

# BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 15, 2016

GENERAL ORDER R-37

SUBJECT: RETIREE CONCEALED FIREARMS

## PURPOSE

- 1 - The purpose of this policy is to provide guidelines for the issuance, denial, suspension or revocation of Berkeley Police Department identification cards under the Law Enforcement Officers' Safety Act (LEOSA) and California law (18 USC § 926C; Penal Code § 25455).

## POLICY

- 2 - It is the policy of the Berkeley Police Department to provide an identification card to qualified former or retired officers as provided in this policy.

## LEOSA

- 3 - The Chief of Police may issue an identification card for LEOSA purposes to any qualified former officer of this department who (18 USC § 926C(c)):
  - a. Separated from service in good standing from this department as an officer.
  - b. Before such separation, had regular employment as a law enforcement officer for an aggregate of 10 years or more or, if employed as a law enforcement officer for less than 10 years, separated from service after completing any applicable probationary period due to a service-connected disability as determined by this department.
  - c. Has not been disqualified for reasons related to mental health.
  - d. Has not entered into an agreement with this department where the officer acknowledges that he/she is not qualified to receive a firearm qualification certificate for reasons related to mental health.
  - e. Is not prohibited by federal law from receiving or possessing a firearm.

## LEOSA IDENTIFICATION CARD FORMAT

- 4 - The LEOSA identification card should contain a photograph of the former officer and identify him/her as having been employed as an officer.

If the Berkeley Police Department qualifies the former officer, the LEOSA identification card or separate certification should indicate the date the former officer was tested or otherwise found by the Department to meet the active duty standards for qualification to carry a firearm.

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### LEOSA AUTHORIZATION

- 5 - Any qualified former law enforcement officer, including a former officer of this department, may carry a concealed firearm under 18 USC § 926C when he/she is:
- a. In possession of photographic identification that identifies him/her as having been employed as a law enforcement officer, and one of the following:
    1. An indication from the person's former law enforcement agency that he/she has, within the past year, been tested or otherwise found by the law enforcement agency to meet agency-established active duty standards for qualification in firearms training to carry a firearm of the same type as the concealed firearm.
    2. A certification, issued by either the state in which the person resides or by a certified firearms instructor who is qualified to conduct a firearms qualification test for active duty law enforcement officers within that state, indicating that the person has, within the past year, been tested or otherwise found to meet the standards established by the state or, if not applicable, the standards of any agency in that state.
  - b. Not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.
  - c. Not prohibited by federal law from receiving a firearm.
  - d. Not in a location prohibited by California law or by a private person or entity on his/her property if such prohibition is permitted by California law.

### CALIFORNIA IDENTIFICATION CARD ISSUANCE

- 6 - Any full-time sworn officer of this department who was authorized to, and did, carry a concealed firearm during the course and scope of his/her employment shall be issued an identification card with a Carrying Concealed Weapon endorsement, "CCW Approved," upon honorable retirement (Penal Code § 25455).
- a. For the purpose of this policy, honorably retired includes all peace officers who have qualified for, and accepted, a service or disability retirement. It shall not include any officer who retires in lieu of termination.
  - b. No CCW Approved endorsement shall be issued to any officer retiring because of a psychological disability (Penal Code § 26305).

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### CALIFORNIA IDENTIFICATION CARD FORMAT

- 7 - The identification card issued to any qualified and honorably retired officer shall be 2 inches by 3 inches, and minimally contain (Penal Code § 25460):
- a. A photograph of the retiree.
  - b. The retiree's name and date of birth.
  - c. The date of retirement.
  - d. The name and address of this department.
  - e. A stamped CCW Approved endorsement along with the date by which the endorsement must be renewed (not more than one year). If a CCW endorsement has been denied or revoked, the identification card shall be stamped "No CCW Privilege."

### QUALIFIED RETIREES FROM INCORPORATED JURISDICTION

- 8 - The Berkeley Police Department shall provide an identification card with a CCW Approved endorsement to honorably retired peace officers from any jurisdiction that this department now serves under the following conditions (Penal Code § 25905):
- a. The retiree's previous agency is no longer providing law enforcement services or the relevant government body is dissolved.
  - b. This department is in possession of the retiree's complete personnel record or can verify the retiree's honorably retired status.
  - c. The retiree is in compliance with all of the requirements of this department for the issuance of a CCW Approved endorsement.

### QUALIFIED RETIRED RESERVES

- 9 - Qualified retired reserve officers who meet the department requirements shall be provided an identification card with a CCW Approved endorsement (Penal Code § 26300).

### FORMER OFFICER RESPONSIBILITIES

- 10 - A former officer with a card issued under this policy shall immediately notify the Berkeley Police Department Communication Center of his/her arrest or conviction in any jurisdiction, or that he/she is the subject of a court order, and

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advise that they have been issued a card with a CCW endorsement. The Communication Center employee receiving the information shall notify the Professional Standards Division captain or lieutenant for follow up. The Communication Center employee is responsible for ensuring that the message is received, whether it is verbally communicated or in writing.

### RESPONSIBILITIES UNDER LEOSA

- 11 - In order to obtain or retain a LEOSA identification card, the former officer shall:
- a. Sign a waiver of liability of the Department for all acts taken related to carrying a concealed firearm, acknowledging both his/her personal responsibility as a private person for all acts taken when carrying a concealed firearm as permitted by LEOSA and also that these acts were not taken as an employee or former employee of the Department.
  - b. Remain subject to all applicable department policies and federal, state and local laws.
  - c. Demonstrate good judgment and character commensurate with carrying a loaded and concealed firearm.
  - d. Be permitted by law to receive or possess a firearm - Determined by absence of Department of Justice Denial or criminal history background check.

### MAINTAINING A CALIFORNIA IDENTIFICATION CARD CCW ENDORSEMENT

- 12 - In order to maintain a CCW Approved endorsement on an identification card issued under California law, the retired officer shall (Penal Code § 26305):
- a. Qualify annually with the authorized firearm at a course approved by this department at the retired officer's expense.
  - b. Remain subject to all applicable department policies and federal, state and local laws.
  - c. Not engage in conduct that compromises public safety.
  - d. Only be authorized to carry a concealed firearm inspected and approved by the Department.

### DENIAL, SUSPENSION OR REVOCATION OF A LEOSA IDENTIFICATION CARD

- 13 - A LEOSA identification card may be denied or revoked upon a showing of good cause as determined by the Department. In the event that an identification card is denied, suspended or revoked, the former officer may request a review by the Chief of Police. The decision of the Chief of Police is final.

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### DENIAL, SUSPENSION OR REVOCATION OF A CALIFORNIA CCW ENDORSEMENT CARD

- 14 - A CCW endorsement under Penal Code § 25470 for any officer retired from this department may be denied or revoked only upon a showing of good cause. The CCW endorsement may be immediately and temporarily revoked by the Professional Standards Division Captain when the conduct of a retired peace officer compromises public safety.
- a. In the event that a CCW endorsement is initially denied, the retired officer shall have 15 days from the date of denial to request a formal hearing. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received.
  - b. In conjunction with temporary revocation of any CCW endorsement, the Department shall provide the affected retiree with written notice of a hearing by either personal service or first class mail, postage prepaid, return receipt requested to the retiree's last known address (Penal Code § 26315).
    1. The retiree shall have 15 days from the date of service to file a written request for a hearing.
    2. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received (Penal Code § 26315).
    3. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right, and the temporary revocation will become permanent.
  - c. A hearing for the denial or revocation of any CCW endorsement shall be conducted before a hearing board composed of three members, one selected by the Department, one selected by the retiree or his/her employee organization and one selected jointly (Penal Code § 26320).
    1. The decision of such hearing board shall be binding on the Department and the retiree.
    2. Any retiree who waives the right to a hearing or whose CCW endorsement has been revoked at a hearing shall immediately surrender his/her identification card. The Department will then reissue a new identification card which shall be stamped "No CCW Privilege."
  - d. Members who have reason to suspect the conduct of a retiree has compromised public safety shall notify the Professional Standards Division as soon as practicable. The Professional Standards Division should promptly take appropriate steps to look into the matter and, if warranted, contact the

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retiree in person and advise him/her of the temporary suspension and hearing information listed below.

1. Notification of the temporary suspension should also be promptly mailed to the retiree via first class mail, postage prepaid, return receipt requested (Penal Code § 26312).
2. The Professional Standards Division should document the investigation, the actions taken and, if applicable, any notification made to the retiree. The memo should be forwarded to the Chief of Police.
3. The personal and written notification should be as follows:
  - a. The retiree's CCW endorsement is immediately and temporarily suspended.
  - b. The retiree has 15 days to request a hearing to determine whether the temporary suspension should become permanent revocation.
  - c. The retiree will forfeit his/her right to a hearing and the CCW endorsement will be permanently revoked if the retiree fails to respond to the notice of hearing within the 15-day period.
4. In the event that personal contact with the retiree cannot be reasonably achieved in a timely manner, the Professional Standards Division should attempt to make the above notice of temporary suspension through another law enforcement officer. For example, if a retiree was arrested or detained by a distant agency, the Professional Standards Division may request that a law enforcement officer from that agency act as the agent of the Department to deliver the written notification.

### FIREARM QUALIFICATIONS

- 15 - The Personnel and Training Sergeant may provide former officers from this department an opportunity to qualify. Written evidence of the qualification and the weapons used will be provided and will contain the date of the qualification. The Personnel and Training Sergeant will maintain a record of the qualifications and weapons used.



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### RETIREE CONCEALED CARRY

#### QUALIFICATION AGREEMENT AND WAIVER OF LIABILITY

I am a retired peace officer of the Berkeley Police Department. I am eligible to attempt to qualify to carry a concealed firearm, pursuant to the Law Enforcement Officers Safety Act of 2004 and/or California Law (18 USC § 926C; Penal Code § 25455).

I understand that the Berkeley Police Department is not legally required to provide a firearms qualification course or provide me with firearms instruction.

I understand that to attempt to qualify to carry a concealed firearm, I may only fire my weapon under the direct supervision of a certified firearms instructor.

I agree to defend and indemnify and hold harmless the City of Berkeley Police Department and/or its officers, agents and employees, for any injury caused by my participation in this qualification process. I further waive any claim for damages against the City of Berkeley Police Department and its officers, agents and employees, for any injury suffered by me while participating in this qualification process.

I agree to defend, indemnify, and hold harmless the City of Berkeley Police Department and/or its officer, agents and employees, from any and all liability resulting from my carrying and/or use of any weapon allowed under the Law Enforcement Officers Safety Act of 2004 or California Law, including, but not limited to, civil litigation.

Furthermore, I have read, understand, and agree to the following conditions under LEOSA or California Law.

#### LEOSA CONDITIONS

I understand that I am personally responsible for all acts taken related to carrying a concealed firearm and that these acts were not taken as an employee or former employee of the Berkeley Police Department. \_\_\_\_\_ (initial)

I understand that I remain subject to all applicable Berkeley Police Department policies and federal, state and local laws. \_\_\_\_\_ (initial)

