



**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
REGULAR MEETING**

**Monday, July 6, 2020
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Rigel Robinson, and Susan Wengraf
Alternate: Councilmember Lori Droste

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

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

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://us02web.zoom.us/j/84966410006>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **849 6641 0006**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Public Safety Policy Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - February 3, 2020

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.

2. **Ordinance: Public Right to Identify Officers** **From: Councilmember Robinson (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Councilmember Davila (Co-Sponsor)**

Referred: June 15, 2020

Due: November 30, 2020

Recommendation: Adopt an ordinance prohibiting law enforcement from obscuring or failing to wear their identification, such as name and badge number, when it is required to be displayed, with additional penalties when done during the commission of a crime or violation of City or Department regulation or procedure, and refer to the City Manager to update City policy regarding undercover and plainclothes officers in crowd control situations to comply with the ordinance.

Financial Implications: Negligible

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Committee Action Items

3. **Resolution: No Police Revolving Door**
From: Councilmember Robinson (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Referred: June 15, 2020
Due: November 30, 2020
Recommendation: Adopt a resolution designating a history of serious misconduct and the act of previously resigning in the middle of a serious misconduct investigation as immediate disqualifiers in the Berkeley Police Department recruitment and selection process.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

4. **Safety for All: The George Floyd Community Safety Act - Development of a Progressive Police Academy**
From: Councilmember Bartlett, Mayor Jesse Arreguin (Co-Sponsor) and Councilmember Cheryl Davila (Co-Sponsor)
Referred: June 16, 2020
Due: December 1, 2020
Recommendation: That the City Council refers to the Public Safety Committee to develop a progressive police academy and curriculum. That this progressive academy is hosted by the City of Berkeley and offered for use by the regional. The City should hire consultants and convene stakeholders including the Police Review Commission, a community task-force, and the Berkeley Police Department to create the academy's programmatic design. Once established, Berkeley Police Department recruits will attend this academy for basic training. The training program is intended to become revenue neutral. The program will be offered on a paid subscription basis to interested jurisdictions. Berkeley's progressive police academy envisions a curriculum that teaches recruits de-escalation, empathy, and the Critical Decision-Making Model (CDM). CDM encourages officers to challenge their biases, refrain from using force when possible, and build police-community trust. By reshaping police ideology through education, the City of Berkeley can tackle police brutality and police misconduct at their roots.
Financial Implications: This recommendation would reallocate some funding from the department's Training and Standards division to the development of a new regional police academy. Once established, Berkeley's police academy would serve as a training institution for recruits from other progressive minded jurisdictions throughout the region. Attracting recruits from other cities and counties would potentially make this a revenue generating measure.
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

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.

- **None.**

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

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*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. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

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

~~~~~  
I hereby certify that the agenda for this meeting of the Standing Committee 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 July 2, 2020.

A handwritten signature in black ink that reads "Mark Numainville".

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.

**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
REGULAR MEETING**

**Monday, February 3, 2020
10:30 AM**

2180 Milvia Street, 1st Floor - Cypress Room

Committee Members:

Councilmembers Rashi Kesarwani, Rigel Robinson, and Susan Wengraf

MINUTES

Roll Call: 10:33 a.m.

Election of Chair

Action: M/S/C (Robinson/Kesarwani) to nominate Councilmember Wengraf as Chair.

Vote: All Ayes

Public Comment on Non-Agenda Matters: 1 Speaker.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - December 2, 2019

Action: M/S/C (Robinson/Kesarwani) to approve the minutes as presented.

Vote: All Ayes

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.

- **None**

Unscheduled Items

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Items for Future Agendas

- None

Adjournment

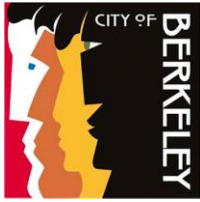
Action: M/S/C (Robinson/Wengraf) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 10:37 a.m.

I hereby certify that this is a true and correct record of Public Safety Policy Committee meeting held on February 3, 2020.

Michael MacDonald, Assistant City Clerk



CONSENT CALENDAR
June 30, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson (Author), Ben Bartlett (Co-Sponsor),
Kate Harrison (Co-Sponsor), and Cheryl Davila (Co-Sponsor)
Subject: Ordinance: Public Right to Identify Officers

RECOMMENDATION

Adopt an ordinance prohibiting law enforcement from obscuring or failing to wear their identification, such as name and badge number, when it is required to be displayed, with additional penalties when done during the commission of a crime or violation of City or Department regulation or procedure, and refer to the City Manager to update City policy regarding undercover and plainclothes officers in crowd control situations to comply with the ordinance.

BACKGROUND

In response to the police murders of George Floyd, Breonna Taylor, and countless other Black victims of police brutality and racism, hundreds of thousands of people have taken to the streets to demand change. From these protests emerged a troubling trend of law enforcement officers covering their badge numbers and name tags while on duty at protests and other crowd situations.

During the New York City protests, several NYPD officers wore “mourning bands” on their badges to honor their colleagues who had passed away from COVID-19. These bands were placed in a way that covered their badge numbers, in direct violation of NYPD Patrol Guide Section 204-17.¹

In the City of Seattle, several SPD officers covered their badge numbers with black electrical tape to serve as makeshift mourning bands. There is currently no City or Department policy preventing officers from doing so. In a press conference, Seattle Mayor Jenny Durkan asserted that officers are allowed to cover their badge numbers because they are required to wear their names on the left side of their uniforms.²

In response to protests in Washington, D.C., the Trump administration deployed federal law enforcement officers in riot gear with no name tags, badge numbers, or other identifiable markings, who refused to disclose which agency they were representing.³

¹ <https://www.documentcloud.org/documents/6936059-National-Lawyers-Guild-Letter-to-NYPD.html>

² <https://southseattleemerald.com/2020/06/01/spd-officers-only-required-to-display-last-name-and-first-initial-despite-potential-name-overlap/>

³ <https://www.nytimes.com/2020/06/04/us/politics/unidentified-police-protests.html>

Others reported sightings of officers, again with no identifying markers, armed with riot shields labeled "MILITARY POLICE." Members of the press and a representative from the National Guard later confirmed that these two groups of unidentified officers were both affiliated with the Bureau of Prisons.

Members of the public have a right to identify officers. It is the interest of preserving accountability and building community trust that a member of the public can easily identify an officer's agency, name, and badge number. At the very least, officers without clear identification can cause civilian confusion, prevent officers from recognizing officers from other agencies, allow officers to evade consequences and accountability, and erode public trust.

In the most egregious of cases, such as with the Trump administration's deployment of entirely unidentified officers, this practice can spark fears of unauthorized, non-state-sanctioned, often right-wing militias entering protests and acting with impunity. This is not uncommon in large protests or crowds, where members of III% and other far-right militia groups have been known to show up in riot gear. The practice of allowing unidentified law enforcement officers "functionally allows any unidentifiable individual to more easily pretend to be law enforcement."⁴

The Berkeley Police Department's current policy can be found in Policy 429.9, "General Event Procedures," which states that "(a) Employees dispatched or pre-assigned to a crowd situation shall be in a department approved uniform appropriate for their assignment. 1. Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn."

In the case of the NYPD, police officers obscured their badge numbers even when explicitly prohibited by their Patrol Guide. It is crucial to not only implement policies banning the obscuring of identification for the sake of transparency, accountability, and democracy, but to also ensure that violation of such policies is met with appropriate consequences.

FINANCIAL IMPLICATIONS

Negligible.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

⁴ <https://www.washingtonpost.com/politics/2020/06/03/dangerous-new-factor-an-uneasy-moment-unidentified-law-enforcement-officers/?fbclid=IwAR2WBP97c1n-WtXu4iu9W5by16ThRcBplMDSWIF4J9yvATMcmqEuTLyMt8>

Attachments:

1: Ordinance

2: BPD Policy 429 "First Amendment Assemblies"

[https://www.cityofberkeley.info/uploadedFiles/Police/Level_3 -
_General/429%20First Amendment Assemblies.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/429%20First_Amendment_Assemblies.pdf)

ORDINANCE NO. -N.S.

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

Section 1. That Berkeley Municipal Code Chapter 13.111 is added to read as follows:

**Chapter 13.111
Obscuring of Police Officers' Identifying Information**

13.111.010 Findings and Purpose.

- A. In enacting this Chapter, the City finds that, in order for the public to have trust in the Berkeley Police Department, it is essential that individual members of the Department be accountable for their actions as officers and that the public, should they be abused or treated unjustly by a member of the Department, be able to report that conduct, and the officer responsible for that conduct, to the appropriate oversight body.
- B. In order for this accountability to take place, officers on duty must be identifiable to the public, by both name and badge number. In recognition of this need, a variety of departmental policies require officers to display their name and badge number on different places on their uniform and in different circumstances.
- C. The failure of an officer to properly display their identification corrodes the basic trust of the people in their government and undermines the mechanisms of accountability that have been put in place to ensure that officers uphold the values and standards of the City of Berkeley.
- D. It is the purpose of this Chapter to ensure that officers display their identification at all times when it is required under departmental and City policy, and that failure to do so is properly penalized.

13.111.020 Definitions.

- A. "City Policy" shall mean any ordinance, resolution, administrative regulation, departmental policy, or any other official expression of City procedures, policies, or practices.
- B. "Department" shall mean the Berkeley Police Department.
- C. "Officer" shall mean any sworn officer of the Berkeley Police Department.

13.111.030 Display of Identifying Information.

- A. Officers shall, at all times when they are on duty, be identifiable to the public by name and badge number.
- B. Officers shall observe all City policies on the form and placement of their identifying information.

13.111.040 Exceptions.

- A. Officers may refrain from displaying identifying information only when undercover or in plainclothes as explicitly authorized by City policy.
- B. This exception shall not apply in crowd control settings. No City policy shall authorize undercover or plainclothes officers in crowd control settings.

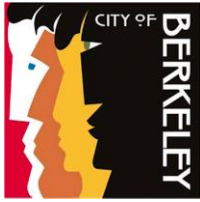
13.111.050 Penalties.

- A. Violation of section 13.111.030 shall be an infraction.
- B. The willful or repeated violation of section 13.111.030 shall be a misdemeanor and grounds for termination from the Department.
- C. Violation of section 13.111.030 by an officer while that officer is committing a crime or violating City policy shall be a misdemeanor and grounds for immediate termination.

13.111.060 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.



CONSENT CALENDAR
June 30, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson (Author), Ben Bartlett (Co-Sponsor), and
Kate Harrison (Co-Sponsor)
Subject: Resolution: No Police Revolving Door

RECOMMENDATION

Adopt a resolution designating a history of serious misconduct and the act of previously resigning in the middle of a serious misconduct investigation as immediate disqualifiers in the Berkeley Police Department recruitment and selection process.

BACKGROUND

Senate Bill 1421, which went into effect in 2019, allows the public and the press to access police misconduct records that were previously undisclosed.¹ In the process of reviewing this data, new light has been shed on the “revolving door” of police brutality, in which police officers fired for misconduct are simply re-hired by another jurisdiction.

A San Jose State police officer, fired in 2017 for excessive use of force, was then hired by the Los Gatos-Monte Sereno Police Department. An Alameda County deputy sheriff, fired in 2015 for soliciting prostitution and filing a false police report, was later hired by the Pinole Police Department.² An SFPD officer resigned one day before the Internal Affairs division ruled to discipline him for his fatal shooting of Luis Gongora Pat, a homeless man.³ He was immediately hired by the Antioch Police Department, escaping the 45-day suspension and any consequences for his actions.

This revolving door phenomenon raises serious concerns about the ability of police departments to maintain accountability, create trust in the community, and eliminate police brutality and misconduct. Given the longstanding history of racial bias in policing and use of force nationwide, public trust is already badly damaged between law enforcement and many communities of color, particularly Black communities.

Furthermore, officers with histories of misconduct often cannot carry out a key part of their job: testifying in court. In *Brady v. Maryland* (1963), the Supreme Court ruled that

¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421

² <https://www.mercurynews.com/2019/07/23/editorial-records-expose-revolving-door-for-bad-california-cops/>

³ <https://www.nbcbayarea.com/investigations/sf-officer-jumps-to-another-department-before-being-disciplined-for-a-shooting/2304029/>

prosecutorial suppression of evidence that could benefit the defendant violates the Due Process Clause of the Fourteenth Amendment.⁴ Police officers' credibility can be called into question if they have a documented history of misconduct or dishonesty, which can jeopardize their testimonies and entire cases.

San Francisco Supervisor Shamann Walton introduced a resolution on June 2, 2020, attached below, "urging the city's Civil Service Commission to prohibit the Police and Sheriff's Departments from hiring law enforcement personnel with histories of serious misconduct."⁵

The City of Berkeley should follow suit by adopting the attached resolution and amending BPD Policy 1000, "Recruitment and Selection," to prohibit the hiring of any police officer who has a history of serious misconduct or who has previously resigned in the midst of a serious misconduct investigation.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Resolution

2: BPD Policy 1000 "Recruitment and Selection"

https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/1000%20Recruitment_and_Selection.pdf

3: Proposed San Francisco Resolution

<https://sfgov.legistar.com/View.ashx?M=F&ID=8582276&GUID=8C81E0F1-7BDA-4F2D-888E-F90F6E1807A5>

⁴ <https://www.law.cornell.edu/supremecourt/text/373/83>

⁵ <https://www.sfchronicle.com/bayarea/article/SF-supervisor-wants-a-ban-on-hiring-of-police-15311973.php>

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

BANNING THE HIRING OF POLICE OFFICERS WITH A HISTORY OF SERIOUS MISCONDUCT

WHEREAS, the Berkeley Police Department (BPD) is entrusted with keeping all community members in the City of Berkeley safe and enforcing laws; and

WHEREAS, all residents of Berkeley equally deserve to feel safe when interacting with police and should be able to trust that the officers tasked with protecting them have no prior history of excessive force, racial bias, or other significant misconduct; and

WHEREAS, there is a national crisis over repeated instances of police brutality and killings of Black people and persons of color; and

WHEREAS, there is a longstanding history of racial bias in policing nationwide, especially towards Black people; and

WHEREAS, George Floyd, a Black man, was killed by a Minneapolis Police Officer who kneeled on his neck for over eight minutes while he struggled to breathe and who had 17 prior complaints against him, had been responsible for multiple officer-involved shootings, but was permitted to remain on the police force; and

WHEREAS, the Council of the City of Berkeley acknowledges that communities of color have borne the burdens of inequitable social, environmental, economic, and criminal justice policies, practices, and investments, and that the legacy of these injustices has caused deep racial disparities throughout the juvenile justice and criminal justice system; and

WHEREAS, members of the public cannot fully trust law enforcement officers or feel safe if they are uncertain whether an officer with whom they interact had a prior history of significant misconduct or abuse; and

WHEREAS, it is difficult, and in some cases prohibited, especially under California law for members of the public to know about prior complaints or findings related to law enforcement officer misconduct; and

WHEREAS, public trust, including in the City of Berkeley, is badly damaged between law enforcement and many of the communities they serve, particularly communities of color; and

WHEREAS, the Council of the City of Berkeley aspires to hold the Berkeley Police Department to the highest standard of professionalism and integrity.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Berkeley Police Department Policy 1000 be amended as follows:

Recruitment and Selection

1000.1 PURPOSE AND SCOPE

This policy provides a framework for employee recruiting efforts and identifying job-related standards for the selection process. This policy supplements the rules that govern employment practices for the Berkeley Police Department and that are promulgated and maintained by the Personnel and Training Bureau.

1000.2 POLICY

In accordance with applicable federal, state and local law, the Berkeley Police Department provides equal opportunities for applicants and employees, regardless of race, gender expression, age, pregnancy, religion, creed, color, national origin, ancestry, physical or mental handicap, genetic information, veteran status, marital status, sex or any other protected class or status. The Department does not show partiality or grant any special status to any applicant, employee or group of employees unless otherwise required by law.

The Department will recruit and hire only those individuals who demonstrate a commitment to service and who possess the traits and characteristics that reflect personal integrity and high ethical standards.

1000.3 RECRUITMENT

The Professional Standards Division Captain should employ a comprehensive recruitment and selection strategy to recruit and select employees from a qualified and diverse pool of candidates

The strategy should include:

- (a) Identification of racially and culturally diverse target markets.
- (b) Use of marketing strategies to target diverse applicant pools.
- (c) Expanded use of technology and maintenance of a strong internet presence. This may include an interactive department website and the use of department-managed social networking sites, if resources permit.
- (d) Expanded outreach through partnerships with media, community groups, citizen academies, local colleges, universities and the military.
- (e) Employee referral and recruitment incentive programs.
- (f) Consideration of shared or collaborative regional testing processes.

The Professional Standards Division Captain shall avoid advertising, recruiting and screening practices that tend to stereotype, focus on homogeneous applicant pools or screen applicants in a discriminatory manner.

The Department should strive to facilitate and expedite the screening and testing process.

1000.4 SELECTION PROCESS

The Department shall actively strive to identify a diverse group of candidates that have in some manner distinguished themselves as being outstanding prospects. Minimally, the Department should employ a comprehensive screening, background investigation and selection process that assesses cognitive and physical abilities and includes review and verification of the following:

- (a) A comprehensive application for employment (including previous employment, references, current and prior addresses, education, military record)
- (b) Driving record
- (c) Reference checks
- (d) Employment eligibility, including U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form I-9 and acceptable identity and employment authorization documents consistent with Labor Code § 1019.1. This required documentation should not be requested until a candidate is hired. This does not prohibit obtaining documents required for other purposes.
- (e) Information obtained from public internet sites
- (f) Financial history consistent with the Fair Credit Reporting Act (FCRA) (15 USC § 1681et seq.)
- (g) Local, state and federal criminal history record checks
- (h) Computer Voice Stress Analysis (CVSA) exam (when legally permissible) (Labor Code § 432.2)
- (i) Medical and psychological examination (may only be given after a conditional offer of employment)
- (j) Hiring authority review
- (k) Records of police misconduct

1000.4.1 VETERAN'S PREFERENCE

Qualifying veterans of the United States Armed Forces who receive a passing score on an entrance examination shall be ranked in the top rank of any resulting eligibility list. The veteran's preference shall also apply to a widow or widower of a veteran or a spouse of a 100 percent disabled veteran (Government Code § 18973.1).

1000.5 BACKGROUND INVESTIGATION

Every candidate shall undergo a thorough background investigation to verify his/her personal integrity and high ethical standards, and to identify any past behavior that may be indicative of the candidate's unsuitability to perform duties relevant to the operation of the Berkeley Police Department (11 CCR 1953).

The narrative report and any other relevant background information shall be shared with the psychological evaluator. Information shall also be shared with others involved in the hiring process if it is relevant to their respective evaluations (11 CCR 1953).

1000.5.1 NOTICES

Background investigators shall ensure that investigations are conducted and notices provided in accordance with the requirements of the FCRA and the California Investigative Consumer Reporting Agencies Act (15 USC § 1681d; Civil Code § 1786.16).

1000.5.2 STATE NOTICES

If information disclosed in a candidate's criminal offender record information (CORI) is the basis for an adverse employment decision, a copy of the CORI shall be provided to the applicant (Penal Code § 111105).

1000.5.3 REVIEW OF SOCIAL MEDIA SITES

Due to the potential for accessing unsubstantiated, private or protected information, the Professional Standards Division Captain shall not require candidates to provide passwords, account information or access to password-protected social media accounts (Labor Code § 980).

The Professional Standards Division Captain should consider utilizing the services of an appropriately trained and experienced third party to conduct open source, internet-based searches and/or review information from social media sites to ensure that:

- (a) The legal rights of candidates are protected.
- (b) Material and information to be considered are verified, accurate and validated.
- (c) The Department fully complies with applicable privacy protections and local, state and federal law.

Regardless of whether a third party is used, the Professional Standards Division Captain should ensure that potentially impermissible information is not available to any person involved in the candidate selection process.

1000.5.4 DOCUMENTING AND REPORTING

The background investigator shall summarize the results of the background investigation in a narrative report that includes sufficient information to allow the reviewing authority to decide whether to extend a conditional offer of employment. The report shall not include any information that is prohibited from use, including that from private social media sites, in making employment decisions. The report and all supporting documentation shall be included in the candidate's background investigation file (11 CCR 1953).

1000.5.5 RECORDS RETENTION

The background report and all supporting documentation shall be maintained in accordance with the established records retention schedule.

1000.5.6 BACKGROUND INVESTIGATION UPDATE

A background investigation update may, at the discretion of the Chief of Police, be conducted in lieu of a complete new background investigation on a peace officer candidate who is reappointed within 180 days of voluntary separation from the Berkeley Police Department or is transferred to a different department within the City as provided in 11 CCR 1953(f).

1000.6 DISQUALIFICATION GUIDELINES

As a general rule, performance indicators and candidate information and records shall be evaluated by considering the candidate as a whole, and taking into consideration the following:

- Age at the time the behavior occurred
- Passage of time
- Patterns of past behavior
- Severity of behavior
- Probable consequences if past behavior is repeated or made public

- Likelihood of recurrence
- Relevance of past behavior to public safety employment
- Aggravating and mitigating factors
- Other relevant considerations

A candidate's qualifications will be assessed on a case-by-case basis, using a totality-of-the-circumstances framework.

1000.6.1 DISQUALIFICATION FOR PAST MISCONDUCT

Notwithstanding section 1000.6 of this Policy, a candidate shall be immediately disqualified if:

- (1) The applicant has been the subject of a sustained finding or two unsustained complaints by different complainants against the applicant by any law enforcement agency or oversight agency, following an investigation and opportunity for administrative appeal by the applicant, that the applicant, while employed as a peace officer, engaged in serious misconduct, which includes but is not limited to the following: use of excessive force, racial bias, sexual assault, discrimination against any person or group based on race, gender, religion, nationality, or sexual orientation, or dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence; or
- (2) The applicant resigned or retired from their employment as a peace officer in any jurisdiction during the pendency of a disciplinary proceeding related to alleged serious misconduct by the applicant while they were employed as a peace officer, and the proceeding was suspended or terminated as a result of the applicant's resignation or retirement, until such a time that the applicant has been exonerated for the pending allegation.

1000.7 EMPLOYMENT STANDARDS

All candidates shall meet the minimum standards required by state law (Government Code §1029; Government Code § 1031; 11 CCR 1950 et seq.). Candidates will be evaluated based on merit, ability, competence and experience, in accordance with the high standards of integrity and ethics valued by the Department and the community. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

Validated, job-related and nondiscriminatory employment standards shall be established for each job classification and shall minimally identify the training, abilities, knowledge and skills required to perform the position's essential duties in a satisfactory manner. Each standard should include performance indicators for candidate evaluation. The Personnel and Training Bureau should maintain validated standards for all positions.

1000.7.1 STANDARDS FOR OFFICERS

Candidates shall meet the minimum standards established by POST (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.):

- Free of any felony convictions
- Citizen of the United States, or permanent resident alien eligible for and has applied for citizenship

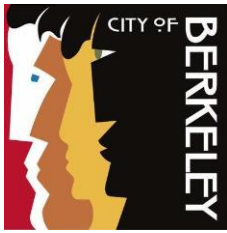
- (c) At least 21 years of age at time of appointment
- (d) Fingerprinted for local, state and national fingerprint check
- (e) Good moral character as determined by a thorough background investigation (11 CCR1953)
- (f) High school graduate, passed the GED or other high school equivalency test and completed at least 60 college semester units or 90 college quarter units
- (g) Free from any physical, emotional or mental condition which might adversely affect the exercise of police powers (11 CCR 1954; 11 CCR 1955)
- (h) Candidates must also satisfy the POST selection requirements, including (11 CCR1950 et seq.):
 - 1. Reading and writing ability assessment (11 CCR 1951)
 - 2. Oral interview to determine suitability for law enforcement service (11 CCR1952)

In addition to the above minimum POST required standards, candidates may be subjected to additional standards established by the Department (Penal Code § 13510(d)).

1000.7.2 STANDARDS FOR DISPATCHER

Candidates shall satisfy the POST selection requirements, including (11 CCR 1956):

- (a) A verbal, reasoning, memory and perceptual abilities assessment (11 CCR 1957)
- (b) An oral communication assessment (11 CCR 1958)
- (c) A medical and psychological evaluation (11 CCR 1960)



Councilmember Ben Bartlett
City of Berkeley, District 3

EMERGENCY ITEM AGENDA MATERIAL

Meeting date: June 16, 2020
Item Description: Safety for All: The George Floyd Community Safety Act - Development of a Progressive Police Academy
Submitted by: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin (Co-Sponsor) and Councilmember Cheryl Davila (Co-Sponsor)

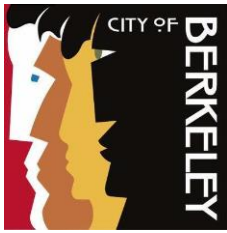
Rationale:

Pursuant to California Government Code Section 54954.2(b) (2), Councilmember Ben Bartlett submits the attached item to the City Council for placement on the June 16, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that *“Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”*

This item meets the criteria for “immediate action” as follows:

- 1) The budget is being considered and there is public outcry for the Council to take action.
- 2) Racism Is a Public Health Emergency.
- 3) Council is considering numerous police items right now.

In all 50 states and more than 145 cities, Americans are calling for an end to police brutality, legitimate police accountability, and the transformation of the police system itself. The killing of George Floyd, a 46-year-old Black man, at the hands of police officers in Minneapolis, Minnesota followed a long series of constitutional abuses of Black men and women. Mr. Floyd’s death has proved to be the tipping point, giving rise to these waves of demonstrations, including many in the City of Berkeley. It is imperative that the City takes urgent action to end racial injustice and police brutality by considering all options.



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CONSENT CALENDAR

June 16, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett (Author) and Mayor Jesse Arreguin (Co-Sponsor)
Subject: Safety for All: The George Floyd Community Safety Act - Development of a Progressive Police Academy

RECOMMENDATION:

That the City Council refers to the Public Safety Committee to develop a progressive police academy and curriculum. That this progressive academy is hosted by the City of Berkeley and offered for use by the regional. The City should hire consultants and convene stakeholders including the Police Review Commission, a community task-force, and the Berkeley Police Department to create the academy's programmatic design. Once established, Berkeley Police Department recruits will attend this academy for basic training. The training program is intended to become revenue neutral. The program will be offered on a paid subscription basis to interested jurisdictions. Berkeley's progressive police academy envisions a curriculum that teaches recruits de-escalation, empathy, and the Critical Decision-Making Model (CDM). CDM encourages officers to challenge their biases, refrain from using force when possible, and build police-community trust. By reshaping police ideology through education, the City of Berkeley can tackle police brutality and police misconduct at their roots.

CURRENT SITUATION

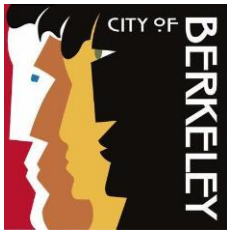
It is imperative that the City of Berkeley develops, implements, and enforces a clear and effective roadmap towards making real change, ending anti-Black state racism, stopping police violence, and holding police accountable for their actions.

As a component of the **REDUCE, IMPROVE, RE-INVEST** framework, this item works towards the IMPROVE goal: *the City should reform current aspects of the police department to better hold its officers accountable for their actions.* Specifically, this item will develop a progressive police academy that is not paramilitary in nature and embraces non-violent approaches to curb police brutality.

The Current State of Berkeley Police Department Training

The department's adopted 2019 fiscal year budget allocated \$3,433,573 for Personnel and Training¹. Berkeley Police Department recruits currently train at the Contra Costa County Sheriff's Office Academy Training Center, Sacramento Police Academy, Santa

¹ <https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY-2020-2021-Adopted-Budget-Book.pdf> (p.295)



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Clara County Sheriff's Office Justice Training Center, and Alameda County Sheriff's Office Academy Training Center.

Unfortunately, these facilities are paramilitary in structure, potentially instilling the warrior mentality that forces a divide between law enforcement and the public and promotes fear. Additionally, the Alameda County Sheriff's Office's history of using military technology, deploying armored vehicles, equipping deputies with automatic rifles, and support for Urban Shield casts doubt on the ability of the Alameda County Sheriff's Office Regional Training Center in Dublin to train cadets in a progressive, non-paramilitary manner.

BACKGROUND

Peace Officer Basic Training

The Berkeley Police Department requires officers to attend a basic training academy that is approved by the Commission on Peace Officer Standards and Training.

The guidelines for police officer training are outlined by the Commission on Peace Officer Standards and Training (POST). The POST-certified Regular Basic Course (basic academy) is the training standard for police officers, deputy sheriffs, school district police officers, district attorney investigators, as well as a few other classifications of peace officers. The basic academy is both physically and mentally challenging. It includes a minimum of 664 hours of POST-developed training and testing in 42 separate areas of instruction called Learning Domains. Most POST-certified basic training academies exceed the 664 hour minimum by 200 or more hours with some academies presenting over 1000 hours of training and testing.

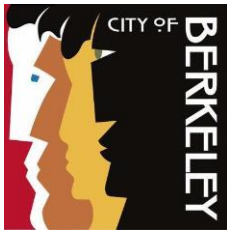
Academy students are subject to various written, skill, exercise, and scenario-based tests. Students must also participate in a rigorous physical conditioning program which culminates in a Work Sample Test Battery (physical ability test) at the end of the academy. Students must pass all tests in order to graduate from the basic academy.²

Progressive Police Academy Models in the United States

Those condemning the paramilitary aspect of policing have concentrated their attention on federal military equipment transfers, and for good reason. But the police system's paramilitary nature extends beyond the equipment used on the streets. It takes on a fundamental role, weaving itself into police ideology from the very beginning.

Many police academies in the United States are paramilitary in nature and instill cadets with a warrior mentality from the start. Police training must be reformed if we are to close the divide between police and the civilians they serve.

² <https://post.ca.gov/peace-officer-basic-training>



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Georgetown University law professor Rosa Brooks discusses several police academies that have reformed their training processes. In Washington State, the “Listen and Explain with Equity and Dignity” method trains recruits to listen, show empathy, explain their actions, and de-escalate tense situations. In Washington, D.C., the Metropolitan Police Department has brought civilian teachers and adult-learning specialists into many senior police-academy positions instead of staffing the academy solely with sworn officers. D.C. police recruits are encouraged to question and debate policies instead of just memorizing them. The department has also partnered with several local universities to develop programs designed to push both recruits and more experienced officers to critically engage with the history and practices of their profession. All officers now visit the Holocaust Memorial Museum and the National Museum of African American History and Culture, and spend a day discussing the role of police officers in perpetuating—or ending—atrocities and injustice. A select group of officers take part in the Georgetown program’s Police for Tomorrow Fellowship, where the fellows participate in intensive workshops on many of the toughest and most controversial issues in policing, including race and the legacy of racial discrimination, over-criminalization, alternatives to arrest, poverty, addiction, and homelessness. Officers visit prisons and homeless shelters and meet with local teens, and each fellow undertakes a capstone community project.

Such programs can be transformative. In D.C., many of the young officers who go through these programs credit them with changing how the officers think about their role—and their thoughtful feedback has helped fuel internal changes within the department, including some recent changes at the police academy itself.³

A new regional progressive police academy should adopt these policies or look to them as inspiration for innovation.

Fair and Impartial Policing (FIP)

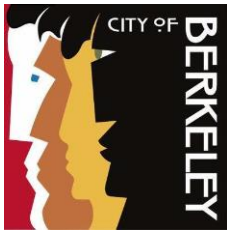
Fair and Impartial Policing is a philosophy and methodology of reflecting on bias, based on an understanding that all of us have biases. The old way of addressing this was to point out bad behavior and tell cops to stop the behavior. This caused some to feel police departments are full of racist, biased officers, which is not the case.⁴

The Critical Decision-Making Model

The Critical Decision-Making Model is a five-step critical thinking process developed by the Police Executive Research Forum (PERF). All five steps are built around the core values of the department and the policing profession.

³ <https://www.theatlantic.com/ideas/archive/2020/06/police-academies-paramilitary/612859/>

⁴ <https://www.iaclea.org/assets/uploads/pdfs/CLEJ-2017-03-ProgressivePolicing.pdf>



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The thought processes embedded in the CDM are not very different from what many police officers already do on a daily basis. The CDM is certainly in line with how specialized tactical units are trained to approach their assignments. And it likely reflects the activities of many patrol officers, whether consciously or by instinct, when responding to calls for service or engaging in proactive policing. What is new and different about the CDM is that it offers a structure for working through a series of steps that officers may already be following and questions they are probably asking already. This structure helps to ensure that each critical step is followed and that all key questions are asked along the way.

At the center of the CDM is an ethical core that provides grounding and guidance for the entire process. The four elements of the CDM core are:

- Police ethics
- Agency values
- Concept of proportionality
- Sanctity of all human life

Every step of the process is connected to this core, and the core informs and guides officers throughout the five steps. Everything an officer does within the CDM must support the ideals in the center, and no action can go against those standards.

Step 1: Collect Information

The logical first step in the process is for officers to gather information and intelligence, a process that begins as officers are heading toward the incident. During this step, officers ask themselves and others, including Dispatch personnel, a series of key questions.

Step 2: Assess Situation, Threat and Risks

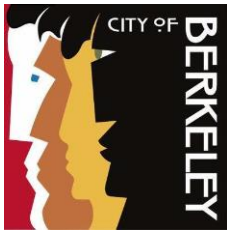
This step typically begins as officers are responding to the incident and are evaluating what they are being told by dispatchers or others. That is the time when officers begin considering “what if?” scenarios in their minds. The assessment step shifts into high gear as officers arrive on scene and can visually begin to gauge threats and risks.

Step 3: Consider Police Powers and Agency Policy

This step represents an important self-check of officers’ authority to take action. In addition to considering their legal authority to act, officers must think about what their agencies’ policies say about the situation.

Step 4: Identify Options and Determine the Best Course of Action

Using the information and assessment from earlier steps, officers now begin to narrow their options and determine the best course of action. Again, part of this step is to



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determine if the officers have enough information and resources, and a compelling interest, to act right away. Or should they hold off, possibly to get even more information and resources?

Step 5: Act, Review and Reassess

In this step, officers execute the plan, evaluate the impact, and determine what more, if anything, they need to do.

If the incident is not resolved, then officers should begin the Critical Decision-Making Model again, starting with the collection of additional information and intelligence.⁵

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Before starting their career as a Police Officer for the City of Berkeley, Berkeley Police Officers must attend a Basic Training Academy that has been approved by the Commission on Peace Officer Standards and Training (POST).⁶

ACTIONS/ALTERNATIVES CONSIDERED

Alternatives considered include:

1. Instituting police reform without altering existing academies
2. Reforming existing police academies

Unfortunately, the paramilitary aspect of police culture may be planted in the beginning as officers undergo training. It is clear that police academy training must be transformed to effectively reduce police brutality.

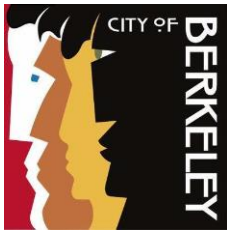
While the City of Berkeley may advocate for the reform of existing police academies, it would have little ability to enforce necessary changes and oversee the transformation process. By starting an academy from the ground-up, the City has input at every step of the development process, and can ensure that officers of the Berkeley Police Department are properly trained.

OUTREACH OVERVIEW AND RESULTS

The District 3 Office has consulted with David Muhammad, who is the Executive Director of the National Institute for Criminal Justice Reform; the former Chief Probation Officer in Alameda County; and the former Deputy Commissioner of Probation in New York City. David Muhammad is a leading expert on criminal justice who has helped inform our response to the current situation.

⁵ https://www.policeforum.org/assets/ICAT/module%202_cdm_dec16.pdf

⁶ https://www.cityofberkeley.info/BPD_General_Orders.aspx



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The District 3 Office has also consulted with Marcus McKinney, the Senior Director of Government Affairs & Public Policy at the Center for Policing Equity.

The District 3 Office has also consulted with Professor Tracey L. Meares, Walton Hale Hamilton Professor and Faculty Director of the Justice Collaboratory at Yale Law School.

RATIONALE FOR RECOMMENDATION

The paramilitary aspect of policing and police academies creates a rift between law enforcement officers and the public. Many civilians cease to view the police as members of the community tasked with upholding the law, seeing instead an unpredictable occupying force with a license for violence and the armaments to do so. Their paramilitary training instills far too many officers with a warrior mentality, deepening the divide between civilians and police.

Rooting out the paramilitary aspect of policing begins with transforming police training. It necessitates equipping officers with practical and effective decision making methods that prioritize de-escalation and reserve use of force as a last resort. It necessitates teaching police officers that they have the power and the choice to perpetuate or defeat injustice. It necessitates engaging officers with the history of their profession and challenging their socioeconomic and racial biases.

FISCAL IMPACTS OF RECOMMENDATION

This recommendation would reallocate some funding from the department's Training and Standards division to the development of a new regional police academy. Once established, Berkeley's police academy would serve as a training institution for recruits from other progressiveminded jurisdictions throughout the region. Attracting recruits from other cities and counties would potentially make this a revenue generating measure.

ENVIRONMENTAL SUSTAINABILITY

No expected negative environmental impact.

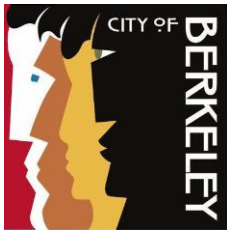
OUTCOMES AND EVALUATION

It is expected that a new progressive police academy will be created to help recruits build a foundation of empathy and de-escalation.

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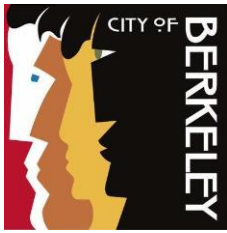
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ATTACHMENTS

1. Critical Decision-Making Model Chart
2. Cover Letter - Safety for All: George Floyd Community Safety Act
 - <https://drive.google.com/file/d/16pqgd9J6NPRzh6298Bgazo7jw1qxTK6Y/view?usp=sharing>



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