



Cheryl Davila
Vice Mayor
Councilmember District 2

ACTION CALENDAR
September 13, 2018

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Cheryl Davila and Councilmember Kate Harrison
Subject: City of Berkeley Policy Limiting the Publishing of Photos (doxing) of people arrested by the Berkeley Police Department

RECOMMENDATION

That the Council adopt a Resolution and adopt as a City of Berkeley Policy that:

The Berkeley Police Department (BPD) shall not publicly post on social media, through email or other forms of communication the mugshots or pictures of individuals arrested, unless they pose an immediate threat to the public safety of the Berkeley community (e.g. persons arrested for serial rape, persons wanted for homicide, or felony assault).

Under no circumstances shall BPD publish photos of individuals arrested in First Amendment activity.

Council affirms its opposition to racist and other hate speech and calls for racist violence and affirms its solidarity with communities most targeted by white supremacy.

BACKGROUND

As a sanctuary city, Berkeley prides itself on its commitment to protecting and standing in solidarity with its residents targeted by racism, xenophobia, homophobia, transphobia, ableism, sexism and other biases and forms of hate violence. Being a sanctuary city for immigrants as well as from racial, religious or gender-based violence also requires that we do not allow City-supported platforms to espouse hatred and calls for violence against people based on race, nationality, religion, gender, sexual orientation or immigration status. As such, the City of Berkeley needs to be clear in word and action that it is against such hatred and violence – by individuals or groups. Furthermore, the City of Berkeley should not take actions that curtail the first amendment rights of those attempting to express non-violently that racism, xenophobia, homo/transphobia, antisemitism and Islamophobia are not welcome in Berkeley. Instead, we should be doing everything we can to protect free speech.

Following arrests during the August 5, 2018 demonstrations, the Berkeley Police Department released the photos, home cities and legal names of those arrested, the vast majority of which were anti-racists. These names were then promoted by Fox news and other outlets used to foment attacks against those who speak out against racism

and fascism. By doing so, the Berkeley Police Department contributed to “doxing” people – publishing personal information to be used to harass and threaten people at their homes and places of work. These calls have gone as far as threatening people’s children and families and even putting “bounties” on people’s heads. Though these photos were later removed due to political pressure and international criticism of Berkeley, the damage was done. They remain available on the internet and continue to be circulated by Fox news. People whose names were released are receiving threatening phone calls at work and home, postings and emails.

After BPD published these photos, City Councilmembers received numerous calls and emails from Berkeley residents expressing outrage over this practice.

Of the persons whose identifying information and booking photos were published by BPD in 2017 during demonstrations, none were convicted of any crime related to these arrests. Similarly, these photos were published on social media prior to any conviction of a crime. The practice of posting the pictures publicly of those arrested in First Amendment activity could create a chilling effect and discourage free speech activity and could pose a safety risk to those persons whose pictures are published on social media.

It is important, however, to have an exception to this policy for individuals who pose an immediate threat to the public safety of the Berkeley community (e.g. persons arrested for serial rape, persons wanted for homicide, or felony assault). Residents should know if a suspect who is out in the community can pose a serious risk to public safety.

FINANCIAL IMPLICATIONS

Staff time to draft, review and finalize ordinance.

ENVIRONMENTAL SUSTAINABILITY

No ecological impact.

CONTACT PERSON

Vice Mayor Cheryl Davila, 510.981.7120

Attachments and links:

1. NLG Statement (pending)
2. [Berkeley police slammed for Antifa-related mugshot tweets after violent rally](#) – Fox news posting of mug shots and names of those arrested
3. [Berkeley police under fire for publishing anti-fascist activists' names and photos](#) - [Guardian article](#)
4. [Anti-fascists say police post mugshots on Twitter to 'intimidate and silence'](#) – [Guardian article](#)
5. [ACLU of California Statement: White Supremacist Violence is Not Free Speech](#)

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

Against City of Berkeley doxing or releasing identifying information about people arrested in civil conflicts

WHEREAS, Berkeley unequivocally supports people's exercise of their First Amendment rights, including the right to associational privacy and to protect oneself from future retaliation as a result of exercising their freedom of expression; and,

WHEREAS, Berkeley has expressed its solidarity with communities most targeted by white supremacist organizing, and recognizes the threat to their safety and the trauma caused by incursions into Berkeley by violence-prone agitators; and,

WHEREAS, the ACLU of California stated in August of 2017, "the First Amendment does not protect people who incite or engage in violence. If white supremacists march into our towns armed to the teeth and with the intent to harm people, they are not engaging in activity protected by the United States Constitution. The First Amendment should never be used as a shield or sword to justify violence;" and,

WHEREAS, after Berkeley police officers arrested counter-demonstrators against white supremacy on August 5, 2018, the police publicly released identifying information including legal names and photos of those arrested on Twitter, leading to harassment of the demonstrators at their homes and workplaces, threatening their children and family members, and putting bounties on people's heads; and,

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley refers to the City Attorney to draft an ordinance that restricts the Berkeley Police Department or other City of Berkeley departments from publishing or releasing the addresses or photos of people arrested under the special circumstances of civil conflicts, particularly when one party is likely to do harm to another, specifically under threat of harm from people who spread hate.

