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 Arrest Photos (doxing) of people arrested by the Berkeley Police Department

RECOMMENDATION
That the Council direct the City Manager to develop an ordinance that:

The Berkeley Police Department (BPD) shall not publicly post on social media, including but not limited to FaceBook, Instagram, Twitter, etc., the arrest photos of individuals arrested, unless they pose an immediate threat to the public safety of the Berkeley community (e.g. persons wanted for serial rape, homicide, or felony assault).

Furthermore, it is recommended that the City of Berkeley resist PRA requests for arrest photos and identifying information on individuals that have been arrested when doing so poses a risk to their safety as a result of threats against them and when doing so provide no public safety value.

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.

Following arrests during the August 5, 2018 demonstrations, the Berkeley Police Department released the arrest photos, home cities and legal names of those arrested. 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.

Doxing has resulted in threats to people’s children and families, and even putting “bounties” on their 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 and other outlets. 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 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.

As recommended by the National Lawyers Guild, the City of Berkeley should discourage the release of arrest photos and other identifying information not already available on the BPD website when requested in PRAs in situations where one party is likely to do harm to another.

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 suspected of serial rape, persons wanted for homicide, or felony assault). Residents should know if a suspect who is out in the community can pose an imminent threat 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:
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 against City of Berkeley doxing or releasing of arrest photos and other 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 both August 27, 2017 and 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 and threats to their children and family members; and,

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley refers to the City Manager to draft an ordinance that restricts the Berkeley Police Department or other City of Berkeley departments from publishing or releasing the addresses or arrest photos of people arrested under the special circumstances of civil conflicts, particularly when one party is likely to do harm to another, on social media; and,

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley refers to the City Manager to draft an ordinance that also encourages the Berkeley Police Department or other City of Berkeley departments to resist PRA’s requesting the release of addresses, arrest photos or other identifying information of people arrested under the special circumstances of civil conflicts, particularly when one party is likely to do harm to another.