reas. Susp. K Prob./Parole W Wanted	A Arrest C Citation W Warning O Other	S Search N No Search

Appendix B:
RIPA Reporting Requirements

AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS

Additional data values for the stop of a student in a K-12 public school are listed in red.

1. **Originating Agency Identifier** (prepopulated field)

2. **Date, Time, and Duration of Stop**
   Date: (e.g., 01/01/19)
   Start Time (approx.): (e.g. 1530)
   Duration of Stop (approx.): (e.g. 30 min.)

3. **Location**
   - Report one (listed in order of preference): block number and street name; closest intersection; highway and closest highway exit. If none of these are available, the officer may report a road marker, landmark, or other description, except cannot report street address if location is a residence.
   - City:_____
   - Check here to indicate stop is of a student at K-12 public school: _____
     - Name of -12 Public School _____

4. **Perceived Race or Ethnicity of Person Stopped** (select all that apply)
   - Asian
   - Black/African American
   - Hispanic/Latino(a)
   - Middle Eastern or South Asian
   - Native American
   - Pacific Islander
   - White

5. **Perceived Gender of Person Stopped** (may select one from options 1-4 AND option 5, if applicable, or just option 5)
   1. Male
   2. Female
   3. Transgender man/boy
   4. Transgender woman/girl
   5. Gender nonconforming

6. **Person Stopped Perceived to be LGBT** (Yes/No) **(**"Yes" must be selected if "Transgender" was selected for "Perceived Gender")

7. **Perceived Age of Person Stopped** (input the perceived, approximate age)

8. **Person Stopped Has Limited or No English Fluency (check here if Yes _____)**

9. **Perceived or Known Disability of Person Stopped** (select all that apply)
   - Deafness or difficulty hearing
   - Speech impairment or limited use of language
   - Blind or limited vision
   - Mental health condition
   - Intellectual or developmental disability, including dementia
   - Disability related to hyperactivity or impulsive behavior
   - Other disability
   - None

AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS

Additional data values for the stop of a student in a K-12 public school are in listed in red.

10. Reason for Stop (select one - the primary reason for the stop only)

- Traffic violation
  - Specific code (CJIS offense table; select drop down) and
  - Type of violation (select one)
    - Moving violation
    - Equipment violation
    - Non-moving violation, including registration violation
- Reasonable suspicion that person was engaged in criminal activity
  - Specific Code (drop down; select primary if known) and
  - Basis (select all applicable)
    - Officer witnessed commission of a crime
    - Matched suspect description
    - Witness or victim identification of suspect at the scene
    - Carrying suspicious object
    - Actions indicative of casing a victim or location
    - Suspected of acting as a lookout
    - Actions indicative of a drug transaction
    - Actions indicative of engaging in a violent crime
    - Other reasonable suspicion of a crime
- Known to be on parole/probation/PRCS/mandatory supervision
- Knowledge of outstanding arrest warrant/wanted person
- Investigation to determine whether person was truant
- Consensual encounter resulting in search
- Possible conduct warranting discipline under Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7 (select specific Educ. Code section & subdivision)
- Determine whether student violated school policy

A brief explanation is required regarding the reason for the stop and must provide additional detail beyond the general data values selected (250-character maximum).

11. Stop Made in Response to a Call for Service (Yes/No) (Select "Yes" only if stop was made in response to call for service, radio call, or dispatch)

12A. Actions Taken by Officer(s) During Stop (select all that apply)

- Person removed from vehicle by order
- Person removed from vehicle by physical contact
- Field sobriety test conducted
- Curbside detention
- Handcuffed or flex cuffed
- Patrol car detention
- Canine removed from vehicle or used to search
- Firearm pointed at person
- Firearm discharged or used
- Electronic control device used
- Impact projectile discharged or used (e.g. blunt impact projectile, rubber bullets or bean bags)
- Canine bit or held person
- Baton or other impact weapon used
- Chemical spray used (e.g. pepper spray, mace, tear gas, or other chemical irritants)
- Other physical or vehicle contact
- Person photographed

AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS

Additional data values for the stop of a student in a K-12 public school are in listed in red.

- Asked for consent to search person
  - Consent given
  - Consent not given
- Search of person was conducted
- Asked for consent to search property
  - Consent given
  - Consent not given
- Search of property was conducted
- Property was seized
- Vehicle impound
- Admission or written statement obtained from student
- None

12B. Basis for Search (if search of person/property/both was conducted; select all that apply)

- Consent given
- Officer safety/safety of others
- Search warrant
- Condition of parole/probation/PRCS/mandatory supervision
- Suspected weapons
- Visible contraband
- Odor of contraband
- Canine detection
- Evidence of crime
- Incident to arrest
- Exigent circumstances/emergency
- Vehicle inventory (for search of property only)
- Suspected violation of school policy

A brief explanation is required regarding the basis for the search and must provide additional detail beyond the general data values selected (250-character maximum). This field is not required if basis for search is "condition of parole/probation/PRCS/mandatory supervision."

12C. Contraband or Evidence Discovered, if any (during search/in plain view; select all that apply)

- None
- Firearm(s)
- Ammunition
- Weapon(s) other than a firearm
- Drugs/narcotics
- Alcohol
- Money
- Drug paraphernalia
- Suspected stolen property
- Cell phone(s) or electronic device(s)
- Other contraband or evidence

12D. Basis for Property Seizure (if property was seized; select all that apply)

- Safekeeping as allowed by law/statute
- Contraband
- Evidence
- Impound of vehicle

AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS

Additional data values for the stop of a student in a K-12 public school are in listed in red.

- Abandoned property
- Suspected violation of school policy

Type of Property Seized (select all that apply)

- Firearm(s)
- Ammunition
- Weapon(s) other than a firearm
- Drugs/narcotics
- Alcohol
- Money
- Drug paraphernalia
- Suspected stolen property
- Cell phone(s) or electronic device(s)
- Vehicle
- Other contraband or evidence

13. **Result of Stop** (select all that apply)
    - No action
    - Warning (verbal or written): Code/ordinance cited (drop down)
    - Citation for infraction: Code/ordinance cited (drop down)
    - In-field cite and release: Code/ordinance cited (drop down)
    - Custodial arrest pursuant to outstanding warrant
    - Custodial arrest without warrant: Code/ordinance cited (drop down)
    - Field Interview Card completed
    - Noncriminal transport or caretaking transport (including transport by officer, transport by ambulance, or transport by another agency)
    - Contacted parent/legal guardian or other person responsible for the minor
    - Psychiatric hold (Welfare & Inst. Code, §§ 5150, 5585.20.)
    - Referred to U.S. Department of Homeland Security (e.g., ICE, CBP)
    - Referral to school administrator
    - Referral to school counselor or other support staff

14. **Officer's Identification (I.D.) Number** (prepopulated field)

15. **Officer's Years of Experience** (total number of years worked as a peace officer)

16. **Type of Assignment of Officer** (select one)
    - Patrol, traffic enforcement, field operations
    - Gang enforcement
    - Compliance check (e.g. parole/PRCS/probation/mandatory supervision)
    - Special events (e.g. sports, concerts, protests)
    - Roadblock or DUI sobriety checkpoint
    - Narcotics/vice
    - Task force
    - K-12 public school, including school resource officer or school police officer
    - Investigative/detective
    - Other (manually specify type of assignment)

CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

03

CONSENT CALENDAR
May 28th, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Rigel Robinson and Kate Harrison

Subject: Alternative Compliance Measures to Achieve Fire Safety in Existing Live/Work Spaces

RECOMMENDATION

Refer to the City Manager to develop alternative code compliance measures for nontraditional live/work spaces, in order to improve residential safety without displacing existing communities. Given the current shortage of affordable housing, Staff should consider how to enact a policy of leniency towards existing structures which may not be in complete compliance with city permits. Staff should seek methods to incentivize incremental safety renovations without exposing communities to eviction concerns.

BACKGROUND

In December 2016, the Oakland artist collective known as the Ghost Ship caught fire during a 50-person house concert, ultimately resulting in the deaths of 36 attendees. The building itself, a 1930's industrial warehouse, hadn't been inspected by the City in three decades. In addition to a densely packed interior with art, pianos, and antique furniture obstructing walkways, the Ghost Ship lacked fundamental safety features including sprinklers and clearly marked exits.

This tragedy highlighted the unique challenges and risks faced by the residents of similar nontraditional living spaces, and particularly by economically marginalized populations whose identities or financial circumstances can create a barrier to relocation. In response, Berkeley and other cities should consider what action can be taken to initiate the process of bringing existing spaces up to code without displacing current residents.

When considering methods of doing so, Staff should bear in mind that existing buildings may not be in complete compliance with current city permits and codes. Staff should consider how to adopt a policy of short-term leniency or amnesty, while these structures are improved for the long-term benefit of safe alternative living solutions.

The City of Seattle has also wrestled with the question of how to make alternative living spaces safer while preserving existing communities. In a letter to Seattle Mayor Ed Murray, the Seattle Arts Commission expressed that "reactionary shutdown of essential community spaces is not an appropriate, sustainable, or equitable response. Even when the intent is to protect the public by preventing imminent catastrophe, eviction creates another emergency: the violence of displacement. The existence of non-permitted, non-

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code-compliant spaces is in part driven by the economics of space affordability in Seattle, and the fact that code compliance is complicated and expensive."

Seattle is also considering systematic reforms, including: (1) Instructing all officials involved with code enforcement to consider the impact on marginalized communities before recommending venue closure or resident eviction. (2) Allowing the Fire Marshall to advise non-code-compliant communities on attainable incremental safety improvements, rather than demanding complete compliance immediately, according to the principle that keeping residents safe and housed is the best possible outcome. (3) Designating a fund to assist with life safety improvements, specifically for 'underground' or nontraditional live/work spaces. (4) Developing a low-barrier "Arts Events License" for non-commercial spaces, incentivizing nontraditional communities to obtain sanctioned permission rather than operate underground.

When developing a plan, Staff should consider whether aspects of the Seattle model may be appropriate or effective in Berkeley.

FINANCIAL IMPLICATIONS
Staff time.

ENVIRONMENTAL SUSTAINABILITY
Per-capita use of energy and water by residents of collectives is typically lower. Preserving these community living arrangements helps maintain this low rate of energy and water use per resident. Furthermore, making these communities safer prevents fires which could have devastating consequences for the greater Bay Area ecosystem.

CONTACT PERSON
Councilmember Rigel Robinson, (510) 981-7170
Mars Svec-Burdick, Intern to Councilmember Rigel Robinson

Attachments:
1: UC Berkeley Department of City and Regional Planning Report on Strategies for Live/Work Preservation (http://www.urbandisplacement.org/sites/default/files/images/livework_ucb_studio_report_final.pdf)
2: Seattle Arts Commission Letter to Seattle Mayor Ed Murray (https://res.cloudinary.com/sagacity/image/upload/v1482164218/Commissions_Response_to_Oakland_Fire_mykyrd.pdf)
3: Berkeley Zoning Code Title 23, Section 20: Live/Work Provisions (http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_BMC/BMC-Part2--032508.pdf)

04

CONSENT CALENDAR
May 14, 2019

To: Honorable Mayor and Members of the City Council

From: Disaster and Fire Safety Commission

Submitted by: Gradiva Couzin, Chair, Disaster and Fire Safety Commission

Subject: Recommendation to Install an Outdoor Public Warning System (Sirens) and Incorporate It Into a Holistic Emergency Alerting Plan

RECOMMENDATION

We recommend that City of Berkeley immediately begin the process to purchase, install, and maintain an outdoor public warning system (sirens) as a supplement to other alert and warning technologies within our boundaries and coordinated with abutting jurisdictions and Alameda County.

This installation should be accompanied by the following:

- ongoing outreach and education so that the public will understand the meaning of the sirens and what to do when they hear a siren
- development of a holistic alert protocol, incorporating sirens as an additional option among the available suite of alerting methods
- staff training and drills on alerting procedures
- development of a testing and maintenance plan that will ensure the system is fully operational while avoiding unnecessary or excessive noise pollution in the City
- outreach to deaf and hard of hearing residents to encourage them to opt-in for alerting that meets their communication needs. This may include distributing weather radios or other in-home devices with accessibility options for people with disabilities.

This recommendation does not specify the number, type, or location of sirens; City staff should determine the most cost-effective system that achieves the goals described in this recommendation. This may include either mobile or fixed-location sirens.

FISCAL IMPACTS OF RECOMMENDATION

Exact costs and staff time are to be determined. However, the two estimates below give a ballpark sense of the possible cost of this installation:

- Example 1: The cost of a 23-siren system in Berkeley was estimated at $801,000 in 2004 ($1.1 million in 2018 dollars), with an additional $100,000 ($132k in 2018 dollars) for public outreach and 0.5 FTE staff member time for 6 months to support the installation process.
- Example 2: A siren proposal in Sonoma County was recently estimated at $850,000 for design and installation of 20 sirens.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2019, at the Regular meeting of the Disaster and Fire Safety Commission, the commission passed a motion to recommend that the City immediately begin the process to purchase, install, and maintain an outdoor public warning system (sirens) as a supplement to other alert and warning technologies within our boundaries and coordinated with abutting jurisdictions and Alameda County. M/S: Flasher, Degenkolb; Vote: 8 Ayes: Degenkolb, Flasher, Simmons, Stein, Bailey, Couzin, Grimes, Dean; 0 Noes; 0 Absent; 0 Abstain.

Berkeley faces a serious threat from a wildland-urban interface (WUI) fire that has increased for many reasons, including the growth of fuel that is happening as a result of recent rains. Based on recent experiences in the 2017 North Bay fires and the 2018 Camp Fire, it is clear that a wildfire in Berkeley would spread very quickly, expanding at many miles per hour and requiring a rapid evacuation of a large number of residents. This is especially likely in the designated Hazardous Fire Zones in the hills, but an intense and fast-moving fire threatens the entire City of Berkeley, including the flats.

Significant efforts are underway to address this increasing threat, including City staff's creation of a draft Wildfire Evacuation Plan and other wildfire safety efforts.

The City of Berkeley currently has several available alerting options that it can use in a wildfire emergency (see Attachment A) but does not have a citywide system of emergency sirens.

Recent wildfires in Northern and Southern California have shown that existing alerting systems and processes have not been sufficient. These wildfires have had tragic outcomes, with a disproportionate number of deaths of seniors and people with disabilities. Some of these locations have since initiated plans to install outdoor public warning systems (sirens).

BACKGROUND

Berkeley has considered using sirens for many years. In 2004, the City commissioned a study exploring installing emergency sirens, which included testing sirens and designing a possible layout of sirens.

In November, 2004, Bill Greulich, Emergency Services Manager at the time, recommended against installation of fixed sirens. He instead recommended exploring mobile sirens or weather radios. See Attachment B, "Alerting and warning system project update and recommendations for further action." However, in the 15 years since that discussion, neither of the suggested alternatives (mobile sirens and mass distribution of weather radios) has materialized.

Since that time, wildfires have become an increasing hazard in California due to the effects of climate change, including: increased frequency and severity of drought, tree mortality, bark beetle infestation, warmer spring and summer temperatures, and longer and more intense dry seasons. California experienced the deadliest and most destructive wildfires in its history in 2017

and 2018.[1] Fires are bigger, faster, and more intense; firefighters in the 2018 Camp Fire reported that they had never seen a fire move so quickly.[2] The length of wildfire season has expanded to be nearly year-round.[3] With the continuing effects of climate change, scientists suggest that fires will continue to be a worsening threat.[4]

Also, in the years since the 2004 decision, smartphone technology has emerged, and while this has been an important addition to alerting options, it has not fully met the alerting needs or expectations of the public. A California Office of Emergency Services (Cal OES) Assessment Report on the Sonoma County wildfires of October 2017[5] concluded that public expectations for local government alert and warning services are higher than what is currently being offered. People expect to be adequately alerted, even if they have never taken any action to "opt-in" for warnings.

At this time, the City is reviewing and re-evaluating all of its emergency notification options following the 2017 and 2018 wildfires. Berkeley Fire Department has been considering the idea of installing sirens for at least a year, since January 2018.

ENVIRONMENTAL SUSTAINABILITY

Installing sirens will have an environmental impact due to the construction and maintenance required. They also create noise pollution that can be highly annoying for residents. Poles can be wood, concrete or steel. Sirens can be AC or battery-powered with solar-powered battery back-up as an option.

RATIONALE FOR RECOMMENDATION

The tragedies of the 2018 Camp Fire and the 2017 North Bay fires show the extreme danger that fast-moving wildfire events pose for both residents and responders. The objective of this Commission is to assist policy makers, responders, and residents in achieving the ultimate goal of a smooth-running, extremely fast, safe and effective evacuation with no loss of life.

Currently, Berkeley has several systems available to alert residents of an emergency. See Attachment A, "Alerting Systems Available for Berkeley Emergencies (February 2019)".

Each of Berkeley's currently-available alert systems will reach some but not all residents, and most of these systems are only available to people who have opted-in before an emergency, or who are actively seeking information about an emergency – not people who are simply going about their lives.

[1] http://www.fire.ca.gov/downloads/45-Day%20Report-FINAL.pdf
[2] https://www.nationalgeographic.com/environment/2018/11/how-california-fire-catastrophe-unfolded/
[3] https://www.nature.com/articles/ncomms8537
[4] https://www.theguardian.com/environment/2018/aug/07/california-wildfires-megafires-future-climate-change
[5] https://sonomacounty.ca.gov/Public-Safety/Emergency-Notification-for-Sonoma-Complex-Fires-2017/

As an additional concern, failure rates can be high with any one system. In Sonoma County in the 2017 North Bay fires, only 51% of the 290,000 emergency alert calls reached a human or answering machine[6]. Camp Fire failure rates for alerts reportedly ranged from 25% to 94%.[7]

Due to various failures and limitations of emergency alerting, many survivors after the 2017 North Bay fires and the 2018 Camp Fire were left wondering why they did not receive any alert at all. These experiences and tragic outcomes strengthen the importance of redundancy through multiple alert methods.

A modern outdoor siren system, designed to blanket all of Berkeley in sound, would provide an additional layer of coverage where other systems may fail. Sirens can also provide redundancy if other communication channels are disabled due to power outage or cell tower disruption.

Here are several questions and answers about this siren recommendation:

When will sirens be activated? Currently, City staff determine what type of alerts to send out based on the level of danger, how localized the danger is, and how imminent the danger is. Sirens should be incorporated into a holistic plan for warnings and alerts so that they have the best chance of filling any gaps to alert people when there is a serious or life-threatening hazard, including wildfires, chemical spills, or other hazards.

Modern sirens allow for multiple tones, so they can be used for more than one message. In addition to wildfire and other hazard alerting, sirens could potentially be integrated with future earthquake early warning systems, which is already done in Mexico City, to provide a warning before earthquake shaking hits.[8]

This recommendation does not specify the exact criteria for determining when to activate a siren alert; the option of activating sirens should be incorporated into the City's alerting protocol based on the best professional judgement of City staff, and in accordance with appropriate state or federal guidelines.

Any alert or warning technology is only as good as the planning, training, and situational awareness that allows responders to use it well. We recommend that activation criteria and procedures be fully and clearly documented in writing, trained, and tested by City staff on a regular basis:

- Criteria for activating alerts
- Who is authorized to decide to activate an alert
- Content of alerts (message template), as applicable
- Technical operation of the alerting system

[6] https://abc7news.com/sonoma-county-tests-emergency-phone-calls-in-wake-of-north-bay-fires/4208459/
[7] https://www.mercurynews.com/2018/12/16/camp-fire-created-a-black-hole-of-communication/
[8] https://eos.org/features/lessons-from-mexicos-earthquake-early-warning-system

Will people hear them indoors? Outdoor public warning systems are generally considered to be for alerting people who are outdoors, not indoors. However, "practical experience and the results of tests by the Federal Emergency Management Agency (FEMA) and others have shown that siren sounds are quite effective for alerting large populations—including those indoors"[9]

According to a 2006 FEMA technical bulletin, despite the limitations in sound getting inside buildings, "an outdoor [public alert system] can reasonably be expected to alert *some* people inside buildings" and "a properly designed outdoor [public alert system] may also awaken sleeping members of the public in residential areas."[10] This bulletin reports that the likelihood of a person being awakened from sleep by an outdoor siren ranges from 17% - 52%, depending on the person's age and the loudness of the sirens.

Consistent with this research, past events also show that sirens are often heard indoors. For example, in the deadly 2011 Joplin, MO tornado, sirens "could generally be heard indoors" although unfortunately many residents did not take action based on the sirens[11]. Recent siren malfunctions in 2017 and 2018 (in Dallas and Memphis) resulted in a large number of complaints about people being awakened or kept awake by the sirens.[12] And many West Berkeley residents can attest to being awakened from sleep by Bayer plant sirens.

Clearly, the City can't rely on sirens to alert everyone who is indoors, especially if people are asleep. Sirens may only reach half or a quarter of this population; because of this, sirens should be just one layer in multiple alerting methods that are used. The most effective emergency alerting combines multiple methods, both outdoor and indoor.[13]

We recommend that the selection of tones and frequencies be made to maximize the chance of the siren being audible indoors, as described here: "lower frequency components should be included for better coverage, including components between 225 Hz and 355 Hz for transmission through windows (Mahn 2013)."[14]

Will they be confusing? An ongoing public information campaign is an important part of any outdoor public warning system, so that people know what action to take when they hear a siren. Additionally, siren testing should be designed to help the public be aware of sirens and their meaning. Testing should take place at the same time of day and week (e.g. at noon on Tuesdays) to avoid any confusion, and silent testing should be used when possible.

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[9] https://asa.scitation.org/doi/10.1121/1.2024832
[10] https://www.midstatecomm.com/PDF/FEMA_guide.pdf
[11] https://www.nist.gov/sites/default/files/documents/2017/05/09/NCSTACmtgDec2013KuligowskiJoplin.pdf
[12] http://www.wmcactionnews5.com/2018/11/01/tornado-sirens-falsely-sound-nd-straight-morning/, https://www.nytimes.com/2017/04/08/us/dallas-emergency-sirens-hacking.html
[13]https://www.researchgate.net/profile/John_Sorensen7/publication/327226171_Rogers_and_Sorensen_1988_Diffusion_of_Emerg_Warn/links/5b816d40299bf1d5a7270825/Rogers-and-Sorensen-1988-Diffusion-of-Emerg-Warn.pdf
[14] https://nvlpubs.nist.gov/nistpubs/TechnicalNotes/NIST.TN.1950.pdf

Here are examples of siren testing programs in locations near Berkeley:

- San Francisco, which has had a siren system in place for many years, tests their system every Tuesday at noon using a single tone for 15 seconds. In an actual emergency, the sound will cycle repeatedly for 5 minutes.[15]
- Oakland and UC Berkeley test on the first Wednesday of every month at the same time, using a slow wail for 90 seconds. This is explained to the public as not only testing the system, but "enhancing public awareness" so that if something different from the usual day, time, or tone is heard, the public should turn on radios, computers, phones or TV for more information. Three different tones are used in case of an actual emergency: A 3-minute slight wail means shelter in place, a slow wail means a tsunami, and a fast wail means a fire.[16]
- Richmond, which is on the Contra Costa County system, tests on the first Wednesday of every month at 11:00 am for less than 3 minutes, and every Wednesday at 11:00 am using a barely audible sound (known as a "growl test")[17]. There are also two systems in place controlled by the Chevron Refinery.

The typical action that people should take when they hear an emergency siren is to seek more information through other channels, which may include the radio or internet, in order to learn what they need to do next. It's very important that people get a consistent message from all of these channels, so planning for that output should be included in the holistic alerting plan.

Here are two examples of this process not working well:

- In the 2011 Joplin, MO tornado, sirens prompted people to look for more information, but they got conflicting information from different sources, which led to public confusion and is considered a major contributor to why people didn't take action and get to safety.[18]
- Another example of poorly-managed public information for outdoor public warnings is the Bayer plant in West Berkeley. Bayer alarms occasionally go off and are concerning to neighbors, but there is minimal information available online, and Bayer doesn't answer a support line after hours.

City of Berkeley would need to do a better job and provide extensive support and education, not only when the system is installed but also on an ongoing basis afterwards, and every time the sirens are activated.

Are they accessible and ADA compliant? A negative feature of sirens is that, like other audible alerts, they are not accessible to people who are deaf or hard of hearing.

Berkeley's emergency alerting must use a combination of notification methods that can reach all residents. The public outreach campaign should include a very extensive program to reach all

[15] https://sfdem.org/tuesday-noon-siren
[16] http://www2.oaklandnet.com/oakca1/groups/fire/documents/webcontent/oak063278.pdf
[17] https://www.ci.richmond.ca.us/331/Community-Warning-System
[18] https://www.nist.gov/sites/default/files/documents/2017/05/09/NCSTACmtgDec2013KuligowskiJoplin.pdf

disabled residents and encourage them to opt-in for alerting that meets their communication needs. This may include distributing weather radios or other in-home devices with strobe light or vibration options as an alternative to siren alerting for people who are deaf or hard of hearing.

We believe that despite this limitation, sirens could help deaf and hard of hearing residents. In emergencies, many people learn about the danger from a neighbor, not directly from official alerts. This is described in the 2018 Camp Fire:

> *"Some learned about the looming wildfire from neighbors knocking on their doors. Or frantic cellphone calls from friends. Others just looked out their windows and saw the smoke and flames, or heard the chaos of neighbors hustling up children and pets and scrambling to get out.*
>
> *Matthew White was sound asleep when the fire began raging around his home in Paradise, Calif., the morning of Nov. 8. But somehow he heard his cellphone ring.*
>
> *It was a friend of his shouting on the other end of the line: "Get the hell up and get the hell out! Paradise is on fire!" ".*[19]

The way this helps is analogous to the concept of "herd immunity" or "community immunity" that helps explain how vaccines make communities safer: blanketing the area with a siren will allow a larger percentage of people to get informed and to inform neighbors, and this will improve the level of protection for all, including vulnerable neighbors who may not hear the sirens.

Will they work in a power outage? Outdoor warning sirens can have backup batteries, which can be recharged using solar panels to ensure that they will work during a power outage. They can be controlled by a radio signal from a safe location.[20] Sirens may burn down in a fire, but they will at least be able to provide warning until the fire reaches their location.

What other communities in California have sirens? Many communities near Berkeley have sirens, including the City of Oakland and UC Berkeley as well as Contra Costa County, as noted above. Oakland's sirens were installed as a result of the 1991 Tunnel fire. Lake County installed sirens following the deadly Valley Fire in 2015. Sonoma County is considering installing sirens following the deadly North Bay fires of 2017 Mill Valley is exploring the use of mobile sirens. Berkeley now has the opportunity to install sirens before, rather than after, a disaster occurs.

Will people take them seriously? The decision-making process for people to decide to take action in an emergency is complicated and varies from person to person. ***Studies show that people look for confirmation from more than one source before they take action***.[21] Sirens can reinforce other messages about imminent danger.

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[19] https://www.nytimes.com/2018/11/21/us/paradise-fires-emergency-alerts.html
[20] https://www.dhs.gov/sites/default/files/publications/Outdoor-Sirens-MSR_0315-508.pdf
[21] https://www.osti.gov/servlets/purl/6137387

Although conventional wisdom may worry about a "cry wolf" or "warning fatigue" effect from too many warnings, research about these effects is mixed.[22] Ensuring the credibility of the sirens and avoiding a "cry wolf" effect should be considered when choosing a siren system and testing plan.

Can't the city go door-to-door instead? If there is a fire moving at the scale and speed of recent California wildfires, responders will not have enough time to alert a large portion of the population by going door-to-door. The City will be balancing its resources between fighting the fire, clearing the roads, and knocking on doors. According to Berkeley's draft Evacuation Plan:

> *"Community members should not expect door-to-door notifications or assistance from emergency responders during evacuation."*

What is the best siren system? This recommendation does not specify a specific siren brand or system. A 2015 FEMA survey of available siren systems[23] shows that there are many features that can be varied in different systems, including:

- Price
- Number and location of sirens
- Static or mobile sirens
- Materials (concrete, wood, or metal poles)
- Type of sounds (wailing, beeping, voice)
- Power backup
- Methods of activation (in-person, radio, wired, wireless)
- Testing options (low-volume and silent testing)

We recommend that Berkeley select a system that provides the most cost-effective solution to meet the goals described in this recommendation: providing reliable coverage for the maximum number of Berkeley households possible, while offering enough flexibility of controls so that sirens can be effectively integrated into a complete alerting protocol.

ALTERNATIVE ACTIONS CONSIDERED

Several interrelated recommendations were made to City Council in 2017 and 2018 addressing fire safety and community disaster preparedness. These recommendations included many possible actions covering a broad range of preparedness and hazard mitigation activities. Progress is already being made on some of these priorities.

Sirens should be part of a suite of emergency alerting options; other options could also be enhanced in addition to this one:

- Berkeley could forgo installing sirens, and focus on improving existing protocols to get the maximum effectiveness from the existing suite of alerting tools, particularly Wireless

[22] https://nvlpubs.nist.gov/nistpubs/TechnicalNotes/NIST.TN.1950.pdf

[23] https://www.dhs.gov/sites/default/files/publications/Outdoor-Sirens-MSR_0315-508.pdf

Emergency Alerts (WEA, also used for Amber Alerts). A new set of guidelines for WEA and Emergency Alert System (EAS) alerting is expected from Cal OES in July 2019, and Berkeley will be required to comply with those guidelines within six months. We look forward to Berkeley's continued improvement of these protocols.

- Mass distribution of NOAA weather radios has been discussed as an alternative to sirens. However, the cost to distribute weather radios to every household in Berkeley would reach $1+ million, and each radio would need to be programmed to receive appropriate alerts. It would also be challenging to ensure proper maintenance and testing of the radios over time. However, a limited distribution to residents who are deaf and hard of hearing should be considered as an accessible supplement to sirens.
- Relying on police and fire vehicle apparatus (bullhorns or sirens) is another option. However, these have a limited audible range[24] and would not be able to alert large portions of the city at once. There may also be physical obstacles that could limit the ability of vehicles to reach all the areas that need alerting. It should not be forgotten that such systems may have a substantial role to play in an early warning system specifically designed to evacuate seniors and people with disabilities.

CITY MANAGER

The City Manager appreciates the research and work put into this report by the Disaster and Fire Safety Commission. A siren alerting system could be a valuable tool for use in the City's overall emergency notification system. Given the number of modern options for sirens, the high cost in purchase and replacement of such a system, and the additional FTE that would be necessary to install and maintain the system, the Fire Department is researching options and alternatives. The City Manager refers this to the budget process for consideration of funding sources and prioritization with the overall needs of the City.

CONTACT PERSON

Keith May, Assistant Fire Chief, Berkeley Fire Department, 510-981-5508

Attachments:

1: Attachment A: Alerting Systems Available for Berkeley

2: Attachment B: Memorandum: Alerting and Warning System Project Update, November 2004

[24] https://www.fireapparatusmagazine.com/articles/print/volume-22/issue-4/features/siren-limitation-training.html

ATTACHMENT A
Alerting Systems Available for Berkeley Emergencies (February 2019)

Alerting system	Requires Opt-in?	Description	Reaches these people	Will not reach these people
Systems to alert people who are not actively seeking information:				
WEA (Wireless Emergency Alert)	Does not require opt-in	An Amber Alert-style message with a loud squawking sound, vibration, and brief text message on cell phones.	Anyone with a cell phone that is powered on. Reaches all phones in an area, including residents and visitors passing through.	Anyone without a cell phone or with their cell phone in airplane mode or fully turned off. It is also possible for people to opt out of WEA alerts.
AC Alert (Alameda County Alert)	Requires opt-in except landlines	Sends emergency messages by landline phone, email and cell phone.	Houses with a landline, plus people who have opted in for cell phone or email messages. Reaches people based on their residence address, not their current location.	Anyone without a landline, unless they have opted in. Only 5-10% of Berkeley residents have opted in to this system.[1]
Emergency Alert System	n/a	National public warning system that broadcasts on TV, radio, cable, and satellite TV. Also broadcasts to weather radios.	Anyone who is watching or listening to broadcast TV or radio in a specified area.	Anyone not watching or listening to a live TV or radio broadcast at the time of the emergency. Streaming (Netflix, Hulu etc.) do not show EAS messages.
Nixle	Requires opt-in	Sends messages by email and cell phone and on the web. Often used for lower-urgency messages.	Anyone who has signed up to get messages.	Anyone who has not signed up.
Information that people can actively seek in an emergency, but won't receive passively:				
City Website, Twitter, Facebook, Nextdoor	n/a	The City plans to post emergency messaging on the City website and social media.	People who are actively seeking information, able to access the internet, and know where to look for City information.	Anyone not actively seeking information online, or not able to access the internet.
1610 AM Radio	n/a	The City plans to output emergency messages on 1610 AM radio.	People who are actively seeking information, have a radio, and know to go to 1610 AM.	Anyone not actively seeking information online, or who does not have a radio. Also, 1610 AM radio does not reach all of Berkeley.

[1] Estimate based on data from Berkeley Office of Emergency Services, 3/29/2019.

Department of Fire and Emergency Services
Office of Emergency Services Division
William Greulich, Manager

MEMORANDUM

Date: November 5, 2004

To: Phil Kamlarz, City Manager

Cc: Lisa Caronna, Deputy City Manager
Arrietta Chakos, Chief of Staff
Reginald Garcia, Fire Chief
Roy Meisner, Police Chief

From: Bill Greulich, Emergency Services Manager

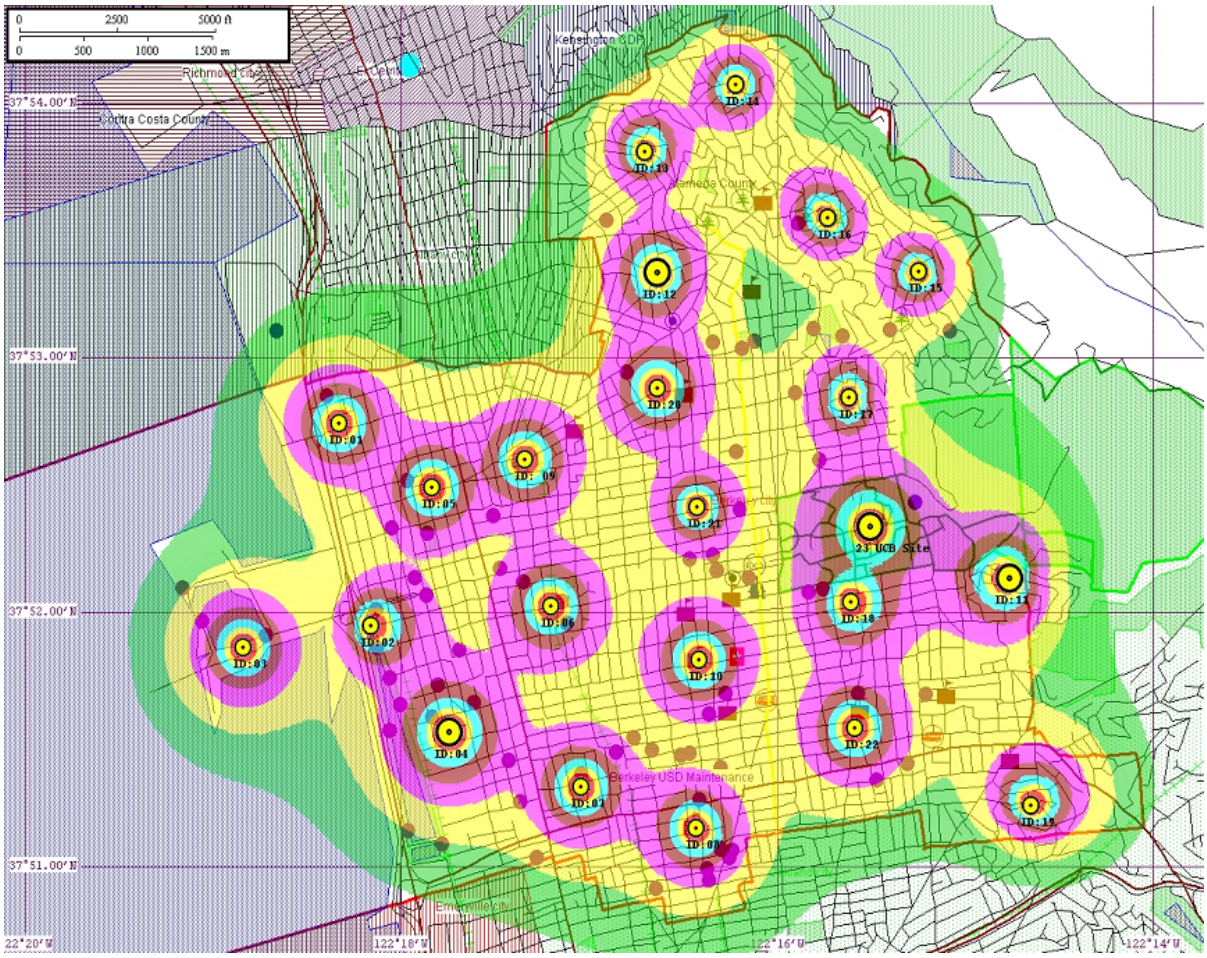
Alerting and warning system project update and recommendations for further action

As discussed in our quarterly meeting of May 28th, here is a summary of work completed to date and my recommendations for further action.

The first phase of the project as outlined in my memorandum of October 14, 2003, "Berkeley Outdoor Warning System (Siren) Project Recommendation" has been completed. Hormann America, Inc. of Martinez, CA in partnership with ProComm Marketing was awarded the contract under IF-9046-04 for $9,250. Hormann and ProComm designed, installed and continue to support Contra Costa County and the City of Oakland Alerting and Warning Systems (AWS).

Based on criteria derived from the FEMA "*Outdoor Warning Systems Guide*", Civil Preparedness Guideline 1-17, Hormann produced a design requiring the placement of 23 sirens (19 @ 118 dB and 4 @ 121 dB). This design was field verified at four Berkeley locations.

Here are my recommendations.



Sound intensities are shown as contours, the outermost is 70 – 75 dB.

Recommendations –

1. Discontinue the implementation of a citywide siren system. Implementation of a citywide siren system is of limited emergency value, may be detrimental to the health of the community, and exhibits poor cost benefit characteristics.

Cost considerations –

The non-recurring capital estimate is based on City funding of 21 sirens totaling **$801,000**. This is in alignment with the cost to the City of Oakland of $1.03 million for 27 units. There would be recurring costs associated with power and maintenance.

The initial public education campaign is estimated at **$100,000**. There would be recurring costs associated with public education.

Cost estimates for the permitting process are difficult. It is likely that significant staff time would be required to complete an EIR and the other associated work. It is estimated that **0.5 FTE** of City staff would be necessary over a six-month period to accomplish this.

Public and Environmental Health Consequences -

The FEMA "*Outdoor Warning Systems Guide*" has guided the design of siren systems nationwide since May of 1980. Recent work has challenged some of the fundamental assumptions on which the guide was based. The current conclusion is that 123 dB sources will likely be considered "highly annoying" by a noticeable segment of the population.

The FEMA guide also proposed the public would accept loud warning devices regardless of their perceived annoyance because of the potentially life saving value. This belief however, does not accurately reflect the possibility that a 118 or 121 dB sound could in fact contribute to public hearing loss, especially to those who are most sensitive, such as children or the frail. While the guide makes a valid point in light of a life-threatening emergency, it does not accommodate the need to activate the sirens regularly to familiarize the public with their existence. A perceived reduction in quality of life is likely in those members of the community who view the siren testing as "highly annoying". This phenomenon was demonstrated during the field-testing of Phase I.

City Environmental Health staff has concluded that the sirens would qualify for the emergency use exemption of the City Noise Ordinance. It is also their conclusion that preparation of an Environmental Impact Report (EIR) would be necessary.

Siren System Efficacy -

Sirens target only the community members capable of hearing the warning or alerting tone. Many factors contribute to limiting the number of people who are able to recognize the alert or warning. These include hearing impairments, being inside a building at home, school or work, in an automobile, or in a higher noise environment, i.e. listening to music or operating a power tool.

Hearing a siren sounding is not enough in and of itself. In order to be effective the public must know the system exists before it is used, how to recognize an alert, warning, or test, and what subsequent actions are expected or necessary.

2. Continue to work with Toxics Management and the two private facilities covered by the California Accidental Release Prevention Program (CalARP).

Hazardous materials and the related use of such materials in an act of terror are the best matches to a citywide siren system. In fact, the "East Bay Corridor of Safety" community direction of "Shelter, Shut and Listen" comes from the Contra Costa County alerting and warning system which is focused on and funded by local chemical manufacturing companies. Two facilities in Berkeley possess hazardous materials in quantities requiring implementation of State accidental release prevention programs. Sirens would benefit the community in the event of a release of material from either of these facilities.

3. Continue to work with UCB and the "Corridor of Safety" concerning their siren programs.

UCB has a limited outdoor warning and alerting system in place. Neighboring communities, in particular the City of Oakland, have sirens that may also impact Berkeley when activated.

These agencies have not currently produced a complete, integrated set of procedures and protocols for system activation. It is recommended that staff continue to work with UCB and the "Corridor of Safety" on the creation of protocols for the activation of their systems.

4. Investigate alternative alerting and warning technologies – mobile siren.

Berkeley has a history with these systems and has experienced their lack of utility in public safety programs and their long-term resource burden. However, the potential use of a small number of deployable or mobile sirens with voice capability may be valuable. Mobile sirens could be pre-deployed or brought to areas of high risk as needed, such as placement in the Hills during fire season. Addition of a voice capability could expand their utility as a potential public address tool. While they would be more costly on a unit basis, the city would not need to purchase a large number, and a basic capability in outdoor warning might be had at a more affordable cost.

5. Investigate alternative alerting and warning technologies – weather radio.

Currently, only two Federal programs exist to alert and warn the public, the commercial radio and television based Emergency Alerting System (EAS), and the National Weather Service (NWS) weather radio program. The City of Berkeley has the ability to utilize the EAS; it is recommended the City investigate the weather radio program. The program is very simple. Radios are available which turn themselves on when a NWS alert signal is received. Community members are not burdened by having to listen all the time to the warning station. The NWS signal is broadcast from a tower in San Francisco or on Mt. Diablo. Several key findings are:

- The radios can be placed anywhere, including in schools, and with members of vulnerable populations.
- The alert would be citywide; all radios in the reach of the Diablo or SF tower would be activated.
- The radios are affordable at approximately $30 each.
- The radios do not have any obvious adverse health impact and can be acquired with visual aids for the hearing impaired.
- Significant Federal support for this program exists.

It is recommended that staff investigate the possibilities of utilizing the NWS system.

Kate Harrison
Councilmember District 4

05

ACTION CALENDAR
June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Adopt an Ordinance Amending Berkeley Municipal Code Chapter 2.99 to Prohibit City Use of Face Recognition Technology

RECOMMENDATION

Adopt an ordinance amending Berkeley Municipal Code Chapter 2.99 to prohibit the City from acquiring, retaining, requesting, accessing, or using: (1) any face recognition technology, or (2) any information obtained from face recognition technology.

BACKGROUND

The City of Berkeley was the first City in California to adopt a comprehensive Ordinance regulating City Departments' acquisition of surveillance technology (Ord. 7592-NS, 2018). The legislation, adopted unanimously, recognizes that surveillance technology is inherently dangerous to civil liberties, and establishes a requirement that the City proactively establish why proposed surveillance technology is in the public interest and request Council permission to acquire it.

In adopting its own Acquisition of Surveillance Technology Ordinance modeled upon Berkeley's, the San Francisco Board of Supervisors recently became the first city in the United States to also prohibit city departments' from acquiring, retaining, requesting, accessing, or using of face recognition technology, except at the federally regulated San Francisco Airport and Port. Face recognition technology means "an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face."[1]

It is in the public interest for the City of Berkeley to amend its existing Surveillance Technology Ordinance to include a ban of City use of face recognition technology. There are a number of essential constitutional reasons why government use of this specific technology is incompatible with the people's civil liberties:

[1] City and County of San Francisco, Board of Supervisors, "Administrative Code - Acquisition of Surveillance Technology," May 21, 2019, https://sfgov.legistar.com/LegislationDetail.aspx?ID=3850006&GUID=12FC5DF6-AAC9-4F4E-8553-8F0CD0EBD3F6.

1. Government use of face recognition technology for identifying or tracking individuals or groups *en masse* for criminal and civil purposes flies in the face of the fundamental principle underlying the Fourth Amendment to the United States Constitution. The amendment clearly prohibits federal, state and local governments from engaging in mass surveillance of their citizens.[2]

   Facial recognition technology differs from stationary surveillance cameras in that it eliminates the human and judicial element behind the existing warrant system by which governments must prove that planned surveillance is both constitutional and sufficiently narrow to protect targets' and bystanders' fundamental rights to privacy while also simultaneously providing the government with the ability to exercise its duties.

   Facial recognition technology automates the search, seizure and analysis process that was heretofore pursued on a narrow basis through stringent constitutionally-established and human-centered oversight in the judiciary branch. Due to the inherent dragnet nature of facial recognition technology, governments cannot reasonably support by oath or affirmation the *particular* persons or things to be seized. The programmatic automation of surveillance fundamentally undermines the community's liberty.

   With respect to the Fourth Amendment, in practice, facial recognition technology's sweeping nature has already proven extremely ineffective at applying narrowly tailored surveillance. For example, according to the American Civil Liberties Union, in 2018 Amazon's technology "incorrectly matched 28 members of Congress, identifying them as other people who have been arrested for a crime…[t]he false matches were disproportionately of people of color, including six members of the Congressional Black Caucus, among them civil rights legend Rep. John Lewis (D-Ga.)."[3]

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[2] The Fourth Amendment reads:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

See Fourth Amendment to the United States Constitution, Cornell Law School Legal Information Institute, https://www.law.cornell.edu/constitution/fourth_amendment.

[3] Jacob Snow, "Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots," American Civil Liberties Union, July 26, 2018, https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28.

While it is easy to write off the Amazon example, along with other examples of the grave issues of facial recognition technology by looking at the technology's shortcomings as merely an engineering or temporary problem, in fact, the technology poses a fundamental Fourth Amendment constitutional problem.

2. Government acquisition and use of mass surveillance presents a fundamental threat to the community's First Amendment right to exercise their freedom of speech, including through assembly, and petitions to the government for a redress of grievances.[4]

   Brian Hofer, the Executive Director of Secure Justice, and Matt Cagle, a Technology and Civil Liberties Attorney at the ACLU of Northern California, point out in a recent editorial that there is evidence from the 1970s of local Bay Area governmental entities, such as the San Francisco Police Department, amassing "intelligence files on over 100,000 people, including civil rights demonstrators, union members, and anti-war activists." They note that while these intelligence files took decades to collect, authorities using face recognition technology today, "can stockpile information on 100,000 residents in a few hours."[5]

   Government face recognition surveillance will likely have a chilling effect on public engagement. The City of Berkeley can ill-afford to acquire and use technology that has the potential to circumscribe citizens' essential First Amendment rights.

These fundamental constitutional deficiencies with regard to government acquisition and use of face recognition technology necessitates that the Council move proactively to prohibit use of such technology by the City of Berkeley.

FINANCIAL IMPLICATIONS

The Ordinance will prevent investment in expensive face recognition technology.

ENVIRONMENTAL SUSTAINABILITY

The Ordinance is in line with the City's Climate goals by preventing the use of carbon-intensive computing resources for processing bulk facial data.

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[4] *See* Fourth Amendment to the United States Constitution, Cornell Law School Legal Information Institute, https://www.law.cornell.edu/constitution/first_amendment.

[5] Matt Cagle and Brian Hofer, "New surveillance oversight law keeps communities safe and redefines tech leadership," San Francisco Examiner, May 8, 2019, https://www.sfexaminer.com/opinion/new-surveillance-oversight-law-keeps-communities-safe-and-redefines-tech-leadership/.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

ATTACHMENTS

1. Proposed Ordinance Amending Berkeley Municipal Code Chapter 2.99 to Prohibit City Use of Face Recognition Technology

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.99 TO PROHIBIT CITY USE OF FACE RECOGNITION TECHNOLOGY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Berkeley Municipal Code is amended to read as follows:

2.99.020 Definitions

The following definitions apply to this Chapter:

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

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

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

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

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

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

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

f. Municipal agency databases;

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

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

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

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

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

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

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

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

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

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

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

3. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent

Circumstances pursuant to Section 2.99.040 (2), of a type of Surveillance Technology that includes the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. "Face Recognition Technology" means an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face.

Section 2. That the Berkeley Municipal Code is amended to read as follows:

2.99.030 City Council Approval Requirement

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

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

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

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

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

2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology. No later than 30 days after receiving a Surveillance Use Policy for review, the Police Review Commission must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of

such a policy, nor failure by the Police Review Commission to act, shall prohibit the City Manager from proceeding with its own review and potential adoption.

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

4. Notwithstanding any other provision of this Chapter, it shall be unlawful for any City staff to obtain, retain, request, access, or use: i) any Face Recognition Technology; or ii) any information obtained from Face Recognition Technology. City staff's inadvertent or unintentional receipt, access to, or use of any information obtained from Face Recognition Technology shall not be a violation of this subsection 4., provided that:

a. City staff does not request or solicit its receipt, access to, or use of such information; and

b. City staff logs such receipt, access to, or use in its Annual Surveillance Report.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.