BERKELEY CITY COUNCIL AGENDA COMMITTEE
REGULAR MEETING
TUESDAY, JANUARY 22, 2008
2:30 P.M.

6th Floor Conference Room, 2180 Milvia Street
Teleconference Location – 1636 Channing Way, Berkeley, CA
Committee Members:
Mayor Bates and Councilmembers Linda Maio and Gordon Wozniak

AGENDA

1. Roll Call
2. Public Comment
3. Approval of Minutes: January 7, 2008
4. Review and Action of draft agendas for January 29, 2008:
   a. 5:30 p.m. City Council Work Session
   b. 7:00 p.m. Regular City Council Meeting
5. Upcoming Council Items – authorize amendments
   a. Schedule work sessions:
      (1) Light Brown Apple Moth, State Department of Food & Agriculture
      for February 26 regular meeting
      (2) Instant Runoff Voting from February 12 to April 22
   b. Future Scheduling:
      (1) Park Bench Donation Policy
      (2) Alcohol Fee and Program Ordinance
6. Land Use Calendar (no changes) – accept & file

Additional items may be added to the draft agenda per Council Rules of Procedure.
Rules of Procedure Resolution No. 63,690-N.S., Article III, C3c - Agenda - Submission of Time Critical Items

Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.

The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar. If the Agenda Committee finds that the matter does not meet the definition of Time Critical and the sponsor does not wish to hold the report for the next Council meeting, the City Clerk shall place the item on the Action Calendar under the Time Critical section.

The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953, Teleconferencing. Any member of the public may attend this meeting at either the Council Chambers or at the teleconference location. Questions regarding this matter may be addressed to Pamyla Means, 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 981-6346(V) or 981-7075 (TDD) at least three business days before the meeting date.
Please refrain from wearing scented products to this meeting.

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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 Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on January 17, 2008.

Pamyla Means, MMC, City Clerk
BERKELEY CITY COUNCIL AGENDA COMMITTEE
REGULAR MEETING MINUTES
MONDAY, JANUARY 7, 2008

6th Floor Conference Room, 2180 Milvia Street
Teleconference Location – 1636 Channing Way, Berkeley, CA
Committee Members:
Mayor Bates and Councilmembers Linda Maio and Max Anderson

1. Roll Call – 2:31 p.m. Councilmember Wozniak absent.

2. Public - 0


4. Review and Action of draft agendas for January 15, 2008:
   a. Deleted 5:30 p.m. City Council Work Session (5.a. below)
   b. M/S/C (Anderson/Maio) approved 7:00 p.m. Regular City Council
      Meeting as amended to include Public Hearing on the Downtown Business
      Improvement Assessment District and authority to the City Manager to add
      recess items as needed.

5. Upcoming Council Items – authorize amendments
   a. Continued to January 21, 2008 Agenda Committee meeting to
      schedule work session on Light Brown Apple Moth by the State
      Department of Food & Agriculture for January 15 at 5:30 p.m.
   b. Changed Measure G workshop from January 15 to January 29
   c. Established work session regarding Under-Grounding on March 25 at
      5:00 p.m.
   d. Moved quarterly crime report to January 29 regular meeting
   e. Moved Refuse Rate & Study to regular meeting on February 12
   f. Scheduled Quarterly Economic Development Workshop for February
      26 at 6:00 p.m.

6. Land Use Calendar (no changes) – accepted & filed

7. Adjournment – 2:46 p.m.

Pamyla Means, MMC, City Clerk
DRAFT PROCLAMATION
CALLING A SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

TUESDAY, JANUARY 29, 2008
5:30 P.M.
Council Chambers, 2134 Martin Luther King Jr. Way
Teleconference Locations: 1636 Channing Way, Berkeley, CA

AGENDA

Roll Call
Public Comment - Limited to items on this agenda only
Work Sessions:

1. MEASURE G – DRAFT CLIMATE ACTION PLAN PRESENTATION

Adjournment
I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this day of , 2007.

____________________________
Tom Bates , Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:

Date: ___________________
Pamyla Means, MMC, City Clerk

Time: ___________________

TOM BATES, MAYOR
Councilmembers:
DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – DARRYL MOORE  
DISTRICT 3 – MAX ANDERSON  
DISTRICT 4 – DONA SPRING  
DISTRICT 5 – LAURIE CAPITELLI  
DISTRICT 6 – BETTY OLDS  
DISTRICT 7 – KRIS WORTHINGTON  
DISTRICT 8 – GORDON WOZNIAK

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NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc., 1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

Live captioned broadcasts of Council Meetings held in Council Chambers are available on Cable B-TV (Channel 33), via internet accessible video stream at http://www.ci.berkeley.ca.us/video and KPFB Radio 89.3. Archived indexed video streams are available at http://www.ci.berkeley.ca.us/citycouncil. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Agendas and agenda reports may be accessed via the Internet at http://www.ci.berkeley.ca.us/citycouncil and may be read at reference desks at the following locations:

<table>
<thead>
<tr>
<th>City Clerk Department</th>
<th>Libraries:</th>
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<tbody>
<tr>
<td>2180 Milvia Street</td>
<td>Main - 2090 Kittredge Street</td>
</tr>
<tr>
<td>Tel: 510-981-6900</td>
<td>Claremont Branch – 2940 Benvenue</td>
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<tr>
<td>TDD: 510-981-6903</td>
<td>West Branch – 1125 University</td>
</tr>
<tr>
<td>Fax: 510-981-6901</td>
<td>North Branch – 1170 The Alameda</td>
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<tr>
<td>Email: <a href="mailto:clerk@ci.berkeley.ca.us">clerk@ci.berkeley.ca.us</a></td>
<td>South Branch – 1901 Russell</td>
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Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.
DRAFT AGENDA

BERKELEY CITY COUNCIL REGULAR MEETING

TUESDAY, JANUARY 29, 2008

7:00 P.M.

Council Chambers, 2134 Martin Luther King Jr. Way

Teleconference Location – 1636 Channing Way, Berkeley, CA

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – DARRYL MOORE
DISTRICT 3 – MAX ANDERSON
DISTRICT 4 – DONA SPRING

DISTRICT 5 – LAURIE CAPITELLI
DISTRICT 6 – BETTY OLDS
DISTRICT 7 – KRIS WORTHINGTON
DISTRICT 8 – GORDON WOZNIAK

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953, and Teleconferencing. Any member of the public may attend this meeting at either location. Questions regarding this matter may be addressed to Pamyla Means, City Clerk, 981-6900

The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Ceremonial Matters: In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.

City Manager Comments: The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.

Public Comment on Non-Agenda Matters: Five persons selected by lottery will have two minutes each to address matters not on the Council agenda. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a name card to the City Clerk in person at the meeting location and prior to commencement of that meeting. Five cards will be drawn by the City Clerk to determine the speakers who will be allowed to comment during the first round of public comment on non-agenda matters. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Name cards are not required for this second round of public comment on non-agenda matters.
Public Comment on Consent Calendar and Information Items Only: The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Up to three speakers will be entitled to two minutes each to speak in opposition to or support of a Consent Calendar Item. The Presiding Officer will ask additional persons in the audience to stand to demonstrate their respective opposition to or support of the item.

In the event that there are more than three persons wishing to speak either in opposition to or support of a “Consent” item, the Presiding Officer will move the item to the beginning of the Action Calendar. Prior to moving the item, the Presiding Officer will fully inform those persons in the audience of this process.

Consent Calendar

The Council will first determine whether to move items on the agenda for action or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to action. Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

After hearing from public speakers regarding items remaining on the Consent Calendar, any Council Member may move any Information or Consent item to “Action”, however no additional items can be moved onto the Consent Calendar at that point. Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items removed from the Consent Calendar to the Action Calendar for additional public comment, at the time the matter is taken up during the Action Calendar, public comment will be limited to persons who have not previously addressed that item during the Consent Calendar related public comment period.

1. **Check for 2nd Reading of Ordinances. Add them here.**

2. **Donation: Raymond Family Foundation to the Animal Care Shelter**
   From: City Manager
   **Recommendation:** Adopt a Resolution accepting a donation from the Raymond Family Foundation to the Animal Shelter in the sum of $5,000.
   **Financial Implications:** Animal Shelter Donation Fund - $5,000
   Contact: Phil Kamlarz, City Manager, 981-7000

3. **Prevention of Farm Animal Cruelty Act**
   From: City Manager
   **Recommendation:** Adopt a Resolution endorsing the Prevention of Farm Animal Cruelty Act, a statewide ballot initiative requiring that calves used for veal, egg-laying hens and breeding pigs on industrialized factory farms have enough room to turn around and extend their limbs.
   **Financial Implications:** None
   Contact: Phil Kamlarz, City Manager, 981-7000

4. **Minutes for Approval**
   From: City Manager
   **Recommendation:** Approve the minutes for the Council meetings of December 11 and December 18, 2007.
   **Financial Implications:** None
   Contact Pamyla Means, City Clerk, 981-6900:
5. **Formal Bid Solicitation and Request for Proposal Scheduled For Possible Issuance in the Next 30 Days**  
*From: City Manager*  
**Recommendation:** Approve the new invitation for bid/request for proposal (RFP) that will be, or is planned to be, issued in the next 30 days upon final approval by the requesting department or division.  
**Financial Implications:** See report  
*Contact: Robert Hicks, Finance, 981-7300*

6. **Memorandum Of Understanding: Berkeley Police Association**  
*From: City Manager*  
**Recommendation:** Adopt two Resolutions:  
1) Approving a new four year Memorandum of Understanding with the Berkeley Police Association (hereinafter referred to as the "Association") with a term of July 1, 2007 through June 25, 2011; authorizing the City Manager to execute and implement the new labor agreement that includes certain adjustments to salaries and benefits retroactive to July 1, 2007 or other dates set forth in the contract;  
2) Approving a new salary resolution for Representation Units E and F that implement the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 61,331-N.S.  
**Financial Implications:** General Fund - $6.9 million  
*Contact: David Hodgkins, Human Resources, 981-6800*

7. **Contract: NEOGOV Job Applicant Tracking Service**  
*From: City Manager*  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute and implement a contract and any amendments with NEOGOV to provide the City with a job applicant tracking system and service in an amount not to exceed $45,000 for the period February 1, 2008 through January 31, 2009.  
**Financial Implications:** General Fund - $45,000  
*Contact: David Hodgkins, Human Resources, 981-6800*

8. **Conservation Easement: Lower Codornices Creek - City of Albany and UC Berkeley**  
*From: City Manager*  
**Recommendation:** Adopt first reading of an Ordinance authorizing and directing the City Manager to convey a conservation easement to the City of Albany and the University of California for Lower Codornices Creek.  
**Financial Implications:** None  
*Contact: William Rogers, Parks, Recreation and Waterfront, 981-6700*
Consent Calendar

9. **Lease Agreement with Berkeley Waterski Club for Property in Aquatic Park**  
   **From: City Manager**  
   Recommendation: Adopt the first reading of an Ordinance authorizing the City Manager to execute a lease agreement and any amendments with the Berkeley Waterski Club, Inc. to use City property at 2821 West Bolivar Drive in Aquatic Park for an estimated amount of $36,400 for eight years.  
   **Financial Implications:** $36,400 in revenue.  
   Contact: William Rogers, Parks, Recreation and Waterfront, 981-6700

10. **License Agreement: Rod and Gun Club in Aquatic Park to San Francisco**  
    **From: City Manager**  
    Recommendation: Adopt a Resolution authorizing the City Manager to execute a license agreement and any amendments with San Francisco Institute of Architecture (SFIA) and Waterside Workshop (WW) for City property located at 90 Bolivar Drive in Aquatic Park for nine months for an amount of $100.  
    **Financial Implications:** $100 in revenue.  
    Contact: William Rogers, Parks, Recreation and Waterfront, 981-6700

11. **Lease Agreement: Berkeley Rowing Club for Property in Aquatic Park**  
    **From: City Manager**  
    Recommendation: Adopt the first reading of an Ordinance authorizing the City Manager to execute a lease agreement and any amendments with the Berkeley Rowing Club, Inc. to use City property at 2851 West Bolivar Drive in Aquatic Park for an estimated amount of $36,400 for eight years.  
    **Financial Implications:** $36,400 in revenue  
    Contact: William Rogers, Parks, Recreation and Waterfront, 981-6700

12. **Changing the United States Drug Policy**  
    **From: Peace and Justice Commission**  
    **Recommendation:**  
    1) Recognize the leadership of Congresswoman Barbara Lee in advocating for reduced military spending by the federal government;  
    2) Declare that United States drug policy should be re-oriented toward programs for demand reduction in the United States and to support the rights of people with the diseases of alcoholism and drug dependency to receive effective treatment;  
    3) Urge Representative Lee to step up her leadership to terminate all military assistance to the Colombian Army, and to re-direct these funds to the United States Department of Health and Human Services for substance abuse prevention, harm reduction, and treatment programs;  
    4) Call for a policy toward Colombia that at its forefront promotes respect for human rights and the rule of law, by conditioning economic aid to the Colombian government on effective action to end impunity for human rights violations and collaboration with paramilitary groups;  
    5) Oppose proposals to expand into Mexico and Afghanistan the failed strategies of aerial fumigation and militaristic approaches to drug trafficking.  
    **Financial Implications:** None  
    **Contact:** Manuel Hector, Commission Secretary, 981-5400
13. **Firestone Natural Rubber Company Workers in Liberia**  
*From: Peace and Justice Commission*  
**Recommendation:** Join the International Labor Rights Forum, Friends of the Earth, NAACP, TransAfrica Forum, The RFK Memorial Center for Human Rights, and other United States and Liberian based organizations in demanding that the Bridgestone/Firestone Corporation:  
1) Take responsibility for the situation in Liberia and follow the law;  
2) Assign achievable quotas for the average worker to negate the use of child laborers;  
3) Increase wages to raise the standard of living of plantation workers;  
4) Supply modern tools to protect workers on the job from coming into contact with harmful chemicals;  
5) Redress all environmental damages as a result of its Liberian operations;  
6) Stop releasing chemicals into the environment and stop exposing workers to any compounds and chemicals that are internationally recognized as most toxic;  
7) Fully disclose all key project payments, contracts, and concession agreements for all Firestone projects in Liberia.  
**Financial Implications:** None  
Contact: Manuel Hector, Commission Secretary, 981-5400

14. **Marine Recruiting Office in Berkeley**  
*From: Peace and Justice Commission*  
**Recommendation:**  
1) Direct the City Attorney to investigate and report back to Council within 60 days on City options for enforcing Chapter 13.28 of the Berkeley Municipal Code, prohibiting discrimination on the basis of sexual orientation, with respect to military recruiting offices in Berkeley;  
2) Direct the City Manager to send letters to the Marine Corps Recruiting Station at 64 Shattuck Avenue and to General James T. Conway, Commandant of the United States Marine Corps, advising them that the Marine recruiting office is not welcome in our city, and if recruiters choose to stay, they do so as uninvited and unwelcome intruders;  
3) Encourage all people to avoid cooperation with the Marine Corps recruiting station, and applaud residents and organizations such as Code Pink, that may volunteer to impede, passively or actively, by nonviolent means, the work of any military recruiting office located in the City of Berkeley.  
**Financial Implications:** See report  
Contact: Manuel Hector, Commission Secretary, 981-5400

15. **Withdrawal of California National Guard Troops from Iraq**  
*From: Peace and Justice Commission*  
**Recommendation:** Call upon the Governor of California to demand that the President and Congress take immediate steps to withdraw California National Guard troops from Iraq now, and urge the California State Assembly and Senate to introduce legislation calling upon the prompt return of the California National Guard from Iraq.  
**Financial Implications:** None  
Contact: Manuel Hector, Commission Secretary, 981-5400
Council Consent Items

16. Enforcement Of Lying In Public Spaces And Implementation Policy  
From: Councilmembers Maio and Capitelli  
Recommendation: Refer to City Manager the request that staff review and suggest implementation of a policy that would require no (or low) enforcement of (647j) at night if no shelter beds are available, and if available enforcement would involve offering a shelter bed and would include transportation to the bed funded via taxi scrip for those homeless individuals who opt for a bed.  
Financial Implications: To be determined  
Contact: Linda Maio, Councilmember, District 1, 981-7110

17. Midyear Budget Referral: Bicycle Safety Signs - University from 6th Street to Sacramento Street  
From: Councilmember Moore  
Recommendation: Install Bicycle Safety Signs, similar to those along Telegraph Ave. and Shattuck Ave., on the North and South sides of University Avenue from 6th Street to Sacramento Street  
Financial Implications: To be determined  
Contact: Darryl Moore, Councilmember, District 2, 981-7120

18. Support Lawrence Berkeley National Laboratory Continuing Its Downtown Shuttle  
From: Councilmember Spring  
Recommendation: Request the City Manager send a letter to the director of the Lawrence Berkeley National Laboratory to urge them to continue their shuttle between the Lab and downtown Berkeley.  
Financial Implications: None  
Contact: Dona Spring, Councilmember, District 4, 981-7140

19. Pedestrian Safety; Current Statistical Data and Recommendations  
From: Councilmembers Capitelli, Spring and Olds  
Recommendation: Request the City Manager direct staff to:  
1) Provide Council with pedestrian and bicycle collision data for the years 2004 to the present; and  
2) Review the May 2000 “Bicycle and Pedestrian Safety Report” and return to Council with an update and strategies on how the 2000 pedestrian-related recommendations can and be further implemented in light of current data.  
Financial Implications: None  
Contact: Laurie Capitelli, Councilmember, District 5, 981-7150
20. **Wind Turbines and Bird Deaths**  
*Recommendation:* Direct the City Manager to write letters to both the Alameda County Board of Supervisors and the Alameda County Planning Department, expressing the Berkeley City Council’s concerns about the number of bird deaths as a result of wind turbines in the Altamont Pass.  
*Financial Implications:* None  
*Contact:* Betty Olds, Councilmember, District 6, 981-7160

21. **Condemn Construction of Border Wall - United States and Mexico Border**  
*From:* Councilmember Worthington  
*Recommendation:* Condemn the construction of a border wall along the international boundary zone connecting the United States of Mexico and the United States of America.  
*Financial Implications:* None  
*Contact:* Kriss Worthington, Councilmember, District 7, 981-7170

22. **Medical Cannabis Sanctuary Resolution and Opposing U.S. DEA Dispensary Raids**  
*From:* Councilmember Worthington  
*Recommendation:* Adopt a Resolution declaring the City of Berkeley as a sanctuary for medicinal cannabis and opposing the attempts by the U.S. Drug Enforcement Administration to close medical marijuana dispensaries.  
*Financial Implications:* None  
*Contact:* Kriss Worthington, Councilmember, District 7, 981-7170

23. **Reaffirmation - U.S. Record of the Armenian Genocide**  
*From:* Councilmember Worthington  
*Recommendation:* Adopt a resolution calling upon the House of Representatives to schedule a vote on House Resolution 106, which reaffirms the U.S. record of the Armenian Genocide.  
*Financial Implications:* None  
*Contact:* Kriss Worthington, Councilmember, District 7, 981-7170

**Action Calendar**

*After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up. Where an item was moved from the Consent Calendar to Action no speaker who has already spoken on that item would be entitled to speak to that item again.*

*The Presiding Officer will request that persons wishing to speak line up at the podium to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer 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. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*
**Action Calendar – Public Hearing**

Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer 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. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

24. **ZAB Appeal: 161 Panoramic Way**  
*From: City Manager*  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution adopting the revised mitigated negative declaration and approve Use Permit No. 04-10000145 to construct a new single family dwelling at 161 Panoramic Way, with modified conditions of approval to address the issues discussed herein.  
**Financial Implications:** None  
Contact: Dan Marks, Planning and Development, 981-7400

25. **Parking Meter and Pay-and-Display Station Fees**  
*From: City Manager*  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance amending Berkeley Municipal Code (BMC), Section 14.52.120, Parking Meter and Pay-and-Display Station Fees, to increase the rate to $1.25 per hour, effective February 29, 2008; and amending Section 14.52.110, Use of Money Deposited in Parking Meters and Pay-and-Display Stations, to allow transfer of revenue to the General Fund for program costs associated with the Public Commons for Everyone Initiative (PCEI).  
**Financial Implications:** See report  
Contact: Claudette Ford, Public Works, 981-6300

**Action Calendar – New Business**

26. **Chevron Corporation**  
Select a or b  
a. *From: City Manager*  
**Recommendation:** Adopt a policy directing City staff, where practical, to cease purchases from Chevron Corporation.  
**Financial Implications:** See report  
Contact: Fred Medrano, Health and Human Services, 981-5100  
b. *From: Peace and Justice Commission*  
**Recommendation:** Direct the City Manager to report to the City Council as soon as possible what, if any, is the nature of the City of Berkeley business with Chevron Corporation, and that the City of Berkeley cease all purchases from Chevron.  
**Financial Implications:** See report  
Contact: Manuel Hector, Commission Secretary, 981-5100
Action Calendar – New Business

27. Citizen Participation Plan
   From: City Manager
   Recommendation: Adopt a Resolution to rescind and re-adopt the Citizen Participation Plan of the Berkeley Consolidated Plan for Housing and Community Development, 2005-2010, and authorize the City Manager to incorporate the newly-adopted Citizen Participation Plan into the Consolidated Plan.
   Financial Implications: See report
   Contact: Renelda Mary, Housing, 981-5400

28. Evidence Theft Issues within the Berkeley Police Department
   Select a or b
   a. From: City Manager
      Recommendation: Approve the Police Department’s response plan to the Police Review Commission’s report on evidence theft issues as described in this report. Request that the City Manager report back to council in September 2008 on the implementation of the response plan.
      Financial Implications: None
      Contact: Douglas N. Hambleton, Police, 981-5900
   b. From: Police Review Commission
      Financial Implications: Unknown
      Victoria Urbi, Commission Secretary, 981-4960

29. Project and Program Submittals for 2008 Alameda Countywide Transportation Plan and 2009 Regional Transportation Plan
   Recommendation: Adopt a resolution authorizing the City Manager to submit a prioritized and financially constrained list of Projects and Programs, consistent with City Council direction, to the 2008 Alameda Countywide Transportation Plan, which the Alameda County Congestion Management Agency will submit to the Metropolitan Transportation Commission’s 2009 update of the Regional Transportation Plan 2035.
   Financial Implications: See report
   Claudette Ford, Public Works, 981-6300

Information Reports

30. Contract: Vector Control Services
    From: Health and Human Services
    Contact: Fred Medrano, Health and Human Services, 981-5100

31. Audit: Residential Rental Inspection Program
    From: City Manager
    Contact: Renelda Mary, Housing, 981-5400
Information Reports

32. Volunteer Clean-up of Bay Trail  
   From: City Manager  
   Contact: William Rogers, Parks, Recreation and Waterfront, 981-6700

33. SMART 911  
   From: Disaster and Fire Safety Commission  
   Contact: Donna McCracken, Commission Secretary, 981-5580

Public Comment – Including Items Not Listed on the Agenda –

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc., 1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

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  - TDD: 510-981-6903
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- Libraries:
  - Main - 2090 Kittredge Street
  - Claremont Branch – 2940 Benvenue
  - West Branch – 1125 University
  - North Branch – 1170 The Alameda
  - South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:
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Please refrain from wearing scented products to this meeting.

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Tuesday, January 29, 2008  DRAFT AGENDA  Page 10
To: Honorable Mayor and Members of the City Council
From: Peace and Justice Commission
Submitted by: Steve Freedkin, Chairperson
Subject: Changing the United States Drug Policy

RECOMMENDATION
1) Recognize the leadership of Congresswoman Barbara Lee in advocating for reduced military spending by the federal government; 2) declare that United States drug policy should be re-oriented toward programs for demand reduction in the United States and to support the rights of people with the diseases of alcoholism and drug dependency to receive effective treatment; 3) urge Representative Lee to step up her leadership to terminate all military assistance to the Colombian Army, and to re-direct these funds to the United States Department of Health and Human Services for substance abuse prevention, harm reduction, and treatment programs; 4) call for a policy toward Colombia that at its forefront promotes respect for human rights and the rule of law, by conditioning economic aid to the Colombian government on effective action to end impunity for human rights violations and collaboration with paramilitary groups; and 5) oppose proposals to expand into Mexico and Afghanistan the failed strategies of aerial fumigation and militaristic approaches to drug trafficking.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECT
Over 23 million Americans are affected by substance abuse, including many members of our community, as documented by the Alcohol and Other Drugs Policy Council in its July 2006 report, City of Berkeley Taking the Lead in Combating Alcohol and Other Drug Problems.
Retail cocaine prices fell and purity of cocaine on the street increased between 2003 and 2006, according to the White House Office on National Drug Control Policy, and recent reported increases in street price of cocaine are not the result of counter-drug programs in South America, where "cocaine production appears to be stable or increasing," according to the Justice Department National Drug Threat Assessment for 2008.

BACKGROUND
At the meeting of December 3, 2007, the Peace and Justice Commission approved the following motion: **M/S/C (Bohn/Cohen)** that the Berkeley City Council approve the following recommendation:

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code (BMC) Chapter 360.070); and

WHEREAS, over 23 million Americans are affected by substance abuse, including many members of our community, as documented by the Alcohol and Other Drugs Policy Council in its July 2006 report, *City of Berkeley Taking the Lead in Combating Alcohol and Other Drug Problems*; and

WHEREAS, a study by the Rand Corporation showed that spending on drug interdiction of the sort conducted in Colombia is 23 times less effective in reducing illegal drug use than treatment of drug users in the United States (U.S.); the U.S. has spent $4.7 billion on Plan Colombia since 2000, primarily in training, equipment and intelligence for the Colombian Armed Forces, in what was promoted as a plan to reduce in half the cultivation of coca leaves, a primary ingredient of cocaine, by 2005; and the most recent data released by the State Department show that more land in Colombia was cultivated with coca in 2006 -- 388,000 acres -- than when the effort began in 2000; and

WHEREAS, retail cocaine prices fell and purity of cocaine on the street increased between 2003 and 2006, according to the White House Office on National Drug Control Policy, and recent reported increases in street price of cocaine are not the result of counter-drug programs in South America, where “cocaine production appears to be stable or increasing,” according to the Justice Department National Drug Threat Assessment for 2008; and

WHEREAS, many units of the Colombian Army, including the commander of the Colombian Army, have been credibly reported to have collaborated with paramilitary death squads, themselves declared by the State Department to be a Foreign Terrorist Organization, but almost none have been successfully prosecuted for their atrocities, and an investigation by international jurists and Colombian human rights organizations documented 955 extrajudicial executions committed by the Colombian armed forces from July 2002 to June 2007, representing an increase of 65% from the previous five years, and of which only two had resulted in a judicial conviction and sentence, and in August 2007, six Colombian military officers who were recipients of U.S. military training...
were charged by Colombian prosecutors with serving in the organization of a drug mafia baron included on the FBI’s Ten Most Wanted list, thus making U.S. assistance to the Colombian Army an asset to the very entities the policy purportedly targets, and

WHEREAS, the administration of President Bush proposes to expand such failed strategies to other nations, including Mexico, where “Plan Mexico” would designate $500 million in mostly military, police and surveillance equipment and involve unaccountable civilian mercenaries, and to Afghanistan, where a plan to aerially fumigate poppies is opposed by Afghan and European officials, Pentagon officials and Members of Congress; and the U.S. Comptroller General reported in August 2007 that "the U.S. government is on a 'burning platform' of unsustainable policies and practices," including "fiscal deficits" and "overseas military commitments"; and

WHEREAS, Congressional Representative for Berkeley, the Honorable Barbara Lee, has consistently supported both reductions in military spending and efforts to increase drug treatment funding, such as Proposition 36, and is a member of the two Appropriations Subcommittees responsible for most military spending in Colombia (Foreign Operations) and for most domestic federally funded drug treatment programs (Health and Human Services), and is thus in a unique position to reorient U.S. counter-narcotics spending away from Colombia and towards U.S. social programs; and

WHEREAS, the U.S. government should not provide arms and military assistance to any government that is directly connected to and associated with paramilitary death-squad organizations that listed on the U.S. State Department terrorist list and is directly linked with organized drug export criminal organizations.

NOW THEREFORE, BE IT RESOLVED that the Peace and Justice Commission recommends that the Council of the City of Berkeley 1) recognize the leadership of Congresswoman Barbara Lee in advocating for reduced military spending by the federal government; 2) declare that U.S. drug policy should be re-oriented toward programs for demand reduction in the United States and to support the rights of people with the diseases of alcoholism and drug dependency to receive effective treatment; 3) urge Representative Lee to step up her leadership to terminate all military assistance to the Colombian Army, and to re-direct these funds to the U.S. Department of Health and Human Services for substance abuse prevention, harm reduction, and treatment programs; 4) call for a policy toward Colombia that at its forefront promotes respect for human rights and the rule of law, by conditioning economic aid to the Colombian government on effective action to end impunity for human rights violations and collaboration with paramilitary groups; and 5) oppose proposals to expand into Mexico and Afghanistan the failed strategies of aerial fumigation and militaristic approaches to drug trafficking.

BE IT FURTHER RESOLVED, that copies of this Resolution be sent to Representative Lee and Senators Barbara Boxer and Dianne Feinstein.

Ayes: Bohn, Brody, Cohen, Freedkin, Kafin, Litman, McDonald, Sherman, sorgen, Winkelman; Noes: None; Abstain: Wornick; Absent: Seaton.
Commissioner Wornick abstained from the vote for the following reason: “With all due respect to the people of Columbia, I’d prefer to see a broader resolution aimed at ending the current policy of fighting drug production and distribution worldwide and rather redirect sufficient funding to drug education and substance abuse treatment. Furthermore, I do not believe that the timing is right for a resolution of this nature and therefore believe that my vote to abstain will not affect action on this item whatsoever.”

CITY MANAGER
The City Manager takes no position on the recommendations of the Commission.

CONTACT PERSON
Steve Freedkin, Chairperson, Peace and Justice Commission, (510) 595-4626
Diana Bohn, Peace and Justice Commission, (510) 525-5497
Manuel Hector Jr., Secretary, Peace and Justice Commission, (510) 981-5110
To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Steve Freedkin, Chairperson

Subject: Firestone Natural Rubber Company Workers in Liberia

RECOMMENDATION
Join the International Labor Rights Forum, Friends of the Earth, NAACP, TransAfrica Forum, The RFK Memorial Center for Human Rights, and other United States and Liberian based organizations in demanding that the Bridgestone/Firestone Corporation:

(1) Take responsibility for the situation in Liberia and follow the law;
(2) Assign achievable quotas for the average worker to negate the use of child laborers;
(3) Increase wages to raise the standard of living of plantation workers;
(4) Supply modern tools to protect workers on the job from coming into contact with harmful chemicals;
(5) Redress all environmental damages as a result of its Liberian operations;
(6) Stop releasing chemicals into the environment and stop exposing workers to any compounds and chemicals that are internationally recognized as most toxic; and
(7) Fully disclose all key project payments, contracts, and concession agreements for all Firestone projects in Liberia.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECT
Firestone Corporation has operated in Liberia since 1926 and has exploited workers and the environment throughout its history, currently paying its workers $3.19 a day in base pay for a production quota that a Firestone official acknowledged in an interview with CNN in 2005 could take up to 21 hours of work per day to meet; thereby forcing the workers to employ family members, including young children, to assist them, which has led to a lawsuit against Firestone filed in 2005 by the International Labor Rights Fund.
Firestone rubber tappers in Liberia are dependent on the company for housing, schools and medical facilities, all of which are inadequate. They have little access to safety equipment and limited access to medical facilities, and their backbreaking work leads to numerous injuries and deformities the longer a tapper is employed; with a report by the United Nations Mission in Liberia in 2006 stating that “occupational safety and health standards are not observed at the Firestone plantation” (United Nations Mission in Liberia, "Human Rights in Liberia’s Rubber Plantations: Tapping into the Future" Report of the Commission for Africa, May 2006), and Firestone being given the Public Eye Award by two activist organizations, the Berne Declaration and Friends of the Earth-Switzerland, for “irresponsible corporate behavior” and “conditions approaching slavery” at the World Social Forum in Switzerland.

BACKGROUND
At the meeting of January 7, 2008, the Peace and Justice Commission approved the following motion: **M/S/C (Bohn/sorgen)** that the Council of the City of Berkeley approve the following recommendation expressing solidarity with the Firestone Natural Rubber Company Workers in Liberia:

WHEREAS, Berkeley Municipal Code (BMC) Chapter 369.070, establishing the Peace and Justice Commission, states that the Commission shall (A) Advise the Berkeley City Council … on all matters relating to the City of Berkeley’s role in issues of peace and social justice…including…support for human rights and self-determination throughout the world, (and) (C) Help develop proposals for the City Council … for actions in furtherance of the goals of peace and justice”; and

WHEREAS, Firestone Corporation has operated in Liberia since 1926 and has exploited workers and the environment throughout its history, currently paying its workers $3.19 a day in base pay for a production quota that a Firestone official acknowledged in an interview with CNN in 2005 could take up to 21 hours of work per day to meet; thereby forcing the workers to employ family members, including young children, to assist them, which has led to a lawsuit against Firestone filed in 2005 by the International Labor Rights Fund (Class Action Complaint for Injunctive Relief and Damages) in the United States; and

WHEREAS, the Bridgestone/Firestone Corporation sells automobile tires in the city of Berkeley, deriving great profit due to the near slave-labor wages and exploitative conditions under which Liberian workers toil, and the City of Berkeley procures automobiles and trucks equipped with Bridgestone/Firestone tires, with proceeds flowing directly or indirectly to that corporation; and Berkeley residents, having a strong sense of social justice, do not wish their city to be a profit center for Bridgestone/Firestone; and

WHEREAS, Firestone rubber tappers in Liberia live inside a 240 square mile plantation and are dependent on the company for housing, schools and medical facilities, all of which are inadequate; they have little access to safety equipment, and limited access to medical facilities; their backbreaking work leads to numerous injuries and deformities
the longer a tapper is employed, with a report by the United Nations Mission in Liberia in 2006 stating that “occupational safety and health standards are not observed at the Firestone plantation” (United Nations Mission in Liberia, "Human Rights in Liberia’s Rubber Plantations: Tapping into the Future" Report of the Commission for Africa, May, 2006), and Firestone being given the Public Eye Award by two activist organizations, the Berne Declaration and Friends of the Earth-Switzerland, for “irresponsible corporate behavior” and “conditions approaching slavery" at a ceremony at the World Social Forum in Switzerland; and

WHEREAS, the community outside the plantation has also charged Firestone with dumping chemical waste into the Farmington River, contaminating a waterway used for fishing, bathing and drinking water, and a French laboratory recently tested water samples and found high concentrations of ammonium, nitrate and other harmful chemicals; and

WHEREAS, fed up with the abusive conditions and the lack of union democracy, workers have staged two work stoppages demanding the formation of a union to represent them, elections which took place June 30, 2007; but there are already ominous signs indicating that management and its allies are trying to place as many obstacles as possible in the way of independent union leaders.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley join the International Labor Rights Forum, Friends of the Earth, NAACP, TransAfrica Forum, The RFK Memorial Center for Human Rights, and other United States and Liberian based organizations in demanding that the Bridgestone/Firestone Corporation:

(1) Take responsibility for this situation and follow the law;

(2) Assign achievable quotas for the average worker to negate the use of child laborers;

(3) Increase wages to raise the standard of living of plantation workers;

(4) Supply modern tools to protect workers on the job from coming into contact with harmful chemicals;

(5) Redress all environmental damages as a result of its Liberian operations;

(6) Stop releasing chemicals into the environment, and stop exposing workers to any compounds and chemicals that are internationally recognized as most toxic; and

(7) Fully disclose all key project payments, contracts, and concession agreements for all Firestone projects in Liberia.

BE IT FURTHER RESOLVED, that copies of this Resolution be sent to the International Labor Rights Fund, International Labor Rights Forum, United Steel Workers (who will
convey the information to the Liberian rubber workers), and Dan Adomitis, President, Firestone Natural Rubber Company.

Ayes: Unanimous; Absent: Brody, Cohen, Litman, Seaton, Sherman.

CITY MANAGER
The City Manager takes no position on the recommendations of the Commission.

CONTACT PERSON
Steve Freedkin, Chairperson, Peace and Justice Commission, (510) 595-4626
Diana Bohn, Peace and Justice Commission, (510) 525-5497
Manuel Hector Jr., Secretary, Peace and Justice Commission, (510) 981-5110
To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Steve Freedkin, Chairperson

Subject: Marine Recruiting Office in Berkeley

RECOMMENDATION
(1) Direct the City Attorney to investigate and report back to Council within 60 days on City options for enforcing Chapter 13.28 of the Berkeley Municipal Code, prohibiting discrimination on the basis of sexual orientation, with respect to military recruiting offices in Berkeley; (2) direct the City Manager to send letters to the Marine Corps Recruiting Station at 64 Shattuck Avenue and to General James T. Conway, Commandant of the United States Marine Corps, advising them that the Marine recruiting office is not welcome in our city, and if recruiters choose to stay, they do so as uninvited and unwelcome intruders; and (3) encourage all people to avoid cooperation with the Marine Corps recruiting station, and applaud residents and organizations such as Code Pink, that may volunteer to impede, passively or actively, by nonviolent means, the work of any military recruiting office located in the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION
Staff time to research the City’s options for enforcing Chapter 13.28 of the Berkeley Municipal Code, discrimination on the basis of sexual orientation, with respect to military recruiting offices in Berkeley.

CURRENT SITUATION AND ITS EFFECT
The United States has a history of launching illegal, immoral and unprovoked wars of aggression and the Bush Administration launched the most recent of those wars in Iraq and is threatening the possibility of war in Iran. These wars have produced catastrophic loss of human life, both civilian and military, as well as physically maiming and deforming and psychologically destroying countless numbers of civilians and military personnel.

The United States Marine Corps is being used as one of the means of perpetrating and prolonging illegal, unconstitutional and unnecessary wars of the United States. Military recruiters are sales people known to lie to and seduce minors and young adults into contracting themselves into military service with false promises regarding jobs, job
training, education and other benefits. Many enlisted persons never see the benefits they are promised and find out they are not eligible for the educational benefits due to loopholes and they did not receive the training promised or it did not qualify them for jobs outside the military.

The United States military discriminates by refusing to hire gays, lesbians, or bisexuals. By ordinance (BMC § 13.28.030; Ord. 5106-NS § 1 (part), 1978), the City of Berkeley prohibits such discrimination; requires employers to post a notice that discrimination on the basis of sexual orientation is prohibited by law; and provides for a fine of up to $50 per offense for failure to do so.

BACKGROUND
At the meeting of January 7, 2008, the Peace and Justice Commission approved the following motion: **M/S/C (Meola/sorgen)** that the Council of the City of Berkeley approve the following recommendation:

WHEREAS, the Peace & Justice Commission advises the City Council on all matters relating to the City of Berkeley’s role in issues of peace and social justice [Berkeley Municipal Code (BMC) Chapter 369.070]; and

WHEREAS, the United States has a history of launching illegal, immoral and unprovoked wars of aggression and the Bush Administration launched the most recent of those wars in Iraq and is threatening the possibility of war in Iran; and

WHEREAS, the United States armed forces, including the Marine Corps, explicitly refuse to hire openly non-heterosexual individuals, and will discharge an individual in their employ “who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts” [10 USC § 654(b)(2), “Policy Concerning Homosexuality in the Armed Forces”]; and

WHEREAS, Berkeley Municipal Code § 13.28, “Discrimination on the Basis of Sexual Orientation,” provides that “It shall be an unlawful employment practice for an employer to fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment on the basis of such individual’s sexual orientation” [BMC § 13.28(A)(1)], and applies the same standard to employment agencies and job-training programs [BMC § 13.28(A)(3), § 13.28(A)(5)]; and

WHEREAS, these wars have produced catastrophic loss of human life, both civilian and military, as well as physically maiming and deforming and psychologically destroying countless numbers of civilians and military personnel; and

WHEREAS, the people of the City of Berkeley have long voiced their stand for peace and against unnecessary wars; and support people following their consciences to do what is morally and ethically right to resist illegitimate authority; and
WHEREAS, the United States Marine Corps is being used as one of the means of perpetrating and prolonging illegal, unconstitutional and unnecessary wars of the United States; and

WHEREAS, military recruiters are sales people known to lie to and seduce minors and young adults into contracting themselves into military service with false promises regarding jobs, job training, education and other benefits; and

WHEREAS, many enlisted persons never see the benefits they are promised and find out they are not eligible for the educational benefits due to loopholes and they did not receive the training promised or it did not qualify them for jobs outside the military; and

WHEREAS, the people of Berkeley should want the Marine Corps present near Berkeley High School, Berkeley City College, and University of California no more than they would want other violent influences downtown.

NOW THEREFORE, BE IT RESOLVED that the Peace & Justice Commission recommends that the Council of the City of Berkeley direct the City Attorney to investigate and report back to Council within 60 days on City options for enforcing Chapter 13.28 of the Berkeley Municipal Code, prohibiting discrimination on the basis of sexual orientation, with respect to military recruiting offices in Berkeley.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley direct the City Manager to send letters to the Marine Corps Recruiting Station at 64 Shattuck Avenue and to General James T. Conway, Commandant of the United States Marine Corps, advising them that the Marine recruiting office is not welcome in our city, and if recruiters choose to stay, they do so as uninvited and unwelcome intruders.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley encourage all people to avoid cooperation with the Marine Corps recruiting station, and applaud residents and organizations such as Code Pink, that may volunteer to impede, passively or actively, by nonviolent means, the work of any military recruiting office located in the City of Berkeley.

Ayes: Unanimous; Absent: Brody, Cohen, Litman, Seaton, Sherman.

CITY MANAGER
The City Manager takes no position on the recommendations of the Commission. However, it is unlikely that the City has the ability to enforce Chapter 13.28 against the United States military.

CONTACT PERSON
Steve Freedkin, Chairperson, Peace and Justice Commission, (510) 595-4626
Robert Meola, Peace and Justice Commission, (510) 644-1102
Manuel Hector Jr., Secretary, Peace and Justice Commission, (510) 981-5110
To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Steve Freedkin, Chairperson

Subject: Withdrawal of California National Guard Troops from Iraq

RECOMMENDATION
Call upon the Governor of California to demand that the President and Congress take immediate steps to withdraw California National Guard troops from Iraq now, and urge the California State Assembly and Senate to introduce legislation calling for the prompt return of the California National Guard from Iraq.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECT
In the wake of the ongoing conflict in Iraq as well as recent fires in the State of California, it is more important than ever that California's National Guard troops are withdrawn from Iraq. There is reason to believe that the federalization and deployment of National Guard troops has rendered the remaining National Guard forces less able to carry out its state activities effectively.

BACKGROUND
At the meeting of November 5, 2007, the Peace and Justice Commission approved the following motion: MISC (Bohn/Meola) that the Council of the City of Berkeley approve the following recommendation:

WHEREAS, on September 13, 2005, the Berkeley City Council adopted Resolution No. 63,055-N.S. supporting the withdrawal of California National Guard troops from Iraq; and

WHEREAS, the costs of the call-up of California National Guard members for deployment in Iraq have been significant, as determined in lost lives, combat injuries, psychic trauma, disruption of family life, financial hardship for individuals, families, and
businesses, interruption of careers, and damage to the fabric of civic life in many California communities; and

WHEREAS, these are costs which would be suffered willingly were there a threat to our nation, but which are not tolerable where there is none; and

WHEREAS, Californians have joined the Guard thinking that they would be serving their neighbors by helping with California-based emergencies, unless there was a danger to the United States requiring transfer to active duty; and

WHEREAS, stop-loss orders, which unilaterally extend the duration of duty, violate the mutual understanding between Californians in the Guard and the state and nation they agreed to serve; and

WHEREAS, severe lack of personnel and resources during the recent fires in Southern California further shows that the federalization and deployment of National Guard members has rendered the remaining Guard force less able to carry out its state activities effectively; and

WHEREAS, the United States Constitution provides that Congress shall have the power to "provide for calling forth the Militia to execute the laws of the Nation, to suppress insurrections and repel invasions," and the California State Assembly, the California State Senate, and the Governor of California to direct the training and arming of members of the California National Guard for defense of the State; and

WHEREAS, the Council of the City of Berkeley believes that the best way to support the women and men serving in the United States Armed Forces and California National Guard is by bringing them home.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley again calls upon the Governor of California to demand that the President and Congress take immediate steps to withdraw California National Guard troops from Iraq now, and urges the California State Assembly and Senate to introduce legislation calling for the prompt return of the California National Guard from Iraq.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley directs the City Manager to send a copy of this Resolution to President Bush, Governor Schwarzenegger, President Pro Tempore of the California Senate, Speaker of the California State Assembly, each member of the Bay Area Congressional Delegation, and Berkeley’s State Legislators.

Ayes: Unanimous; Absent: Wagley.
Past Council Action
On September 13, 2005 by Resolution No. 63,055-N.S., the City Council asked the Governor of California to insure that the President and Congress take immediate steps to withdraw California National Guard Troops from Iraq.

CITY MANAGER
The City Manager takes no position on the recommendations of the Commission.

CONTACT PERSON
Steve Freedkin, Chairperson, Peace and Justice Commission, (510) 595-4626
Diana Bohn, Peace and Justice Commission, (510) 525-5497
Manuel Hector Jr., Secretary, Peace and Justice Commission, (510) 981-5110
TO: Honorable Mayor and Members of the City Council

FROM: Councilmembers Linda Maio and Laurie Capitelli

SUBJECT: Enforcement Of Lying In Public Spaces And Implementation Policy

RECOMMENDATION:
Refer to City Manager the request that staff review and suggest implementation of a policy that would require no (or low) enforcement of (647j) at night if no shelter beds are available, and if available enforcement would involve offering a shelter bed and would include transportation to the bed funded via taxi scrip for those homeless individuals who opt for a bed.

BACKGROUND:
Council recently enacted enforcement of 647j, lying in public spaces and had considerable discussion regarding the fate of homeless individuals who were roused at night but had no place to go. The above policy direction came from concern about these persons and in some discussion with staff. This item requests that staff review the proposed policy direction and develop an implementation plan for consideration by the City Council. It is expected that we have a trial period in which we learn from our experience regarding level of staff time and demand for beds, and taxi scrip required.

FINANCIAL IMPLICATIONS:
Some staff time and earmarking of a certain amount of taxi scrip.

CONTACT PERSONS:
Councilmember Linda Maio       Council District 1       (510) 981-7110
Councilmember Laurie Capitelli   Council District 5       (510) 981-7150
To: Honorable Mayor and Members of the City Council

From: Councilmember Darryl Moore

Subject: Bicycle Safety Signs - University from 6th Street to Sacramento Street

RECOMMENDATION:
Refer to Mid Year Budget installing Bicycle Safety Signs, similar to those along Telegraph Ave. and Shattuck Ave., on the North and South sides of University Avenue from 6th Street to Sacramento Street

BACKGROUND:
There have been concerns about the safety of the patrons of businesses along University Avenue due to the amount of bicycle traffic along the sidewalks. Although some of the businesses have posted bicycle safety posters, provided by our Transportation Dept, in their storefronts, bicyclists tend to miss or ignore them. Additional permanent signage would help decrease the number of bicycle accidents along the sidewalks. The Transportation Dept. have made cost estimates, but since the resignation of the Transportation director and the bicycle/pedestrian safety officer, the project was not executed.

FINANCIAL IMPLICATIONS:
To Be Determined

CONTACT PERSON:
Councilmember Darryl Moore, District Two 981-7120
To: Honorable Mayor and Members of the City Council

From: Councilmember Dona Spring

Subject: Support Lawrence Berkeley National Laboratory Continuing Its Downtown Shuttle

RECOMMENDATION:
Request the City Manager send a letter to the director of the Lawrence Berkeley National Laboratory to urge them to continue their shuttle between the Lab and downtown Berkeley.

BACKGROUND:
Apparently LBNL officials think that the City of Berkeley thinks that there are too many shuttle in the downtown area. (See letter attached.)

FINANCIAL IMPLICATIONS:
None

CONTACT PERSON: Councilmember Dona Spring 981-7140

Attachments:
1: Letter to LBNL
To: Director Steven Chu, Lawrence Berkeley National Laboratory  
From: Berkeley City Council  

Dear Director Chu, 

The Lawrence Berkeley National Laboratory (LBNL) shuttle provides daily transportation for hundreds of LBNL employees and visitors. We understand that the buses carry many passengers per trip, especially during commute hours when they run close to full, and that each shuttle trip thereby eliminates many car trips. This significantly reduces traffic in Berkeley, especially on the heavily used streets near UC Berkeley that lead to and from the Lab. It also provides environmental benefits for the City, such as reduced greenhouse gas emissions and reduced pollution.

Additionally, hundreds of employees each day use the shuttle service to visit Berkeley restaurants for lunch, which provides economic benefits and vitality to the City.

The City Council has heard that you are considering reducing or eliminating LBNL shuttle service to downtown Berkeley, in part because you believe that the city is unhappy with the number of LBNL shuttle buses using our streets. This is not true. In fact, we strongly encourage LBNL to improve the shuttle service to handle even more commuters, including those who arrive in downtown Berkeley via BART. We remind you that as the Lab adds employees, carrying more commuters by shuttle rather than private car is a required mitigation in the Environmental Impact Report for the Lab's 2006 Long-Range Development Plan.

We encourage the Lab to add a shuttle stop at the top of the UC campus in order to pick up additional UC employees and students before going to the downtown area.

Thank you for working with the City of Berkeley to maintain and improve the quality of life for your employees and our citizens.

Signed  
[Berkeley City Council]
To: Honorable Mayor and Members of the City Council

From: Councilmembers Dona Spring, Laurie Capitelli & Betty Olds

Subject: Pedestrian Safety; Current Statistical Data and Recommendations

RECOMMENDATION
Request the City Manager direct staff to:

1. Provide Council with pedestrian and bicycle collision data for the years 2004 to the present; and
2. Review the May 2000 “Bicycle and Pedestrian Safety Report” and return to Council with an update and strategies on how the 2000 pedestrian-related recommendations can and be further implemented in light of current data.

FINANCIAL IMPLICATIONS
Unknown staff time to research and write report.

BACKGROUND
Recent serious collision injuries and fatalities within Berkeley require a look at the whole picture of vehicle dangers in the city. Council and staff need to have an accurate picture of dangers in order to allocate resources efficiently and develop effective programs. The data report should contain information on the location, time, fault, cause/factors and level of injuries, including alphabetization by street name for accessibility.

The 2000 Bicycle and Pedestrian Safety report included a variety of recommendations for pedestrian and bicycle safety. At the time, bicycle safety items were implemented first because the bike plan was already in process and soon to be finished. This would be an appropriate time to review and evaluate what in the plan has been implemented in terms of pedestrian safety, including a status report on the Pedestrian Safety Plan, and revisit and to consider those recommendations that have not been implemented.

Though statistics from the 2000 Bicycle and Pedestrian Safety report may be dated, it would provide a baseline for a comparison with recent data.
CONTACT PERSON

Councilmember Betty Olds, District 6   981-7160
Councilmember Laurie Capitelli, District 5   981-7150
Councilmember Dona Spring, District 4   981-7140

ATTACHMENTS:
May 2000 City of Berkeley Bicycle and Pedestrian Safety Report
To:         Honorable Mayor and Members of the City Council
From:      City Councilmember Betty Olds
Subject:    Wind Turbines and Bird Deaths

RECOMMENDATION
Direct the City Manager to write letters to both the Alameda County Board of Supervisors and the Alameda County Planning Department, expressing the Berkeley City Council’s concerns about the number of bird deaths as a result of wind turbines in the Altamont Pass.

BACKGROUND
A year ago, a legal settlement between environmental groups, wind companies and Alameda County regulators promised to reduce bird deaths by 50% within three years. In addition, the agreement called for the closure or relocation of 300 wind turbines that are considered to be the most threatening to birds, especially golden eagles, red-tailed hawks, American kestrels and burrowing owls. Recently, the Scientific Review Committee, a team of five scientists who studied the situation, reported that efforts to reduce bird deaths are not on track to meet the 50% goal. The report also concluded that additional older turbines need to be removed, than originally thought. Bird deaths can be reduced by replacing older turbines with fewer, bigger, more powerful wind turbines.

FISCAL IMPACTS OF RECOMMENDATION
None

CONTACT PERSON
Betty Olds, City Council, 981-7160
To: Honorable Mayor and Members of the City Council

From: Councilmember Kriss Worthington

Subject: Condemn Construction of Border Wall - United States and Mexico Border

RECOMMENDATION:
Condemn the construction of a border wall along the international boundary zone connecting the United States of Mexico and the United States of America.

BACKGROUND:
Last year, the United States Congress appropriated 1.2 billion dollars to construct a wall along the United States (US) -Mexico border. The purpose of the project, as suggested by the US Department of Homeland Security, is to help eliminate migration and drug trafficking along the border.

Recently the Department of Homeland Security proceeded with its plan to construct the border wall by giving property owners along the US-Mexico border a 30-day notice asking owners to sign waivers allowing Department personnel access to their property or else the federal government will file a lawsuit so that they can have unimpeded access to the land.

The proposed border wall will have devastating consequences on the local environment along the border, and will result in landowners and farmers losing their land and access to river water for irrigation. It will also negatively affect the relationship between the US and Mexico as well as to indigenous nations.

The border wall would also limit access to parks and historical sites, as well as adversely affect the environmental quality of the region.

In order to facilitate the construction of the wall, the Department of Homeland Security has waived a number of important environmental laws. Additionally, it has indicated that it may need to acquire private property through eminent domain to ensure that the wall is built.

Additionally, the billions of dollars in federal funding designated for the border wall project could be better used for a number of domestic needs such as health care, education and housing.
A number of human rights organizations, as well as the Town of Brownsville, Texas, which is along the US-Mexico border have expressed their opposition to the proposed border wall project.

The City of Berkeley should join these organizations in recognizing the impacts that the proposed border wall will have on local economies, the environment and human rights along the US-Mexico border and express its opposition to the project.

FINANCIAL IMPLICATIONS:
NONE

CONTACT PERSON:
Councilmember Kriss Worthington, 981-7170.
To: Honorable Mayor and Members of the City Council

From: Councilmember Kriss Worthington

Subject: Medical Cannabis Sanctuary Resolution and Opposing U.S. DEA Dispensary Raids

RECOMMENDATION:
Adopt Resolution declaring the City of Berkeley as a sanctuary for medicinal cannabis and opposing attempts by the U.S. Drug Enforcement Administration to close medical marijuana dispensaries.

BACKGROUND:
In 1996, California voters approved Proposition 215, the Compassionate Use Act which legalized and regulated the medical use of marijuana. The measure received support from an overwhelming number of Berkeley voters.

Since the passage of Proposition 215, the City of Berkeley has adopted legislation to regulate the establishment of medical marijuana dispensaries. It has also directed its Police Department to not cooperate with the Drug Enforcement Administration in investigations of medical marijuana dispensaries.

State legislation and court decisions have also clarified the law regarding the provision of marijuana for medicinal purposes.

However, recently the federal government has been interfering in the operation of dispensaries. It has launched a campaign of threatening, raiding, seizing the property of and forcing the closure of many legally established medical cannabis providers in California.

These efforts have not only prevented dispensaries from providing medical marijuana to patients throughout the state, but also to chronically ill patients in the City of Berkeley. Also the forced closures of medical cannabis dispensaries has resulted in the loss of a significant amount of tax revenue and jobs.

In response to attacks on medical marijuana providers, the City and County of San Francisco declared its city as a “sanctuary for medical cannabis” in 2001. It is important that the City of Berkeley join San Francisco in making Berkeley a sanctuary to ensure that patients continue to have safe access to medical marijuana. The City should also join other jurisdictions in opposing
the attempts by the federal Drug Enforcement Administration to harass and force the closure of legitimate medical marijuana providers.

FINANCIAL IMPLICATIONS:
NONE

CONTACT PERSON:
Councilmember Kriss Worthington, 981-7170.

Attachments:
1. Resolution
RESOLUTION

RESOLUTION DECLARING THE CITY OF BERKELEY AS A SANCTUARY FOR MEDICINAL CANNABIS AND OPPOSING ATTEMPTS BY THE U.S. DRUG ENFORCEMENT ADMINISTRATION TO CLOSE MEDICAL MARIJUANA DISPENSARIES

WHEREAS, the City of Berkeley supports the rights of persons with medical conditions to obtain and use cannabis for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of cannabis in the treatment of an illness or medical condition for which cannabis provides relief; and

WHEREAS, many residents of the City of Berkeley are or will become seriously ill with cancer, anorexia, HIV/AIDS, chronic pain, movement disorders, glaucoma, arthritis, migraines, or other medical conditions for which cannabis may provide relief; and

WHEREAS, in 1996, with over 80 percent of Berkeley voters supporting the Compassionate Use Act (CUA), or Proposition 215, the City Council of Berkeley resolved that the City will facilitate the implementation of the Compassionate Use Act of 1996, which legalized and regulated the use of marijuana as medicine; and

WHEREAS, in 1997, the Berkeley City Council amended its Zoning Ordinance No. 3018 N.S. to regulate the establishment of medical marijuana dispensaries; and

WHEREAS, in 2002, the Berkeley City Council unanimously passed a resolution directing the Berkeley Police Department not to cooperate with the Drug Enforcement Administration (DEA) in investigations of medical marijuana dispensaries; and

WHEREAS, in 2003, the state legislature passed SB 420, the Medical Marijuana Program Act (MMPA), codified as section 11362.7 of the California Health and Safety Code, in order to further clarify the rights bestowed by the CUA, and provide greater protection for qualified patients and primary caregivers, in part by explicitly recognizing and protecting collective and cooperative cultivation of medical marijuana; and

WHEREAS, in 2004, the Berkeley City Council amended the Berkeley Municipal Code Chapter 12.26 to regulate the number and location of medical cannabis dispensaries; and

WHEREAS, As affirmed by the California Court of Appeal, Third Appellate District, in the matter of People v. Urziceanu (2005) 132 Cal.App.4th 747, the State of California recognizes The Compassionate Use Act contemplates the formation and operation of medical marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana; and
WHEREAS, The State of California has recognized medical marijuana dispensaries and collectives as retailers required to collect, report, and remit tax on the sales of medical marijuana and the revenues derived from those sales to the Board of Equalization and the Franchise Tax Board; and

WHEREAS, despite the adoption of the CUA and MMPA in California, and the recognition of dispensaries as legally taxable entities, nevertheless a terminally ill patient may still be prosecuted under federal law for possessing cannabis for medicinal use, and dispensary operators still face federal persecution; and

WHEREAS, the federal government has recently increased its campaign of interference, undermining the successful implementation of California’s medical marijuana laws in Berkeley; the DEA has launched a campaign of threatening, raiding, seizing the property of, prosecuting under federal law, and forcing the closure of scores of legitimate medical cannabis providers in California, including 28 raids since June 2007 in 11 different counties, and

WHEREAS, Seizures of assets of medical marijuana dispensaries and collectives effectively have blocked payments of taxes to the State of California and the City of Berkeley, and

WHEREAS, The DEA has employed the tactic of threatening property owners in Berkeley and other parts of the state with asset forfeiture and federal prosecution if they continue to lease property to medical cannabis providers; and

WHEREAS, The recent, escalated activities of the Drug Enforcement Administration to shut down medical marijuana dispensaries and collectives by targeting their landlords and seizing their landlords' properties will have serious consequences, including, but not limited to: thousands of Berkeley patients will no longer be able to access medical marijuana as recommended by their physicians because these businesses will be forced to close or move underground for unregulated operations; the state and the City of Berkeley will lose significant amounts of tax revenue; and hundreds if not thousands will lose well-paying jobs with benefits; and

WHEREAS, since the U.S. Supreme Court decision in Gonzales v. Raich in 2005, the federal government has indicted more than one hundreds patients and providers of medical cannabis, and because of medical evidence being inadmissible in federal court, patients and providers that are indicted are unable to adequately defend themselves, and juries are prevented from hearing all of the facts; and

WHEREAS, in 1998, Berkeley’s neighbor to the west, the City and County of San Francisco, requested “all pertinent city agencies to coordinate an emergency distribution program of medicinal marijuana to ensure a continuum of access to medicinal marijuana as provided by the passage of the Compassionate Use Act of 1996;” and

WHEREAS, in 2001, the City and County of San Francisco further resolved to establish itself as “a sanctuary for medical cannabis,” setting a compassionate precedent for other California cities to follow, and
WHEREAS, The federal government continues to classify all forms of cannabis as Schedule I under the federal Controlled Substances Act and therefore does not recognize medical marijuana; and

WHEREAS, Historic practice and scientific research have demonstrated medical marijuana alone or in combination with other drugs is an effective treatment for nausea reduction for patients with cancer and Acquired Immune Deficiency Syndrome; increasing appetite for patients with nausea or other conditions causing dangerous weight loss; reducing eye pressure in patients with glaucoma; and controlling muscle spasms, seizures, and chronic muscular pain; and

WHEREAS, In the matter of Gonzales v. Raich: 545 U.S. 1, 125 S. Ct. 2195, 162 L. Ed. 2d 1, the United States Supreme Court upheld the authority of the Drug Enforcement Agency to conduct these raids, but it left state medical marijuana laws intact;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Berkeley that the City of Berkeley is declared to be a sanctuary for medicinal cannabis to ensure that patients continue to have safe access to their vital medicine; and

BE IT FURTHER RESOLVED, that the City of Berkeley does not support cooperation with the Drug Enforcement Administration in its attacks on this State’s medical marijuana laws, and further calls upon the Berkeley Police Department, the District Attorney for the County of Alameda, the Alameda County Sheriff’s Department, and the Attorney General for the State of California to uphold the laws of the State, and specifically not to assist in the harassment, arrest or prosecution of physicians, medical cannabis dispensaries, individual patients, or their primary caregivers whether in Berkeley or any other part of the state who are attempting to comply with section 11362.5 and 11362.7 of the California Health and Safety Code; and

BE IT FURTHER RESOLVED, that the City of Berkeley urges Governor Arnold Schwarzenegger to stand with the more than 200,000 California patients who rely on medical marijuana, and to prevent any further interference by the federal Drug Enforcement Administration in the successful implementation of state law, and that Governor Schwarzenegger make it known to the Bush Administration and the U.S. Congress that such interference is uncalled for and will be resisted by local and state government; and

BE IT FURTHER RESOLVED, that in the event the U.S. Drug Enforcement Administration closes one of Berkeley’s regulated medical marijuana dispensaries; and that should it be necessary, the City itself shall ensure a continuum of access to medical marijuana as provided by the CUA and MMPA; and

BE IT FURTHER RESOLVED, that the City Attorney transmit copies of this resolution to the State Attorney General, to the Governor of California, and to each Senator and Representative from California in the Congress of the United States.
To: Honorable Mayor and Members of the City Council  

From: Councilmember Kriss Worthington  

Subject: Reaffirmation - U.S. Record of the Armenian Genocide  

RECOMMENDATION:  

Adopt a resolution calling upon the House of Representatives to schedule a vote on House Resolution 106, which reaffirms the U.S. record of the Armenian Genocide.  

BACKGROUND:  

The following information is from the resolution adopted by the San Francisco Board of Supervisors on October 30, 2007:  

In 1915 the Ottoman Turkish government started its genocide against Armenians. By 1923, 1.5 million Armenians, a majority of Armenians living in the Ottoman Empire had been killed as a result of this genocide and the survivors were permanently displaced from their homeland.  

To this day, the Turkish government has not recognized the genocide. To further promote their denial of the genocide, the Turkish government recently enacted Article 301 of the Turkish Criminal Code, which suppresses free speech and prohibits discussion of the Armenian Genocide.  

This law has led to the prosecution of many Turkish citizens including Nobel Laureate Orhan Pamuk and has contributed to an atmosphere which led to the assassination of Hrant Dink.  

The government of the United States has been on record as recognizing the Armenian Genocide. However, recently the Turkish government has been aggressively lobbying our government to change its position. Unfortunately, they have been making progress in getting our government to change its historical recognition of the genocide. For example, they recently pressured the Bush administration to dismiss our Ambassador to Armenia, John Evans. Our government complied with their request and replaced the Ambassador. The Bush administration, as opposed to other administrations, has been more responsive to Turkey because of its strategic position in the Middle East.
It is critical that the Congress reaffirm its recognition of the Armenian Genocide and stop efforts by the Turkish government to wipe out any knowledge of one of the greatest atrocities in history.

The House of Representatives is currently considering House Resolution (HR) 106, which recently passed out of the House Foreign Relations Committee. However, a vote on the resolution has been stalled.

It is important that the City of Berkeley join organizations and cities in urging the House to schedule a vote on HR 106 and ensure that the United States continues on record as recognizing the Armenian Genocide.

FINANCIAL IMPLICATIONS:

NONE

CONTACT PERSON:

Councilmember Kriss Worthington, 981-7170.

Attachments:
1. Resolution
RESOLUTION NO. ##,###-N.S.

CALLING UPON THE HOUSE OF REPRESENTATIVES TO SCHEDULE A VOTE ON HOUSE RESOLUTION 106, WHICH REAFFIRMS THE U.S. RECORD OF THE ARMENIAN GENOCIDE

WHEREAS, in 1915 the Ottoman Turkish government began its genocide against Armenians; and

WHEREAS, by 1923, 1.5 million Armenians, a majority of Armenians who were living in the Ottoman Empire, had been killed as a result of this genocide, and the survivors were permanently displaced from their homeland, having had most of their personal and communal properties stolen by the government and individuals complicit in the genocide; and

WHEREAS, to this day, these historical facts have been denied by successive Turkish governments, thereby continuing its hostility and posing an existential threat towards Armenia; and

WHEREAS, the denial of this genocide set a precedent and contributed to the perpetration of later genocides throughout the 20th Century, including the Holocaust, during which Adolf Hitler was quoted before the Nazi invasion of Poland as having asked "Who today remembers the annihilation of the Armenians?"; and

WHEREAS, the Turkish government continues to deny the Armenian Genocide, and recently enacted Article 301 of the Turkish Criminal Code, which suppresses free speech and prohibits any discussion of the Armenian Genocide; and

WHEREAS, the official Turkish policy as embodied by Article 301 led to the prosecution of Nobel Laureate Orhan Pamuk; and

WHEREAS, the atmosphere of denial fostered by the government also led to the assassination of Hrant Dink, and the Turkish government has continued to persecute citizens for expressing themselves by prosecuting others, including Hrant Dink’s successors at Agos newspaper under the draconian Article 301; and

WHEREAS, the City of Berkeley has in the past adopted resolutions declaring April 24 as Armenian Genocide Commemoration Day; and

WHEREAS, the City of Berkeley maintains that the proper recognition of the crime of genocide and other crimes against humanity should never be sacrificed for perceived political benefits; and

WHEREAS, by joining our voices against the deniers of the Armenian Genocide, we are able to guard against the occurrence of such genocide in the future; and

WHEREAS, House Resolution 106 has overwhelming support in the United States House of Representatives, as demonstrated by more than 200 co-sponsors, and was recently adopted by the House Foreign Affairs Committee; and

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Berkeley that it calls upon the House of Representatives to continue to support United States recognition of the Armenian Genocide and schedule a vote on House Resolution 106.
To:   Honorable Mayor and Members of the City Council

From:   Peace and Justice Commission

Submitted by:   Steve Freedkin, Chairperson

Subject:  Chevron Corporation

RECOMMENDATION

Direct the City Manager to report to the City Council as soon as possible what, if any, is the nature of the City of Berkeley business with Chevron Corporation, and that the City of Berkeley cease all purchases from Chevron, to the extent allowable by law.

FISCAL IMPACTS OF RECOMMENDATION

Approval of the recommended action will prohibit the City from purchasing products from Chevron Corporation.

CURRENT SITUATION AND ITS EFFECT

Companies in the petroleum-based energy industry generally draw a wide range of criticism, and are often referred to as Big Oil. Because of the inelasticity of the demand of petroleum and the high-risk nature of operations abroad, the companies involved in the industry have been accused of playing a large role in influencing economic and foreign policies in nations across the globe.

Chevron Corporation in particular is responsible for severe ecological destruction. Texaco, which became a part of Chevron in 2001, dumped over 18 billion gallons of toxic wastewater into Amazon rainforests from 1964-1992, in what has become known as the “rainforest Chernobyl”, and is often considered one of the world’s worst ecological catastrophes. Various Ecuadorian groups have sued Chevron for its activities, arguing it purposefully misrepresented its activities in the rainforest.

In the United States, Chevron’s activities in Richmond, CA have been the subject of ongoing controversy. Chevron’s Richmond operations house over 11 million pounds of toxic materials, and have been responsible for over 304 accidents. For illegally bypassing wastewater treatments and failing to notify the public about toxic releases, Chevron’s Richmond refineries were forced to pay $540,000 in 1998. Overall, Chevron
is responsible for 95 Superfund sites – locations for which the Environmental Protection Agency (EPA) has earmarked funds for cleanup.

BACKGROUND
At the meeting of December 3, 2007, the Peace and Justice Commission approved the following motion: **M/S/C (sorgen/Bohn)** that the Council of the City of Berkeley approve the following recommendation regarding the Chevron Corporation:

WHEREAS, Berkeley Municipal Code (BMC) Chapter 369.070, establishing the Peace and Justice Commission, states that the Commission shall (A) Advise the Berkeley City Council … on all matters relating to the City of Berkeley’s role in issues of peace and social justice… including … support for human rights and self-determination throughout the world, (and) (C) Help develop proposals for the City Council … for actions in furtherance of the goals of peace and justice"; and

WHEREAS, Chevron Corporation is a California based company, facing serious questions about its human rights and environmental record in countries such as Ecuador, Burma, Nigeria and Angola, as well as here locally in Richmond; and

WHEREAS, from 1964 to 1992 Texaco (now Chevron) built and operated oil exploration and production facilities in the northern region of the Ecuadorian Amazon, and systematically dumped 18 billion gallons of toxic waste directly into the rainforest, and Chevron is a defendant in a class-action lawsuit in Lago Agrio, Ecuador where thousands of rainforest dwellers are seeking at least $10 billion in clean-up damages, exclusive of personal liabilities, and Chevron has been implicated in a disturbing pattern of threats and corruption in the environmental trial out of Ecuador, and the contractual ties between Chevron and the Ecuadorian military strongly suggest that Chevron is responsible for the surveillance and threats against plaintiffs’ representatives, which were in some cases perpetrated by identified military officers; and

WHEREAS, the intimidation of the plaintiffs has become so intense that the Inter-American Commission on Human Rights, of the Organization of American States, has granted a petition requesting precautionary measures from the Ecuadorian government, the United Nations Secretary General’s Special Representative on Human Rights Defenders, Hina Jilani, has written a letter to the Ecuadorian government urging it to prosecute the perpetrators and protect the plaintiffs and their legal team; and

WHEREAS, Chevron is accused of polluting land and water resources in its ongoing operations in the Niger Delta, and nine Nigerian plaintiffs are suing Chevron in federal court in San Francisco for deaths and other abuses in two incidents in 1998 and 1999, in which Nigerian military and police paid by Chevron and using Chevron helicopters and boats tortured and shot protestors and destroyed two villages allegedly associated with opposition to Chevron’s oil activities; and

WHEREAS, in 2002, the Angolan government fined Chevron $2 million for oil spills from a pipeline that polluted beaches and damaged fishing in the Cabinda region; and
WHEREAS, Chevron, through its takeover of Unocal in 2005, is a partner with the military regime of Burma in the notorious Yadana natural gas pipeline project which involved mass forced labor and other human rights abuses, committed by the army on Unocal's behalf. Moreover, Chevron Corporation is one of the largest foreign investors in Burma. Their Yadana project funnels tens of millions of dollars to the regime, money the military needs to retain its stranglehold on power; and

WHEREAS, the military regime in Burma is currently conducting a brutal military crackdown against pro-democracy protestors, which as of October 4th, has led to scores of deaths and thousands of arrests and detentions.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley directs the City Manager to report to the City Council by as soon as possible what, if any, is the nature of the City of Berkeley business with Chevron, and that the City of Berkeley cease all purchases from Chevron, to the extent allowable by law.

Ayes: Bohn, Cohen, Freedkin, Kafin, McDonald, Meola Sherman, sorgen; Noes: Brody; Abstain: Seaton; Absent: Litman, Wagley, Winkelman.

Commissioner Seaton: “As usual, I abstain from motions unsupported by sufficient details. I don’t believe the issue is so-time sensitive to warrant its hasty enactment. More documentation is required.”

CONTACT PERSON
Steve Freedkin, Chairperson, Peace and Justice Commission, (510) 595-4626
Diana Bohn, Peace and Justice Commission, (510) 525-5497
Manuel Hector Jr., Secretary, Peace and Justice Commission, (510) 981-5110
To: Honorable Mayor and Members of the City Council
From: Police Review Commission
Submitted by: William White, Commission Chair, Police Review Commission
Subject: Evidence Theft Issues within the Berkeley Police Department – Policy Report

RECOMMENDATIONS

2. Request that the Chief of Police to report back to Council in September 2008 on the completion and implementation of the PRC recommendations.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impact is unknown. The City may avoid potential liability by improving the current BPD policies, so that systems are in place to prevent theft of narcotics, to provide safeguards for tracking and monitoring assets seized and to ensure supervisor accountability of officers who are potentially under the influence of narcotics. The recommendations include additional reporting requirements by the BPD to City Council and the Police Review Commission. BPD will have to respond to additional costs.

CURRENT SITUATION AND ITS EFFECTS

On May 24, 2006, the PRC voted to approve the formation of a Subcommittee to examine the systems within the Berkeley Police Department (BPD) that provide for the security of drug-related evidence and that provide accountability for the officers and supervisors who manage these cases. The Subcommittee met for over a year to analyze the report and gather information. The Subcommittee met with Chief Hambleton to ascertain the policies in place that allowed the officer in charge of receiving and processing narcotics evidence for criminal court cases to tamper with up to 286 evidence envelopes.

On October 18, 2007, the City Manager and Chief of Police met with the Police Review Commission’s Evidence Theft Subcommittee to discuss the findings of the report. The Chief and City Manager reviewed and discussed the specific recommendations with the Subcommittee. There were many areas of agreement, such as the finding and
recommendation that the systems for evaluating job performance by employees were unable to identify and correct the poor job performance of former Sergeant Kent.

Some of the recommendations have already been changed, such as the recommendation that drug/narcotics evidence handling procedures need improvement, based on the recommendations from the Commission on Peace Officer Standards and Training (POST). Chief Hambleton had concerns about some of the findings, such as the finding that the police investigation of former Sergeant Kent was insufficient. The Subcommittee listened to the steps that BPD took in handling the investigation.

On November 7, 2007, the City Manager and BPD issued a response to the report’s findings and presented their response to the Commission. The Commission appreciated the City Manager and BPD’s comments. Despite some disagreement in the recommendations, the Commission passed the Evidence Theft Policy Report and decided to submit that report as written to City Council.


SUMMARY

The PRC Policy Report found that BPD systemically failed to identify and remedy lapses in security, personnel management and administration. The report further found that while policies existed to secure drug-related evidence and provide for accountability, these policies were not effective without thorough implementation, training, assessment and supervision of the employees charged with implementing the policies.

BACKGROUND

On April 18, 2006, former Sergeant Cary Kent pled guilty to grand theft by embezzlement, possession of methamphetamine and possession of heroin, which occurred during his employment with the City of Berkeley. The PRC formed a subcommittee to review the report and issue policy recommendations on BPD’s handling of narcotics evidence. The Subcommittee also met with City Auditor Anne-Marie Hogan to identify information that the Subcommittee needed to understand the processing of assets seized and booked into evidence. This was related to a second theft issue within BPD that involved an officer, who possibly stole money from suspects.
The Commission found the following:

1. Systems for auditing of drug evidence were not adequate to detect unauthorized removal of drugs from the evidence locker.

2. The police investigation of the former Sergeant Kent case was insufficient.

3. Systems for tracking and monitoring the movement of assets (cash evidence) seized by police in drug and non-drug related cases are inadequate.

4. Systems for evaluating job performance by employees were unable to identify and correct the poor job performance of former Sergeant Kent.

5. BPD supervisors were unable or unwilling to verify that former Sergeant Kent was under the influence of narcotics while on duty at Berkeley Police Department.

6. Policies do not currently exist to require BPD officers to report misconduct by other officers, report when they suspect that an officer is under the influence of drugs or alcohol, and receive advanced training in detecting individuals who are under the influence of drugs as a prerequisite to transfer into the Special Enforcement Unit (Drug Task Force) or to making arrests of individuals charged with Health and Safety Code Sec. 11550.

7. The current systems of accountability for the conduct of police have been reduced or compromised.

RATIONALE FOR RECOMMENDATION

The Policy Report on Evidence Theft Issues is necessary for BPD to effectively improve its policies on narcotics handling procedures and supervisor accountability. An essential component of BPD’s “community involved policing” philosophy includes maintaining the public’s trust, so that citizens work with police to ensure public safety and to maintain solid community relations.

CITY MANAGER
See companion report

CONTACT PERSON

Victoria Urbi, PRC Officer, Police Review Commission, 981-4950

Attachments:
1. PRC Policy Report: Evidence Theft within the Berkeley Police Department
POLICE REVIEW COMMISSION

POLICY REPORT:

EVIDENCE THEFT WITHIN THE

BERKELEY POLICE DEPARTMENT

APPROVED OCTOBER 12, 2007
BY THE SUBCOMMITTEE ON EVIDENCE THEFT ISSUES

MEMBERS:
WILLIAM WHITE, CHAIRPERSON
SHARON ANNE KIDD, COMMISSIONER
SHERRY SMITH, COMMISSIONER
JIM CHANIN, COMMUNITY MEMBER
ANDREA PRICHETT, COMMUNITY MEMBER

STAFF:
VICTORIA URBI, PRC OFFICER
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I. PREAMBLE

While the Police Review Commission has investigated hundreds of incidents of individual allegations of police misconduct over its 34-year history, rarely has a single case had such an impact on the public trust as the case of former Sergeant Cary Kent. The possibility that a sworn and armed officer was not only working while under the influence of narcotics, but that he was able to steal drugs from what should have been the most secure location in Berkeley, cast a shadow of doubt on the entire department. Revelations six months later that theft from the department continued to be a problem further shook the public confidence.

The Police Review Commission (PRC) established the Subcommittee on Evidence Theft Issues. The following report represents a review, not of individual officer conduct, but of systems within the department that provide for the security of drug related evidence and accountability for the officers and supervisors who manage these cases. The basic questions for this report focused on identifying these systems and evaluating their effectiveness in addressing these issues.

While some have characterized this investigation as simply a policy review, it must be remembered that policies are only one part of the systems required to effectively manage a police department. Well-written policies are useless without thorough implementation, training, assessment and supervision of the employees charged with implementing the policies. In addition, policies of the police department require interaction between the Berkeley Police Department (BPD), PRC, the City Auditor, the Finance Department and the City Manager. It is hoped that this report will provide insights as to areas where interagency coordination could be improved for the benefit of the citizens of Berkeley.

The purpose of this report is not to place blame or to accuse individual employees of the City of Berkeley. Former Sergeant Kent served the City honorably for many years. The personal failings of one individual may be forgiven. The systemic failure of a department to identify and remedy major lapses in security, personnel management and administration must be addressed immediately. The hope is that those who read this report will understand that a systemic failure of this magnitude represents an urgent need for improved management, and will work to address the findings in this report.
II. ACKNOWLEDGEMENTS

This report is a collective effort by the citizens of Berkeley. Subcommittee Chairperson William White, Commissioner Sharon Kidd, Commissioner Sherry Smith, and community members Jim Chanin and Andrea Prichett spent countless hours conceptualizing the investigation’s areas of concern, pouring over 800 pages of the police report, writing various pieces and meeting monthly to analyze the evidence. All the Subcommittee members were highly committed to contributing their insight and making thoughtful findings and recommendations.

PRC Investigators Fred Vides and Barbara Mann gathered evidence on narcotics symptoms and detection, lupus, summarized officer interviews and conducted research on the court cases.

Maritza Martinez and Rebecca Webb assisted in coordinating the Subcommittee meetings, copying and collating the report.

U.C. Berkeley interns Stephanie Ahn and Melodie Yashar read through the reports and provided interview summaries, news stories and additional questions.

James Mason of the City’s Human Resource Department provided an historical City perspective on drug testing.
III. INTRODUCTION

A. Legal Authority: BMC, Ch. 3.32.010, Police Review Commission Ordinance (Section 1 and 10b selected)

Section 1. The general purpose of this chapter is to provide for community participation in setting and reviewing Police Department policies, practices and procedures and to provide a means for prompt, impartial and fair investigation of complaints brought by individuals against the Berkeley Police Department. (Ord. 4644-NS § 1, 1973)

Section 10 b. The Commission established by this Ordinance shall have the following powers and duties: to review and make recommendations concerning all written and unwritten policies, practices and procedures of whatever kind and without limitations (emphasis added), in relation to the Berkeley Police Department.

B. Objectives of the subcommittee investigation

The original intention of the Subcommittee was to identify policies related to the handling and storage of drug evidence, money, and evidence related to drug cases and to evaluate whether these policies were adequate to provide proper management and to prevent irregularities such as mismanagement or even theft in the future. As the Subcommittee’s investigation progressed, it became clear that policies related to the supervision of officers, personnel policies, early detection of problematic behavior as well as policies directly related to the handling and auditing of physical evidence also required some examination. This report addresses some of our findings and recommends policy changes as well as additional actions to be taken by the City Council.

C. Not a personnel investigation

The Subcommittee believed the investigation should focus on a policy review and not a personnel investigation. First, Government Code §3304, which states that investigations of peace officers must be completed within one year, had already expired, so the issue would have been moot for any disciplinary recommendations. More importantly, there were no specific allegations of misconduct against any specific officer remaining in the department.

In February of 2007, the PRC voted to open an investigation into BPD’s evidence theft issues as a policy complaint. The subcommittee believed that the larger issue was not about officer misconduct or a failure of any one individual, but that a policy review of the incident would render lasting impact and guidelines for command staff to consider in dealing with similar evidence theft issues.

D. Limitations of investigation

The Subcommittee attempted to gather further information by interviewing members of
the department with direct experience in the handling of evidence and the prosecution of
drug related cases. Although one officer was interviewed, this process was abandoned
after objections from the Berkeley Police Association (BPA). The BPA’s attorney wrote
to Chief Hambleton and threatened to sue the City if officers were interviewed about this
incident. The objections raised were connected with the recent California Supreme Court
Police Association v. City of Berkeley and City of Berkeley Police Review Commission
ACSC No. 2002 057569, which has essentially suspended the hearing of complaints in
Berkeley.

Despite the assurance that information gathered by the Subcommittee was specifically
related to evaluation of policies and procedures within the department, and the fact that
no discipline issues were being investigated, the Subcommittee was forced to desist from
its effort to interview officers. The Subcommittee believes that not being able to
interview officers concerning the incident was a major setback to the investigation,
because the Subcommittee could not obtain follow-up information that was lacking from
the police report. The PRC Ordinance states that the Commission can review BPD
policies without limitation (emphasis added).

The Subcommittee believes that the Chief of Police and the City Manager should have
ordered the BPD to have individual officers appear for interviews so long as there was a
clear understanding that such interviews would only further policy development and
would not constitute an investigation of individual officers. The City Manager and BPD
Chief Hambleton took the position that line officers could not contribute to policy
development since policy was set by the Command Staff and the City Manager. The
Subcommittee believes otherwise. While these officers do not make policy, their insight
is extremely helpful towards suggesting needed change. The failure to have these
officers provide their perspective is unfortunate and this information would have been
beneficial to the City of Berkeley.

The Berkeley Police Association’s reaction was unfortunate, but characteristic of its
critical attitude toward the concept of civilian review in general and the Police Review
Commission in particular. The citizens of Berkeley have every right to suggest policy
changes for their own police department, as civilian control of the military and the police
is a cornerstone of democracy. It is very unfortunate that individual police officers either
refused or were prevented from providing their perspective as to why these incidents took
place and how they could be prevented or minimized in the future.
IV. OVERVIEW OF INVESTIGATION

A. City Manager directive

In April of 2006, City Manager Phil Kamlarz issued a memorandum to the PRC to inform them that the Peace Officer Standards and Training (POST) would conduct an independent review of BPD’s narcotics-handling procedures. Mr. Kamlarz advised that the appropriate role of PRC was to review and comment on the POST recommendations. Our suggestions regarding the POST recommendations are included in this report and none of the report’s recommendations were opposed by the Subcommittee. They are a good first step toward regaining control and providing accountability.

B. Formation of Subcommittee

On May 24, 2006, the Police Review Commission voted to approve the formation of a Subcommittee to examine the department’s investigation of Sergeant Kent and report back to the full Commission. On September 13, 2006, in light of the second criminal investigation involving the theft of evidence, the Commission voted to accept the Subcommittee’s proposal to expand its purpose by reviewing evidence theft problems within BPD.

The Subcommittee examined the police report related to the investigation of Sergeant Kent (#06-3074). In addition, the police report for the investigation of Officer Steve Fleming (#06-41966) was also reviewed. On May 3, 2007 Chief Hambleton met with the Subcommittee and answered questions from Subcommittee members. City Auditor Anne-Marie Hogan also met with the Subcommittee in order to identify information that the Subcommittee would need in order to understand the processing of assets seized and booked into evidence and to review the effectiveness of policies regulating these transactions and the handling of such evidence.

The Subcommittee made oral and written requests to Chief Hambleton for documents and information related to the investigation. Our written communication dated April 23, 2007 included a request for the following information:

- A total inventory of the missing drug evidence including quantities as measured in grams, ounces, etc.
- A copy of the CRIMES database as well as the results of any audits or inquiries made about the CRIMES database or any investigations or inquiries concerning theft or loss of evidence in the BPD’s possession.
- Any audits, policies or procedures related to maintaining an asset forfeiture account of any kind,
- Any policies related to the processing of drug evidence, other property or cash seized in drug arrests or from any arrests,

These requests for information were not honored and the Subcommittee believes that greater cooperation would have increased the quality of our inquiry and the value of this
A basic assumption of the department’s investigation of the evidence tampering was that the missing drugs were being used by Sergeant Kent to supply his personal addiction to drugs. He was the only identified suspect in the investigation. During the time of the investigation, the City of Berkeley had a 1988 resolution adopted by the City Council, which prohibited the City from conducting any drug or alcohol testing on any of its employees, except the federally mandated drug testing required by the Department of Transportation regulations for commercial drivers. On June 26, 2007, the City Council repealed the law prohibiting drug testing of City employees.

Although Sergeant Kent’s suggested addiction to drugs was never independently confirmed, court records show that he participated in the Continuing Care Program at the John Muir Behavioral Health Center for Recovery.

Without knowing the total amount of drugs missing, the possibility that the amount of missing drugs was more than what would have been required to supply one addict can not be ruled out. It is important to note that, in addition to 286 tampered envelopes, it was also discovered that Sergeant Kent purchased drugs at least 2-3 times per week from informants (BPD Report #06-3074 Supplemental Report pg.3 and Interview with CRI #1 January 31, 2006).

If the quantity of drugs missing, plus what he purchased, is greater than what one drug addicted person could consume, the question remains as to what happened to the rest of the drugs. As Inspector Scarlett #214 wrote in his Affidavit for Search Warrant, “I believe, based on the facts above, that any evidence removed from sealed BPD drug evidence envelopes could be sold, traded, provided to others, or used by Sergeant Kent #S24”.

Were these drugs consumed or did they leave the department? Were other individuals with access to the drug locker also involved in removing drugs? To the Subcommittee’s knowledge, these troubling questions remain uninvestigated.
V. FACTS

A. Cary Kent: 18 year veteran of Berkeley Police Department

Cary Kent, 55 years old, was a Sergeant in the Administrative Narcotics Unit of BPD. He worked for approximately eighteen years before retiring in March of 2006. He enjoyed baseball and would attend games with fellow officers. He coached Little League, was a swim team judge and, in 1997 he competed in the U.S. Masters Swimming Men’s competition and finished among the top five.

Chief Hambleton stated he “earned a reputation as being a very thorough, very, very good investigator. He had….a number of informants. He seemed to be getting very good information on cases.” Sergeant Kent taught officers how to conduct surveillances of drug dealers and drug pushers.

B. Sergeant Kent’s responsibilities

Sergeant Kent worked as the Administrative Narcotics Sergeant. His responsibilities included retrieving narcotics envelopes from the drop safe in the SEU (Special Enforcement Unit) office and the Property Room. His duties also included making certain that evidence was properly entered into the CRIMES database. He was also expected to note the chain of evidence when he picked up the evidence from the drop safe and process it so that it could be ready for use as evidence and that the evidence could be located when needed.

Sergeant Kent was also required to check the court board to see what cases were going to court, so that he could know which officers need certain evidence. He was supposed to check the SEU box to determine what cases had been charged. On parole violation cases, he was expected to take those envelopes to the lab and have the narcotics tested. It was Sergeant Kent’s responsibility to pick up the envelopes from the lab and obtain the lab reports.

In an email dated July 8, 2006 Captain Gustafson outlined Sergeant Kent’s responsibilities. The following list of responsibilities was sent to Sergeant Kent:

_I depend on you for these things:_

1. Processing, tracking, and storing all drug evidence.

2. Reviewing drug evidence for in-custody cases, determining which cases should be lab tested, and insuring that the drug evidence is tested and returned prior to being needed in court.

3. Being in the office and available to distribute drug evidence to officers who are called to testify, on the mornings that they are due in court. I would appreciate it if you were in the office by 0800 hours on these days to handle any problems, but
it is fine if you are in the office no later than 0830 hours. Officers should have their evidence and leave for court by 0845 hours to avoid having to return to the afternoon session.

4. Processing assets that are seized in SEU cases, and monitoring the forfeiture process.

5. Preparing the SEU monthly report by the 10th of each month.

6. Preparing other statistical reports related to the disposition of drug evidence as assigned.

7. Attending the Monday morning staff meeting.

8. Maintaining a liaison with the DA’s office regarding SEU cases.

Work Schedule:

Monday-Thursday

Court days – 0830 to 1830

Non-court days – no later than 0930, please, without prior approval.

Please don’t flex or take time off, without prior approval.

Availability:

Please be readily available by your departmental Nextel during your work hours. I usually don’t have a need to contact you, but when I do, it is usually somewhat urgent, and related to court/evidence matters.

If you have the time, working on these things would be a great benefit to the unit.

1. Participating in SEU operations (when it does not conflict with your other duties).
2. Interviewing prisoners to gather intelligence information.
3. Aggressive investigation and pursuit of financial assets that are associated with any SEU case.

C. Theft of narcotics from Property Room

Sergeant Kent was scheduled to rotate out of the SEU in mid-January 2006. He had intended to conduct the scheduled drug burn that would have destroyed any evidence of drug evidence tampering. The January 6, 2006 audit of the evidence locker was in
keeping with departmental policy (General Order P-65 section 100) that when a new Property Officer is appointed, a joint inventory should be conducted.

Chief Hambleton explained that as a result of contradictory information about Sergeant Kent’s physical fitness for duty, he decided to conduct the audit of the drug evidence locker.

According to Chief Hambleton, there is no written policy regarding what should be done if an officer fails to report for a physical examination. In fact, Sergeant Kent failed to report for a medical examination on several occasions. When he finally did report for his physical examination on December 28, 2005, he refused to submit to a blood test or an EKG and was deemed unfit for duty. Additional medical clearance forms were faxed to the department on January 5, 2006 by Dr. Peterson, which cleared Sergeant Kent for administrative tasks. He was allowed to return to work to continue to process drug evidence envelopes for destruction.

On January 5, 2006, Captain Stephanie Fleming stated during the Captains’ staff meeting that she had serious concerns about Sergeant Kent, who had been the subject of discussion for the previous months.

On January 6, 2006, former BPD Sergeant Kent was placed on administrative leave due to BPD’s preliminary audit that discovered that evidence envelopes in the property room had been tampered with. After Lt. Cynthia Harris and Inspector Mark Scarlett, from the District Attorney’s Office, conducted an investigation, Sergeant Kent was charged with grand theft by embezzlement, possession of methamphetamine and possession of heroin. On January 13, 2006, the Berkeley Police Department issued a press release regarding the initiation of an investigation into “irregularities in the handling of some evidence.”

In March of 2006, Sergeant Kent retired from BPD. On April 18, Sergeant Kent pled guilty to all three counts. Judge Don Clay sentenced Sergeant Kent to five years probation and one year in county jail, which Sergeant Kent completed through the Contra Costa County Sheriff’s alternative custody program (electronic home detention). Sergeant Kent provided no statement to investigators regarding the issues of missing drug evidence or his activities while employed by BPD.

On May 12, 2006, the police report on the investigation of Sergeant Kent’s activities was made public. Based on this report, the Police Review Commission (PRC) began its inquiry.
VI. EARLY WARNING SIGNS

A. Officers noticed problems

1. Twenty-one (21) officers noticed that Sergeant Kent had problems. (See Exhibit B, Observations of Kent). Most officers observed that Sergeant Kent gained weight. Other comments concerning his health and behavior included:
   - “sweat,”
   - “eyes had dark circles,”
   - “sallow look,”
   - “unkempt,”
   - “falling asleep,”
   - “tired,”
   - “depressed,”
   - “eyes bloodshot,”
   - “withdrawn,”
   - “appearance disheveled,”
   - “less reliable,”
   - “tore up,”
   - “sniffles frequently, long lasting symptoms of a cold,”
   - “extremely talkative,”
   - “behavior erratic,”
   - “wore old clothes,” and more.

2. Officer Bjeldanes stated that on a Saturday at about 1:40 am, he and Officer Smith saw Sergeant Kent in the department parking lot behind the Public Safety Building. Officer Smith asked Sergeant Kent what he was doing; Sergeant Kent said he was getting ready for a purge of the dope. Ofc. Bjeldanes said he was shocked at Sergeant Kent’s appearance and he looked “weird.” Ofc. Bjeldanes said, “…it would be like if my mom told me that she was a heroin addict….I mean if that’s what it is….everything about that stuff and what it does to you and how it brings you down and makes you a criminal and makes you do stupid things like rob banks. And I mean for him to do that I can’t, I can’t imagine.”

3. Twelve officers (12) stated that Sergeant Kent had been late or missed appointments when he was responsible for bringing tested narcotics evidence into court. Sgt. Reece stated that all the officers he supervised complained about not getting drugs to court on time. Some officers called Sergeant Kent at home to wake him up. Sergeant Kent typically had some excuse. Consequently, officers had to stay in court until the afternoon. Some criminal cases were affected because the evidence was not tested.

4. Nine (9) officers stated that Sergeant Kent was either late to work, worked different hours or did not show up at all. He missed meetings, his door was shut, and some officers reported that they did not know if he was even in his office. Ofc. Parsons noticed Sergeant Kent working midnight to around 6:00 am. Officer Friedman said Kent would show up on weekends or later at night and he would be gone for long
“chunks of time throughout the day. Officer Friedman further stated, “Over time, it was generally understood that Kent was not going to be around.”

5. Twelve (12) officers reported these complaints to their supervisors, who then reported these issues to Lt. Yuen and Capt. Gustafson.

B. Officers who suspected substance abuse

Although several officers noticed that Sergeant Kent had health issues and poor work performance, four officers actually suspected substance abuse. Each officer, who suspected that Sergeant Kent might have had a substance abuse problem, told a colleague or supervisor, thus giving notice to the chain of command. Despite these four separate incidents of suspicion, the Chief was never informed and did not suspect any drug abuse until November of 2005 *(Statement of Chief Hambleton pg. 5)*.

1. In spring of 2005, Lt. McBride expressed concern to Capt. Gustafson that Sergeant Kent’s physical changes might be related to drug use.

2. In the summer of 2005, Captain Fleming suspected that Sergeant Kent might be using drugs. She asked Captain Gustafson andLt. Yuen whether they suspected the possibility of drug abuse, given his position and responsibilities in the department. They did not believe so.

3. Detective Jack Friedman stated that it crossed his mind that Sergeant Kent might be using drugs due to his weight gain and different behavior. He stated that although some officers speculated that Sergeant Kent was sick, it was clear that something was wrong outside of work pressures.

4. Officer Katie Smith stated she saw Sergeant Kent around 1:40 am one night in December of 2005 and was surprised to see that Sergeant Kent changed significantly from the last time she saw him a year before. She gave him her telephone number to offer him support. When asked why she gave her phone number, she said she was concerned and “Because it looked to me like he had (been) abusing alcohol or drugs. Not particularly that night, but his appearance.” Officer Smith then told fellow Officer Jennifer Wilson with the intent that Officer Wilson would inform her husband, Officer Brian Wilson, which she did.
VII. Management Response

Under City of Berkeley Administrative Regulation 2.3, permanent employees are to have performance evaluations conducted on an annual basis. Section 2A.3 states that “Terminating or reassigned supervisors shall make every attempt to complete all performance evaluations due for employees up to and including the month they will be leaving the City service or their previous assignment…”

A. Captain Gustafson’s supervision of Sergeant Kent

1. When Captain Gustafson took over the unit in January of 2005, he immediately began to notice Sergeant Kent’s performance problems. Capt. Gustafson noticed during the first month that Sergeant Kent was adjusting his schedule and did not look well. He decided to monitor his behavior and noticed that Sergeant Kent was not at work when expected, not involved in any active investigations, and not always available during morning hours to give the officers needed narcotics evidence for court.

2. Around April, Capt. Gustafson spoke to Sergeant Kent about his deficient work performance. Capt. Gustafson inquired about Sergeant Kent’s health, but Sergeant Kent said he could not talk about it. Capt. Gustafson noticed minimal improvement in Sergeant Kent’s performance following the conversation.

3. As early as May 2005, Sergeant Kent was believed by Capt. Gustafson to be “flatly unreliable” for his failures to attend to his duties and answer his cell phone. He spoke with Sergeant Kent at that time about his poor job performance.

4. On July 8, 2005, Capt. Gustafson sent an electronic message to Sergeant Kent to discuss these concerns, follow-up on previous discussions about deficient performance, and outline his responsibilities and what needed to be improved. The email listed Sergeant Kent’s required hours of attendance and additional activities that Captain Gustafson believed Sergeant Kent should be performing. (See pages 10-11 of this Policy Report).

5. It took Capt. Gustafson about four months to talk to Sergeant Kent about his performance and six months to issue a written directive on Kent’s performance, despite eight officers who complained to their supervisors about Sergeant Kent.

B. Performance evaluations

1. It is unclear if Lt. Yuen or Captain Gustafson completed any formal evaluations of Sergeant Kent’s work or if, according to department policies, a formal process with a timeline for meeting performance standards was required. Captain Gustafson has described himself as a “personal friend” of Cary Kent’s and this may be a factor in understanding why, despite numerous complaints and concerns about job performance, Sergeant Kent was allowed to continue in his position without interruption.
2. Inspector Scarlett asked Capt. Gustafson whether a performance evaluation had been completed prior to Capt. Gustafson taking over the unit in January 2005. He stated, “I don’t know how Allen (Lt. Yuen) manages those.” (Interview Transcript of Capt. Gustafson, Page 14) “Usually those things are done informally person to person where you discuss problems in the unit or problems with people or something like that.”

3. According to the Chief, “…supervisors are supposed to let us know if they get informal complaints about an officer, we review officer’s attendance records…Individual supervisors are responsible for monitoring their employees and bringing the issues about the performance to our attention”. It is not clear what happens when an officer is identified as not meeting performance standards.

C. Reasonable accommodation

Since Sergeant Kent explained that his lacking job performance was due to a medical condition, and given the serious nature of his responsibilities, Lt. Yuen or Captain Gustafson could have inquired whether Sergeant Kent required reasonable accommodation. When a City employee has a “known physical or mental impairment that limits a major life activity that prevents them from performing the essential functions of their job classification,” the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) allow the employer to modify or adjust their duties, work environment or schedule to accommodate the employee.

Here, 21 officers noticed Sergeant Kent had health problems and 12 officers noticed poor work performance. Under the City’s Reasonable Accommodation policy, Sergeant Kent would be required to bring a medical notice concerning his condition to determine if he was “fit for duty.”

In December 2005, Sergeant Kent was ordered to take his annual physical examination, which is required of police officers. The problem here is that officers noticed problems beginning in 2005. Captain Gustafson stated that when he took over the SEU unit, he heard that there were problems with Sergeant Kent, but he did not realize how serious these problems were.

The failure of BPD officers, particularly supervisors, to intervene given their observations of Sergeant Kent is unacceptable. Even worse, Chief Hambleton admitted to the Subcommittee that:

1. Not all officers, even those in narcotic enforcement, are trained to recognize people who are under the influence of narcotics;

2. Officers are not trained to tell their supervisors if they see an officer who is unable to perform his or her duties;
3. Officers are not trained to report another officer when he or she feels the officer is medically compromised; and

4. There is no computerized early warning system or any written materials or early warning system as exists in other cities such as Oakland and San Francisco. As a result, the subcommittee believes there is a need for policy development in this area and has provided for specific recommendations elsewhere in this report.

D. Conflict of interest

Sergeant Kent had several close friends within the department. Lt. Ahearn considered him a “personal friend.” (Interview transcript: Lt. Ahearn, page 2) In 2005, Sergeant Kent went to baseball spring training with Capt. Gustafson, former Officer Lopes, and Lt. Ahearn.

Officer B. Wilson stated that he worked with Sergeant Kent for about 3 years. Around 2003, Officer Wilson stated that everything seemed okay with Sergeant Kent. Around 2004-2005, he said, “Then I started noticing something going worse and worse and worse. Then when Captain Gustafson came in there, he seemed to have gotten really bad and that’s when I thought he was taking advantage of his friendship with Captain Gustafson.” Officer Wilson states that Sergeant Kent was counseled and he “got better…And then Al (Lt. Yuen) came back in he just reverted back to how he was before with Captain Gustafson.”
VIII. Theft of Money From Suspects

1. In January of 2006, former BPD Officer Steven Fleming was investigated for stealing money from individuals whom he had arrested or was responsible for transporting to jail. Chief Hambleton contacted the California Department of Justice to assist in conducting an investigation. During this time, the PRC was not yet made aware that a second evidence theft case concerning Officer Fleming was under investigation.

2. In September 2006, Officer Fleming was placed on administrative leave pending an investigation into allegations that he had stolen money. He left the department in February 2007. A police report was issued in this case of evidence theft (06-41966) and was used by the Subcommittee to expand its inquiry beyond a single review of the Kent investigation into an examination of evidence theft issues generally.

3. In March 2007, the District Attorney concluded that there was insufficient evidence to obtain a conviction of Officer Fleming and declined to press charges. Since the District Attorney did not file criminal charges against Officer Fleming, this report will not focus on this case, but use it in reference to two common themes of theft by police officers occurring around the same time frame.

Officer Fleming left the department and the Subcommittee finds it disturbing that six months after revelations of drug evidence theft, policies and actions by the department were not taken that could have secured and monitored evidence and assets.
IX. Monitoring of Evidence Room/Drug Vault

1. Policies already exist that require monitoring of the evidence room. General Order P-65 issued May 27, 2005 established procedures for the inspection of evidence/property storage areas. These procedures include specific instructions on how often and how these inspections should be conducted. In addition, an automated property system was instituted in December of 2000. General Order P-65 describes procedures for auditing seized cash property as well as drug evidence. These procedures include monthly and quarterly audits in addition to requiring an inventory to be conducted by outgoing and incoming personnel when a new Property Officer is appointed. It appears that these policies were adopted but never implemented.

2. According to Chief Hambleton, “We did not do as thorough an examination of those envelopes as we should have…we did not hold the envelopes up to the light to inspect and see that there was no tampering with the edges” (pg. 7 Statement of Chief Hambleton). However, the Subcommittee was not provided with any written verification that any regular audits were conducted prior to January 6, 2006 or that audits included an examination of the records of property and cash received and booked into evidence by BPD and compared with the physical evidence stored in the evidence room.

3. The evidence room was not actually restricted due to failure of the keypad access system to track entry. The system stopped working as of September 8, 2005 and there are no logs of any entries either by access code or by key from that time. It is unclear who within the department is responsible for tracking entries into the drug vault or what action should be taken if unauthorized entry occurs.

4. In addition to processing drug evidence, Administrative Narcotics Unit Sergeant Kent was responsible for processing assets seized in drug related cases. In fact, although he was officially a signatory to the Asset Forfeiture accounts, he was able to make withdrawals without even a second signature being required. Despite repeated requests to the Chief of Police for information about related BPD procedures, the Subcommittee has not been briefed on how cash transactions were reconciled within the department. If officers booked cash assets into the CRIMES database along with drug evidence related to a particular case, it is important to determine if these assets were actually deposited into any of the (four) Asset Forfeiture accounts maintained by the city.

5. The City Auditor has conducted an audit of the asset forfeiture accounts held by the city, but it did not reconcile the deposits to these accounts with the amount of cash booked into the city as evidence in drug related cases. Although the audit raised important questions about the handling of funds, without a reconciliation between assets booked into evidence and assets deposited into various police-managed accounts, it is difficult to confirm how accurate these records are and how well they track the flow of these assets.
X. Criminal investigation of evidence theft

1. According to Chief Hambleton, there is no standard for conducting “this type” of criminal investigation. Valuable evidence was not secured during this investigation in a timely manner. Immediately following the January 6, 2006 preliminary audit, access to Sergeant Kent’s office was monitored by a handwritten Entry/Exit log taped to the door of the office. This remained in effect until the locks were changed sometime later.

2. Sergeant Kent was placed on Administrative Leave on January 6, 2006. However, a search warrant for Sergeant Kent’s office and car was not issued until January 25, 2006. A search warrant for Sergeant Kent’s computer was not issued until February 17, 2006. The last call Sergeant Kent made before he turned in his department-issued cellular telephone was to a known drug dealer and informant (Search Warrant No. 2006-0098, January 25, 2006, Statement of Probable Cause, pg. 7). Therefore, it appears that evidence in this case was not secured in a timely fashion.

3. The CRIMES database was not “backed up” and secured when it became known that there were discrepancies in the evidence room inventory. An audit was done by Sgt. Reece, Captain Fleming and Lt. Yuen. Because this was a criminal investigation, the Subcommittee believes that this database should have been copied and this evidence should have been secured to safeguard against alterations.

4. Amount of drugs missing has not been disclosed. Although the number of envelopes was determined to be 286, the amount of drugs contained in these envelopes has not been revealed or is not known. Inventories of drug envelopes were incomplete and failed to list quantities of missing drugs for all of the envelopes. For example, the evidence bag labeled -SEAL BROKEN.LISTED AS MULTI BAGS INSIDE INSIDE BAGS NOT SEALED.NO EVID TAPE.CONFIRMED (3 BAGS INSIDE & 4 LBS LOOSE seems to raise more questions than it answers. The theory that all missing drugs were used to supply the drug habit of one officer does not explain why, in addition to a large number of heroin and methamphetamine envelopes, drugs such as cocaine, amphetamine, vicodin, ecstasy, oxycontine, and methedrine and numerous envelopes containing “pills” were also missing or tampered with.

5. No other individuals were investigated or regarded as possible suspects despite the fact that (at least) five other officers were authorized to enter the evidence room and the fact that that entry to the evidence room had been unregulated since September 2005.

6. The Subcommittee has not been provided with documents related to an audit which the Chief directed Sgt. Curtin to perform on January 27, 2006. Although the City Auditor has done an audit at the request of the Subcommittee, the funds examined were not reconciled with records of cash evidence seized by the department and deposited into the asset forfeiture accounts. The Subcommittee would be better informed if the Chief would provide the results of Sgt. Curtin’s audit and share what was learned about the asset forfeiture accounts at that time.
7. When it became clear that criminal conduct had occurred, Sergeant Kent was given preferential treatment that may have endangered himself or others. It also potentially gave him time to destroy evidence. He was not taken into custody and his gun was not taken despite the fact that other officers were concerned that he might be so distraught that he could pose a threat to himself. His badge was not taken and there are interviews from which it can be inferred that he was later able to represent himself as an officer while participating in drug deals.

8. There is no written policy regarding restricting officers who are placed on administrative leave from accessing their computers. According to the Chief, this is done on a “case by case” basis.
XI. FINDINGS

Finding #1: Systems for auditing of drug evidence were not adequate to detect unauthorized removal of drugs from the evidence locker. Systems for monitoring access to drug storage locations were also inadequate and the evidence was not properly secured. Although policies and procedures exist, they were not implemented and monitored regularly. Revised policies have been drafted by BPD (Asset Management Manual, August 27, 2007) but do not yet reflect input from other agencies.

Finding #2: The police investigation of the Sergeant Kent case was insufficient. Valuable evidence was not secured in a timely fashion, and no other individuals were investigated to determine what, if any, knowledge or involvement they may have had in the illegal movement of drug evidence. Police made no effort to determine whether Cary Kent was involved in illegal drug dealing after he was placed on Administrative leave.

Finding #3: Systems for tracking and monitoring the movement of assets (cash evidence) seized by police in drug and non-drug related cases are inadequate. The potential for mishandling of these funds was high and the same officer responsible for booking cash evidence was also responsible for making deposits and was able to make withdrawals from asset forfeiture accounts without detection or intervention from the Finance Department, the City Auditor, the City Manager or the Chief of Police. All of these agencies are involved in the management and dispersal of seized assets and police accounts.

Finding #4: Systems for evaluating job performance by employees were unable to identify and correct the poor job performance of Sergeant Kent. Although his supervisors were aware that he was physically challenged in his position and “flatly unreliable” in executing his responsibilities, this information did not lead to early intervention.

a. There is no written policy regarding what action should be taken if an officer is consistently late to work or to meetings. Officers routinely had to call Sergeant Kent in order to directly ask him for help getting their evidence for court.

b. There is no written policy requiring officers to report the fact that they are having problems getting their evidence from the evidence room in time for court. The Chief expected officers to notify their supervisors about such difficulties.

c. While it is commendable that the Chief decided to proceed with the drug audit on January 6, 2006, no early warning systems related to suspicion of Sergeant Kent’s use of drugs or his poor job performance activated earlier interventions.

Finding #5: BPD supervisors were unable or unwilling to verify that Sergeant Kent was under the influence of narcotics while on duty at Berkeley Police Department. Despite numerous observations, conversations and concerns expressed by other officers that it was possible that Sergeant Kent was using drugs, no intervention was made by command staff even though supervisors were aware of the problem for one year to 18 months prior to his being placed on Administrative leave.
Finding 6#: Policies do not currently exist to require BPD officers to:

- a. Report misconduct by other officers
- b. Report when they suspect that an officer is under the influence of drugs or alcohol
- c. Receive advanced training in detecting individuals who are under the influence of drugs as a prerequisite to transfer into the Special Enforcement Unit (Drug Task Force) or to making arrests of individuals charged with Health & Safety Code Sec. 11550.

Even though officers can sometimes be misled as to whether a person is under the influence of heroin or methamphetamine, the fact remains that officers are authorized to arrest people who are under the influence of such controlled substances (See Health & Safety Code Sec. 11550). These offenses carry stiff consequences including county jail and even state prison for people who are on parole. Police with such powers who are inadequately trained and claim that they are unable to recognize an officer under the influence of drugs, should not be allowed to arrest others (citizens) for that same offense and send them to jail. While recognition of drug intoxication will never be an exact science, officers must receive all available training in recognizing drug intoxication so long as our current narcotic laws remain in effect.

Finding 7#: The current systems of accountability for the conduct of police have been reduced/compromised. The ability of a city to monitor the performance of its department requires a coordinated approach between the City Manager and the Police Review Commission. The Evidence Theft Subcommittee did not receive adequate access to information, documents, and other information crucial to the investigation. Police accountability is dependent upon access to information. In addition, the ability of the commission to investigate the effectiveness of policies requires that the Commission be able to evaluate policy with the assistance of information and experience provided by officers and BPD personnel responsible for implementing these policies. Currently, the PRC has been prevented from meeting with BPD officers and making inquiries necessary to monitor the impact and effectiveness of policies.
XII. RECOMMENDATIONS

Recommendation For Finding # 1: Systems for auditing of drug evidence were not adequate to detect unauthorized removal of drugs from the evidence locker.

a. Require that Chief of Police report to the City Council on the implementation of General Order P-65, recommendations from POST committee, newly drafted Property Room Procedures and an overall action plan to ensure that drug evidence and assets seized by the Berkeley Police department are secure. Chief of Police should also provide quarterly audit reports to the City Council and Police Review Commission for review. An interagency protocol for monitoring drug evidence and related assets (based on the Asset Management Manual, August 27, 2007) should be written and submitted to related agencies for comment and revision (including the Police Review Commission).

b. BPD should hire an outside auditor to examine the CRIMES database and design a system for generating detailed accounts of the quantities of drugs and assets seized by police. Monthly asset reports should be made public. This database should be available for inspection by members of the public and Police Review Commissioners.

c. Train interagency group with members from Finance, Auditor, City Manager, Police Department and any other agencies or individuals involved in processing or accounting for evidence in drug and asset tracking procedures. These should include but not be limited to reconciling seized assets with deposits into police/city accounts, tracking the status of individual cases including the status of court proceedings to promote consistency and to enable members of the public whose assets have been wrongly seized to recover their assets with due process and efficiency. In addition, written criteria for seizures of cash in drug and non-drug related cases should be established along with procedures for distributing unclaimed assets and returning assets to arrested individuals shall be established and made public.

d. Identify who is responsible for monitoring entry into secured drug storage areas and chain of command related to unauthorized entry into these areas. A hard copy verifying the amount of drugs and/or assets should be created and signed by the responsible officer at the time of booking evidence into custody.

e. Require the Chief of Police and City Manager to create a timeline and action plan for implementing relevant policies and procedures and providing necessary training to involved staff.
Recommendation For Finding # 2: The police investigation of the Kent case was insufficient.

a. Police Department should identify policies and training information related to securing crime scenes and evidence. Review these policies and provide to the PRC.

b. Preserve all documents related to the security and handling of drug evidence and seized assets and provide these to the PRC.

c. Identify the EXACT amount of drugs missing from the evidence locker.

d. Remove from the SEU and replace as soon as possible any officers who had access to the drug vault when Sergeant Kent was Administrative Narcotics Sergeant.

Recommendation For Finding # 3: Systems for tracking and monitoring the movement of assets (cash evidence) seized by police in drug and non-drug related cases are inadequate.

a. Chief of Police should ensure that monthly statements of drugs and assets seized by BPD officers be made available to the PRC each month. Prioritize this measure until processes for reporting are well established.

b. City Auditor should provide monthly bank statements to PRC regarding deposits made into police related accounts. These accounts must be reconciled with assets booked as evidence and monthly reconciliation of these accounts should take place.

c. The Police Department should not be responsible for banking and should operate no accounts. All police spending must be approved and conducted through the office of the City Manager and the City Auditor. Expenditures beyond what has been allocated through the City’s budgeting process should be authorized by the City Manager and the City Auditor. Release of assets should be documented and verified by the City Manager and City Auditor.

d. The City Manager should be responsible for creating (interagency) procedures for processing assets including:

1. Criteria for confiscating assets.
2. Standards for ensuring and crosschecking amounts seized.
3. Policies describing when and by what process assets shall be returned to members of the public.
5. Descriptions of all assets forfeiture related accounts and criteria for making withdrawals from these accounts.
Recommendation For Finding # 4: Systems for evaluating job performance by employees were unable to identify and correct the poor job performance of Sergeant Kent.

a. Police supervisors should review existing personnel policies.

b. Supervisors should provide written performance reviews annually. If an employee is no satisfactory in any criteria, a written performance review will be created that identifies the area for improvement and a plan and timeline for gaining compliance with these standards.

c. Supervisors who fail to produce written performance reviews of employees should be disciplined or reprimanded.

d. It should be the responsibility of the Chief of Police to ensure that supervisors are conducting performance reviews and addressing personnel matters in a timely fashion.

e. The current BPD Early Warning System needs major revisions. It is limited only to intervention when an employee receives three formal complaints. Therefore, someone who works inside the Department and has little contact with the public, like Sergeant Kent, would not be identified by the current Early Warning System and would not be provided with the necessary intervention.

In Oakland, by contrast, the early warning system is triggered by a combination of many factors including (but not limited to) uses of force, officer involved shootings, traffic violations, firearm discharges, citizen complaints, civil suits, in custody deaths or injuries, Penal Code 148, 69 and 243 citations, and sick leave usage The use of these criteria is far more successful in identifying officers who may need intervention.

Finally, the existing BPD Early Warning System appears to include identifying problem officers on the basis of unfounded complaints. This is manifestly unfair to officers and is probably illegal under existing California law.

Recommendation For Finding # 5: BPD supervisors were unable or unwilling to verify that Sergeant Kent was under the influence of narcotics while on duty at Berkeley Police Department.

a. All BPD officers who take individuals into custody for violations related to the use of drugs should receive advanced training in detecting drug use.

b. BPD officers should not be supervised by family members or personal friends when it is possible to find another officer to conduct this task. Conflict of interest should be avoided to the greatest extent possible. Under no circumstances should a police officer suspected of misconduct be investigated by a family member or personal friend. All investigators should sign a statement or form verifying that they are not related to or personal friends with the subjects of their investigations.
c. BPD should develop training procedures that clarify policy and require that officers who suspect another of drug use become mandated reporters and report to the officer’s supervisor as well as the Chief of Police.

d. The development and implementation of drug testing policies and procedures subject to review by the Police Review Commission prior to implementation.

**Recommendation For Finding # 6: Policies do not currently exist to require that BPD officers report misconduct, report officers who are unfit for duty, receive training in drug detection:**

a. The BPD should create a policy that requires officers to report misconduct by other officers.

b. The BPD should create a policy to require officers to report when they suspect that an officer is under the influence of drugs or alcohol (see RECOMMENDATION 5c).

c. Require that officers receive advanced training in detecting individuals who are under the influence of drugs as a prerequisite to transfer into the Special Enforcement Unit (Drug Task Force).

**Recommendation For Finding # 7: The current systems of accountability for the conduct of police have been reduced/compromised.**

a. Direct City Manager to make information public and direct city staff (and the Police Department) to assist the public in accessing documents.

b. Work with the Police Review Commission to review updated models of civilian review measures, including provisions of Oakland Police Department’s consent decree (“Negotiated Settlement Agreement” United States District Court Northern District of California, Delphine Allen, et al., Plaintiffs, v. City of Oakland, et al., Defendants.) to increase the strength and ability of the Police Review Commission to fulfill its mission and responsibility to provide meaningful oversight of the police for the people of Berkeley.
EXHIBIT A:

TIMELINE OF INCIDENT
# Timeline of Events

## 2004

<table>
<thead>
<tr>
<th>Timeframe</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>Around 2004</td>
<td>Sgt. Reece noticed that Sgt. Kent gained weight and observed him sweating profusely. Sgt. Kent told Reece that he had some medical issues, after the unit complained about Sgt. Kent’s tardiness and failure to distribute narcotics evidence envelopes for court.</td>
</tr>
<tr>
<td>2004-2005</td>
<td>Ofc. Lopez noticed during the past couple of years a change in Sgt. Kent. Sgt. Kent gained weight, wore the same clothes, and socialized less.</td>
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## 2005

<table>
<thead>
<tr>
<th>Timeframe</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>January 2005</td>
<td>Capt. Gustafson returned to SEU and noticed problems with Sgt. Kent. He was “surprised and ashamed” at Sgt. Kent’s performance. During first month, he noticed Sgt. Kent adjusted his schedule and did not look well, so he monitored Sgt. Kent’s behavior. Sgt. Kent was not at work when expected, was not involved in any active investigations and was unavailable during morning hours to give officers evidence for court.</td>
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<tr>
<td>2005</td>
<td>Ofc. Lopez stated that the changes in Sgt. Kent were more drastic, but Ofc. Lopez thought that if Sgt. Kent were ill, he would have come to him.</td>
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<tr>
<td>March</td>
<td>Doug Hambleton appointed as Chief of Police</td>
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<tr>
<td>April-May</td>
<td>Capt. Gustafson spoke to Sgt. Kent about his work performance and asked about his health. Sgt. Kent said that he could not talk about it.</td>
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<tr>
<td>April-June</td>
<td>Capt. Fleming noticed that Sgt. Kent looked unhealthy. He appeared “sweaty and out of sorts”.</td>
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<tr>
<td>April-June</td>
<td>Capt. Fleming told Sgt. Kent she was concerned about him. Sgt. Kent told her that he might have lupus. Sgt. Kent asked Capt. Fleming if he could extend his current assignment until May 2005, but Capt. Fleming told him that he needed to complete his work at the proper times.</td>
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<tr>
<td>April-June</td>
<td>As time went on, Capt. Fleming said that she had a “weird” feeling because Sgt. Kent still looked the same.</td>
</tr>
<tr>
<td>April-June</td>
<td>Capt. Fleming, at some point, asked Capt. Gustafson and Lieutenant Lt. Yuen whether they thought that Sgt. Kent was on drugs. They said they did not think so.</td>
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<tr>
<td>June (approximately)</td>
<td>Lt. McBride stated that he had conversations with Capt. Gustafson and Lt. Ahearn to the effect that Sgt. Kent’s proximity to drugs should be explored.</td>
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<tr>
<td>July 8</td>
<td>Capt. Gustafson provided Sgt. Kent email about previous discussions on deficient performance and outlined a performance improvement plan.</td>
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<tr>
<td>July 20 (approximately)</td>
<td>Sgt. Kent told Capt. Gustafson he had a medical condition, which concerned Capt. Gustafson because Sgt. Kent was not articulate and seemed emotional.</td>
</tr>
<tr>
<td>September 2005</td>
<td>Capt. Gustafson promoted Lt. Yuen back to the SEU, Administrative Narcotics Unit.</td>
</tr>
</tbody>
</table>
Upon his return to the Narcotics Unit, Lt. Yuen heard that Sgt. Kent’s health had declined and that he “looked bad”. Lt. Yuen stated that Sgt. Kent arrived to work late and his work performance declined. Lt. Yuen questioned Capt. Gustafson, who stated that Sgt. Kent had a medical issue upon which he could not elaborate.

**September - October**
Lt. Yuen spoke with Sgt. Kent regarding Sgt. Kent’s sub-par work performance. Sgt. Kent told Lt. Yuen that he had a medical condition that could only be treated through the prescription, Prednisone, and that a psychiatric drug was prescribed to offset the side effects.

**October**
Chief Hambleton completed staffing changes, and converts the Administrative Narcotics Sergeant’s position (Sgt. Kent’s position) to an Officer’s position. These changes took effect on January 15, 2006.

**October**
Chief Hambleton informed by Command Officers that Sgt. Kent suffered from some illness that would prevent him from working patrol.

**November-December**
Lt. Yuen continued to talk to Sergeant Sgt. Kent about his medical issues and encouraged Sgt. Kent to listen to his physician and take the recommended medication. Lt. Yuen stated that Sgt. Kent changed his story and said that the doctor was not sure what exactly his illness was, and that he would have to go through a series of tests.

**November**
Chief Hambleton noted that Sgt. Kent had gained a lot of weight and did not look healthy.

**November (before Thanksgiving)**
Chief Hambleton met with Sgt. Kent who told the Chief that he might have some other disease, and that he planned to use Family Medical Leave. Sgt. Kent requested a 4-month extension in his assignment citing a backlog of work. Sgt. Kent stated that he needed to complete a drug destruction, and admitted that his work performance had been deficient.

**November (after Thanksgiving)**
Chief Hambleton was alerted by his executive staff of captains that there were concerns about Sgt. Kent’s health, and that he had not completed his Departmental annual physical. The Chief orders that the physical be scheduled.

**December 2005-January 2006**
Chief Hambleton learned that Sgt. Kent had gone for a 3rd doctor’s appointment to complete the blood test. Sgt. Kent told people that he had passed his physical and was fit for duty. Department had received a doctor’s note to the contrary. Sgt. Kent contacted the physician who had notified the Department, and a second medical slip followed stating that Sgt. Kent could work with restrictions. The Chief found this odd.

**December**
A physical was scheduled for Sgt. Kent, but he arrived two hours late. He did not complete the physical. The physical was rescheduled for a later date, and although Sgt. Kent went to the appointment, he failed to complete the required blood test, cited reasons of weakness and failure to fast as required. This caused concerns with the Chief and Captains, as it seemed as if Sgt. Kent tried to avoid submitting to a blood test, coupled with the fact that he was in charge of processing narcotics.
<table>
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<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>January 2, 2006</td>
<td>Lt. Yuen received a call from Sgt. Kent that he would be late the following day because he had to complete the second part of his physical for the City of Berkeley. Sgt. Kent also stated that he would come in early that day to take narcotics evidence to the lab. Lt. Yuen never saw him.</td>
</tr>
<tr>
<td>January 4</td>
<td>Sgt. Kent did not report for work or return any of Lt. Yuen’s calls.</td>
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<tr>
<td>January 4</td>
<td>Lt. Yuen spoke with Lt. Ahearn about the upcoming drug destruction set for January 12, 2006. When Lt. Yuen and Lt. Ahearn enter the inner drug vault adjacent to Sgt. Kent’s office, they discover that not all the evidence was processed for destruction as Lt. Yuen had instructed Sgt. Kent to do.</td>
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<tr>
<td>January 5</td>
<td>Lt. Yuen spoke to Sgt. Kent who stated that the City Doctor placed him on leave, and for that reason Sgt. Kent had not reported to work. Sgt. Kent told Lt. Yuen that he wanted to come in and clean up his desk, and that he also wanted to work on the drug destruction scheduled for January 12, 2006. Lt. Yuen told Sgt. Kent that he would need a written report from the doctor about Sgt. Kent’s status. Sgt. Kent was eventually allowed to return to work.</td>
</tr>
<tr>
<td>January 5</td>
<td>Chief Hambleton was on vacation between Christmas and New Years. Acting Chief Fleming stated during command staff meeting that she had serious concerns about Sgt. Kent. Lt. Yuen provided 3 documents from Sgt. Kent’s physician, which raised a concern that Sgt. Kent possibly manipulated the doctor to return to work for the scheduled drug destruction the following week.</td>
</tr>
<tr>
<td>January 6</td>
<td>Reece spoke with Sgt. Kent about 10-15 minutes before Sgt. Kent was told about the random audit. Sgt. Kent wanted Reece to sign a receipt for money disbursement to an informant, in the amount of $100.00. Reece, at some point, had given Sgt. Kent $100.00 to give to an informant before. Reece did not remember that he gave him the money, but it was noted in his expense account log.</td>
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<tr>
<td>January 6, 2006</td>
<td>Capt. Fleming told Lt. Yuen that the Chief wanted to meet with Lt. Yuen and Sgt. Kent. Lt. Yuen took Sgt. Kent to coffee to discuss Sgt. Kent’s medical condition, the work that needed to be complete, and Sgt. Kent’s pending retirement. Sgt. Kent mentioned to Lt. Yuen that he needed to complete the drug destruction.</td>
</tr>
<tr>
<td>January 6</td>
<td>The Chief spoke to Sgt. Kent in the presence of Capt. Fleming and Lieutenant Lt. Yuen. The Chief told Sgt. Kent that he seemed to be acting odd, and stated that he realized that Sgt. Kent’s illness might cause some of his odd behavior. The Chief explained to Sgt. Kent that an inspection was being conducted, and that he was not accused of anything, but as Chief he needed to resolve the cloud of suspicion. The Chief told Sgt. Kent to go home for the rest of the day.</td>
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<tr>
<td>1030 hrs</td>
<td>Capt. Fleming told Lt. Yuen and Sgt. Kent that the Chief wanted to meet with Lt. Yuen and Sgt. Kent. Lt. Yuen took Sgt. Kent to coffee to discuss Sgt. Kent’s medical condition, the work that needed to be complete, and Sgt. Kent’s pending retirement. Sgt. Kent mentioned to Lt. Yuen that he needed to complete the drug destruction.</td>
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<tr>
<td>1600 hrs</td>
<td>Capt. Fleming, Lt. Yuen and Sgt. Reece conducted an audit of SEU drug vault located next to Sgt. Kent’s office. Capt. Fleming was the only one with keys to both drug vaults, and keypad access was limited to Capt. Fleming, Lieutenant Lt. Yuen, Sergeant David Lindenau, and Officer Jeff Chu. Sgt. Kent’s access to the citywide computer system was disabled by Ed Yamada of IT.</td>
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<tr>
<td>Time</td>
<td>Event Description</td>
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<tr>
<td>1630 hrs</td>
<td>Chief Hambleton called the SEU to check on the progress of the inspection. The Chief went to the unit and was shown a number of envelopes that appeared to have been tampered with. The Chief asked Lt. Yuen to contact Sgt. Kent and to have him come into the station. Lt. Yuen placed Sgt. Kent on speakerphone with the Chief. Sgt. Kent recognized that he was on speakerphone and asked why. The Chief responded that he was in the room and he wanted Sgt. Kent to come in to the station and speak with him. Sgt. Kent agreed.</td>
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<tr>
<td>1700 hrs</td>
<td>Chief Hambleton informed Capt. Gustafson that Sgt. Kent had tampered with narcotics and that the Chief would like to speak to Sgt. Kent at the Police Department. Capt. Gustafson was concerned with Sgt. Kent personally and worried that Sgt. Kent might be depressed/suicidal. Capt. Gustafson called Lt. Ahearn and Lt. McBride, and told him to be with Sgt. Kent. Lt. Ahearn and Lt. McBride made arrangements to meet Sgt. Kent at the Lafayette Bart Station. Sgt. Kent was concerned about being arrested and wanted a guarantee that he would not be arrested. Capt. Gustafson called the Chief who stated that Sgt. Kent would not be arrested.</td>
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<tr>
<td>1800 hrs</td>
<td>Acting Chief Fleming alerted Lieutenant Cynthia Harris that she would be assigned to an investigation along with the DA's office to look into improprieties discovered during an audit on the SEU drug vault.</td>
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<tr>
<td>January 6 (and unknown prior)</td>
<td>Sgt. Kent's crimes occurred.</td>
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<tr>
<td>2030 hrs</td>
<td>Sgt. Kent placed on administrative leave. Sgt. Kent came in to the station, depressed. The Chief informed Sgt. Kent that he was placed on Administrative Leave, and that he could not exercise police powers nor carry a weapon. Sgt. Kent relinquished his Departmental keys, ID cards, and cell phone. Sgt. Kent stated that he did not have his badge, and that his gun was in his locker, and that he would arrange for it to be turned in.</td>
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<tr>
<td>January 6</td>
<td>Of. Lopez received a cell phone message from Sgt. Kent to the effect of &quot;Listen, I need your help. I’m in trouble. I don’t know what to do.”</td>
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<tr>
<td>January 7</td>
<td>Lt. Ahearn informs Of. Lopez that Sgt. Kent was addicted to heroin.</td>
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<tr>
<td>January 8 (approx.)</td>
<td>Sgt. Kent left Of. Lopez another message asking that Of. Lopez intervene on Sgt. Kent’s behalf and speak to Harry Harris from the Oakland Tribune. A few days later, Sgt. Kent called Of. Lopez again and told Of. Lopez he needed him to contact Henry Lee of the San Francisco Chronicle on Sgt. Kent’s behalf.</td>
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<tr>
<td>January 9</td>
<td>Capt. Fleming informed Lt. Cynthia Harris that she would be assigned to an investigation along with the DA’s office.</td>
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<tr>
<td>January 9</td>
<td>Capt. Fleming and Lt. Yuen went to 1st United Credit Union, Berkeley, to put a hold on the asset forfeiture money because Sgt. Kent previously had access to it. She also told Ed Yamada of IT to provide a printout of access codes and any forced key entries that had been used to gain entry to the drug vaults beginning December 10, 2005-January 10, 2006.</td>
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<tr>
<td>January 10</td>
<td>Acting Chief Fleming convened a meeting attended by Captain Miller, Pittman, Capt. Gustafson, Inspector Scarlett, the DA’s office, and Harris. Acting Chief Fleming revealed that on January 6, 2006 it was found that evidence envelopes in the SEU drug vaults had been tampered with, and drug evidence was missing.</td>
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<tr>
<td>January 10</td>
<td>Acting Chief Fleming, Miller, Pittman, Capt. Gustafson, Scarlett, Lt. Yuen, and Harris went to the property room area on the first floor of the Public Safety Building, and removed items from the safe, sealed the items, and placed them in the SEU drug vault.</td>
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<td></td>
<td>Voicemail access code for Sgt. Kent’s office phone changed by IT, and Sgt. Kent’s lock to his locker #187 super glued by Capt. Gustafson in the presence of Miller and Pittman.</td>
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<tr>
<td>Date</td>
<td>Event Description</td>
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<tr>
<td>January 10</td>
<td>Acting Chief Fleming spoke to Alison Barry-Wilkinson, who represented Sgt. Kent. Berry-Wilkinson told Fleming that she had Sgt. Kent's badge, and that his gun was in his locker, and that his off-duty weapon was in his office drawer. Berry-Wilkinson told Fleming that Sgt. Kent wanted an in-house investigation only, with no criminal investigation, that he would help with tracking the &quot;stuff&quot;, that Sgt. Kent wanted to handle the matter &quot;smoothly, quietly, and informally&quot;, and that he wanted to &quot;walk away&quot;. Berry-Wilkinson told Fleming that she could not respond to Fleming's question regarding whether Sgt. Kent was using drugs.</td>
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<tr>
<td>January 11</td>
<td>Inspector Scarlett provided a list of pending court drug cases in order for him and Harris to inspect and determine if they had been compromised.</td>
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<tr>
<td>January 12</td>
<td>Inspector Scarlett and Harris examined evidence stored in the SEU drug vault.</td>
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<tr>
<td>January 16</td>
<td>Of. Lopez spoke to Sgt. Kent and told him that he did not want to know the details of the case, nor would he speak to the media on Sgt. Kent's behalf.</td>
</tr>
<tr>
<td>January 18</td>
<td>Police report filed charging Sgt. Kent with grand theft, embezzlement, and possession of a controlled substance.</td>
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<tr>
<td>January 20</td>
<td>Scarlett and Harris interviewed Sergeants David Reece and David Lindenau, Officers Durbin and Mathis.</td>
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<tr>
<td>January 23</td>
<td>Scarlett and Harris interviewed Retired Lieutenant R. Of. Lopez, Officers Craig Lindenau, Mortillas, Murphy, Montgomery, and Sergeant Schofield.</td>
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<tr>
<td>January 24</td>
<td>Scarlett and Harris interviewed Chief Hambleton.</td>
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<tr>
<td>January 27</td>
<td>Scarlett and Harris served a search warrant on Sgt. Kent's locker #187 located in the men's locker room in the Public Safety Building. They also served a search warrant on a city-owned Chevy Lumina, CA License #4PKA 144 driven primarily by Sgt. Kent.</td>
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<tr>
<td>January 27</td>
<td>Sergeants Files and Hart assigned to conduct an inspection of the marijuana vault in the property room area in the Public Safety Building.</td>
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<tr>
<td>January 27</td>
<td>Sergeant Curtin assigned to inspect the asset forfeiture account records that had been maintained by Sgt. Kent.</td>
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<tr>
<td>January 27</td>
<td>Scarlett and Harris conducted interviews with Officers Fomby and Bjeldanes.</td>
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<tr>
<td>January 31</td>
<td>Harris picked up a videotape of the Golden Gate Fields parking lot from Security Officer Frank Granada. The videotape covered January 30, 2006, from 0037 hrs to 2040 hrs.</td>
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<tr>
<td>January 31</td>
<td>Harris received a call from Sergeant Ross regarding the arrest of CRI #1, an alleged informant of Sgt. Kent's who had information concerning his recent purchases of illicit narcotics for Sgt. Kent.</td>
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<tr>
<td>January-August 2006</td>
<td>Officer Steven Fleming was investigated for stealing money from suspects he arrested.</td>
</tr>
<tr>
<td>February 1</td>
<td>Scarlett and Harris interviewed Officers Shannon, Smith, and Sergeants Ross; Okies, and CRI #1.</td>
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<tr>
<td>February 2</td>
<td>Scarlett and Harris conducted a search of Sgt. Kent's office in SEU pursuant to a</td>
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<td>Date</td>
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<tr>
<td>February 2</td>
<td>Phone messages collected on Sgt. Kent's office, and departmental cell phones were recorded.</td>
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<tr>
<td>February 2</td>
<td>Scarlett and Harris met with CRI #2 (recorded surreptitiously).</td>
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<tr>
<td>February 6</td>
<td>Scarlett and Harris interviewed anonymous private citizen.</td>
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<tr>
<td>February 9</td>
<td>Scarlett and Harris interviewed CRI #3.</td>
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<tr>
<td>February 15</td>
<td>Harris spoke with Alison Berry-Wilkinson, Sgt. Kent's attorney, who said that Sgt. Kent was medically unavailable for an interview for at least 2-3 weeks.</td>
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<tr>
<td>April 12</td>
<td>Sgt. Kent charged with grand theft by embezzlement, possession of methamphetamine and heroin.</td>
</tr>
<tr>
<td>April 14</td>
<td>Warrant of arrest issued to Sgt. Kent.</td>
</tr>
<tr>
<td>April 19</td>
<td>City Manager issued a memorandum to City Council regarding Retired Sargeant Sgt. Kent.</td>
</tr>
<tr>
<td>May 12</td>
<td>City Manager issued a memorandum to the Police Review Commission:</td>
</tr>
<tr>
<td>May 24</td>
<td>1. Chief Hambleton requested POST to conduct an independent review of BPD's narcotics handling procedures</td>
</tr>
<tr>
<td>August</td>
<td>2. Appropriate role of PRC was to review and comment on the POST recommendations</td>
</tr>
<tr>
<td>September 13</td>
<td>Sgt. Kent sentenced to 5 years felony probation and 1 year in county jail.</td>
</tr>
<tr>
<td>October 13</td>
<td>PRC voted to form a subcommittee to review the Sgt. Kent police report and recommend to the commission on next steps.</td>
</tr>
<tr>
<td>November 8</td>
<td>Commission voted to expand scope of subcommittee's review to other evidence theft issues in BPD.</td>
</tr>
<tr>
<td>November 8</td>
<td>Police report issued charging Steven Fleming with violation Section 487(c) of the Penal Code.</td>
</tr>
<tr>
<td>November 8</td>
<td>POST report issued to PRC.</td>
</tr>
</tbody>
</table>

2007

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 16</td>
<td>Subcommittee voted to include 2 community members on the subcommittee.</td>
</tr>
<tr>
<td>January 31</td>
<td>Steven Fleming had his last day with BPD.</td>
</tr>
<tr>
<td>February 14</td>
<td>Commission voted to investigate the evidence theft issues of BPD.</td>
</tr>
<tr>
<td>March</td>
<td>Assistant District Attorney Marty Brown declined to prosecute Ofc. Fleming, because the evidence was insufficient to get a conviction.</td>
</tr>
<tr>
<td>April 25</td>
<td>Commission voted that BPD should adopt POST recommendations.</td>
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</tbody>
</table>
| April 27   | City advised PRC staff not to interview officers regarding Sgt. Kent incident. All questions to BPD concerning the evidence theft issues were to be related to policy and
not about the incident.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>May 3</td>
<td>PRC Evidence Theft Subcommittee interviewed Chief Hambleton and Lt. Harris.</td>
</tr>
<tr>
<td>July 24</td>
<td>Sgt. Kent completed Contra Costa County Electronic Home Detention Program</td>
</tr>
</tbody>
</table>
EXHIBIT B:

OBSERVATIONS OF SGT. KENT
# OBSERVATIONS OF SERGEANT KENT

<table>
<thead>
<tr>
<th>OFFICERS</th>
<th>HEALTH, BEHAVIOR, WEIGHT</th>
<th>COURT</th>
<th>WORK HOURS</th>
<th>REPORT TO SUPERVISOR</th>
<th>NOTABLE COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 CHIEF HAMBLETON</td>
<td>Nov. 2005: Kent told Chief he had an illness.</td>
<td>Late or missed meetings.</td>
<td>Kent wanted to work on his day off before narcotic evidence inspected.</td>
<td>Gustafson and Yuen told Chief that Kent was on medication.</td>
<td>Did not hear any rumors of any drug use and nobody brought up any information. Heard from officers he had a medical condition.</td>
</tr>
<tr>
<td>2 S. FLEMING</td>
<td>Sweaty. Kent said he had lupus. Sallow look, eyes had dark circles. Gained weight.</td>
<td>Late for staff meetings or did not attend.</td>
<td>Kent said his son was reason for varying hours.</td>
<td>Asked Gustafson and Yuen if Kent on drugs.</td>
<td>Ahearn told her that Kent was talking to himself.</td>
</tr>
<tr>
<td>3 GUSTAFSON</td>
<td>Depressed, emotional tearful, eyes blood shot.</td>
<td>Late in getting evidence to court.</td>
<td>Kent said his son was reason for varying hours.</td>
<td>Spoke with Gustafson regarding Kent's performance in SEU.</td>
<td>Kent asked about being arrested on day he was placed on administrative leave.</td>
</tr>
<tr>
<td>5 MCBRIDE</td>
<td>“Standoffish,” said he had shoulder injury. Never said what illness was Missed meetings. Bloated.</td>
<td>Late to work.</td>
<td>Spoke with Gustafson and Ahearn regarding drugs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 LOPES</td>
<td>Socialized less. Different demeanor. Gained weight.</td>
<td></td>
<td></td>
<td>Ahearn told him Kent was hooked on heroin.</td>
<td></td>
</tr>
<tr>
<td>7 YUEN</td>
<td>Skin looked pale or gray. Always sweating. Falling asleep. Gained weight.</td>
<td></td>
<td></td>
<td></td>
<td>Gustafson said Kent had medical condition.</td>
</tr>
<tr>
<td>9 D. REECE</td>
<td>Notice sweating. Weight gain</td>
<td>All officers he supervised complained about not getting drugs to court</td>
<td></td>
<td></td>
<td>Thought issue was Kent's health, because that was what Kent told him.</td>
</tr>
<tr>
<td>OFFICERS</td>
<td>HEALTH, BEHAVIOR</td>
<td>COURT</td>
<td>WORK HOURS</td>
<td>REPORT TO SUPERVISOR</td>
<td>NOTABLE COMMENTS</td>
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<tr>
<td>10 D. LINDENAU</td>
<td>Notices Kent is different, more withdrawn, often shuts door to office.</td>
<td>Kent unavailable to give officers evidence in court.</td>
<td></td>
<td>Informs Yuen.</td>
<td>Speaks with Kent who is upset that Department wouldn’t support you if you’re sick or hurt.</td>
</tr>
<tr>
<td>11 SCHOFIELD</td>
<td>Appearance disheveled, less reliable. Weight gain.</td>
<td>Unit talked about not getting evidence to court on time.</td>
<td></td>
<td></td>
<td>Told he had medical condition.</td>
</tr>
<tr>
<td>12 BJELDANES</td>
<td>Saw Kent late at night and he looked weird. He was shocked at his appearance.</td>
<td></td>
<td></td>
<td>Asked Ahearn, who said he had medical condition.</td>
<td></td>
</tr>
<tr>
<td>13 B. WILSON</td>
<td>Scabs on face, sweating, shutting door – didn’t know if he was in office or not. Gained weight.</td>
<td>Needed evidence for court. Kent had to be woken up at home. He heard every excuse from Kent.</td>
<td>Woudn’t come to work or he’d come but he had to be woken up.</td>
<td>Complained to D. Reese and D. Lindenau, which went to Lt. Yuen.</td>
<td>Around 2005-06, Kent asked if he could meet informant who was into heroin.</td>
</tr>
<tr>
<td>14 C. Lindenau</td>
<td></td>
<td>Kent unavailable to bring evidence. Had to call Kent at home to wake him up.</td>
<td></td>
<td>Spoke to Gustafson.</td>
<td></td>
</tr>
<tr>
<td>15 PARSONS</td>
<td>Noticed strange behavior, i.e. working overtime at strange hours. Gained a lot of weight</td>
<td>Noticed Kent working midnight – 6:00 a.m. around Dec. 2005.</td>
<td></td>
<td></td>
<td>Officers get trained to spot strange behavior on the street, they never think to look internally at their family.</td>
</tr>
<tr>
<td>16 MONTGOMERY</td>
<td>Seemed tired, kept to himself.</td>
<td></td>
<td></td>
<td></td>
<td>Never suspected Kent of using legal or illegal drugs.</td>
</tr>
<tr>
<td>17 DURBIN</td>
<td>Had sniffles frequently, long lasting symptoms of a cold. Had occasional conversations with other employees about Kent’s health.</td>
<td>2-4 times when Kent needed to bring drugs to court and Kent failed to bring it on time. Kent would volunteer an excuse.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>OFFICERS</td>
<td>HEALTH, BEHAVIOR</td>
<td>COURT</td>
<td>WORK HOURS</td>
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<tr>
<td>18 ALLEN</td>
<td>Appeared “tore up.” Inquired into Kent’s health; Kent said it was a shoulder problem. Put on a lot of weight.</td>
<td>Drugs weren’t tested at lab. Kent gave vague excuses, e.g. lab had screwed up or he didn’t realize that the crack cocaine needed to be tested. Drugs weren’t picked up from lab.</td>
<td>Kent would show up on weekends or later at night. Kent went for long chunks of time throughout day. Over time, it was generally understood that Kent wasn’t going to be around.</td>
<td>Friedman told Kent’s supervisors, David Reese and David Lindenau. Reese talked to Lt. Gustafson and something was going to be done about it.</td>
<td>Never suspected Kent of using legal or illegal drugs.</td>
</tr>
<tr>
<td>19 FRIEDMAN</td>
<td>Behavior erratic. Wore day old clothes. Skin gray or pale. Extremely talkative. Gained weight</td>
<td></td>
<td></td>
<td></td>
<td>It crossed Friedman’s mind that Kent might be using drugs due to weight gain and different behavior. Some officers speculated he was sick, but it was clear that someone was wrong outside of work pressures.</td>
</tr>
<tr>
<td>20 SMITH</td>
<td>After not seeing Kent for a long period of time, his appearance shocked her. His face was different and he aged a lot. Gained weight.</td>
<td>Saw Kent working Saturday night Sept. 2005, 1:40 am.</td>
<td></td>
<td></td>
<td>Gave phone number to Kent because “it looked to me like he had been abusing alcohol or drugs. Not particularly that night but his appearance.”</td>
</tr>
<tr>
<td>21 MORILLAS</td>
<td>Kept to himself. Gained weight.</td>
<td>3 times had problems with Kent bringing drugs for court.</td>
<td></td>
<td></td>
<td>Never suspected Kent of using legal or illegal drugs.</td>
</tr>
<tr>
<td>22 MURPHY</td>
<td>Tired and noticed something was going on. Gained weight.</td>
<td></td>
<td></td>
<td></td>
<td>Never suspected Kent used drugs.</td>
</tr>
<tr>
<td>23 ROSS</td>
<td>Appeared less healthy. Shut office door more frequently, wore baggier, sloppier clothes. Gained weight.</td>
<td>Kent not getting narcotic evidence processed on time, not showing to give drug evidence to officers in court.</td>
<td>Kent worked strange, late hours.</td>
<td></td>
<td>Asked Kent about his health Oct.-Nov. 2005, Kent said he had a medical condition. Offered to help Kent get drugs from lab, but Kent declined.</td>
</tr>
<tr>
<td>24 SHANNON</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Arrested CR#1, who said he worked for Kent on 1/31/06 and planned to work the next morning.</td>
</tr>
<tr>
<td>OFFICERS</td>
<td>HEALTH, BEHAVIOR</td>
<td>COURT</td>
<td>WORK HOURS</td>
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<tr>
<td>25 SMITH</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>CR#1 said he bought quarter of an ounce of heroin for Kent on 1/30/06 and planned to buy again on 1/31/06. CR#1 worked for Kent for 1 year.</td>
</tr>
<tr>
<td>26</td>
<td>CR#1</td>
<td></td>
<td></td>
<td></td>
<td>Told Ross that he was making controlled buys of heroin for Kent. 1/30 – bought 5 grams of heroin for Kent. Kent paid $120, though actual cost was $100. 1/27 – bought 3 grams of heroin for Kent. Bought about 2-3 times a week for Kent over a span of 7-8 months.</td>
</tr>
<tr>
<td>27</td>
<td>CR#2</td>
<td></td>
<td></td>
<td></td>
<td>Bought methadone pills for Kent, costing $3/pill. On typical day, he bought 30 pills. They met behind BPD, Claremont Hotel, Blockbuster, Bank of America and Whole Foods.</td>
</tr>
</tbody>
</table>
EXHIBIT C:

CHIEF HAMBLETON’S INTERVIEW
TRANSCRIPT
STATEMENT OF CHIEF HAMBLETON
PRC COMPLAINT NO. 2139

WW= William White        SK= Sharon Kidd
CH= Chief Hambleton      SS= Sherry Smith
LH= Lt. Harris           AP= Andrea Prichet
JC= Jim Chanin           VU= Victoria Urbi

WW: Good Evening. Today is Thursday, May 3rd; the time is 5:35 pm. This is the Subcommittee of the Police Review Commission that reviews the evidence theft issues.

WW: Present are Commissioner Smith, Commissioner Kidd, and myself Commissioner White, citizen Andrea Prichett, citizen Jim Chanin, PRC Officer Victoria Urbi. With the Berkeley Police, we have Lt. Harris and Chief Hambleton.

Welcome each and every one of you. Tonight, at this point, we would like to invite Chief Hambleton, and welcome him to the committee that is looking into the theft issues of the department that took place last year and recently, beginning of the year. At this point, I would like to invite Chief Hambleton, if you would like to address the Subcommittee with any comment before we ask questions concerning this matter, please feel free to do so. Also, Lt. Harris can also join in at any time, at the Chief’s direction.

CH: Well, I didn’t really prepare a big opening statement or anything. One of the things since this incident came to light last year, I asked the California Commission on Peace Officer’s Standards and Training to come in and do an audit of our procedures, and I was quite honestly, frustrated with the progress or the speed with which they performed their audit. I was expecting a report some time in June. I didn’t actually get a final report from them until the end of October.

Shortly after they gave me that report, I presented it to the Commission and asked them to give me some feedback on that report. Before even asking POST for the audit, I told the Commission that I was planning on doing that, and I wanted to discuss with the Commission the results of that audit before I implemented anything, and that was my understanding of what I was going to do.

Once the audit report was issued, I brought it to the Commission, and it’s sort of been sitting, waiting for some discussion with the Commission on that, so I am glad we’re now going to have an opportunity to do that. My understanding is the Commission voted last week to approve the findings. I wish
I had an opportunity to talk to you about it first, because there is one finding in there that to me is a little bit problematic. It doesn't make a lot of sense, but we will get to that later on. But, not having heard back from the Commission several months ago, I assigned the project to Lt. Harris to start working on implementing the findings from POST. So it was my intention to go ahead and implement them, but we haven't really done much of anything towards that end other than doing some planning because I was waiting to have these discussions.

There was also some internal issues within the department in terms of our ability to immediately implement them. One of the recommendations is that the Narcotics Evidence be moved to the Drugs ... to the regular Property Room. And that's ... the Property Room is staffed by the Community Service Officers, not by sworn officers, and we've had some preliminary discussions with their union about them taking on this responsibility, and there has been some resistance on their part. So, that's an issue that we have to overcome before that change can take place, but it's something we are in fact working on.

We have done some things. We moved the narcotics evidence out of the Special Enforcement Unit office. It's being stored in another evidence room, but it's not in the main evidence room itself at this stage. So, we haven't made that final transfer. So, having said all that, I am hoping we can have some discussion about these procedures and anything else that you want to talk about tonight.

There is one concern I think the members of the Subcommittee might be aware of this - the Police Association has raised some questions about the nature of this inquiry about whether the policy aspects of the Subcommittee's work as opposed to what they perceived as the investigation that still dealt with the personnel issues, and we've had the discussions with the City Attorney's office. As I said the Police Association's attorneys have raised various issues. Ms. Urbi, and I and others from the City Administration have had discussions with the City Attorney's office. And it's their recommendation that this Commission, in terms of what the Department does interacting with the Commission, that we avoid specific questions or answers about what specific individuals did or what specific observations of individuals, and we confine this discussion to policy issues. In other words, questions about what are our policies, and what our policy should be as opposed to what an individual did or did not do in a specific circumstance.

So, having said that, that all revolves around the recent lawsuit and the results of that lawsuit and the difficulty with discussing the confidential personnel-type issues in a public setting.
WW: Chief, you did receive that April 26th letter from the police union? And I was just wondering - was your response to that letter - Did the City of Berkeley respond to that letter?

CH: I don’t believe the City has responded in writing to that letter that I am aware of. I have not.

WW: At this point, we will now turn to the Subcommittee members with their questions concerning the policy issues that we are working on and they will address the Chief with questions. I will start to my extreme left. Citizen Jim Chanin will begin the questioning. Jim.

JC: Thank you. I just want to say, and I will be discussing this later. I don’t want to take up too much of your time, Chief, but I completely disagree with both the decision made by the City as you stated it and with the letter that was written by the police union. It’s funny, I was getting ready and I heard on the news, this person who arrested a woman who was trying to go to the hospital to see her father who was having a heart attack. They showed it and they said the officer was disciplined and suspended for five days. I thought well this couldn’t possibly be California because the union controls the state to the point that we would never know that.

In addition, we are doing policy here, as you know under the Government Code 3304. Any discipline that could possibly be imposed in this case had to be imposed by now and so there is no way we could possibly impact any discipline even if we wanted to, which we don’t.

But that’s not why we are here. It’s not why I am here, so with that as I said, I will discuss this some more later, but I just want to put that on the record. I am going to try to comply with the dictates of the City Attorney at least for now. So, I guess my first question is, you are familiar with the health and safety code 11550 - people who are under the influence?

CH: Yes.

JC: How are the Berkeley Police Officers trained to recognize people who are under the influence?

CH: It is not a training that occurs in the normal police academy setting. Or if it does, it is only very briefly. Normally, for 11550 Drug Influence training, it’s done at a 3-day or longer school, where officers will be sent to a POST school, certified by POST, and given 3 days of training. We also have the more advanced classes, drug recognition expert training, which is longer - that’s I think it’s about a two-week
class, and then there is drug recognition expert instructor
classes, which even go on longer than that. So, that’s the
normal process where that training occurs. As an example, I had
that training when I was a Sergeant in Drug Task Force back in
probably about 1989. So, most officers in the department had
not received that advanced training.

JC: Have not?

CH: Right, most have not received that training.

JC: How about the narcotics officers?

CH: Some of them have, and some of them haven’t.

JC: What are the criteria by which some have and some haven’t?

CH: Basically, they have to request to go, then we have to
schedule it. There is not that many classes available, and so,
not everybody ends up going to that class, although many
officers in that unit do attend eventually.

JC: Have there been any discussions within the Department about
the needs of training officers better in recognizing individuals
who are under the influence of narcotics as a result of the Kent
case?

CH: Certainly, there have been discussions about that, yes.

JC: What discussions?

CH: Well, it, to a certain extent, it comes down to if you have
been through one of these courses, you know that it’s not as
simple as it might seem. In other words, you don’t just look at
somebody, and from looking at someone, conclude that they may or
may not be under the influence. The training involves examining
- touching the skin, feeling how moist the skin is, examining
the pupils, it involves the nystagmus test, where you move your
finger back and forth and you check the bouncing of the eyes at
different angles, it involves taking people’s pulses - and that
sort of thing, and that’s not the kind of activity that normally
occurs in an employment setting.

JC: Did it bother you or any member of the BPD command staff
that there was a failure to recognize that someone who was in
front of them every day was under the influence of narcotics?

CH: This is getting to a drug question about a particular
person in a particular incident, so I have a little difficulty
going into too much detail on that particular question. It is a
concern and it would be a concern for me if there were people
who are under the influence in the work environment and people
did not recognize that.

JC: Are there any policy changes that the BPD is considering
regarding identifying people who are under the influence of
narcotics or training officers to identify such people that are
contemplated as a result of the Kent case?

CH: I wouldn't put it in those exact terms. What I am looking
at is potentially utilizing the current provision in our M.O.U.
with the Police Association that allows us to direct people to a
medical examination, fitness for duty evaluation, and that would
be the avenue that I would probably want to take if we suspected
someone was under the influence.

The other avenue that we discussed is a possibility of having
ordered drug testing. If there were some grounds for doing so
for one of our employees. That's not something that we
currently can do by Council policy. The Council policy is
essentially at this point prohibits any drug testing of our
employees.

JC: My question was, "What are you going to do to train your
officers or what policy changes regarding your officers to
improve their ability to recognize people who are under the
influence of narcotics?" Is there anything contemplated in that
regard or not?

CH: Not at this time because of the difficulty, as I said, of
doing that in an employment-type setting. If - we have some
people who already are trained, so I don't feel there is a need
to train additional people if there were grounds or suspicions.
We have people who are already very well trained to do that if a
supervisor were to recognize a situation and want to take action
on it.

JC: Are you suggesting that because someone is an employee that
if someone suspects they're under the influence of narcotics,
they have more rights than someone who is on the street?

CH: No.

JC: Moving on - are officers trained to tell their supervisors
when they see an officer who is unable to perform his or her
duties and responsibilities?

CH: I don't think we have a specific training on that, no.

JC: Are there any policies which require officers to report
officers who they believe are unable to perform their duties and
responsibilities?
CH: I don't believe there are, no.

JC: Do you contemplate making any changes to implement such policies in light of the Kent case?

CH: At this point, I haven't. I think that's a supervisor responsibility as opposed to a line-level officers responsibility.

JC: Similarly, is there a policy, which require officers to report another officer when he or she feels that officer is medically compromised?

CH: No, there are currently aren't such policies.

JC: There is no written policies regarding that issue?

CH: No.

JC: Has there been any discussion of any changes in policy that might address that issue as a result of the Kent case?

CH: Not at this point, again, I think that's a supervisor responsibility.

JC: What policies were in effect before mid 2005 that audited officers with access to narcotics? I am specifically referring obviously to the narcotics - the room, the safe, any kind of chain of custody where an officer might have access to narcotics that were confiscated from a suspect?

CH: We have policies in place that required the supervisors of the unit to do inspections and for the people from outside of the unit to do periodic inspections, and examine the files, confirm things that were supposed to be there were there, and that sort of thing.

JC: Do you think that the policies in effect in mid 2005 were adequate in light of what happened at the Kent case?

CH: I am not sure if I can answer it in a yes or no answer, so I will try to explain it myself. The policies call for inspections, as a captain, I conducted some of those inspections. The inspections that we had conducted - looking back now - were not as thorough as they should have been. And, I will give you an example.

When I would do those inspections, I would go through and usually I would do it with another lieutenant - someone from outside the unit itself would - outside the chain of command
from the unit who would be instructed to move in. I would be charged with doing those inspections. We would go through and do some random checks, do some file checks, and come up with (20) for example narcotics cases from the last six months, get those case numbers, review search those cases and know this evidence is supposed to be there. We would then go to the room. We would look at everything there, and look to make sure everything is in order - the things should be there as they should be. We pick up envelopes and say, "What, where is this envelope supposed to be" look it up in the file and see that it was where it was supposed to be. Then we would go over 10 cases or 20 cases. And we say okay we are supposed to have - you know - show me the narcotics for this case and they would pull the envelope. We would examine the envelope and then put it back in file.

We did not do as thorough an examination of those envelopes as we should have. And what I mean by that is, in this case, if you've read the investigation you see that the seals were very carefully cut and then resealed. We did not hold the evidence envelopes up to the light to inspect to see that there was absolutely no tampering with the edges. It was not something that we had contemplated as something to do. So those were not the kinds of inspections that we did. Clearly, the inspections that we will have to conduct in the future will need to be more thorough, and we have to examine those envelopes in much more detail.

JC: Was there a protocol on how you should do these inspections?

CH: No, it just said do an inspection. It did not have specifics down the line in terms of how those inspections should be conducted to the detail I just described.

JC: Well do you think a protocol might be a good idea in light of what happened?

CH: Absolutely.

JC: What is the policy of the Berkeley Police Department when an officer fails to report for a physical?

CH: We find out the reasons why they failed to report for the physical. If there's no grounds, there is a potential for discipline. Usually, in those kind of circumstances, the first time they get a warning and then they are re-ordered to go to their physical, and then we insure that they go and attend the physical.

JC: Is there any place that that's written down?
CH: I don't believe so.

JC: Is there any intent to create a policy which makes attendance of a physical mandatory given the fact that the physical may reveal things about the officer which may deal with that officer, can compromise officer's safety, or cause harm to people in the community?

CH: I don't see a need for specific written policies on those lines. Officers are instructed to go to their annual physicals every year. If they don't go to their annual physicals, the chain of command is notified they are then directed to go. So, we don't have a separate policy about people who fail to show up at a training class for instance, but if people fail to show up at a training class, then we take action to make sure they go to required training.

JC: What is the policy of the Berkeley Police Department to identify officers that are consistently late?

CH: Consistently tardy to work?

JC: Yes, well to work, to meetings.

CH: We don't have a written policy about officers being consistently tardy to show up for meetings for instance, but we do have policies or practices that if officers are consistently late for their duty shift for instance, that that's documented on their time card. If they have more than several tardies, then we do take disciplinary action with that.

JC: How about to meetings where narcotic operations are planned? If they are consistently late to that, how would you know?

CH: I wouldn't normally know. That's their supervisor's job to deal with an employee who is not performing the way they should be performing.

JC: Well, is there a requirement that that supervisor document the fact that the officer is late, and so as to create a pattern and put that up the chain of command rather than just remember it anecdotaly?

CH: No, there isn't.

JC: What is the policy regarding restricting officers who are placed on administrative leave from accessing their computers?

CH: There is no written policy on that.
JC: How about their lockers?

CH: There is no written policy on that.

JC: How about their informants if they are narcotic officers.

CH: There is no policy on that.

JC: Do you have any plans to create any new policies in this regard as a result of this incident?

CH: No. The reason, I need to explain why.

JC: Sure.

CH: When people are placed on administrative leave, there's various reasons why people might be placed on administrative leave and so it's a case-by-case basis. And so, we would do what we feel is appropriate depending on the circumstances. So, you know, I've placed people off on administrative leave for a variety of reasons. In some occasions involves allegations of serious misconduct and in those cases, we've removed the officer's badge, their gun, their I.D. card. We have immediately done things like contacted people from the City's Information Technology Department and changed their passwords, denied them access to computers and that sort of thing. And there are other circumstances where we placed officers on administrative leave where the issue that we placed them on administrative leave, the issue - underlying issue - was not as serious and we have not taken those steps. So it kind of depends on a case-by-case basis.

JC: Give me an example of the second.

CH: We had one case where, actually several cases, where officer had some off-duty misconduct involving alcohol and it was an alcohol issue. It was not the type of integrity issue where we thought they were stealing, we thought they were compromising criminal investigations, but we felt that under the circumstances at that time they were not able to come to work, and so they were placed on administrative leave for that reason.

JC: Let's talk about officers who were stealing or who you think might be stealing. Is there a policy restricting them from their computer?

CH: There is no written policy. As I said, those are handled on a case-by-case basis. And the times when that has been the issue while I've been Chief, I have taken those kinds of steps.
JC: And how do you communicate that to other officers so they see that person violating your order they would know about it?

CH: I inform supervisors and command officers that someone is on administrative leave, the department learns very soon that they are on administrative leave. In terms of their ability to access their computers, we either deny them access to the area where their personal computer would be kept, in other words, we take their keys away and they can't get in that room, or we can make master copy entries into the computer, basically shut them out of the computer system. You know, the I.T. Department can shut me out of my computer, so I cannot log into my computer and that's how we can do it.

JC: And that's all handled by the case-by-case basis?

CH: Yes.

JC: With you being the decision maker?

CH: Yes.

JC: What about super-gluing an officer's locker? What are the criteria that lead to that decision?

CH: That would be if we want to deny someone access to their locker we would do something in order to prevent them from getting into their locker.

JC: How is that done? Do you make that decision or if someone suggests it to you, you would then authorize it?

CH: Yes.

JC: Is there a BPD policy that requires officers to report the fact that they are having problems getting evidence to court?

CH: No.

JC: Such as their shift they're just not getting it delivered in a way that is appropriate in order to get them to court. Is there a policy that says you have to report the person who is causing a problem to anyone?

CH: No, there's no set policy. And to address all these specific questions with policy, if we have policies on every kind of thing you possibly could imagine. Our policy book now is about this thick. A policy book would be about this thick and, you know, you cannot anticipate every single occurrence and set a policy that address every single type of situation under the sun.
JC: I understand that, but we don’t have to anticipate these things because they actually happened, right?

So, what is the policy regarding officer’s responsibility to report when they think evidence is being tampered or compromised?

CH: There is no written policy to that effect, but I would expect them to notify their supervisors about it.

JC: And you say you would expect them to do that. Is there a directive which mandates them to do that?

CH: If you look on our General Orders, Police Regulations 400 which says that the general responsibilities of employees requires them to maintain order, enforce laws, and that sort of thing. I think it would fall under that provision.

JC: What is the policy when an officer hears a person complaining that their money is missing when they are in prison?

CH: I don’t believe we have a written policy on that, but again the expectation is when they hear something like that I expect them to notify their supervisor.

JC: What is the basis of your expectation?

CH: That there is a proper performance of their duties, and again, that’s just part of what we expect our employees to do.

JC: Is there anything that occurred as a result of the Fleming incident or (inaudible) incident that made you or anyone you talked to feel that policy changes are needed in this area?

CH: In the area of?

JC: Mandating reporting to superiors when an officer hears a prisoner accuse another officer of stealing their money.

CH: No, because in fact those incidents in these situations were reported.

JC: Are the officers allowed to use profanity toward prisoners?

CH: No.

JC: Is there a policy where officers should hear another officer use profanity to a prisoner are commanded or expected to report it to a superior?
CH: No.

JC: Does the Berkeley Police have any kind of early warning system?

CH: Yes.

JC: Can you tell me about that a little bit, please?

CH: It's contained in - I can't remember which general order, but it provides that we...

LH: E5?

CH: E5. It provides that when an officer has or Internal Affairs folks review the number of complaints officers receive, supervisors are supposed to let us know if they get informal complaints about an officer, we review people's officers attendance records, and if we identify a potential problem with an officer, even if they have a number of complaints, but even if those complaints are not sustained, we then have an informal system of calling that officer in with the division commander and the administrative captain, and the representatives from the Police Association to discuss whatever the concerns might be about their behavior and why these issues keep coming to the attention of the administration and offer assistance and suggest modifications of behavior if they might be in order.

JC: Are the only things that go into your early warning system a complaint?

CH: I'd have to read the order, but I don't believe so, no.

JC: You don't?

CH: I don't have all the specifics off the top of my head. It's attendance issues. It's complaint issues. It's informal complaints as well as formal complaints.

JC: So there's a list of things that go into your early warning system?

CH: Yes.

JC: Is that computerized?

CH: No, it is not.

JC: Is it done by index cards or how is it done? How do you determine that an officer has reached a certain threshold that they need intervention that you just described?
CH: It’s basically by a review of the Internal Affairs files and discussions with command staff about these issues coming to people’s attention.

JC: Would that be just recorded by Internal Affairs? Are they in charge of doing that?

CH: Yes.

JC: So there is no responsibility to do that by senior command staff?

CH: I think the expectation is: senior command staff is responsible for doing that. Individual supervisors are responsible for monitoring their employees and bring issues about their performance to our attention.

JC: Could you supply the criteria of the early warning system to Ms. Urbi?

CH: Yes.

JC: Okay. I have a lot more but I don’t want monopolize all your time on this subject.

WW: You can come back.

JC: Yes.

WW: Commissioner Kidd.

SK: I just have a couple. As Mr. Chanin was asking all these questions regarding policy and policies, you indicated the policies have been generated, but we all learn from mistakes, right? And so I am asking within the Police Department or yourself and your supervisor be more in tune to the activities that had occurred in the past in order to alleviate them from being repeated, right?

CH: Yes

SK: And during the subcommittee meetings I’ve often said that when an individual change coats, he or she inherits problems that were occurring before that person became the new leader, right?

CH: That’s right.

SK: So it could be feasible that all these policies and unwarranted things that occurred was occurring in the past
years, but eventually someone makes a mistake and get caught and
then the person that's in the lead at a time takes, has to be
responsible for that, right?

CH: Right.

SK: In regards to administrative leave, what determines if an
officer or an employee is on administrative leave with pay or
without pay? How is that weighed out, depending on the case?

CH: We cannot place employees on administrative leave without
pay without going through a formal disciplinary process. There
has to be allegations or misconduct, there has to be an
investigation, there has to be findings, there has to be a
skelly process where the employee is given due process to
counter the charges and respond to the charges. And in our
system in Berkeley then there is an appeal process to go
through. Sometimes that appeal process would occur before any
discipline could be imposed.

Sometimes, in case of some serious discipline, the appeal
process might take place after the discipline has been imposed,
but I do not have the authority to just unilaterally place
someone on unpaid administrative leave and the City Manager does
not have unilateral authority to do that. That has to go
through a disciplinary process. So if there is a circumstance
where I or the City Manager feel someone should not be at work
for whatever reason, then we can place them on administrative
leave, they're off work being paid. But in order to deny them
their pay, we have to go through a rather extensive process.

SK: (Inaudible) taken in from a prisoner, is it a two-party
process, I mean, the officer brings the evidence in and somebody
signs off, does somebody witness it? What is the procedure? Is
there a policy?

CH: There is a policy. The officer who seizes the evidence,
that officer packages the evidence and books it into the
property room. We do not have a requirement for a second
officer to witness that process. It is very cumbersome to do
that in most cases, and it takes a lot of administrative time.
We do have policies with respect to taking large sums of cash,
so if officers, in a search warrant or seizure seizes $10,000
worth of cash, then we have policies that say that there will be
two officers doing the counting and there is procedures for how
we do the counting and package that money. But for small sums
and most routine cases, we don't require a second officer.

SK: Is there a policy for a certain period of time that the
officer retrieves, say the evidence that he has in order to turn
it in? Is it a six-hour period after the individual was
booked, or three-hour period, or twenty-four-hour period?

CH: I have to go look at our records, but I think basically
officers are expected to book in any evidence or property by the
end of their shift. I think that’s the wording, yes.

SK: But, there is not a written policy on that?

CH: I think there is a written policy. And I think the written
policy says by the end of their shift, but I’m not absolutely
certain what that policy says. As I said, our books are pretty
thick and I don’t have them all memorized.

JC: Could you supply us with that policy?

CH: Yes.

JC: Okay, thank you.

SK: I have one more question. In the event an officer is
involved in a large drug bust, where there are narcotics
involved and a large sum of money that they received at the time
of their arrest, and say the sum of money is $10,000, but by the
time it gets to – well, how would Berkeley PD or any division
know that that’s the correct amount of money that was received
at the location where the drug bust took?

CH: When large sums are seized, then we count the money on site
or we bag it on site and then it’s given to the custody of
several people, and they take it back to the station, and they
count it usually in the presence of the supervisor or someone
else, but it’s done with several employees overseeing each other
essentially.

SK: So it is verified and sealed up at the location and then
brought back.

CH: Right.

SK: That’s all I have, thanks.

WW: Commissioner Smith.

SS: Thank you, Commissioner. At the beginning of your remarks,
Chief, you had stated that you had been disappointed in how long
the POST people had taken all of these events involving Cary
Kent, that is to say the coming to the head of your events
involving Sgt. Kent had occurred January or February of last
year, and presumably you asked the POST report like in February
or March?
CH: I can't remember the exact date now going back. I know that I would...

SS: I'm not expecting you...

CH: I can't remember the exact date that I asked for the report. I had waited - I'd discussed this with representatives from POST very early on, probably even in January. In fact, I know I did in January because I was at a school with a POST official in January and discussed it while our criminal investigation was still ongoing. Their recommendation was wait until the criminal investigation was concluded and then make the request. So then that's when I made the formal request, and I can't remember the date. And it took longer than I'd hoped for them to come.

One of the complications was they assigned this to one of their senior consultants who came and did some site visits and then he had some surgery scheduled, so he was off work due to that surgery, and he told me that he was going to be working on the report while he was at home convalescing, and I'd expected the report shortly afterwards. And it didn't come, it didn't come and then I made some inquiries of his supervisors, and I learned that he had retired and so they had to reassign the report to somebody else who took the draft that he had completed and finished the report which I think accounts for at least some of the delay.

SS: It appears that the Commission on Peace Officers Standards and Training doesn't have a very good way to track their own assignments. And that they can just go off... So, you were sort of expecting around June that wasn't going to happen, but finally got it at late October. We had it sent to us right after that in November and now it is May. And you told us in opening remarks here that through some miscommunication apparently that I don't think this Subcommittee can understand, you thought that you were to await our input on the POST report before you can go ahead and begin implementation?

CH: Absolutely.

SS: How was that communicated to you?

CH: My understanding was when I came to the Commission and discussed the fact that I was apparently going to do this report, asked for this report. In fact, I believe even the City Manager sent the Commission a letter stating that we had asked for this audit from POST and stating to the Commissioner that we would be seeking the Commission's input before we implemented any changes. And when I came to the Commission in November and
presented them with the report, my recollection of that meeting was that I told the Commission then that I was seeking their input before implementing any changes. And I've been waiting for that input ever since, and I think I've gone back to the Commission at least one other time when I made a presentation to the Commission and told the Commission that I was waiting for their input. I believe that was in January.

SS: Oh, I speak for myself, and I imagine some other Commission members too. When I say that I'm sure we didn't anticipate that you would actually not implement, pending our input, in other words, that you would be seeking input and that that was essentially a courtesy thing. Do you folks have any observations to make after you've seen this because we are going to be going ahead and implementing it? That would be the logical, I think, way to do that.

One other problem is that in a quasi-military operation like a police force that such important recommendations coming from an outside, sir, that you wouldn't be champing at the bit essentially to, "Oh my God, look what's happened?" These people are making suggestions about how it could be precluded from happening exactly that way again, and yet here we are in May, fully more than a year after all of this came to light and a head and you are telling us that essentially you have not implemented the POST recommendations, waiting for us. I just think that's incomprehensible.

CH: Well, I'll tell you. There seemed to be intense interest, I'll emphasize, intense interest, on the part of Police Review Commission to be involved in this process, and based on that intense interest on the part of the Commission, I felt that if I was to proceed without consulting the Commission, that there would be some rather significant concerns on the part of the Commission for me to do that. And so I have not implemented any formal, again, written policy changes because of that. I've been waiting for your input because it seemed to me that you, all the Commission, cared a great deal about this and that the Commission really wanted to give me some input. And I was a little bit frustrated over the last few months about the fact that the Commission has not given me input, so that's basically my position. I'm not making any formal written policy changes. I can say that I have done some things differently. We have done one drug destruction that we did it in January of some old drug evidence, and we followed the procedures the POST recommended in terms of how we did that.

SS: Well, Chief, I must say that if I had been in your shoes, and I wasn't getting the input that I had requested and I wanted to proceed, that I would not be leaving any stones unturned about where is your input I'm wanting to implement, would you
please come forward? In other words, those type of urging
tings rather than letting months go by because here we are a
volunteer organization and, yes, we certainly wanted to be
involved with it, but there didn’t appear to be anything to be
involved with because you were not telling us that you wanted to
move ahead and make proposals. So I am just saying apologies
for any communications and misunderstandings here; but I
really think the ball was in your court, to hit it back up to
us, and again if I were in your shoes, I would not have just
waited and waited and put it on a back burner wondering if these
people were ever going to come up with any... I would be wanting
to implement changes to make sure that the Cary Kent type of
thing did not happen again.

As for the drug user identification training, have you had that
training?

CH: Yes.

SS: And has the Captain here, has had that training?

Lieutenant.

LH: Thank you for promoting me. Back in ’87 - ’88, yes.

SS: So long time ago.

LH: Long time ago.

SS: Maybe like CPR training though perhaps it doesn’t change
all that much, so, has Captain Fleming had this training?

CH: I don’t know.

SS: You don’t know?

CH: I don’t know if Captain Fleming has been to that school or
not.

SS: It would be in her record, would it not?
To ask whether if she has ever had this training?

CH: I’m sure it’s in her record, you know, she’s probably been
to 50-75 classes. I don’t know off my head which ones she’s
been to.

SS: I would think that anybody who is in charge of narcotics
who is on a narcotic squad for drug investigations, I would
think that it would be more than useful to have each and every
one of those officers have taken that training and you were
saying that sometimes it’s hard to find or it doesn’t come up
regularly, but the minute the thing crossed your desk if there
was this, you would make sure your narcotics people at least.
It chills me horrifically to think there are officers out there
untrained in drug user identification who are making the drug
user busts, I mean just doesn’t jive.

CH: Well, let me explain what that training is about, maybe
you’ll understand. The training is to develop an officer’s
expertise in recognizing someone who is under the influence in
narcotics. You don’t have to have that training in order to do
narcotics enforcement. You only have to have that training in
order to qualify as an expert in court to certify that yes in
fact I’ve been to the training and so I could make that call on
making that particular arrest.

Officers who have not been to that training do not normally make
drug influence arrests, and we have many officers in our
department who do not make drug influence arrests. Most of our
arrests—in terms of drug influence arrests—it’s a different
type of arrest than a drug possession arrest. In other words,
you don’t need to have a drug influence arrest or to have that
expertise in order to arrest somebody for a possession of
narcotics, or for sales of narcotics. There are different kinds
of charges and so lots of our officers do not have that
training.

SS: I am just thinking that, again, a personal thought that
actually sort of over training in this area might be a good idea
than under training... And you said you’ve taken this and I
realize now we are getting back to the personal area, but I
would’ve hoped that Chiefs having taken drug user identification
would have made some bells go off if he ever saw any of his
officers behaving in such a way that the training was designed
to flag.

CH: Well, I guess you’d have to go through the training to
understand that the symptoms of someone who is under the
influence of narcotics are very subtle, and they are not quite
so obvious, and you can’t sit across the room and say, “Oh that
person is under the influence or that person is not under the
influence.” You have to do an extensive kind of examination of
somebody. It’s not the kind of examination you would normally
do if someone in a work setting when someone appears to be sick,
for instance.

SS: It can be perhaps a flag though in combination with other
behaviors of the person like sleeping on their desk or being
tardy all the time or starting to tell lies about where they are
and those sorts of things. In other words, surely as part of
training it was you can start to do a profile of possibility of
drug use, perhaps.
CH: Perhaps.

SS: I just have one other thing that I wanted to bring up. And that is the lack of written policies has allowed for so much leeway of your supervising staff that the results seem to have been a complete failure of supervision on the part of several of your commanders or those in charge of other officers. And I would be curious to know whether anyone has been disciplined or demoted because of failure to adequately supervise.

CH: I think that gets into the area of discussion that we really can’t cover in this public setting.

SS: I don’t need to have you name them.

CH: I still think it goes into the area that we are not supposed to cover in this setting.

SS: All right, can we pose a hypothetical here? Well, it wouldn’t be a hypothetical. But during your time as Chief, has any of your commanders/supervisors been disciplined or demoted for failure of supervision?

CH: I think that’s, again, the hypothetical goes directly to the person you’re trying to...

SS: I really do, we are not talking about specific people here at all. We are talking about a policy that apparently— I am talking, and I’m (inadible) in every word I’m saying a failure of supervision. And that’s obviously one of the areas that we are going to be wanting to recommend is that supervisors supervise. That’s what they are given a higher rank for and paid more money for it, at least in non-military place or organizations that usually is what follows that they pay a price for it. Okay, thank you. I’m finished.

JC: I want to agree with you completely. I’m looking over Ms. Wilkinson’s letter here, and even she, and I talked to the City Attorney yesterday as well, not the City Attorney, the other one, what’s her name, I can’t remember.

Unknown: Sarah Reynoso?

JC: Sarah Reynoso, yes. You know you’ve gone way beyond even what they say. I mean she is asking you a question which does not require you to name names or tell about discipline or name officers who’ve been disciplined. She is just asking you what your policy is and your practice is. And I don’t think it’s inappropriate even under these stilted, idiotic rules.

AP: Officer, I have questions.
WW: Okay, Citizen Prichett.

AP: Chief, I am happy that you came here. I appreciate that you came here and you're sitting through this, and I'm hopeful actually to recast the relationship in some sense because I feel like there has been a huge problem that this - that the lack of resolution, the lack of closure, the lack of investigation in this case has really compromised the credibility of the Berkeley Police Department. The word on the street it used to be, "Well, at least it's not Oakland" and that's not what people say anymore. So my hope is that an open investigation will help to re-establish some credibility and I like to think about the truth in reconciliation commissions and that's one thing that public airing and a re-direction and a new start can help to put these things behind us. And I would ask you to encourage officers to speak with us because I think there is a problem that the citizens and the Police Department have together. How do we make sure this doesn't happen again? So I'd like us to sort of get past that adversarial aura that I think you know if from what I'm reading and these letters and so forth that this whole...

CH: Ms. Prichett, if I can address that, the Commission I think will remember and many people in the room will remember that as soon as I was able to, I brought the Commission a copy of the criminal investigation. It's not like I tried to hide this investigation. I brought it forward, made the copies and delivered them to the Commission.

And I did the same, and I came and made public statements about the other incident involving Officer Fleming and made that report available to anyone who wanted it. I also want to remind you that I was the one who made this incident public by issuing a press release. It was not somebody else issuing a press release. It wasn't something that was being hidden and the press discovered it and they were doing some exposé on the Berkeley Police Department. I was the one who issued the press release. And so you know to the extent that I feel I am able to do the things you want done I've tried to do them. (Inaudible - tape ended)

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CH: Twice now I've called in outside agencies to conduct criminal investigations of members of the department.

AP: Did you contact the Department of Justice related to the Fleming case?

CH: Yes.
AP: Okay, I wasn't clear. Well, I have a few questions. One of them is I am trying to understand because when I was reading the police report, I was trying to understand...

CH: I'll go step further... In addition to that, I contacted the Department of Justice with respect to the Kent case.

AP: Did they answer?

CH: Yes.

AP: Cool. But I guess we'll never know about that, will we?

CH: Well, I feel I can discuss a little bit about that case. During the course of the criminal investigation that was conducted by Lt. Harris and a member of the District Attorney's office, I also consulted with several chiefs from outside the department to get advice, and I consulted with the State Bureau Narcotics Enforcement about their potential to participate in that investigation. And they were not particularly inclined to do so. They felt that the investigation that was going forward was adequate under the circumstances.

AP: So Chief, to what extent did you supervise the investigation because I see that Captain Fleming played a major role and what I'm curious to learn is, you know, something like this comes to light, who is deciding this is what we need to do, we need to go ahead and deal with the asset forfeiture account, or we need to contact this person, or close up the locker. Were you making those decisions or was Captain Fleming?

CH: We were discussing all that stuff and some of that was done at my direction. Some of that was done at her direction, and at this point, I can't remember specifics, but many of those things were done at my direction. Some of those things were done at the recommendation of the outside investigators.

AP: Were you aware of what was happening? Were they reporting to you?

CH: Oh absolutely, I was getting briefs in the early stages. I was getting briefs daily, and after that I was getting briefed every several days. I happened to be out of town at some conferences shortly after this incident broke, and so I was on the phone several times a day monitoring what was going on.

AP: So Captain Fleming was taking certain actions, but you were (Inaudible).
CH: Captain Fleming during some of that time, during some of those occasions, I was out of town, at things that were required for me to be away from the work site and she was the Acting Chief, but I was in touch with her constantly.

AP: I see. So, you were thinking ... here is this issue of the compromised, potentially compromised evidence room. On January 5th, now here we have the situation where - something kind of was not fit ... there was some discussion on whether or not he was fit for duty, correct? And, and he said he was getting the forms from his doctor and so forth. Who made the decision ... am I understanding, sir?

CH: I think we are getting to some specifics that I shouldn’t be discussing.

AP: Okay. It’s not about Sgt. Kent. It’s about you or Capt. Fleming.

CH: Go ahead and finish your questions. I’ll see if I can answer it.

AP: I was curious... because we have some conflicting reports in the police report. On one hand it says that Capt. Fleming said yes, it’s okay. Who said it was okay for Kent to come back to work on January 5th? Was that you or Capt. Fleming?

CH: I’d have to take a look at some dates. I am not sure that anybody ... I guess the sequence of events ... is confusing.

AP: Who would have had that authority?

CH: I don’t think anybody told him to come back to work.

AP: Okay, thank you.

CH: That I am aware of.

AP: Would you expect ... I am going to jump around a little bit, no actually I am going to stay with that. So, in terms of the investigation, were you recommending what should be searched, or is it just sort of standard? Is it like if an officer is accused of criminal conduct, and that’s why I feel comfortable talking about Kent and Fleming. Because these are not, as far as I can tell, they’re not personnel issues, criminal issues. When something like that happens, is there a standard protocol like, what would you do if somebody in the department is accused of theft? So, what does your investigation look like, what’s it going to look like? You’re going to put super glue on the locker, what else are you going to do?
CH: We are not necessarily going to put super glue on the locker in every single case.

AP: Okay.

CH: Each and every criminal investigation takes its own course based on the circumstances.

AP: What are some of the cases?

CH: There are no set, you know, A-B-C-D and E. You have to do these things. Each criminal investigation takes its own course, based on the circumstances, and what the investigators think is important to do and what, you know whoever is directing the investigation feels needs to be done under those particular circumstances.

AP: So, would you feel it would be necessary to secure the locker?

CH: Mm hmm.

AP: You felt it was necessary to – you think it would be important to search his office?

CH: Yes.

AP: Would you feel the importance to search his car?

CH: Yes.

AP: Do you feel like it would be important to search his house?

CH: Perhaps.

AP: That’s based on what? How would you decide whether or not?

CH: Well, you would search those areas where you felt that there is a likelihood of gaining or finding evidence. And, once a suspect is aware that they are suspect, and is aware that they are being investigated, and they no longer have access to certain places, then it makes sense to search those places.

If they have access to those places and are able to destroy evidence or conceal evidence or that sort of thing, then the likelihood of finding anything is severely diminished, and the value of going forth and trying to do that is questionable. And, then, the other factor is when you do a criminal investigation you certainly consult with the District Attorney and other people who are involved. In this case, we did that. And, we were gearing ourselves towards charges that we could comfortably
prove, and we felt fairly confident early on that we could prove
some charges, and that it was not necessary to prove them more
than several times.

AP: Did you regard that the drug vault as a sort of a crime
scene does that become - I am just trying to understand. I
haven't done a lot of (inaudible) Does that become a crime
scene?

CH: Yes.

AP: So, access is limited to that area.

CH: Right.

AP: Okay. The computer, with the crimes (inaudible) signed,
right? How is that secured?

CH: It's in a locked room. The desktop computer, but the
entire system...

AP: The Dell laptop that is used to report his daily...

CH: Secured in a room.

AP: Was it secured that night?

CH: Yes.

AP: How?

CH: The room was locked, and only the people that had keys to
that room were - we knew who had keys, were to have keys to that
room.

AP: Chief, it says though that the audit was actually,
conducted on that laptop.

CH: Mm hmm.

AP: Because there is only a few officers who knew how to
operate that system, apparently. One of whom was Sgt. Reece?

CH: Yes.

AP: What I am asking you is that during the course of that
audit, it has been stated, and it's in the police report that
Sgt. Reese was making notes as the audit was happening and that
apparently Sgt. Reese turned these notes over to Capt. Fleming.
Do you have any knowledge of those notes?
CH: No, you are asking me some, fairly fine details that a year
later I don’t have the memory of.

AP: I know that we’re in the technological age, I am not a
technological genius myself. But, if there is a data base, and
the idea is that we’re dealing with an inventory and so forth,
was there a back-up, was there any, was that database backed up
before it was altered? Was a back-up made?

CH: I don’t know.

AP: I noticed that the actual search warrant for that computer
was not issued until about 5 weeks later. And, I was concerned
about that. It seemed like that was an important part of the
information in order to really understand the flow of the drugs
in and out of that room.

LH: I think they’re talking about two different databases.

CH: You might know better than I would.

LH: Yeah, I think we are talking about two different databases.
You are talking about the crimes, and you are talking about his
actual computer, and I understand that the crimes, it has
limited access for what he was doing.

AP: Was the crimes database backed up at that point?

LH: You know — honestly, I cannot remember, but I know that the
computer was taken and it was copied.

AP: And, what do you figure out what was done with that copy?
Because I am still curious, for example, what is the actual
amount of drugs that were stolen? How much drugs were missing?

CH: I’d have to go through the criminal report and add it up.

AP: That hasn’t been done yet?

LH: Yes, it’s been done. Well, stolen or tampered with?

AP: Stolen.

LH: We’re getting very ...

CH: Yes.

AP: I’m sorry because what you said before... I think it was said
before who was it that told us that ... in most of the envelopes
everything was missing. Most of tampered envelopes we were told
that contents were basically gone, so I am curious as to what
the total amount of drugs that were missing.

CH: Off the top of my head, I don’t know.

AP: Are you aware that Sgt. Kent ... when an informant who was...

CH: I think we are getting ...

AP: I am talking about the public document, and the criminal
investigation, I am not talking about personal ... In the police
report, an informant was arrested and taken to custody, and
claimed that he had purchased drugs and that regularly, had sold
drugs to Cary Kent between 2-3 times a week for a long time. To
me, that seems like enough to feed an individual habit.

My questions is, in addition to that - that amount of drugs, I
am talking at various points seventy balloons of heroin, we are
talking about methamphetamines, we are talking about - and some
of these cases were aggregated - has that concerned you? Did it
ever cross your mind that - I mean did you assume he was using
all those drugs or what did you...? If you are guiding the
investigation, what were your assumptions about it? Did you
assume he was taking all these drugs? Or, did you feel
compelled to investigate further about where those drugs might
have ended up?

CH: I don’t think I made any specific assumptions.

AP: Hypotheses. Did you investigate any hypotheses about what
might have happened with the drugs? Okay, I will say something
else. Did it ever occur to you - I mean I know that the last
thing on your mind was that Sgt. Kent might have been using
drugs. That’s perhaps why it took so long for anybody to take
action. But once the audit happened, did you ever conduct your
investigation with the possibility that somebody in addition to
or instead of Sgt.? Did you ever have another suspect in mind?
I mean you’ve got one - we have five people who had access to
the drug vault. Were they ever considered suspects? Did you
ever ask questions or make inquiries? According to the police
report, I don’t see any evidence that anyone was ever suspect
other than Sgt. Kent. In your criminal investigation, did you
entertain the possibility of somebody else might have?

CH: We certainly entertained that possibility, but that wasn’t
consistent with the information we had developed in terms of who
was the suspect.

AP: And, how do you know that - what came to light?

CH: In terms of ...
AP: In terms of the criminal investigation ...

CH: In terms of the criminal investigation had to do with behavior, and ...

AP: Did you ever have evidence that he used drugs? I mean if that was your hypothesis ...

CH: Well, you've read the report.

AP: There was no evidence.

CH: Mm hmm.

AP: In terms of monitoring of the evidence room, there is a keypad access system, right?

LH: Uh huh.

SS: Can you describe, can you - how does it work? Because it has got a little - you know some of the terminology got a little confusing for me. So help me out, how do people get in there? Does it require tapping a little code on a keypad, or is there a magnetic card or what does it look like?

LH: It actually has a keypad, and they are assigned passwords or numbers as I recall, and the numbers show up random, and so, if they need to enter via the keypad, they would punch in their code, but say for instance, somebody came behind them, then the numbers would be switched.

AP: So, who is responsible for monitoring the keypad access? Who audits that?

LH: Well ...

AP: Who is making sure that folks aren't swapping codes and sharing (inaudible)?

LH: Well, as far as swapping codes, I don't think anybody is technically monitoring that, but at the time the keypad was to be monitored by our I.T. Department, so there have been some kind of entry. There were supposed to be some sort of printout, but of course that didn't happen.

AP: Do you guys get regular printouts of entering? Is anybody checking that?

CH: No.
AP: So, if the system is disabled as it was in this case for many months, to whose attention would that be directed, would that be a supervisor, or would that be you, who would be notified? Or who would even know?

CH: In this case, nobody knew.

AP: Nobody would know. Is that something you guys are thinking about - is that a chain of command issue - I mean I am trying to figure out how what changes - I don't think POST has made any recommendations about that. So, I am going to see what you guys are interested in doing that.

CH: I am definitely interested in being able to maintain the records of who comes and goes, and who has access to those rooms.

AP: Have you made any purchases or have you - do you have any (inaudible)?

CH: We are still waiting until the evidence moves into the property room. We've secured it in a different property room, and we are monitoring that room more closely, we're monitoring the evidence more closely, but all that would have to (inaudible) once we put it into a final solution.

AP: Your supervisors, I am curious of what things they bring to your attention and what they don't. For example, if there is an employee - I mean, I don't think this issue according to the police report many officers notified their immediate supervisors all the way up there were lieutenants who, and captains who were made aware that evidence was not getting to court on time. This was happening over the period of 8 months to a year. So, would you expect your supervisors to notify you that this kind of problem exists? Did you know that this problem existed?

CH: I did not know the problem existed.

AP: Would you expect your supervisors to notify you that this was happening or would you expect your supervisors to handle without notifying you?

CH: I would expect them to handle it without notifying me unless they thought there was something else going on that was of a concern.

AP: So, at what point would you expect anything... This problem was consisting for how long would you expect this to go on without being notified?
CH: I guess it depends on the circumstances. If there is ... if they think there is a problem with an employee, then I expect them to bring that to my attention or bring that to the attention to the chain of command.

AP: So, okay, you don’t feel like anything was deficient that they didn’t tell you about. You’re saying you didn’t know about it at all.

CH: I didn’t know about this evidence not being made available for court. I did not know about that ‘til long after they told me the investigation was being conducted.

Jim Chanin: Can I ask you a quick follow-up?

AP: Go ahead.

JC: Have you seen the Negotiated Settlement Agreement with the Oakland Police Department that was written as a result of Rider’s case?

CH: No, I haven’t.

JC: One of its provisions are that supervisors who failed to report misconduct that the presumptive penalty - is either a heavy suspension, demotion or termination. Would you be open to that for the Berkeley Police?

CH: Certainly. I’d be into looking at that.

JC: Okay, go ahead.

AP: A couple of more questions. On January 27, 2006, Sgt. Curtin was assigned to asset forfeiture of (inaudible) records. What was the result of that?

CH: The result was that he found everything in order.

AP: Is there a report issued that we can get a hold of or did he make the written finding to you?

CH: I’d have to go back and find it - I can’t remember who made a written finding, or if it was an oral finding or exactly what the final result was. I don’t remember, now it’s off the top of my head.

AP: Would you be willing to commit to grant us, to give us something that - Could you spell that for us? Is it a crime, after someone being put on administrative leave; is it a crime for them to use their gun and badge after that point? Is it a crime?
LH: It's not a crime.

CH: No.

AP: Is it - So, even if he is on administrative leave, it's sort of voluntary whether or not they give their badge and gun up for, what's the...? How does that work? Because we have a situation where Officer, Sgt. Kent was presenting himself as an on-duty officer. Is there some penalty for presenting yourself as on-duty officer? Is that an enhanced crime?

CH: I don't believe...

AP: What's going on with that? How do you guys feel about that?

CH: I don't...

AP: Did you get his gun?

CH: Yes.

AP: When did you get his gun?

CH: We had his gun the minute that I placed him on administrative leave, I believe.

AP: That's not what the... When did you get his badge?

CH: We got his badge earlier the next, several days later.

AP: Who gave it to you?

CH: It was delivered to us via his attorney.

AP: And, his gun was... he just gave it to you that night?

CH: I believe we've got his gun that night. I can't remember now that I, I'd have to look at my record.

LH: I don't think so. I think his... well I thought his on-duty gun was in the locker.

CH: Yeah. (Inaudible)

LH: Or was it off-duty? I'm sorry?

AP: Did you guys go into his locker to get the gun?
LH: Well, as a result of the search warrant, I think I am confusing because - confusing details because there was a gun I think in his desk drawer, off-duty gun and I think his on-duty gun may have been delivered by his attorney, also. Wasn’t it though?

CH: I thought his on-duty was in his locker, but I can’t remember, I can’t remember now.

AP: I raised that question because it looked as like again - reading the police report, it looked like that there was some real concern that he was in a really difficult place psychologically, emotionally, he was pretty high strung, in addition to being someone strung out. And I guess I was concerned because I didn’t see that his gun was taken that night, and I was concerned for his safety and the safety of others because with this added stress, so I am looking at the procedures ...

LH: No, he did, I’m sorry. He did. He turned in his badge, gun, keys and cell phone.

AP: When?

LH: That night.

AP: That’s not what’s in the police report.

LH: Okay, well, that’s what I have.

AP: Who did he turn it into?

LH: Did he turn it in to you that night?

CH: I think he actually turned it in to - turned some of the stuff into me, and the rest was turned into somebody else. I can’t remember now off the top of my head. I have to go into, review our administrative files on that. Some of the stuff is not in - some of the administrative stuff is not in the criminal investigation.

AP: Okay, thank you. Uh, yes, go ahead.

WW: Okay. First, Chief, I wanted to thank you again for sitting in this session. And, I would like to clear up a matter concerning the POST report. Although the Subcommittee did recommend to the full PRC Commission that to accept the findings and to approve the findings, we did leave open an avenue for recommendations or adding to that POST report, so along with the approval process, you will be receiving recommendations that would be adequate for (inaudible).
With that in mind, I just have a few questions and referring to
the training as to identifying drug abusers. Do the
participants in the SEU - Special Enforcement Unit; are they all
trained to identify suspected...?

CH: I can't say absolutely all of them are. Routinely - that's
one of the classes that they would normally be assigned to
attend, but I don't know if every single one of them has been -
I am not sure if every single one of them had been at the time
of these incidents, but it is fairly standard for us to send
them to those classes, but sometimes they might not have been
for you know - for all kinds of different reasons, they might
not have attended due to scheduling.

The classes are not offered that often; in other words, it's not
like there's, you know, classes every week you can send somebody
to. It's a kind of the class that it presented maybe in
Northern California once every several months, and we can only
send a couple of people at a time to one of those classes, so
it's not like it's something that's readily available, and you
can send a whole a lot of people to, very quickly.

WW: In hindsight or forethought, do you think this would be a
very important training that particular unit should have?

CH: Oh, absolutely. I mean there is no question that is the
class that we routinely try to send them to. It's just a matter
of whether you can get everybody scheduled enough. I think it's
a very valuable class for all beat officers. And, you know, in
prior years we have tried to send people to these classes to the
extent that we can, but again, there is a limited availability
of those classes, so you don't get an opportunity to send
everybody as quickly or as often as you'd like.

WW: Thank you. In reference to the administrative leave with
or without pay, whatever, and disciplinary process using the
police in Berkeley Police Department ... at this point, is the
punishment, disciplinary punishments, are they a confidential
document ... is that a confidential document?

CH: Yes.

WW: I'm sorry?

CH: Yes.

WW: It is? And why is that? Why would it be confidential
document? If it has no names attached, why would...
CH: Well, I guess maybe I am confusing what you’ve asked me. I thought you were asking me if discipline records for an individual officer — those are confidential.

WW: No, what are the options of discipline?

CH: Oh, oh, that’s not confidential. That’s in our General Order P-26, if you would like a copy. The Commission has the copies of all of these General Orders. They’ve always had the copies of them, but I can tell you what the potential discipline findings are. The lowest level of discipline is a letter, we call it, a training advice letter, basically, it is a relatively minor infraction and this position is that we give someone training or advice and basically advising someone, “Don’t do that again.” That’s not proper policies, “Don’t do that again.” That’s an advice letter.

Next one up from that is a reprimand letter, and those are worded more strongly, and it’s more significant part of the potential discipline, or further discipline. Then, I have the option at my discretion of suspending an officer for, anywhere from one to three days. And, I do not need the approval of the City Manager’s to do that. Generally speaking, if I am going to suspend someone like that, I would want to discuss it with him because the appeal process is that if we get an appealed to him, and it wouldn’t be very smart for me to go and discipline somebody that without finding out if he is going to uphold on that discipline on an appeal.

Anything more than three days is at the discretion of the City Manager, and that’s his authority to discipline an employee for up to 30 days, and the policy with respect to sworn officers and I think it’s also for everyone else in the City is that we do not discipline — that we do not generally suspend people for more than 30 days if an infraction is so serious that we would want to suspend somebody for more than 30 days, rather than suspend them, we are going to terminate them.

And, the policy also it’s in our M.O.U. with the Police Association says, “You cannot be suspended more than 30 days in a calendar year.” So, if someone had two different kinds of policy violations, and for one of them you might suspend the person for 20 days, and for the other one you might suspend the person for 15 days. That’s more than 30 days, and so for the second violation, they would be terminated. We practice what is known as “progressive discipline,” so if an employee commits a violation that might be relatively minor, we start off with a relatively low level discipline and if they continue to commit the same kinds of violations, then the discipline becomes greater and greater and greater for future violations. But still if there is a serious violation, we can go wherever we
want on that scale up to termination depending on how serious
the violation might be.

WW: Okay.

SS: Commissioner White, could we take about a 5-minute break?

WW: Well, I just have one more question, and then ...

SS: Okay, we have been at this for about, a long time ...

WW: This is my last question. At the beginning of your
statement, you made a reference to the POST report, and you
indicated that there are the findings that you had differences
with - can you explain those differences?

CH: Yes. The ... I have to pull it out but it's ... It has to do
with the storage of supplies within the same room - within the
same evidence room. So, there is a big evidence room,
compressible files where property could be stored on shelves,
and moves back and forth, and so it's very space saving kind of
storage facility, and then we have several refrigerators in
there where we store biological evidence. We have a safe in
there where we store guns, we have a safe in there where we
store money, and then there is an alcove off to the side where
we store white-out, and post-it notes, pens and binders, and
that kind of stuff, and those - that's not evidence - that is
just an everyday supply closet for the department, and in
Berkeley that supply closet has always been maintained by the
people who work in the evidence room, primarily because they've
got the storage shelves, they are there all day long receiving
and processing property. So, if we need to go and get some
notebooks or whatever there, you can be confident there is
always someone in that room. Or usually, someone in that room
to give you supplies. We've always had supplies in that office.

The POST report recommends that we cage off that one section.
And when I discussed it with the people who looked at the POST
report, it is basically the reasoning behind that was so that
there wouldn't any confusion, so that when the property clerks
when you go down there and ask for some post-it notes, that they
somehow be confused and instead of going and getting the supply
post-it notes, they might somehow go and get the evidence post-
it notes.

Well, to me it sounded a little absurd because the evidence is
packaged, and it's kept in a separate part of the same room.
It's packaged differently; it's not sitting on the shelf, but
they advocated that we should somehow wall this off or cage it
off and the purpose of that to me is kind of artificial. They
have to go to the separate area of the room. It's clear where
they are going to get supplies. It’s clear that they are not
going evidence, and to me that one aspect just seems pointless
for us to spend a bunch of money, building a cage that just
makes it harder for them to go and get the supplies because they
are the only ones who have access to that room. So, that’s the
only piece in here that I think doesn’t make a lot of sense to
me, and I don’t really want to spend a whole lot of City’s money
to try to implement that.

WW: Okay. At this point, we will take a 10-minute break, and
then when we come back, we will have a brief, really meaning
brief, follow-up questions. I know you have some follow-up
questions. And, we do have more on our agenda … so, let’s take
10 minutes and then … Okay thank you.

* After the break …

WW: Okay, we are back on the record. Again, this will be a
follow-up period, please keep your questions brief as possible,
and we will start at my extreme left this time with PRC Officer,
Victoria Urbi.

VU: Chief, you talked about earlier about the drug recognition
expert class. Do you know about how many officers in the
department or what the percentage of officers have participated
in this type of class?

CH: Probably the current officers, I’d just be guessing, maybe
20% -- maybe less than that -- because all the hiring done over
the last few years, a lot of the people been probably retired.

VU: Is it a requirement to be in S.E.U. to take that class?

CH: No. It’s one of the recommended classes that they would be
assigned to take. It’s not absolutely required to take before
they are assigned there. What we have … when officers are
placed or selected for a special assignment, depending on the
special assignment, they are assigned in; then, our personnel
and training section starts to schedule them for schools that
are appropriate for that assignment. So, an officer assigned a
drug task force would normally get assigned to take that class
as soon as we could schedule it.

As I said it before, it’s sometimes difficult to get them
scheduled, and then, like an undercover officer in the Special
Enforcement Unit then would be assigned to the two-week narcotic
investigation class that the Department of Justice puts on.
And, so they would normally be assigned. But again sometimes
you know it’s a two-week class, they don’t offer it frequently,
so someone might be working in that assignment for an extended period of time before you are able to get them into the class.

VU: And you stated earlier that there is no protocol that the department has for inspecting the narcotics envelopes. Does POST have a protocol?

CH: They don’t have a written one that I am aware of. I mean we discussed the process, and certainly my intention is that (inaudible) ones we’ve done since then, and in the future we will do those more extensive examinations of the envelopes to make sure the envelopes haven’t been tampered with.

And then, another issue that is covered in the POST report is that at a time of evidence destruction you are again to do that same kind of thorough inspection of the envelopes. Spot-checking envelopes where you would – it doesn’t really go into a great detail in the report, but from what they described to me, and what we have done in the recent drug destruction case was I assigned someone from outside the unit to go to the incinerator room where they did the destruction.

That person was instructed beforehand to research some cases, and then do spot checks of pulling envelopes, examining envelopes to make sure they weren’t tampered with, and then periodically take some envelopes out and say okay, this envelope – it says it has a quarter gram of rock cocaine, so now we are going to open it up, and whip out the scale, we are going to weigh it, yes it has the quarter gram of rock cocaine, and now we are going to take off a little chunk of it and test it to make sure that as we are destroying the evidence that what’s in those envelopes is what is supposed to be in those envelopes at the point of destruction.

VU: And you stated earlier that all officers are required to go the POST training. In the training, is there anything on protocols where officers suspect that colleagues might be under the influence and what they should do about that?

CH: Not that I am aware of.

VU: And, is that situation covered in the field-training program?

CH: Not that I am aware of.

VU: And, you stated earlier that when money is seized during narcotics investigations, there are small sums, and there is large sums where the large sums are checked and double-checked by a supervisor and counted in front of people. Could you give me amounts of what’s considered a large and a small sum?
CH: I am not sure if the order is specified? I think it says a significant amount, but we are talking about more than a couple of hundred dollars generally - that’s when we invoke that it’s a smaller amount. We generally wouldn’t do that. But even when you’re doing a narcotics search warrant, there’s lots of officers there - usually when there are more officers there, it’s a pretty standard procedures when there’s several officers at the scene - and you do find money to count it right in front of somebody, so everybody knows here is the money, I count it out, and put it in the envelope right here so everybody sees it. The procedures are to handle that stuff very openly in front of other officers, so everybody sees what you are doing, and is aware of how much money is being seized, and that sort of thing.

VU: And, how do supervisors determine if an officer might be under the influence of a substance or have a medical issue?

CH: The same way anybody else would, just by your observations of them, and what they are doing. If they thought someone is under the influence of some substance and then they are going to bring attention up the chain of command, and we’ll deal with it as best we can.

But as I said, you know, the policy in Berkeley is that we cannot conduct a drug test. If tomorrow an officer shows up to work with alcohol on their breath, we cannot conduct an administrative alcohol test; we cannot conduct an administrative drug test. If we were to see them driving, and we were to conclude that they are driving under the influence, then we could arrest them for driving under the influence, then we could as a part of the criminal investigation, we could do those kinds of tests, but from an administrative point of view, we cannot do those kinds of tests, and that’s Council policy.

VU: I just want to clarify earlier ...

CH: If you want to make a recommendation of that, I’d be happy to hear it.

VU: We are ...(inaudible) I believe you stated earlier that currently BPD does not have a policy that the officers who suspect a colleague of being under the influence to report it to their supervisor? Is that correct?

CH: There is no written policy that requires them to do that.

VU: And, going into the criminal case, did you read the entire report?

CH: Yes.
VU: And, were you satisfied with that investigation?

CH: Yes.

WW: Mr. Chanin.

JC: Are there any new policies that the Berkeley Police Department has implemented as a result of the Kent or Fleming cases?

CH: Yes, in terms of how we did - we haven't written the policies yet, but in terms of how we did the drug destruction. We are following the POST recommendations in terms of how we are doing our inspections of the property room. We're following the recommendations in terms of being more thorough in how we examine the envelopes and that sort of thing.

JC: So...

SS: I'm sorry, you said according to the POST recommendations?

CH: Yes.

SS: That's how you're examining the evidence?

CH: Examining the - when we are doing audits and inspections of the drug evidence room, we are doing a more thorough job of examining the envelopes and that sort of thing, than we had done in the past. You know, I told you I conducted some of those inspections myself in past years, and I had not done as thorough an examination as I could have, in light of what developed in this case.

JC: So, there's these policies you are planning on writing, but you haven't written them yet.

CH: Right.

JC: So, there is nothing has been written yet, but there are things that are being planned.

CH: They've being planned and being worked on, yes.

JC: And those two things are the drug - POST recommendations on drug destruction and the inspection of the property room?

CH: Yes, as well as the other recommendations in there in terms of location of where the evidence will be stored. And we are looking at transferring people from one chain of command to the
other for who has custody and control of the evidence, all that sort of thing.

JC: Is there any new training of any kind that the Berkeley Police Department has implemented as a result of the Kent or the Fleming issues?

CH: No.

JC: I just want to clarify one thing and then I am done. In order to get the SEU, it’s not a requirement to take a drug recognition class?

CH: In order to get assigned there?

JC: Yes.

CH: No, it’s not.

JC: Is there a requirement that you take the class within a certain period of time, after you are …

CH: No.

JC: I mean, you are aware that someone on parole or probation who is - just on the officer’s say so if they are found to be in violation of 11550 of the Health and Safety Code. They can do years in prison, just on the officer’s say so. You are aware of that?

CH: No, I am not.

JC: You are not?

CH: Not - that they could do years in prison. I would be amazed if someone on parole did years in prison as a result of being arrested for 11550. Maybe 3 months in prison, but that has been my experience with the criminal justice system.

JC: Well, I can assure you that it’s more than 3 months in prison from personal experience. I haven’t done criminal law in years, and the penalties are a lot harsher now, than they were when I did, but it’s a felony, right? It can be charged as a felony, is that correct?

CH: I’ve never seen it charged as a felony.

You have never seen 11550?

I’ve never see 11550 charges of felony. In fact, I rarely it charged.
JC: You are aware it can be charged as a felony?

CH: I was not aware of that. I suppose I ...

JC: Isn't it what's known as a wobbler; can be charged a misdemeanor or felony?

CH: I don't have - I don't have the criminal codes memorized. I don't know ... it's normally when we arrest people, they're normally booked into a jail as a misdemeanor, and so I'd have to look up the section.

JC: Well, I wish you would, and if I am wrong then I am. It wouldn't be the first time or the last, but I think I am not wrong about this. And, I know I am not wrong about getting very long sentences if you are on parole and probation, and you have a (inaudible) hearing or parole revocation hearing of some kind. An officer says to you that you are under the influence of drugs. That's pretty much it, for that person. So, it's very serious. I mean we are talking about huge amounts of time, of deprivation of liberty and once you get in the prison system, perhaps your life, so this is a very serious matter.

CH: Well, I guess maybe your experience with the criminal justice system is different than mine.

JC: Yes, it is.

CH: For most parole violations that I've seen - people do not spend years and years and years back in custody for a single parole violation. Most people come out on parole, have very little time hanging on them, and for most violations of parole, it's you know, 3 months, 6 months, every once in a while you see a year, but I don't - my experience is I don't see people on parole violations going back for some extended period of time.

JC: Let's just assume for the sake of it you're right. If you can get 6 months for violation of 11550, on an officer's say so that you are under the influence of narcotics in a parole hearing where there is no jury trial at all, it's the officer and someone who has a long felony record and guess who wins? In a parole violation, you are familiar with that? Is that correct?

CH: Yeah I am familiar with that part of the process.

JC: Can we agree then that even 6 months is a long time to be sentenced for something that you didn't do?
CH: Yeah, I would say that's a long time sentence if that's the case.

JC: Even so, I mean would you be open to making it a mandatory requirement for people at SEU to take a drug recognition class?

CH: I guess I am still confused with your direction. 'Cause it sounds like you think that officers in SEU are making 11550 arrests without having been trained in the procedures for making 11550 arrests. Is that what you are getting at?

JC: Well, I'm saying - they didn't attend the drug recognition class, what other training have they had? I assume ...

CH: Well, if they haven't been to an 11550 class, they are not making 11550 arrests.

JC: So, an officer who doesn't go to the 11550 class is prohibited from making an 11550 arrest?

CH: I have never seen an officer who has not been to that class make the 11550 arrests.

JC: That's not my question.

CH: There is no policy that prohibits them from doing that. I have never seen them do that, and generally speaking they do not that. I am not aware of anybody making the 11550 arrests, if they have not been to that training.

JC: But there is nothing to prohibit it.

CH: No.

JC: Just you didn't know about it.

CH: I don't know about it. I don't believe it's happening.

JC: Okay. I mean I don't want to be rude, but you didn't think the Kent or Fleming thing was happening either. Is that correct? I mean you didn't know that they were doing it before they were discovered, did you?

CH: You never know somebody is doing something before they are discovered.

JC: Exactly. That's all I have.

WW: Ms. Prichett.

AP: Uh, (Inaudible)
WW: Commissioner Smith.

SS: I have nothing further.

WW: Ms. Prichett?

AP: A couple of things ... one, you said that you guys went ahead and did a drug destruction in January.

CH: Yes.

AP: Was the five garbage bags full, that have been audited and so forth? Is that...?

CH: Everything that had anything to do with the - this evidence theft case was not destroyed. We were destroying the cases that had absolutely nothing to do that process.

AP: So, you still have those envelopes that Cary Kent was scheduling to destroy. You preserved that.

CH: Yes, we preserved that.

AP: Has it been an exhausted inventory taken of that? Like every envelope in each pack that has been checked and documented and weighed, and so forth?

CH: No, I don't believe so. You are the one who did it.

LH: I did it.

CH: Well, you did it. Tell them what you did.

LH: Every envelope was inspected. It was not weighed, and it was documented.

AP: Do you have an intention of trying to ascertain the total amount of drugs? Is that ... because in the police report that there is an inventory - envelopes are listed, amounts of drugs, compared to, there is no comparison, there is no - where I sort of expected to see was, you know envelope #3 weighs in at 10 grams and (inaudible) zero, missing drugs 10 grams, and I was looking to see something like that. And, does that exist?

LH: No, I didn't do it.

AP: So, no one has done it. You have an intention of doing that?
CH: I have no intention of re-opening the criminal investigation.

AP: Do you have...?

CH: Which is what we would have to in order to do that.

AP: So, you have no intention of finding out how much drugs was missing?

CH: I could...

AP: It's good enough for you guys that some drugs were missing.

CH: The exact amount at this point doesn't make that much difference. He has been convicted of two felonies, and the case at this point is closed.

AP: I would just like for the record. I think that's hugely important - because there have been accusations that officers in the Berkeley Police Department have been involved in drug dealing. There have been accusations that they have planted the drugs. And, I think in terms of tracking the flow, I...

CH: Ms. Prichett, the only person who has made those allegations is you.

AP: I am afraid that's not true.

CH: Nobody else has come forward to make that allegation.

AP: I have not made allegations (inaudible.)

CH: Nobody has made that complaint to the Police Review Commission. Nobody has made that complaint to the District Attorney's office. Nobody has made that complaint to their Public Defender, and had that information brought forward to us. Nobody has made that complaint to anybody. The only people who made that complaint are you, making these bold allegations...

AP: I am not making any allegations at all. I am not making an accusation. My final question relates to General Order P-65. What you have said that you are - you did conduct a drug evidence destruction according to the POST recommendation.

CH: Uh huh.

AP: Without PRC approval - which I am glad you're doing that.
CH: I probably got to the point where I needed to get rid of
the stuff because we had too much in the files, and we didn't
have room for it any more.

AP: Sure. Now, as far as auditing ... POST hasn't really
recommended very much in terms of altering the audits.

CH: Right.

AP: And, how audits conducted. So, I presume that General
Order P-65 will stand. That seems to be your most current ...

CH: I think we're going to be making some adjustments to it,
but yes ...

AP: Because according to General Order P-65, monthly audits,
quarterly audits are conducted by the property officer and the
drug property officer who is - whoever occupies - was is it,
administrative narcotics sergeant or whatever, so he was
basically supposed to audit himself, according to this policy?

CH: Yeah, until if you read even further, there is also
inspections by people from outside the division who also do
those inspections.

CH: That's what POST is recommending. That's what we are
planning on doing.

AP: It's not in there yet, but...

CH: Because we haven't re-written it yet.

AP: I look forward to it.

WW: At this point, I would like to thank you, Chief Hambleton,
for coming and sitting before this Subcommittee. And I'd just
like to pass along a few of the conversations with the PRC
office and Subcommittee has had this past week based on the
Police Unions Representative letter to the city and you. We
will continue to have dialogue with the City Attorney and the
City Manager to try to circumvent some of the road blocks that
have been put in front of us so we can continue with our
investigation for developing policies that will eliminate such
situations that have occurred in the past.

Having said that, until then, we will probably seek other
avenues perhaps direct communications by correspondence to you
with questions that may come up, through our continued meetings
of the Subcommittee. So, I'd just like to bring that to your
attention.
CH: Okay, that's fine.

WW: You have not heard the last of us. We will continue ...

CH: Historically, that is the way that policy inquiries have occurred in the past, is that commission deals with the Chief, or with the Command Officer, often in writing so that there is no question about what the department's response is. I am more than happy to do that in future, too.

BW: Thank you.

CH: Okay.

WW: Thank you, Lt. Harris.

LH: (Inaudible)

WW: Okay, at this point, we will have public comment. Again, there will be no dialogue with the public with out invited guests. So, you can make a public comment to the public. So, three minutes is the limit on the public comment, two minutes ... Ms. Urbi, can you time? Can you state your name and your city or town of your living?

Male Citizen: My name is (inaudible). I live in City of Berkeley. I've been living here for 15 years. I really appreciate the fact you can hear (inaudible) if somebody was in their job, like a cashier or something. They could be regularly checked for drug test. How could you say that the police officer could come over there (inaudible). You just mentioned it.

Commissioner: You can make a comment. You cannot ask questions. You can only make comments.

Male Citizen: And then, you say ... the reason the Berkeley Police Department has a drug task force to seize drugs for their personal use. Let me just say that you have some big officers over there, you've got some big supply over there (inaudible) - yes, it's okay some supervisors - this is terrible, I mean I was just listening to the radio the other day over the weekend, but this lady from Hayward called, asked this attorney saying that Berkeley Police Department came to Hayward, (inaudible) read something, they immediately opened the door, twelve police officers rushed in, the shot the... (inaudible)

VU: Time.

Male Citizen: Can I borrow yours, or somebody else's?
Unknown: You can borrow mine.

WW: Okay, a time has been borrowed. You have 2 more minutes ...

Male Citizen: If this guy was stupid enough to use drugs ... you know (inaudible)

** Tape 2 (Side A)

Male Citizen: Maybe you say the justice system is, people they go, you never heard of people for drug thing go to prison for 3 months. Maybe that's only your knowledge of what your own officer learned. People, they go to prison for long time. I think they go to jail you see that all minorities. They have no say they have no way to get defense, they don't have money they don't have nobody here. I think this is just the tip of the iceberg, do all these things, ridiculous. (inaudible) People they lose their lives in prison. If for any chance they get out on the street (inaudible) In San Francisco, basically the Mayor says to them, to the Police Department, do what do you want to do. (Inaudible) Probably the same exists in City of Berkeley. I think, not you guys individually, I think you guys fail to oversee that this kind of crime doesn't take place. Because for us you're just sitting talking. People they lose their lives in prison. It's a really sad thing. And they don't have the money to buy a good defense. If by chance they come out, they get them back again. This drug thing is just a very, very, primitive...

VU: Time.

Male Citizen: Thank you.

WW: Any other? Did you want to say something?

Citizen Cynthia Lee: Yes. Could you give me a 15 second warning? Thanks. I'm Dr. Cynthia Lee, and I am a visitor to the area. And, I want to mention that I think from my experience, it can be very hard to sometimes ascertain that somebody is on narcotic. I personally watched a video presented by an oncologist who had a patient with a brain tumor, that he allowed to drive with an IV morphine drip in, receiving 100s of millions of morphine a day because of her individual needs. But such that she could safely operate even though those dosages. We watched her go through intersection, safely stopping for (inaudible) in the video. It was some years back. So there is a misconception, I think that if somebody habituated, that you can necessarily tell on the physical exam without getting a drug test. I am not sure I would make that statement. I think if a neuropsychological testing is under-utilized and certainly board
certified. I am not a neuropsychologist, I am a clinical physician, but it looks at far more intricate ways about how the brain functions and maybe far more useful in the long run. Also it’s predicted that if someone’s IQ, for example, is changing or certain parameters are changing from year to year or even in the third year, you would then get a prediction that a person should go get a much more thorough medical exam, and not one that you would have to pay for. (inaudible). I think that’s most of what I wanted to say ... I’ve love to see more officers with medical training, not necessarily para medic, (inaudible), so they are quicker to recognize people who are elders, hypoglycemic (inaudible).

WW: Thank you. Okay we will now move on to item...

CH: Could I address an issue - just to clarify something? The issue about drug testing ... by Council policy, we cannot drug test. That does not mean we can’t discipline people who have alcohol on their breath, that come to work under the influence. In fact, I have done that as Chief. Other Chiefs have done that, and we have - we do take discipline action under the circumstances. It’s just that as part of the disciplinary action, we cannot give a drug test or an alcohol test. Again, because that is City Council policy.

WW: Okay, let’s move to Item #2-B.

LH: I just want to make a quick comment. Sorry - I wanted to acknowledge Ms. Prichett. I did make an error when I said that the cell phone, badge and gun were confiscated that night. It was the department keys, ID card and cell phone. And then, the other items were confiscated later.

Prichett: Yes, it just never said in the report.

LH: I apologize for that.

* * * *

WW: Let’s move on to Item #2-B. We would like to discuss the letter from the Berkeley Police Association regarding officer’s interviews and next steps.

G:\PRC\Director\Policy Subcommittee\Evidence Theft/Minutes
EXHIBIT D:

MEMORANDUM TO MAYOR AND CITY COUNCIL DATED 4/14/06
April 14, 2006

To: Honorable Mayor and
Members of the City Council

From: Phil Kamlerz, City Manager

Subject: Update – Retired Police Sergeant Cary Kent

This is to update you on the issue regarding retired Police Sergeant Cary Kent. A press release is also being distributed today with the following information:

Cary Kent will appear in Alameda County Superior Court today for arraignment on three felony charges that include grand theft, possession of heroin, and possession of methamphetamine. These charges have been filed as a result of a recent comprehensive criminal investigation conducted jointly by the Berkeley Police Department and the Alameda County District Attorney’s Office.

The investigation led to the discovery of actions by now-retired Police Sergeant Cary Kent, 52, who had earlier requested to be out on leave. Kent submitted a letter in March, 2006 announcing his retirement rather than cooperate with BPD Internal Affairs staff regarding this audit.

On January 6, 2006, Berkeley Police Chief Doug Hambleton ordered an internal audit of the police department’s drug evidence handling procedures. During the audit, the department discovered procedural irregularities in the handling of some of the cases with illegal drug evidence.

Three days later, on January 9, 2006, Chief Hambleton met with Alameda County District Attorney, Tom Orloff, and fully briefed him on the situation. Together they launched a joint criminal investigation to ascertain if illegal conduct occurred. Immediately that day, the BPD Internal Affairs Bureau also started a separate administrative investigation to determine if departmental policies or procedures were violated. Investigators subsequently determined that several crimes occurred including grand theft (PC487), possession of heroin (H&S 11350), and possession of methamphetamine (H&S 11350).

Chief Hambleton has invited the California Commission on Peace Officers Standard of Training (POST) to review the department’s drug handling procedures and policies to see if any changes should be made.

Chief Hambleton stated his assurance to the community that only Cary Kent has been found responsible for the mishandling of drug evidence in the department. With the charges now filed by the District Attorney, along with the upcoming POST procedural review, he is confident that the matter is appropriately addressed.
"This investigation has been a tremendous challenge and disappointment for the men and women of the Police Department. We are relieved the investigation is concluded and we have determined that only one officer was involved. Now, we can move forward....." - Chief Hambleton

Please let me know if you have any questions.

Cc: Doug Hambleton, Chief of Police
    Mark Zembsch, Deputy City Attorney
    Sara Cox, City Clerk
EXHIBIT E:

MEMORANDUM TO POLICE REVIEW COMMISSION DATED 4/19/06
April 19, 2006

To: Police Review Commission

From: Phil Kamlarz, City Manager

Subject: NARCOTICS HANDLING PROCEDURES

I understand that the PRC will take up the issue of narcotics handling procedures at your next meeting. This has risen out of the most recent case of Sgt. Kent's theft of narcotics from the evidence room.

I want the Commission to know that staff takes this issue seriously. Chief Hambleton has asked that POST, (Police Office of Standards and Training) conduct an independent review of our narcotics handling procedures and make recommendations for improvement (see attached letter).

I feel that once this study is conducted, an appropriate role for the PRC is to review and comment on the procedures and POST's recommendations. I would like to invite the PRC to participate in improving our evidence handling procedures to ensure that the community is confident that there are no improprieties. Chief Hambleton shares my view.

Furthermore, I have asked the Chief to work with the District Attorney to better coordinate information distribution once it becomes public. It is important to keep the Commission informed of information available to the public and we are committed to developing a path of distribution that is effective. Clearly in the case of the issuance of search warrants, which are public documents, we will find a way to make them both known and available.

Attachment

cc: Mayor and Councilmembers
Lisa Caronna, Deputy City Manager
Dave Hodgkins, Director of Human Resources
March 14, 2006

Kenneth J. O’Brien
Executive Director
Commission on POST
1601 Alhambra Blvd.
Sacramento, CA 95816-7083

Re: Request for Management Counseling Services

Dear Mr. O’Brien:

This letter is to follow up on my phone conversation with Assistant Executive Director Michael DiMiceli from earlier this week. I had asked for POST assistance to examine and make recommendations regarding the Berkeley Police Department’s narcotics evidence handling procedures. He directed me to you in order to make a formal request.

In January we discovered serious irregularities in the handling of our narcotics evidence. After completing a lengthy joint investigation with the Alameda County District Attorney’s Office, I am satisfied that we have determined what took place and identified the individual responsible for the improper actions.

In order to put this episode behind us I need to have confidence that our narcotic evidence handling procedures and internal controls meet professional standards and are adequate to protect against improprieties. To that end I am requesting that POST conduct a review of our procedures and make recommendations regarding any changes that may be needed. I have discussed this request with City Manager Phil Kamilarz and he joins me in making this formal request.

I look forward to working with POST on this matter.

Sincerely,

Douglas N. Hambleton
Chief of Police

cc: Phil Kamilarz, City Manager
    Michael DiMiceli, Asst. Executive Director
EXHIBIT F:

LETTER FROM BERKELEY POLICE UNION
DATED 4/26/07
April 26, 2007

Alison Berry Wilkinson
Pleasant Hill

VIA EMAIL, FAX AND REGULAR MAIL

Douglas Hambleton, Chief of Police
City of Berkeley
2100 Martin Luther King Jr. Way
Berkeley, CA 94704

Re: Subcommittee Investigation on Evidence Theft Issues

Dear Chief Hambleton:

On behalf of the Berkeley Police Association, I write to request that you withdraw the order issued to individual officers to participate in the interviews currently scheduled by the Police Review Commission’s Subcommittee looking into Berkeley Police Department’s “Evidence Theft Issues” until such a time as it is resolved whether the Commission has the lawful authority to conduct such interviews.

This is a highly unusual situation that warrants careful analysis and discussion in order to ensure that (1) the PRC can fulfill its obligations to the public pursuant to City Ordinance 4644-N.S., (2) the rights of individual Berkeley officers are maintained, and (3) the Department does not run afool of the recent court order in Berkeley Police Association v. City of Berkeley, the Public Safety Officers Procedural Bill of Rights Act, Government Code section 3300 et seq., and Penal Code section 832.7. It is the Association’s hope that it can work together with the Department, the PRC and the City on these issues, but if that is not possible, the Association has authorized this office to pursue court action to obtain resolution.

Section 10(b) of City Ordinance 4644-N.S. only authorizes the Police Review Commission (PRC) to “review and make recommendations concerning all written and unwritten policies, practices, and procedures of whatever kind and without limitations, in relation to the Berkeley Police Department.” That ordinance does not permit the PRC to investigate policy issues. Indeed, there are no rules, regulations, procedures or precedent in which the PRC has conducted individual officer issues in connection with a policy.
Douglas Hambleton, Chief  
Re: Order to Attend PRC Subcommittee Interviews on Evidence Theft Issue  
April 26, 2007  
Page 2 of 2  

review. In contrast, the Ordinance specifically permits the PRC to *investigate* complaints of individual officer conduct, and the rules, regulations and procedures specifically address the manner in which individual officer interview can be conducted. Thus, the plain language of City Ordinance 4644-N.S. prohibits the interviews of individual officers.

As you are no doubt well aware, the Alameda County Superior Court recently issued an order compelling the Police Review Commission to abide by the Public Safety Officers Procedural Bill of Rights Act, Government Code section 3300 *et seq.*, and Penal Code section 832.7. The current subcommittee investigation violates that court order as well as both statutory schemes. Indeed, the subcommittee investigation appears to have been specifically designed to circumvent that court order so that individual members of the public appointed to the committee can examine individual officer conduct with respect to the Department’s evidence procedures and subject officers to interrogations that may lead to punitive actions. Given the pending adjustments necessary to conform PRC practices to that court order, it would be prudent to withdraw the interview order until these issues can be examined and resolved.

Although there may be disagreement with respect to the above contentions of the Berkeley Police Association, I hope you can agree that it would be wise to postpone the scheduled interviews until such time as these issues can be resolved. Failure to do so subjects the City not only to potential contempt of the Court’s order, but also to monetary sanctions pursuant to Government Code section 3309.5.

I look forward to your decision on withdrawing the order issued to individual officers to attend the currently scheduled PRC Subcommittee interviews until the legal issues presented herein are resolved. Please do not hesitate to contact me directly if you wish to discuss this matter further.

Very truly yours,

RAINS, LUCIA & WILKINSON LLP

[Signature]

Alison Berry Wilkinson

Cc: Manuela Albuquerque, City Attorney  
Phil Kamlerz, City Manager  
Victoria Urbi, PRC Officer  
Henry Wellington, President  
Berkeley Police Association

ABW/me
EXHIBIT G:

NEWSPAPER ARTICLES
Cop Pleads Guilty, Critics Urge Investigation

By Judith Scherr (04-18-06)

Former Berkeley Police Officer Sgt. Cary Kent, 53, pleaded guilty Friday to three felony charges: grand theft, possession of heroin, and possession of methamphetamine.

Kent "stumbled," said the officer's attorney, Harry Stern of Rains, Lucina and Wilkinson in Pleasant Hill, describing his client's actions moments after the plea.

Stern negotiated with Deputy District Attorney Jim Panetta to give Kent, who had access to the drug evidence vault from September 2003 to January 2006, about five years of probation and no prison time in exchange for the guilty plea.

Kent will be sentenced May 12 to a possible year in the county jail, Stern said.

The joint police-district attorney investigation was limited to Kent and is closed.

That troubles Andrea Pritchett, of Berkeley Copwatch who is calling for an independent investigation of all police who had access to the evidence room.

"The other [four] officers with access to the evidence room were not investigated," Pritchett said.

While investigators found 181 bags of evidence scheduled for destruction had been tampered with, Pritchett said investigators should review all the drug evidence that passed through Kent's hands. One of Kent's tasks was to check drug evidence into the evidence vault.

The City Council should take a more proactive role in ascertaining whether the problem goes beyond Kent, she
added.

Calling the council responsibility in this case "pretty limited," Councilmember Laurie Capitelli said he is satisfied with the council role.

"This appeared to be an isolated incident," he said.

He further noted that the city is bringing in an independent agency—the California Commission on Peace Officers Standard of Training—to audit current police procedures.

Mayor Tom Bates agreed that the council should play a limited role in investigating personnel matters, but said he wants the Police Review Commission to review "the whole way evidence is handled."

Speaking to reporters outside the courtroom after Kent pled guilty, Stern, a former Berkeley police officer, emphasized that his client had "scores of commendations," and that he was now "on the mend."

Kent hurt no one but himself, Stern said

"He took responsibility for a temporary lapse," he said. "We're all capable of making mistakes."

The almost 20-year Berkeley police officer, who was allowed to retire on March 14 "rather than cooperate with BPD Internal Affairs staff regarding the investigation," according to a BPD statement, remains out of custody until he is sentenced.

Panetta said he did not know if Kent would be placed within the regular jail population.
Bitter Honda Strike Ends With Contract Agreement

By SUZANNE LA BARRE

Service workers at Berkeley Honda overwhelmingly approved a contract late Monday, ending a bitter 10-month strike that concluded a negotiation impasse last June when incoming Berkeley Honda owner George Zapanta failed to reach an agreement with several union employees and refused to renew union contracts.

Under the watchful eye of the union's symbol, a towering bronze bull, company representatives gained the picket line at 260 Shattuck Ave. urging potential customers to take their business elsewhere.

"No longer," the settlement tentatively reached late last week, includes changes in work rules for roughly 30 workers who lost their jobs, calls for an annual 1 percent raise when the new contract was renegotiated.

"The union's Automotive Industry Union Plan was at the crux of the labor dispute. Management said it was unfair to the employees who had been promised a financial burden on dealership owners, and led former Berkeley

International Food Festival Lands in West Berkeley

By RIYA BHATTACHARJEE

Ever heard of a little something called "Mulligatawny"? In case you haven't, it's a spiced Anglo Indian soup made with red lentils, vegetables and chicken. Nothing foreign about red lentils, vegetables or chicken, is there? And yet, most of us would think of it as something exotic and even have a hard time relating it with food.

On Sunday, the West Berkeley Neighborhood Development Corporation along with the city

North Shattuck Plaza Planned for Gourmet Ghetto

By SUZANNE LA BARRE


These are a few of the possibilities for the newly configured streetscape at the northern tip of the gourmet ghetto, a stretch currently dominated by a complicated confluence of roadways.

The project is still in its infancy, but plans to reclaim and expand the streetscape are underway. Community members are banding together to plan the development, and the city officials are working with the Ecology Center, a weekly farmers market, redirecting traffic onto Shattuck Plaza and redistributing parking. Trees, grass, benches, exhibit space and more pedestrian-friendly amenities at the plaza will feature prominently, project organizers say.

"If this sounds familiar, that's because it is. The same scheme won approval from the City Council in 2001, but proponents never found a funding mechanism and the project was subsequently shelved. Now, more than five years later, community members are banding together to plan the development, and the city officials are working with the Ecology Center, a weekly farmers market, redirecting traffic onto Shattuck Plaza and redistributing parking. Trees, grass, benches, exhibit space and more pedestrian-friendly amenities at the plaza will feature prominently, project organizers say.

The nonprofit's board of directors includes Assemblemember Laurie Lake (District 3), who is also a partner at Red Oak Realty, and Councilmember Miss Hailey (also of District 5), former Board of Education Director Lloyd Litts, City Environmental Analyst of the North Shattuck business association and others.

Stool's overarching motivation is to develop an awkward streetscape into usable, pedestrian-friendly public space.

"I would love to have such a plaza to grace the community," he said. "I want it to have a sense of identity and place.

The surrounding area is made up of retail shops, restaurants, cafes and side streets with single-family homes, rooming houses and

Police Chief Details How Cop Stole Drugs

By JUDITH SCHERR

While Berkeley Police Chief Doug Hamblen explained how the drug evidence theft was "not a "professional violation of public trust," in an oral report he gave to the Police Review Commission Wednesday, the chief's account left some commission members and audience members still searching for answers.

Hamblen's summary, presented to six commissioners and some 20 audience members—mostly Berkeley Watch volunteers—begins with an explanation of why it took several months for officers to recognize Kent's problem.

In the fall, colleagues noticed the 16-year veteran's "suspicious behavior." Officers "were led to believe the unit of evidence was not going to be used," Hamblen said.

By the end of November the department scheduled a medical exam for Kent, who came late to the appointment, rescheduled, finally saw the doctor, but refused blood tests at the time because,

Hamblen explained, "he said he was too weak to fast," a prerequisite for the tests.

Scheffler said he "went about the process of transferring the evidence, an audit that had never been done before."

Scheffler said he "went about the process of transferring the evidence, an audit that had never been done before."

"Because of some of the behavior suspected, I decided I needed to do a full audit of the drug evidence room," Hamblen said.

He had three officers check the evidence. The evidence was never left alone. The audit consists of checking all files to make sure all envelopes are accounted for. "I believe we have never examined every envelope to that degree of scrutiny," Hamblen said.

The officers found about 25 envelopes unopened and sealed, with evidence missing, sometimes replaced by other substances.

Continued on Page Twenty-Two

Continued on Page Twenty-Two

Continued on Page Twenty-Two

Continued on Page Twenty-Two
Shattuck Plaza Planned for Gourmet Ghetto

The portion of Shattuck Avenue, from Vine Street to Rose Street, where the proposed North Shattuck Plaza could be built. Plans are in their beginning stages and many options for the area are being considered.

Police Chief Details How Officer Stole Drug Evidence

The image contains text that is not legible due to the quality of the photo.
Panel Demands New Policy for Police Misconduct Probes

By Judith Scherr (05-08-07)

Charges of misconduct levied against two Berkeley police officers in the recent past spurred a five-member Police Review Commission subcommittee to look at creating more effective police policies.

Thursday evening the Evidence Theft Subcommittee interviewed Berkeley Police Chief Douglas Hambleton on issues arising from two police misconduct cases: Cary Kent, a former police sergeant, pleaded guilty in May 2006 to felony charges of stealing drugs from the evidence room he was responsible for; and Officer Steven Fleming was charged by the department with stealing money and other items from citizens he arrested. Fleming resigned from the department in February without being charged by the Alameda County District Attorney’s office.

At the Thursday meeting, subcommittee members—PRC Commissioners Bill White, Sharon Kidd and Sherry Smith, and community members Andrea Pritchett of Copwatch and James Chanin, an attorney and former PRC member—had hoped, in addition to the chief, to interview officers close to the two cases.

The Berkeley Police Officers Association, however, in a letter to Hambleton threatened to “pursue court action” if officers were required to appear and testify before the subcommittee, linking its objection to a recent case won by the BPA that protects police officer confidentiality in personnel-related issues.

Questioning the blue line

One question Chanin asked went to the heart of the problem in the Kent case: why did various officers recognize a problem
with their fellow officer but not report it? The 900-page Internal Affairs report, made public after Kent pleaded guilty to felony charges, documents through interviews with numerous officers that many realized there was something amiss with Kent more than two years before charges were brought against him. He was unkempt, performed duties late, was at the station at odd hours of the day, slept at his desk, isolated himself and more, according to the report.

Some officers mentioned their concerns to colleagues, and a few mentioned the problems to commanding officers, the report said.

"Are officers trained to tell their supervisors when they see an officer is unable to perform his or her duties?" Chanin asked the chief.

"I don't think there's a specific training on that—no," Hambleton responded.

"Are there any policies to report any officers they believe are unable to perform their duties and responsibilities?" Chanin asked, and the chief said there are not, although, while the policy is not in writing, he expects supervisors to recognize problems and follow up.

When it was her turn to question the chief, Commissioner Smith pursued the issue of inadequate supervision. "The lack of written policies has allowed for so much leeway in your written policies that the results seem to be a complete failure of supervision," she said.

Smith went on to query the chief about disciplining supervising officers. "It would be curious to know if anyone had been disciplined because of failure to adequately supervise," she said.

Hambleton declined to comment, citing the letter from the BPA attorneys that cautioned against discussing issues in public that touch on personnel issues.

Along the same line of questioning, subcommittee members wanted to know whether there are policies targeting officers who are late. Interviews by the Internal Affairs Department showed that Kent was consistently late for meetings or did not come to them at all, and was late in distributing drug evidence to officers who needed it in court or was not there at all to distribute it.

Hambleton said if officers are late to work, it is recorded on their time cards. If the officer is late to distribute drug evidence the supervising officer should know about it, but there is no policy that says a report must go up the chain of command, Hambleton said.
Further he said there is no written policy mandating an officer report another officer if that officer doesn’t get drug evidence to him in a timely way.

And there is no policy that an officer file a report when an arrestee says his money has been taken by police or when an officer uses profanity in speaking to a prisoner, the chief said. (Former Officer Fleming was accused of both stealing prisoners’ money and using profanity in addressing them.)

Recognizing officers under the influence

Other questions addressed concerns that fellow officers, especially those involved in drug crimes, should have recognized that one of their own was a drug abuser. (While there was no confirmation in arrest records that Kent was a drug abuser, his attorney Harry Stein, of Rains, Lucia & Wilkinson told the Planet last year that Kent had sought treatment for drug addiction.)

"How are Berkeley police officers trained to recognize people under the influence?" Chanin asked the chief, who answered that there is a training that some officers go through, but most have not received the training.

Smith said she was surprised at the response. "I would think that anybody who is in charge of who’s on a narcotics squad for drug investigations would have taken that training," Smith said, wondering why, since the chief had been trained, he had not recognized a drug-addicted officer.

Hambleton responded that symptoms can be subtle "when someone appears to be sick, for instance," Hambleton said. (Kent had told several fellow officers that he had lupus.)

The chief further explained that such training might not help in a situation such as the Kent case. In addition to outward signs, the officer would have to touch the skin to see how moist it is, examine the suspect’s pupils, and take the person’s pulse.

"That’s not the kind of activity that would normally occur in the employment setting," Hambleton said.

The other avenue is ordering drug testing, something that is prohibited by the city, the chief added.

Chanin pressed the chief to elaborate on what new policies could be put into place so that substance-abusing officers are identified, but the chief said he thinks no new policy is needed in this area.

However, he would like to be permitted to send an officer suspected of abusing substances for a medical exam. "It is not
something we can do under the current policies," Hambleton said, noting that it would have to be part of the Memorandum of Understanding, the work agreement negotiated between the BPA and the city.

Drug evidence audits

Other questions addressed audits of drug evidence, checked into the evidence room and recorded on a computer. (The investigation into Kent's theft of drugs from the evidence room included some 286 envelopes whose contents had been tampered with.)

Hambleton said the audits were not as thorough as they could have been and that they did not weigh the drug evidence to see if it was the same or less than it had been when it was checked into the evidence room.

"Clearly the inspections that we do in the future will need to be more thorough and we'll have to examine those envelopes in much more detail," Hambleton said, noting that he has already tightened the audit procedure, which would likely become written policy in the future.

Before writing new policy, the committee will meet with the city attorney and city manager to discuss the BPA letter and then will meet to discuss policy recommendations. These meetings are yet to be scheduled, according to PRC officer Victoria Urbi.
EXHIBIT H:

APPLICABLE LAW AND POLICIES
HEALTH AND SAFETY CODE
SECTION 11550-11555

11550. (a) No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days or more than one year in a county jail. The court may place a person convicted under this subdivision on probation for a period not to exceed five years and, except as provided in subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that the person be confined in a county jail for at least 90 days. Other than as provided by subdivision (c), in no event shall the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.
PENAL CODE
SECTION 487
487a. (a) Every person who shall feloniously steal, take, transport or carry the carcass of any bovine, caprine, equine, ovine, or suine animal or of any mule, jack or jenny, which is the personal property of another, or who shall fraudulently appropriate such property which has been entrusted to him, is guilty of grand theft.

SECTION 503
503. Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.
City of Berkeley
Drug-Free Workplace Policy

The Federal Drug-Free Workplace Act of 1988 requires the City of Berkeley, including the Housing Authority, Library, Redevelopment Agency, and the Rent Stabilization Board, to certify that it will provide a drug-free workplace in order to obtain and maintain Federal contracts of $25,000 or more. The City has had a longstanding policy that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the City of Berkeley workplace.

Please remember that as a condition of employment, each employee shall:

1. Abide by the terms of the City’s policy and

2. Let the City know of any criminal drug statute conviction (including a plea of nolo contendere), for a violation occurring in the workplace, no later than 5 days after such conviction.

Any employee who has committed any of the unlawful acts of manufacturing, distributing, dispensing, possessing, or using a controlled substance in the City of Berkeley workplace may be subject to disciplinary action, up to and including termination, and/or be required to participate in an approved drug abuse assistance or rehabilitation program.

This is also to remind you of the substance abuse programs that the City makes available to its employees. Initial substance abuse counseling is available free to all employees through the Employee Assistance Program provided by Claremont Behavioral Services at (800) 834-3773. The City’s medical/health plans offer some drug and alcohol detoxification and rehabilitation services; however, the extent of coverage varies from plan to plan.

For additional information on the Employee Assistance Program, call Jim Mason, Occupational Health and Safety Coordinator, at (510) 981-6825.
Frequently Asked Questions
City Services

Jobs
Supervisory Related
ID Badges

Medical / Health Plans
Dental Plan
Other Benefits
Domestic Partnership
Leaves of Absence
Disability / 'Workers' Comp.
Retirement

Occup. Health & Safety
Training
Union / Agreements
E.E.O.
EEO Policy
Harassment Policy
Reasonable Accommodation

Admin Regulations
Personnel Rules & Regs.
Workplace Policies
Payroll Manual

The Americans With Disability Act (ADA) is the federal statute and the California Fair Employment and Housing Act (FEHA) is the state statute prohibiting discrimination in employment against people with disabilities. Under both statutes, the City is prohibited from denying employment to qualified persons with a disability and may be required to provide reasonable accommodation to persons with known physical or mental disabilities.

In accordance with the ADA and FEHA provisions, the City will provide, when feasible, reasonable accommodation for qualified disabled employees with a known physical or mental impairment that limits a major life activity that prevents them from performing the essential functions of their job classification. A reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things usually are done that reduces employment barriers and enables a qualified individual with a disability to perform the essential job duties of the position the employee holds. Reasonable accommodation may include job restructuring or redistributing marginal job duties; part-time or alternative work schedules; acquisition or modification of equipment or adaptive devices; modification of examinations, training materials or policies; providing readers or interpreters; and/or reassignment to a vacant position which is a comparable and similar job classification at the same or lower level of salary if the person can perform the essential job functions.

Reassignment will be considered only when an accommodation is not possible in the employee's present job.

Applicants for employment should notify the Human Resources Examination Unit, either verbally or in writing, of the need for reasonable accommodation during the examination process.
SUBJECT: Performance Evaluation Program

PURPOSE

The purpose of this Administrative Regulation is to establish general guidelines on the exercise of management discretion in reviewing and evaluating career employees' job performance.

POLICY

Career employees' current level of performance should be evaluated to examine the progress they have made since their last review and to establish goals for the next review. Immediate supervisors should communicate the goals and objectives of the annual evaluation program to their employees. As part of this program, supervisors should establish employee-supervisor communication on a regular basis, including discussions of work assignments and objectives and reviews of accomplishments and problems.

PROCEDURE

1. Due Date of Probationary Employee Evaluations

   A. Probationary employees will be evaluated in accordance with the schedule of procedures set forth in the Personnel Rules and Regulations or the applicable Memorandum Agreement. Managers are cautioned to carefully review the specific timelines for probationary requirements for each Memorandum of Agreement. Timely submission of probationary evaluation reports may impact the length of probationary periods for certain classifications.

   B. The hiring department will ensure that the probationary period is monitored. The probation period is a continuation of the examination process, during which time; the employee is subject to dismissal without cause. Failure to properly monitor and evaluate the probationary employee may result in the retention of an unacceptable performer so attention to this process is critical.

2. Due Date of Permanent Employee Evaluations

   A. Permanent employees will be evaluated on an annual basis. Due dates shall be tied to anniversary dates, of either the month of original appointment or subsequent month of promotion, e.g., if appointed or promoted to a new position in January, the evaluations will occur in January of each year, with the following possible exceptions:
1. In case of promotion, employees will return to the schedule for probationary evaluations. Following the successful completion of the probationary period, the date of promotion will become the anniversary date, as noted above, for scheduling regular annual evaluations.

2. Prior to the annual evaluation, the supervisor must have observed the employee's performance for at least three (3) months in that evaluation period. If extended leave, transfers, or other circumstances prevent three (3) month observation, the performance evaluation shall be postponed until this minimum time has elapsed. In special circumstances of relief or rotating employees who regularly do not work consecutive periods of over three (3) months with the same supervisor, the evaluation shall be completed as regularly due, with the primary supervisors providing a joint evaluation.

Example: If an employee transfers from one department to another department two (2) months prior to his/her anniversary date, the performance evaluation becomes the responsibility of the new department. However, that department must observe the transferred employee's performance for ninety (90) days prior to preparing the evaluation. Therefore, the employee's performance evaluation due date will be temporarily extended by one month due to this transfer.

3. Terminating or reassigned supervisors shall make every attempt to complete all performance evaluations due for employees up to and including the month they will be leaving the City service or their previous assignment. (and upon request of the Department Director or City Manager, shall complete reports for employees which would be falling due in the quarter following their termination or transfer, to avoid excessive delays and backlogs of evaluations due.)

4. Special evaluations may be made at times other than the regularly scheduled due date at the discretion of a Department Director or City Manager, or at the request of an employee or supervisor if approved by the Department Director. Reasons for such an evaluation may include but are not limited to: end of training, completion of a special assignment; final evaluation for a terminating or transferring employee; corrective action; change in supervision, etc.

5. An employee whose regularly scheduled evaluation is delayed for one of the reasons cited in paragraph 3 above shall have his/her subsequent evaluation due as regularly scheduled. Special evaluations, as described in paragraph 5 above, shall also not affect the regular due date.

B. Departments are responsible for completing performance evaluations for all employees who are on their payroll on their performance evaluation due date.

C. There are two (2) types of forms: one to be completed for Professional/Administrative classifications, and one for Field-Clerical-Technical classifications.
3. Use Performance Evaluation Form

A. The department shall maintain confidentiality of all evaluation-related records, forms, and their contents. The employee evaluation may only be shared with supervisory staff in the chain of command of the employee's department, with the City Attorney staff assigned to resolve personnel issues and with authorized Human Resources staff.

B. The performance evaluation shall be used to communicate performance standards and assessment of the employee's performance for a given period. It is not intended for use as a disciplinary record. If performance deficiencies exist, they should be documented in the performance evaluation. If the deficiencies are severe enough to require remedial action, such as a written warning or other disciplinary action, that action shall be taken apart from the performance evaluation process.

4. Administration of the Performance Evaluation Program

A. Each department will administer its performance evaluation program and should establish its own system of notification of supervisors for the dates upon which evaluations are due and provide the necessary forms. A monthly listing of employee anniversary dates for the upcoming month may be printed from the payroll database. Any discrepancies in the anniversary date in the payroll database must be brought to the attention of the payroll clerk who will notify the Transaction Unit in the Human Resources Department of the need for a data base correction.

B. Annual performance evaluations shall be conducted by the employee's immediate supervisor and reviewed by additional levels of supervision in accordance with Section 4 of this Administrative Regulation. Each employee may make written comments on the evaluation, which shall be made part of the employee's personnel records.

C. The department will submit a copy of the completed evaluation, including all employee and supervisory sign-offs, to the Human Resources Department and to the employee, and will keep a copy for the departmental records. Each department will maintain a tracking log of annual performance evaluations, with dates due and completed for every career employee. Performance evaluations will be considered to have been completed on time if the form is signed by the employee within 30 days, plus or minus, of the employee's anniversary date.

5. Completion of the Evaluation Form

A. The department will fill out all identifying information required in the top portion of the form and the days absent section at the bottom of page 2.

B. The immediate supervisor (rater) shall fill out the summary of Duties and Responsibilities During Report Period, which is to include a brief description of the position responsibilities as defined in the job specification for the classification, and a listing of
major work assignments, project areas, and specific goals and objectives established during the report period. For probationary employees, only that portion of the position responsibilities and tasks assigned to date should be specified. It is the employee's performance in carrying out the actual job responsibilities and objectives delineated, which forms the basis of the rating.

C. Items in Section A to E (or F) encompass the performance rating part of the form. The supervisor shall complete these sections by placing a check mark in the box, which most closely describes the employee’s level of performance for each descriptive factor listed. The boxes represent a scale of Unsatisfactory to Exceeds Requirements, which are defined on the form.

1. Items that do not pertain to the employee are so indicated by placing a check mark in the Not Applicable box next to the factor.

2. The final section of the performance-rating portion, “Supervisory Ability,” shall be filled out only for employees who supervise the work of others.

D. Based on the ratings given in Categories A through E (or F), the supervisor shall assign an Overall Evaluation by checking one of the boxes on the scale of Unsatisfactory to Exceeds Requirements. The overall evaluation is not a mathematical summary of the preceding ratings, as the performance factors are not necessarily all inclusive or equally important in the performance of a particular job. The ratings serve as a general guide to illustrate areas of strength and weakness, and the overall rating reflects the weight given these in arriving at a composite rating of the employee’s performance. For probationary employees, the overall evaluation should reflect both level of performance in tasks accomplished and progress achieved by the employee in becoming fully competent in all responsibilities of the position.

E. Following the performance section, the rater shall fill out the “Evaluator’s Comments” section which shall provide a narrative summary of the employee's performance during the rating period. The supervisor may include facts and specific performance information, results achieved, a list of the major strengths and weaknesses, and recommendations. In addition, any performance factors marked in the lower (i.e., Unsatisfactory, Needs Improvement) ends of the scale should be justified with a narrative comment, and supervisor's plans to assist employee's performance, improvement, and to meet training needs shall be presented. Supervisors should also provide documentation to support their ratings if a majority of traits is rated as "Exceeds Requirements." Additional sheets may be attached if necessary. For probationary employees, supervisors should comment specifically on progress of employees.

F. The supervisor should meet with the rated employee to discuss the performance evaluation.

G. In the supervisor/employee meeting, it is recommended that the discussion focus on the
employee's current level of performance, the progress made by the employee since the last review, and establishing goals for the employee's next review. If goals are established as a result of this meeting, they should be included within the Employee Development Plan portion of the Performance Evaluation.

H. The employee shall sign the Employee's Certification section to indicate a review of the report. The employee shall check a box indicating agreement or disagreement with the evaluation. The employee may make comments regarding the performance evaluation in the Employee Comments section and/or attach additional sheets.

I. The employee may fill out and return to the supervisor the Employee Development Plan section with any of the following: 1) his/her performance objectives and goals for further improvement during the next year in order to meet or exceed standards or performance for his/her present position; 2) plans to develop his/her skills; 3) self-improvement efforts, i.e., specific methods by which the employee can work toward accomplishing performance objectives.

J. The rater's immediate supervisor and/or Department Director (depending on departmental administrative practices) shall review the evaluation, certify such review by signature, and make written comments as appropriate. The reviewer may file the evaluation as written, or refer it back for purposes of additional information, completeness or accuracy.

GUIDELINES

These are general guidelines to management and are not intended to create any legally enforceable obligations on the part of the City or its employees. Neither the provisions of Administrative Regulation 2.3, nor management's failure to follow the provisions of Administrative Regulation 2.3 shall in any way limit the City's right to discharge any employee from his/her probationary period for no cause and without the right of appeal or hearing in any manner, nor limit the City's right to discharge any employee exempt from the competitive service for cause. Administrative Regulation 2.3 is intended only to describe, in general terms, guidelines for management to follow in evaluating employees' work performance. Accordingly, the City reserves full discretion to add to, modify, or delete provisions of Administrative Regulation 2.3 at any time without advance notice.

RESPONSIBLE DEPARTMENT: Human Resources

TO BE REVISED: Every 2 years

Approved by:

[Signature]

Department Director

City Manager
EXHIBIT I:

BPD POLICIES
BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

SUBJECT: SUBPOENAS AND COURT APPEARANCES

GENERAL ORDER: C-62

PURPOSE

1 - The purpose of this General Order is to outline policies and procedures for processing all subpoenas for Police Department personnel pertaining to criminal, civil and traffic related cases. All subpoenas for Police Department personnel relating to criminal and civil prosecution shall be processed by the designated employee(s) assigned to the Records Bureau of the Support Services Division.

POLICY

2 - It is the policy of the Berkeley Police Department that subpoenas for police personnel be administered and honored in a prompt and efficient manner.

RESPONSIBILITIES

3 - Designated employee(s) assigned to the Records Bureau of the Support Services Division will function as the Court Liaison Program Coordinator (CLP) and the Records Bureau Subpoenas Clerk. He/she shall be responsible for maintaining effective administrative liaison among the Courts, the District Attorney's office, and the Department on matters concerning police personnel who have been subpoenaed for appearances in criminal, civil or traffic court.

MASTER COURT APPEARANCE CALENDAR - CRIMINAL CASES

4 - A Master Court Appearance Calendar will be maintained by the CLP Coordinator and will provide current information on the status of subpoenas and court dates. The calendar will contain information concerning the status of current court cases requiring officers' appearance (e.g., going, canceled or rescheduled).

(a) A telephone Court Appearance recording is available 7 days a week, 24 hours per day. The Telephone Court Appearance recording may be accessed by dialing 981-5990 X 7991.

CRIMINAL SUBPOENA RECEIPT AND SERVICE PROCEDURES

5 - The Coordinator will receive and acknowledge receipt of all subpoenas for police personnel, either on the part of the people or of the defendant. Individual subpoenas will then be processed as follows:

Highlighted text is new.
(a) Subpoenas will be forwarded to the immediate supervisor of the subpoenaed employee.

(b) Supervisors will personally “serve” the employee and acknowledge service by signing the original of the subpoena.

(c) The subpoenaed employee will sign in the Subpoena Acknowledgement Receipt box, indicating receipt of the subpoena.

(d) Supervisors will return the original subpoena to the Coordinator, giving the copy of the subpoena to the employee.

(e) If service of the subpoena is not possible, the reason for “no service” will be noted on the subpoena. The supervisor shall also fill out a “Subpoena Continuation Request” form on behalf of the subpoenaed employee, attaching it to the subpoena. Both subpoena and form shall be returned to the Coordinator.

(f) The Coordinator will return all subpoenas, served or unserved, to the issuing Court.

6- The Police Department and the Housing Department have arranged a “subpoena” process that will insure the needed officer(s) is notified in a timely fashion of the date, time and location of an administrative hearing. The notice will be handled by the Subpoena Clerk in a manner very similar to a normal criminal subpoena.

EMPLOYER RESPONSIBILITY AFTER RECEIPT OF CRIMINAL SUBPOENA

7- Upon receipt of a subpoena the subpoenaed employee shall carefully review the case report to determine the need for his/her testimony. If the employee feels that he/she has been improperly subpoenaed, or that his/her testimony would be of little or no value, this opinion shall be forwarded in writing, via his/her designated supervisor, to the CLP Coordinator.

8- The Coordinator will discuss the need for the employee’s testimony with the District Attorney and report back to the employee. The District Attorney’s office shall make the final determination concerning the need for the employee to appear and testify.

9- If the subpoenaed employee will be unavailable to appear in court due to pre-approved leave of absence (i.e., vacation, training courses, parental leave), the “Subpoena Continuation Request” form shall be completed, attached to the subpoena and returned upon receipt. The form must be approved by the supervisor of the subpoenaed employee and then forwarded to the Coordinator.
CONFIRMATION OF CRIMINAL COURT APPEARANCE

10 - The Coordinator shall confer with the assigned Deputy District Attorney during the afternoon hours of the business day prior to a scheduled court hearing to determine if:

(a) The case will proceed as scheduled;

(b) The subpoenaed employee's testimony will actually be needed for that court session;

(c) If additional witnesses, information, or evidence are needed.

11 - Subpoenaed police employees scheduled to appear for court can confirm their need to appear by checking the Court Calendar posted in the squad room and Service Bureau, (by listening to the recorded court list on the telephone); or they may contact the Coordinator between 1600 and 1630 hours the afternoon before they are scheduled to appear.

12 - In the event of a late cancellation or other change in an employee's scheduled court appearance, the Coordinator will arrange for the notification of the employee.

13 - Subpoenas are usually received by the Subpoena Clerk. Whenever an employee receives a subpoena directly from the District Attorney's Office or from any other source, including a personal notification to appear the employee shall inform the Subpoena Clerk as soon as possible.

(a) Employees should comply with any subpoena that directs them to contact the District Attorney's Office. However, if any change is made regarding date/time of appearance, cancellation or telephone stand-by status, the employee shall inform the Subpoena Clerk as soon as possible.

(b) Notification of the Subpoena Clerk in these situations is required so that the Clerk can administer the subpoena process as outlined through this order.

14 - All completed court overtime slips shall be routed immediately to the employee's supervisor, then forwarded onto the Lieutenant and Captain prior to forwarding to the Coordinator. The Coordinator will initial the overtime slip and forward it to Accounting for processing.
TRAFFIC SUBPOENAS RECEPTION AND SERVICE PROCEDURES

15 - The Coordinator will record and acknowledge receipt of all traffic (section removed) subpoenas. Traffic subpoenas include those requesting an actual appearance in court, Informal Discovery Request, and those requesting "trial by declaration" (TBD).

(a) Traffic subpoenas will be forwarded and served upon the subpoenaed employee as prescribed in section 5 of this Order.

(b) The employee's supervisor shall take steps to insure all traffic subpoenas, requests for "trial by declaration", "Informal Discovery Request" and requested documents are returned, to the Coordinator, by the date specified. There is no specified date on an Informal Discovery Request. Informal Discovery Requests shall be returned promptly.

(1) If the supervisor determines that special circumstances justify a longer response time or is unable to serve the subpoena by the date specified, he/she shall fill out a subpoena continuation request, on behalf of the subpoenaed employee, and route it to the Coordinator.

(2) If the subpoenaed employee will be unavailable to appear in court due to a pre-approved leave of absence (i.e., vacation, training courses, parental leave), the "Subpoena Continuation Request" form shall be completed and attached to the subpoena and returned upon receipt. The form must be approved by the supervisor of the subpoenaed employee and then forwarded to the Coordinator.

16 - If an officer becomes aware they cannot make a scheduled court appearance on the day of appearance, regardless of the reason, he/she must notify a supervisor who will then notify the Department's Subpoena Clerk. The Subpoena Clerk will notify the courts.

17 - Employees who are not able to recall sufficient information regarding the incident in order to testify in traffic court shall advise their supervisor of this prior to the court date. The Courts need to know if an Officer is unable to appear at least 10 business days prior to the appearance date. Employees who are not able to testify shall notify their supervisor as early as possible.

(a) The employee's supervisor shall take appropriate action, depending upon the circumstances, regarding why the employee was not able to testify. Such actions may range from an employee/supervisor counseling session, training or initiation of disciplinary sanctions.
BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

GENERAL ORDER: C-62

(b) The employee's supervisor shall relay this information, in writing, as set forth in paragraph 6 of this Order.

(c) No monetary (overtime) compensation shall be provided for employees who appear in court and are unable to testify due to being unprepared and/or unable to recall.

SUBPOENAING OF CITIZENS IN CRIMINAL CASES

18 - In the majority of criminal cases, the District Attorney’s office will send notice of court appearance to civilian witnesses.

19 - In those cases subpoenas presented to the Police Department for service on civilian witnesses will be sent to the Records Bureau of the Support Services Division by the District Attorney’s office for processing.

(a) The Service Bureau Subpoena Clerk shall immediately stamp it, enter the report number, or arrange for preparation of a numbered report, and then forward the subpoena to the on-duty sergeants for service.

(b) Upon completing service, the subpoena shall be returned to the Records Bureau Subpoena Clerk, who will then insure that the form is returned to the Court.

CRIMINAL SUBPOENAS FROM OTHER JURISDICTIONS

20 - Criminal subpoenas for Berkeley residents from Law Enforcement agencies shall be received by the Records Bureau of the Support Services Division. The Records Bureau Subpoena Clerk shall immediately time stamp them, arrange for the preparation of a numbered report, and route them to the on-duty team sergeants for service.

21 - Upon completing service, the subpoena shall be returned to the Records Bureau Subpoena Clerk for return to issuing agency.

SUBPOENA DUces TECUM

22 - A subpoena duces tecum requires the production of documents, witness, or other objects to be examined.

(a) A copy of the supporting affidavit must be attached to the subpoena when the production of documents is requested.

Highlighted text is new.
23 - An employee served with a subpoena duces tecum shall notify the Subpoena Clerk and give the subpoena to the Subpoena Clerk without delay. The latter shall ensure that the necessary documents or objects are made available for the Court by the due date.

FOR CIVIL ACTIONS - OFFICER PRESENCE REQUIRED

24 - California law requires that a City be compensated at the rate of 150.00 dollars per day or actual expenses, whichever is less, for each day of service lost the City by reason of an officer responding to a subpoena for appearance in court or for the taking of a deposition in connection with any civil action or proceeding regarding an event or transaction which was perceived or investigated in the course of his/her duties. "In the course of his/her duties" shall be construed to mean during his/her regular tour of duty or an extension thereof proceeding or following, while enroute to or from work; or during an off-duty period when, because of his/her peace officer status, he/she takes any police action. If the officer merely witnesses an event while off-duty, but takes no action normally required or expected of a peace officer, the content of this Order does not apply.

25 - The process for receiving Civil Subpoena is the same as the process for criminal subpoena as outlined in Section 5 of this Order.

26 - Any officer served with a subpoena requiring appearance as a witness in any court or for the taking of a deposition in any civil action in connection with on-duty employment shall promptly deliver that subpoena to the Records Bureau Subpoena Clerk who will process it as outlined in Section 5 of this Order and complete Part A of BPD Form J (Reimbursement for Appearance on Civil Subpoenas) in triplicate. The original will be given to the officer, the duplicate attached to the master file, and the triplicate forwarded to the Public Safety Business Office. On those occasions when the civil subpoena is delivered directly to the Service Bureau Subpoena Clerk he/she will prepare a BPD Form J without delay and route as prescribed above.

27 - Following the officer's appearance in response to the subpoena, he/she shall complete Part B of his/her copy of the form, attach the subpoena, and forward them to the Records Bureau Subpoena Clerk.

28 - The Records Bureau Subpoena Clerk shall be responsible for maintaining adequate records of all required appearances of on-duty officers before a court or for the taking of a deposition in connection with any civil action or proceeding.

29 - Upon notification by the Service Bureau Subpoena Clerk, the Public Safety Business Office shall complete Part C of the original of Form J and forward it to the Tax and License Bureau, Finance Department.
COMPENSATION FOR CIVIL ACTIONS - RECORDS PRODUCTION ONLY

30 - When a civil subpoena duces tecum only requires production of the documents, the costs shall be computed at $6.00 per quarter hour and/or any portion thereof per person labor not to exceed $24.00 per person per hour. A fee of 10 cents per page for copying records and 20 cents per page for copying of documents from microfilm shall be charged.

CIVIL CASES INVOLVING THE CITY

31 - Any employee subpoenaed to testify in a civil case involving the City of Berkeley shall confer with the City Attorney in advance of testifying.

CIVIL CASES NOT INVOLVING THE CITY

32 - Government Code Section 68097.1 provides for the service of civil subpoenas and summons not associated with the City but involving Department personnel. The following procedures will be followed regarding the acceptance and delivery of those subpoenas involving Department personnel:

(a) Service Bureau or other personnel who are contacted by individuals attempting to serve such subpoenas shall first contact the employee’s immediate supervisor. The immediate supervisor shall insure the subpoena/summons is personally served upon the named employee.

(1) If unable to contact the immediate supervisor, personnel shall then contact another supervisor or command officer affiliated with the employee’s Division.

(2) In the event the above individuals are not available, such requests are to be directed to the Administrative Division Captain during regular business hours or, in his/her absence, the on duty Watch Commander or senior ranking officer.

(3) The individual accepting the subpoena shall forward the summons via the Divisional chain of command for the named employee.
COURT HEARINGS AND APPEARANCES

33 - Employees shall appear in any court or at any hearing authorized by any public law when:

(a) Subpoenaed;

(b) Requested by a member of a District Attorney's Office;

(c) Requested by a judge or officer of a court;

(d) Requested by a referee or hearing officer.

34 - Employees subpoenaed to Municipal or Superior Court for matters being heard before a jury shall wear conservative civilian clothing. Male personnel shall wear a suit or sport coat, slacks, shirt, tie and dress shoes. Female personnel shall appear in correspondingly appropriate attire. This attire shall consist of suits, including pants suits and conservative dresses. No jeans shall be worn by either male or female personnel attending court. Any employee subpoenaed for matters being heard without a jury may appear in either uniform or appropriate civilian attire as described above. Deviations from this regulation may be authorized by a commanding officer or a Deputy District Attorney.

35 - Employees shall avoid any indication of bias, prejudice or anger, and shall testify in a clear, concise and distinct manner. Questions shall be answered promptly, truthfully, and without trace of evasion. Personal behavior shall be exemplary while waiting to testify and while testifying.

36 - Employees required to be in court by Departmental Order or subpoena shall be prompt in attendance and shall remain until excused by competent authority.

(References: California Penal Code, Section 1328
Government Code Section 68097.1 and 68097.2
Civil Code Procedures 415.20(b)
Police Regulations 222, 223, and 225
Berkeley City Attorney Memorandum of April 27, 1988)
Captain's Instruction 99-27
Captain's Instruction 9-27-96
Training & Information Bulletin #270)
SUBJECT: SPECIAL ENFORCEMENT UNIT (SEU)

PURPOSE

1 - The purpose of this General Order is to formally establish a Departmental commitment to the detection, apprehension, and prosecution of all persons engaged in narcotics, vice, organized crime, and related criminal activity.

POLICY

2 - Although it is the responsibility of each member of the Berkeley Police Department to enforce and investigate all criminal activity, including vice and narcotics, the Special Enforcement Unit is specifically established to respond to this type of criminal activity.

UNIT STRUCTURE

3 - The Special Enforcement Unit (SEU) is a unit of the Patrol Division, commanded by a Lieutenant, who is responsible to the Patrol Captain.

The Special Enforcement Unit consists of three components:

(a) Drug Task Force Teams

(b) Special Investigations Bureau (SIB)

(c) Administrative Narcotics Unit

4 - DTF, SIB, and Administrative Narcotics personnel will work a basic shift as follows:

DTF Team 1: Basic 4/10 shift 1400-2400 hours (FSS off)*
DTF Team 2: Basic 4/10 shift 1400-2400 hours (SMT off)*
SIB: Basic 4/10 shift 1200-2200 (SSM off)*
Administrative: Basic 4/10 shift 0700-1600 hours (FSS off)*

NOTE: Hours are flexible due to the nature of the assignment.

*Highlighted text is new
DRUG TASK FORCE TEAMS

5 - The purpose of Drug Task Force Teams* is to provide uniformed, street-level drug enforcement.

(a) Each DTF Team is supervised by a Sergeant, who reports directly to the Special Enforcement Unit Lieutenant.

(b) The responsibilities of the Drug Task Force Teams include:

1) Taking assertive action against street drug traffickers.

2) Conducting "buy/bust" operations using undercover buyers.

3) Completing drug surveillances.

4) Responding to "hot spot" complaints when available, and completing field interviews, foot patrol, and traffic enforcement.

5) Monitoring police radio channel one for current activities and specialized assignments, when required.

6) Conducting "sting" and "buy-bust" operations.

(c) DTF personnel will normally wear the Drug Task Force uniform consisting of raid jacket, ballistic body armor, blue or black denim, or black "BDU" trousers, and appropriate shoes when engaged in high profile street drug enforcement.

SPECIAL INVESTIGATIONS BUREAU (SIB)

6 - The Special Investigations Bureau (SIB) is responsible for the investigation of the following:

1) Narcotics Offenses (including 23105 VC).

2) Prostitution.

3) Gambling.

*Highlighted text is new
(d) Liquor control.

(e) Public dances, skating rinks, circuses, carnivals, cabarets and other activities in which vice might be a factor.

(f) Follow-up investigations:

(1) Forgery of prescriptions.

(2) Obtaining of drugs via forged or altered prescriptions.

7 - Members of the Special Investigations Bureau shall maintain liaison with other municipal, State and Federal agencies concerned with vice/narcotics problems of importance to this Department. Members of the Special Enforcement Unit will also notify the patrol teams of changing trends and new developments in the areas of vice, narcotics, and organized crime.

8 - The Special Investigations Bureau shall be promptly notified of all reports listed in paragraph six that occur during its duty hours.

(a) At other times, the Patrol Watch Commander (or the Duty Command Officer in his/her absence) shall decide whether to notify an SIB member.

(b) Unavailability of an officer of the Bureau shall not preclude any member of the Department from taking necessary action if, in the opinion of the ranking officer on-duty, it is required.

9 - The SIB shall have sole responsibility during their duty hours for arranging medical care for narcotic addicts confined in the City jail and who are suffering withdrawal symptoms.

(a) This does not relieve any officer of any responsibility specified in the jail regulations.

ADMINISTRATIVE NARCOTICS UNIT

10 - This detail is responsible for investigation, arrest and assisting the District Attorney's office with the prosecution of major narcotics offenders, as well as gathering, analyzing, and disseminating appropriate information regarding narcotics related criminal activity. Duties shall include:
(a) Providing support for both DTF and the Special Investigations Bureau by
hand-carrying all SEU arrest reports to the District Attorney. The unit will
provide feedback from the District Attorney’s office to officers regarding
cases, which are charged or not charged, with emphasis on continually
improving investigations and reports. The SEU Administrative Narcotics
Unit will maintain records of all cases presented to the District Attorney’s
office, and the number of cases charged/not charged.

(b) Developing a database of drug offenders.

(c) Developing organizational structure charts, as required.

(d) Interviewing arrested drug traffickers, as needed.

(e) Reviewing all narcotics-related police reports and, from there, prepare
intelligence reports to better direct the energies of the DTF and the Special
Investigations Bureau.

(f) Targeting/tracking drug traffickers.

(g) Coordinating with other City services in combating the drug problem.

(h) Coordinating the asset forfeiture effort. This entails tracking money and
property through both State and Federal asset forfeiture proceedings, and
coordinating efforts with the asset forfeiture units of the Alameda County
District Attorney and appropriate Federal agencies.

(i) Providing training within the Berkeley Police Department in the area of
drug enforcement.

(j) Investigating narcotics-related conspiratorial crime by organized gangs or
groups of individuals (organized crime). The term “organized crime” is, for
our purposes, defined as a group, sometimes involving the hierarchal
coordination of a number of persons in the planning and execution of illegal
acts, or in the pursuit of a legitimate objective by unlawful means, and
achieving its primary goal of economic gains through the supplying of illegal
goods and services. The Administrative Narcotics Unit shall be responsible
for the initiation of investigations concerning organized criminal activities.
Reports involving organized crime shall be routed to the SEU Administrative
Narcotics Unit, which shall coordinate investigations involving the following
activities:
(1) Loan sharking.

(2) Labor racketeering.

(3) Corruption/bribery.

(4) Illegal sale and distribution of liquor, tobacco, and controlled substances.

(5) Illegal gambling operations.

(b) Pornography.

(7) Firearms violations.

(k) Managing the Department's narcotic evidence storage, testing and transfer to Court, as required.

REPORTS

11 - One copy of each police report referring to a real or suspected vice condition shall be forwarded to the SIB. One copy of each report involving the seizure of narcotics shall be forwarded to the Administrative Narcotics Unit.

12 - SIB confidential reports will be recorded in its special files set aside for this purpose.

EVIDENCE

13 - The Administrative Narcotics Unit shall have sole responsibility for the storage and destruction of all narcotics seized as evidence.

When the destruction of narcotics becomes necessary, the unit shall prepare a numbered report and obtain a court order, listing all items of evidence to be destroyed and case numbers under which the contraband was originally seized.
INFORMANTS

14 - The following policies and procedures will be adhered to in the establishment, use and handling of informants by all officers of this Department:

(a) Informant - defined: A person who, under the direction of a single officer and, with or without an expectation of compensation, furnishes information or performs a service for the Department in an investigation.

(b) Source of Information: An informant differs from a "source of information" in that the latter is not under the specific direction of a single officer and does not become a party to the actual investigation (e.g., a business firm furnishing information from its records, or a concerned citizen relaying information about an event that they have witnessed).

ESTABLISHMENT OF INFORMANTS

15 - Informants may decide to assist the Police Department for reasons other than those given above. The two most common are:

(a) Defendant Informants - Similar to a "normal" informant, but subject to arrest and/or prosecution for a State or Federal case, who expects compensation for his/her assistance in the form of a recommendation to the Judge or prosecutor.

(b) Restricted-Use Informant - A person currently on probation, or parole who wishes to become an informant in exchange for a recommendation to their supervising agent. Restricted use informant should only be used with the consent of the agency supervising the subject.

16 - Juvenile Informants - It is the policy of this Department that juveniles not be used as informants under any circumstances. A juvenile may become a "source of information" as defined above, but under no circumstances are they to be compensated for their information, or function as an undercover police operative.
INFORMANT CRITERIA

17 - There are three criteria that must be met to establish an individual as an informant.

(a) The person must be in a position to measurably assist the Department in an investigation.

(b) The person will not compromise the Department's interest and activities.

(c) The person will accept direction.

REQUIREMENTS FOR INFORMANT USE

18 - The following requirements shall apply to the Department's development of defendant informants:

(a) The approval of the appropriate prosecutor (that is, Federal, State or local) will be obtained prior to seeking the cooperation of a defendant.

(b) A defendant may be advised that his/her cooperation will be brought to the attention of the appropriate prosecutor. No further representations or assurances may be given without approval. The prosecuting attorney shall have the sole authority to decide whether or not to prosecute a case against a defendant/informant.

(c) The appropriate prosecutor shall be advised of the nature and scope of the defendant's cooperation throughout the period of his/her use. The procedures and frequency of this reporting shall be set by the prosecutor.

19 - When the assistance that an informant provides to the Police Department goes beyond merely providing information and evolves into actual participation into the investigation, i.e., making introductions between officer and suspect, controlled buys of narcotics, etc., the informant must sign the Informant

Understanding of Regulations form. This form will be attached to the informant sheet and filed in the appropriate SEU file.
CONFIDENTIAL INFORMANT FILES

20 - A Confidential Informant File will be maintained by the Special Enforcement Unit. The Administrative Assistant Informant form will be completed on all SEU informants, paid informants, informants from other Divisions (i.e., Patrol, D.B., etc.), or informants that are likely to be used to testify in a court action.

21 - Confidential informant files may be used by officers to aid them in establishing the reliability, or unreliability of an informant through past police contacts.

22 - The informant form will include, but is not limited to the following:

(a) Biographical and personal history information.

(b) Photograph.

(c) Criminal history, if any.

(d) Record of past information given; reliability of information.

23 - Each informant will be given an informant identification number by the Administrative Narcotics Office. The informant will be given an identifying number from a sequential list maintained by the Special Investigations Bureau Sergeant.* Informant’s files will be filed alphabetically in a secure cabinet within the SEU. The files will be kept under the control of the Special Investigations Bureau.*

24 - An SEU investigator will be assigned to make inquiry into all available files to determine if the informant has past contacts with any police agency under the status of an informant. The SEU investigator will then notify the officer submitting the informant sheet of the findings:

(a) No prior contacts were found.

(b) The subject is considered reliable. (If possible, the officer will be provided the name of the agency/officer that used the subject in the past and any case numbers to help establish reliability).

*Highlighted text is new.
(c) The subject is considered unreliable. Again, data supporting this conclusion will be supplied to the officer if it is available.

25 - Informant files will be purged only on approval of the SEU Lieutenant. There will be no time limit for retaining files.

26 - Access to the informant files will be limited to SEU personnel. An officer may be allowed access to an individual informant's file for the purpose of updating information in the file, i.e., change of address, to record any additional information the informant provided, etc.

GENERAL POLICIES - UTILIZATION OF INFORMANTS

27 - An informant shall be advised of the following:

(a) He/she shall not violate criminal law in the furtherance of the gathering of information, or providing services to the Police Department and that any evidence of such a violation will be reported to the appropriate law enforcement agency.

(b) He/she has no official status, either implied, or otherwise as an agent or employee of the Berkeley Police Department.

(c) The information that he/she provides may be used in a criminal proceeding and the Department will use all lawful means to protect the informant's confidentiality. However, this cannot be guaranteed.

28 - The case officer must control the direction of the operation and the informant. They must never place themselves in the position of having to take action when there is not enough staffing or equipment to insure the credibility of the investigation and the safety of all parties involved.

29 - The entire relationship and direction must come from the officer. It is not uncommon for the informant to attempt to become involved in planning. Informants will not be present at briefings.

30 - Informants are assets of the Department, not a specific officer. At its discretion, the Department may reassign an informant to the control of another officer or another unit.

31 - Officer/informant contacts will be of a strictly professional nature.
or business contacts beyond the scope of a specific investigation are expressly prohibited.

32 - Contacts with an informant will be such that his/her knowledge of the Department's facilities, operations, activities, and personnel is kept to the minimum necessary to his/her successful utilization. Under no circumstances will an informant be brought into the Special Investigations Bureau Office.

33 - At least two officers should be capable of contacting an informant. WHENEVER PRACTICAL, two officers should be present at all contacts with the informant.

34 - All significant contacts with the informant, and all information obtained at these contacts will be documented in writing.

35 - Where an informant is to participate in an undercover purchase in which he/she may come in contact with either official funds, controlled substances, or anything else of potential evidentiary value, he/she will be thoroughly searched both before and after the encounter and, where possible, kept under continuous observation in between. The reason for this is to preclude questions as to the validity or integrity of the evidence.

COURTS AND INFORMANTS

36 - A police officer is not empowered to dismiss a case, or to grant immunity to anyone. The prosecuting attorney makes the decision whether to file a case or dismiss it. Individual officers will not approach members of the judiciary regarding informants unless specifically directed to do so. Correspondence with the courts will be initiated only after approval of the SEU Lieutenant has been obtained.

DISCLOSURE OF AN INFORMANT'S IDENTITY

37 - An informant shall be advised at the outset that the information he/she provides may be used in a criminal proceeding and that, although the Department will use all lawful means to protect the informant's confidentiality, this cannot be guaranteed.

38 - The disclosure of an informant's identity, even if no prior guarantee of confidentiality was made, will be avoided whenever possible. Informant confidentiality will be thoroughly discussed with the prosecutor prior to
the trial or other proceedings and other alternatives will be given full consideration.

39 - In situations where the disclosure of an informant's identity might adversely affect the outcome of a more significant investigation, the Department may conceivably recommend dismissal of the immediate case. A decision of this nature may only be made by the Lieutenant in charge of the Unit, with the consent of the prosecuting attorney.

40 - If the issue of disclosure arises during an officer's testimony and he/she is uncertain of the legal requirement, he/she should request time to discuss the matter with the prosecutor.

UNRELIABLE INFORMANTS

41 - When the case officer becomes aware that an informant is not reliable, all contact with the informant should cease and the reasons should be noted in his/her informant file.

USE OF CONFIDENTIAL FUNDS

42 - As a general rule, defendant informants will not receive monetary compensation for their information or assistance.

43 - Any deviation of the above policy must be approved by the Lieutenant in charge of the Unit, prior to the payment or agreement to make payment of any funds.

INFORMANT FUNDS

44 - All confidential funds, whether for continuing operations or for a special operation, will be administered according to this procedure. These funds may be utilized to pay informants, purchase contraband, or otherwise maintain and finance undercover or investigative operations approved by the Chief of Police. It is the responsibility of the Lieutenant of the Special Enforcement Unit to maintain control and supervise all disbursements from the confidential fund assigned to his/her specific area of command.

DISBURSEMENT OF FUNDS

45 - All disbursement of funds require the expressed approval of the SEU*

*Highlighted text is new
Lieutenant. Disbursements exceeding $100* must be approved in writing by the SEU Lieutenant* prior to the money being paid out. The Chief of Police must approve all disbursements over $750.

46 - All disbursements will be recorded on the field expense account form in accordance with the established guidelines. The SEU Lieutenant will evaluate and approve each confidential fund expenditure form.

47 - The SEU Lieutenant will not maintain an active expense account. If the SEU Lieutenant uses the SEU cash fund during an emergency, he/she should use an expense account form and have it approved and reviewed by the Division Commander.*

48 - The Special Enforcement Unit Lieutenant will consider using purchase orders for goods and services prior to using the SEU cash fund.*

49 - The SEU Lieutenant will record each cash disbursement in the cash journal. This is to show the dollar amount of the on-hand cash operating base and an accounting of the funds used.*

DOCUMENTATION OF CONFIDENTIAL FUND EXPENDITURES

50 - The Special Enforcement Unit Lieutenant will maintain the field expense reports for the Special Enforcement Unit and a journal of the cash on hand. This cash disbursement journal is designed to provide the Unit Lieutenant and Division Commander with the dollar amount of the cash operating base that is currently on hand and an accounting of how past funds were spent.

51 - The SEU Lieutenant will assure that the journal of cash disbursements is kept up-to-date, and that the field expense account forms submitted (by the fifth of each month)* include the following:

(a) Date of transaction.

(b) Name of investigator/officer disbursing funds.

*Highlighted text is new.
BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 15, 2002

(c) Why the money was spent. To whom and for what, and all related case numbers.

(d) Amount of expenditure.

52 - The Special Enforcement Unit will disburse funds via cash* to the officers requesting them. The officer will record the date on a Berkeley Police Department receipt for cash payment form, which shall contain the following items:

(a) The name of the person disbursing the funds.

(b) Date of transaction.

(c) Amount disbursed.

(d) Reason for funds.

(e) Signature of officer receiving funds.

(f) Signature of person disbursing the funds and badge number.

CASH OPERATING BASE

53 - When the cash on hand falls below the predetermined amount, the Special Enforcement Unit Lieutenant will prepare a cash expenditure package, which will consist of a City of Berkeley Statement of Expense form, a City of Berkeley Payment Voucher (FN024), and a copy of the recent biannual internal reconciliation review signed by the Chief of Police. This package will be forwarded to the Chief of Police for final approval and signature.*

54 - Upon completion of the review and signature by the Chief of Police, the request package will be forwarded to Personnel and Training for final processing and transmitted to the Auditor's Office for disbursement.

55 - The original of the request package will be maintained by the Auditor's Office. The Special Enforcement Unit Lieutenant will retain the monthly expense account sheets reflecting all funds disbursed. All

*Highlighted text is new
funds are disbursed by the Special Enforcement Unit Lieutenant in
the form of cash. The record of all transactions is to be maintained
for a period of not less than three years.

56 - The Chief of Police will review the SEU cash fund to insure that all
cash disbursements are conducted in accordance to the written
policies of the Unit. The Chief of Police, on a bi-annual basis, will
conduct the review.*

57 - The SEU cash accumulation shall not exceed $6,000 unless approved
by the Division Commander or the Chief of Police.*

58 - Prior to the Special Enforcement Unit Lieutenant relinquishing
responsibility as the cash fund custodian, the SEU cash fund should
be reconciled. Any un-reconciled differences or errors should be
reported to the Division Commander for appropriate resolution.*

GUIDE FOR PREPARATION OF INFORMANT EXPENSE REPORTS

59- This guide will be utilized to record and document expenditures of
confidential funds paid to non-police informants for information or
services rendered. The following information will be furnished in the
spaces provided:

(a) List date and time money paid.

(b) List location of activity.

(c) List informant number. No funds will be expended to informants until
an informant sheet has been filed and confidential number has been
established.

(d) List the case number of the incident.

(e) Amount spent in the appropriate section.

(f) List purpose of expenditure, i.e., narcotics buy, meal for informant,
informer fee, etc.

(g) Complete certification that funds were spent in the furtherance of a
police investigation and sign card.

*Highlighted text is new
The informant should then sign his/her name in the appropriate place. If the informant refuses to sign his/her correct name, the informant control number and a fictitious name may be inserted.

The case officer and a second officer (or in the absence of a second officer a supervisor) must sign witness section to verify informant received funds.

The expenditure form to the SEU Supervisor (via the monthly expense report) to be submitted by each officer in the Unit.

**UNDERCOVER OPERATIONS**

Due to the dangers associated with undercover operations, personnel involved shall take the following steps:

(a) Meet to plan the operation, including tactical assignments of the officers and supervisors involved.

(b) Discuss communications in the event the plan is not working.

(1) This shall include agreement on verbal and non-verbal "trouble" or "emergency signs" and;

(2) A signal to communicate that the operation is concluded.

(c) Prepare a written operations plan.

(d) Place a reasonable time limit on the operation, if possible.

(e) Notify the on-duty Patrol Watch Commander and Communications Center personnel prior to beginning the operation when possible. In the event that no Patrol Watch Commander is on-duty, a Patrol Sergeant should be notified about the operation, when possible.

*Highlighted text is new*
BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 15, 2002

(References: CALEA Standards;
General Orders C-63, D-1, J-1, P-65;
Police Regulation 407;
Special Order 88-26968, May 10, 1988;
Special Order 88-75273, December 19, 1988)
BERKELEY POLICE DEPARTMENT

DATE: May 6, 2004

GENERAL ORDER E-13

SUBJECT: COMPLAINT INTERVENTION - EARLY WARNING SYSTEM

PURPOSE

1 - This order sets forth policy and procedures for the complaint intervention, known as the "Early Warning System." The "Early Warning System" (EWS) Program focuses on the intervention of personnel complaints and/or informal inquiries made regarding sworn personnel. The goal of this program is to attempt the elimination of instances of misconduct, either authentic or perceived, and to instill a degree of confidence with the employee.

POLICY

2 - It is the policy of the Berkeley Police Department that all sworn employees comply with the guidelines set forth in this section. Participation in this program is mandatory.

PROCEDURES

3 - As set forth in General Order P-26 (Personnel Complaint Procedure and Disposition), the Internal Affairs Bureau (IAB) is responsible for monitoring all formal and informal allegations of misconduct. This includes IAB staff conferring with the Chief of Police regarding any employee who has received at least three (3) formal complaints or informal inquiries of a similar nature, or has demonstrated a perceived pattern of misconduct within a specific twelve (12) month period. This perceived pattern of misconduct may include, but is not limited to, information received from the public or from other City employees.

4 - When such situations arise, the Chief of Police, via the Internal Affairs Bureau, shall schedule an informal counseling session to include:

(a) The employee

(b) The employee's immediate supervisor

(c) An Internal Affairs Bureau Sergeant

(d) A Division Commander

*Highlighted text is new.
5 - The Division Commander shall preside over this meeting. The employee shall be informed of the Department’s concerns, and he/she shall be allowed an opportunity to respond to those concerns.

6 - The counseling session shall be held at a location to be determined by the Division Commander. The employee may designate one fellow employee to accompany him/her if he/she desires. The role of the accompanying employee is that of support, and not of an active participant in the counseling session.

7 - The counseling session shall be held during the employee’s regularly scheduled working hours. If the meeting cannot be scheduled during the employee’s regularly scheduled working hours, the employee and his/her supervisor shall be compensated with compensatory time (or flex time with approval) for any off-duty time expended during their participation in the meeting.

8 - The Berkeley Police Department shall not prepare any formal document which references this meeting in the employee’s personnel complaint file, nor shall the meeting be in any way construed as punitive, nor as a formal disciplinary proceeding against the employee. The meeting is not recordable, and no permanent record of it shall be maintained.

(Reference: Administrative Division Procedures Manual GO P-26)
BERKELEY POLICE DEPARTMENT

Issue Date: November 19, 2004

GENERAL ORDER P-26

SUBJECT: PERSONNEL COMPLAINT PROCEDURE AND DISPOSITION AND THE INTERNAL AFFAIRS BUREAU

PURPOSE

1 - The purpose of this order is to establish the policy and procedures for handling personnel complaints and to define the responsibilities of the Internal Affairs Bureau.

POLICY

2 - The Internal Affairs Bureau (IAB) shall objectively and immediately review and investigate complaints of police misconduct (personnel complaints) received by the Berkeley Police Department from any source.

PROCEDURES

3 - The Internal Affairs Bureau shall:

(a) Investigate all externally received complaints alleging employee misconduct.

(b) Investigate internally initiated complaints of misconduct as may be assigned by the Chief of Police.

(c) Prepare investigations and reports on inquiries into employee conduct as may be required by the Chief of Police.

(d) Prepare letters, documents and memoranda associated with the disciplinary process in complaint matters.

(e) Prepare letters and correspondence on other matters as may be required by the Chief of Police.

(f) Maintain liaison with the District Attorney's office during investigations involving alleged criminal conduct on the part of an employee.

4 - The Internal Affairs Bureau is organized under the supervision of two Sergeants who report directly to the Chief of Police.

5 - The Internal Affairs Bureau has responsibility for record keeping and preservation duties associated with all complaint investigation matters and associated records, to include:
(a) Registering/recording the receipt of all external and internally generated complaints, assigning an appropriate file number to each.

(b) Logging and preserving a record of the status and disposition of each external and internal complaint received.

(c) Finalizing or closing the file on all complaints and supervising the routing of the cover/disposition sheet of each complaint.

6 - The Internal Affairs Bureau is responsible for storing and keeping secure in its offices the files and records associated with all external and internal complaints received and investigated.

(a) Personnel complaint files shall not include information other than materials directly associated with complaint matters and process; other personnel files shall be maintained under the control of the Administrative Division Captain.

(b) Complaint files are confidential documents and may not be released except as prescribed by law and as directed by this Order.

(c) The offices of the Internal Affairs Bureau shall be kept secure at all times, with keys distributed only to Bureau staff and the Chief of Police.

PERSONNEL COMPLAINT - DEFINITION

7 - A personnel complaint is defined as an allegation of misconduct by a Police Department employee working within the Police Department received from any source.

8 - All complaints alleging misconduct by a Police Department employee will be promptly investigated.

9 - Employee misconduct is defined as follows:

(a) Violation of Department rules, regulations, Orders, policies or procedures.

(b) Commission of a criminal offense.

(c) Categories and definitions of police misconduct.
(1) **Improper Use of Force**

All allegations concerning the improper use of force that goes beyond reasonable or lawful limits of physical power that may be used upon a person including:

(a) Improper use or display of a firearm,

(b) Improper use of any object,

(c) Improper use of hands or feet.

(As may be defined in Police Regulation 200, 318, 321 or 322).

(2) **Discourtesy**

All allegations concerning a failure to be courteous and civil to the public. Complaints may include improper hand gestures or signs, and/or the failure of an employee to give a proper response or explanation to a citizen.

All employees are expected to be quiet, orderly, attentive, and respectful and to exercise patience and discretion in the performance of their duties.

(As may be defined in Police Regulation 239).

(3) **Improper Stop/Street Detention/Search/Seizure/Arrest**

All allegations concerning police actions conducted without sufficient lawful reason, particularly as they relate to improper stops, street detentions, searches, seizures and arrests. This category does not include complaints about improperly issued traffic citations or improper police tows (see paragraph 9, subsection 9).

(As may be based upon the presumptions of proper police conduct defined in Police Regulations 401.)

(4) **Improper Detention Procedures**

All allegations concerning a failure to follow proper procedures for arrest, booking, incarceration and release of
prisoners. May include allegations concerning a failure to advise of the reasons for an arrest; failure to "Mirandize" a suspect; failure to utilize the proper citation release procedure; a failure to follow proper bail procedures; failure to follow proper juvenile processing procedures; failure to allow phone calls and/or access to attorneys, and unnecessary delays in releasing prisoners.

(As may be defined in reference to Police Regulations 400, 401, 211, 212, 213, 201, 202, 203, 204, 205, 206, 207, and General Orders J-1, J-16 and J-18).

(5) Inadequate Investigation or Improper Police Report

All allegations concerning a failure to adequately and impartially investigate and to accurately provide a written account of an incident. May include the failure of an employee to take a report or to make a lawful arrest.

(As may be defined in Police Regulations 274, 276 and 401; General Orders C-2 and R-24, and appropriate Penal Code Sections).

(6) Discrimination

All allegations concerning a favorable or unfavorable treatment or action by a police employee which exhibits partiality or prejudice based upon a person's race, color, religion, ancestry, national origin, age, sex, gender, sexual orientation, marital status, political affiliation, physical disability or medical condition (including cancer and HIV status).

(As may be defined in Police Regulations 237, 239, 240, 282 and 401).

(7) Harassment

Any allegation asserting a consistent, deliberate annoyance by police employees where the complainant can attest to repetitious contact over a period of time. (Police Regulation 257)
(8) Improper Police Procedures

Any allegation concerning a failure to follow approved Departmental policies, procedures, orders, or guidelines.

(As may be defined in official Police Training Bulletins, Captain's Instructions, Police Regulations, or General Orders).

(9) Improper Traffic Citation or Police Tow

All allegations of improperly issued traffic citations or improper towing by a police employee.

(As may be defined by the California Vehicle Code or local ordinance).

(10) Other

All other allegations concerning police employee misconduct that do not fit into any of the other listed categories. These allegations may include, but are not limited to complaints concerning criminal misconduct, abuse of discretion, or failure of a police employee to properly identify self.

(As may be defined by Police Regulation 255, 275 and General Order A-1).

10 - A complaint initiated by a Police Department employee against another Police Department employee working within the Police Department is defined as an "Internal Complaint."

11 - A complaint received from any other source is defined as an "external complaint."

12 - Inquiries regarding employee conduct wherein the concerned party specifically requests only advice or that the matter be resolved without a personnel complaint investigation, may be handled as an "informal inquiry" by either the Internal Affairs Bureau or by supervisors and/or staff within the Department. (See "Informal Inquiries," paragraph 32).
13 - External complaints may be made in person, by telephone or by mail and may be initiated by a third party, i.e., a witness, a representative of an organization, the City Manager's Office, District Attorney's Office, etc.

(a) Complaints made to the Police Review Commission shall also be investigated by the Internal Affairs Bureau as "external complaints."

(1) As directed by the City Manager, the requirement to testify before the Police Review Commission shall not apply to non-sworn Parking personnel affiliated with the Field Support Division.

(2) Personnel falling within the provisions of this exempted classification, however, shall fully cooperate with all aspects of external/internal personnel complaint investigations conducted by IAB and/or other designated Departmental staff.

14 - An external complaint must be made within thirty days of the date of the incident upon which the complaint is based unless the complainant, for reasons beyond his/her control, is unable to do so, i.e., illness, injury, out of the immediate area, etc. The decision as to the acceptability of a complaint shall be made by the Chief of Police.

(a) Complaints filed with the Police Review Commission beyond the thirty day limit and accepted for late filing by that body will be accepted for investigation by the Internal Affairs Bureau.

15 - A person making a complaint in person or by telephone during the hours the Internal Affairs Bureau office is open shall be referred there directly.

(a) If Internal Affairs Bureau personnel are unavailable, the provisions of paragraph 16 will apply.

(b) A brochure has been prepared to provide citizens with a description of the complaint investigation procedure. A supply of these brochures will be maintained in the Internal Affairs Bureau and at the front counter of the Police Department to be available to citizens upon request.

16 - During the hours the Internal Affairs Bureau is closed or IAB personnel are unavailable, individuals making a complaint in person or by telephone shall be interviewed by the Patrol Division Watch Commander. If the Watch
BERKELEY POLICE DEPARTMENT

Commander is not available; the complaint shall be referred to an appropriate Sergeant or supervisor. Complainants shall not be told to return during Internal Affairs Bureau business hours to make their complaint.

17 - An Internal Affairs Bureau "Complaint Investigation" form shall be completed by the Command Officer or supervisor receiving the complaint. If possible the complainant should write a brief statement describing the complaint incident on the reverse side of the form. If for any reason that cannot be done, the Command Officer/Supervisor receiving the complaint shall write or type the narrative account for the complainant. The complainant should then sign the form. The completed complaint form shall be forwarded directly to the Internal Affairs Bureau.

18 - When an employee, who is not a Supervisor becomes aware of possible misconduct by another Department employee, he/she shall immediately notify a Supervisor, or in the absence of a Supervisor, a Command Officer.

(a) A written report documenting the alleged act(s) of misconduct shall be made by the Department employee initiating the complaint if required by the Supervisor or Command Officer receiving the report.

19 - Supervisors or Command Officers, who are made aware of alleged acts of misconduct, shall take appropriate action to prevent aggravation of the incident. Supervisors shall then notify the on-duty Commander who shall then give directions as to the proper procedure for documenting the complaint. Generally, the procedure will follow the guidelines listed in this Order relating to either external or internal complaints.

20 - When the alleged act of misconduct is of a nature that the integrity of the investigation might be jeopardized by reducing the allegations to writing, the concerned Supervisor shall report orally to the on-duty Watch Commander, or if he/she is unavailable, to the on-call Duty Command Officer who will notify the Chief of Police.

INTERNAL COMPLAINTS

21 - An internal complaint may be initiated by any employee of the Police Department to his or her sworn or non-sworn Supervisor or, in the absence of a supervisor, to his/her Commanding Officer. Complaints will be documented in writing either by the employee making the complaint or by the Supervisor/Command Officer receiving the complaint.
(a) The complaint report shall document alleged violation(s) of appropriate Department rules, regulations, Orders, policies or procedures.

(b) The report shall also include an explanation of the circumstances surrounding the alleged violation.

22 - An internal personnel complaint must be initiated within thirty days of knowledge by the employee initiating the complaint of the incident precipitating it. Questions as to the acceptability of a complaint shall be resolved by the Chief of Police.

23 - The Chief of Police and the Commanding Officer of the division to which the accused employee(s) is assigned shall be notified at the earliest possible time as to allegations of misconduct made against the employee(s).

24 - Primary responsibility for the investigation of an internal complaint shall rest with the Commander of the division to which the accused employee is assigned. If the Division Commander feels that the investigation should be conducted within the division, a request may be made to the Chief of Police to investigate by the Internal Affairs Bureau.

25 - If a complaint involves any of the following circumstances, the Chief of Police shall make a request to the Chief of Police that the matter be investigated by the Internal Affairs Bureau.

(b) When the complaint involves allegations of racism, sexism, excessive force or any act which may constitute the commission of a criminal offense.

26 - Investigations handled within the involved division shall be conducted in a complete and thorough manner. Such investigations should include the following:

(a) Summary of the complaint incident.

(b) Identification of specific violations of Departmental rules, regulations, policy, Orders or procedures.
(c) Statements from all involved parties (complainant, witnesses, accused employees).

(d) Notification of the "accused" employee(s) in writing and verbally as to the nature of the allegations made against them as well as their rights and responsibilities relative to the investigation.

(1) To satisfy the written requirement, the employee will be provided with a copy of the IAB Notification form, (copies of which will be available to all supervisors and staff for this purpose).

(e) All relevant background material associated with the complaint (police reports, Communication Center tape recordings, supervisor's logs, citations, stop cards, etc.).

27 - When an internal complaint investigation is handled within the division, it shall be forwarded directly to the Chief of Police who may consult with the appropriate Division Commander(s) prior to making a disposition.

28 - When an internal complaint is investigated by the Internal Affairs Bureau, the completed investigation shall be forwarded directly to the Chief of Police who may consult with the appropriate Division Commander(s) prior to making a disposition.

29 - All internal personnel complaint investigations shall be completed within thirty days unless an extension is granted by the Chief of Police.

30 - Internal personnel complaint dispositions shall be consistent with Sections 43-46 of this Order.

31 - The Division Commander or Chief of Police shall advise the accused employee of the final disposition of the complaint. The complaining employee shall be advised of the disposition to the complaint by his/her Division Commander.

INFORMAL INQUIRIES

32 - As noted in paragraph 12, inquiries regarding employee conduct wherein the complaining party specifically requests only advice or that the matter be resolved without a personnel complaint investigation may be handled by
the Internal Affairs Bureau and/or supervisors/staff within the Department as an "informal inquiry."

(a) Allegations involving improper use of force, racism, sexism or alleged criminal activity require a personnel complaint investigation.

(b) Informal inquiries will be recorded in a log kept for such "inquiries."

EXTERNAL COMPLAINTS
INVESTIGATION - BOARD OF REVIEW

33 - Following receipt of an external personnel complaint, the Internal Affairs Bureau will conduct an investigation of the complaint incident.

(a) Complainants will be notified by the Internal Affairs Bureau of the existence/availability of the Police Review Commission.

(b) Complainants will be notified in writing that their complaint has been received and that it will be investigated.

(c) Allegations of misconduct made by complainants will be attached to the complaint as the initial basis for receipt and investigation of the complaint. The complainant shall be provided with a copy of his or her statement, if requested.

(d) Employees who are designated as "accused" employees will be notified in writing and verbally as to the nature of the allegations made against them and their rights and responsibilities relative to the investigation.

(e) To insure that all possible allegations of apparent misconduct are brought forth, investigated and presented to the Board of Review and that individual employee's rights to due process are protected, obvious or apparent violations of Departmental rules, regulations, Orders, policies, procedures, directives and/or training guidelines noted by the Internal Affairs Bureau at any time during the complaint investigation process will be added to the complaint by the Internal Affairs Bureau. Each new allegation will be matched with the "accused" employee (where possible), bureau, division or the Department (policy complaint) with each new allegation.

(f) Complaint investigations will be completed in a timely manner by the Internal Affairs Bureau.
34 - The Internal Affairs Bureau will advise the Chief of Police of all external complaints received, providing an update as to the status of each as it progresses through the investigative process towards disposition. This will be accomplished by providing weekly updates to the Chief of Police outlining complaint investigations on file with the Internal Affairs Bureau. The Chief of Police will be immediately notified of the receipt of external complaints of a sensitive or urgent nature.

35 - Following the investigation of each complaint by a member of the Internal Affairs Bureau, a Board of Review may be convened by the Chief of Police for the purpose of reviewing and making findings on the complaint matter.

(a) The Chief of Police may choose to make findings on an external personnel complaint without sending the complaint to the Board of Review.

36 - The Board of Review shall consist of two patrol officers, one chosen by the Berkeley Police Association (BPA) membership from the Patrol Division and the other chosen by BPA membership from the other divisions of the Department-at-large. The other members of the Board of Review shall be an appointed on-duty Sergeant from the Patrol Division, the Administrative Division Captain (Hearing Officer), the Division Commander of the accused employee, and a representative of the City Manager's Office. When the complaint involves a non-sworn employee, a designated civilian employee shall also be included as a participating member of the Board of Review.

(a) All sworn participating members of the Board of Review must be of equal or higher rank than the officer accused in the complaint matter under consideration. (BPA representation of the same or higher rank at the Board of Review shall still apply, if requested).

(b) The Chief of Police may invite other person(s) to sit with the Board as participating members as he/she deems appropriate.

37 - The Administrative Captain shall normally preside over the Board of Review and shall serve as the Board of Review Hearing Officer. If he/she is unavailable, a Captain designated by the Chief of Police will preside. The Chief of Police may attend the Board of Review hearing, but will not participate in the decision-making process.
BERKELEY POLICE DEPARTMENT

38 - The accused employee and/or his/her chosen representative is encouraged to attend the Board of Review hearing to present arguments or explanations and to answer questions which may be presented to them by Board members. Accused employees are not required to attend unless specifically ordered to do so by the Chief of Police. The accused employee will be excused during the decision-making stage of the review process.

39 - Following the Board's review and discussion, each Board member will make a recommendation to the Board of Review Hearing Officer relative to finding(s) and possible dispositions. The Board of Review Hearing Officer will listen to the recommendations made by other Board members but will have the responsibility for making the final disposition recommendation to the Chief of Police.

40 - The accused employee will be notified of the decision of the Board of Review as soon as possible after the decision is made.

41 - The Chief of Police retains the right to agree or disagree with the final recommendations of the Board of Review and to limit or augment the recommendations.

42 - The Internal Affairs Bureau investigation is a confidential document that will not be released to the accused officer or his/her chosen representative prior to the time that copies of the complaint investigation are sent to members of the Board of Review and/or Chief of Police. In cases of great sensitivity the Chief of Police retains the right to maintain full confidentiality of the investigative report until such time as required by law to release the information.

COMPLAINT DISPOSITION

43 - Reviewer(s) must determine whether or not the allegations made in a complaint are supported by the investigation. It shall be presumed that all employees acted properly, performing their duties in accordance with appropriate rules, regulations, Orders, policies or procedures unless proven otherwise. Thus, if the allegation(s) contained within a personnel complaint cannot be proved, the allegation(s) cannot be sustained.

44 - The conclusion or finding in a complaint shall fall within one of the following categories:
(a) If the investigation clearly establishes that the allegation is not true, the finding shall be "Unfounded."

(b) If the investigation fails to support the allegation(s), but the allegation(s) cannot be shown as false, the finding shall be "Not Sustained."

(c) If the investigation clearly establishes that the actions of the Employee that formed the basis for the complaint are not violations of law or departmental policy, the finding shall be "Exonerated."

(d) If the investigation shows the allegation did occur and disciplinary action may be warranted, the finding shall be "Sustained."

45 - If the finding of a complaint is "Sustained," a disciplinary disposition must be selected. Disciplinary actions that may be selected include:

(a) Written Advice.

(b) Written Reprimand.

(c) Suspension (including forfeiture of compensatory time).

(d) Dismissal.

(e) Dismissal with criminal charges pending.

46 - The dispositions made in Section 45 are not all inclusive and may be modified or expanded upon at the discretion of the Chief of Police.

COMPLAINANT NOTIFICATION

47 - The Internal Affairs Bureau Investigator shall advise the complainant of the disposition of his/her complaint. The Internal Affairs Bureau Investigator shall advise the complainant in writing of the disposition of his/her complaint, within 30 days of the disposition being reached. If the complainant is not satisfied with the disposition or the manner in which the complaint was investigated, he/she shall again be advised of the existence/availability of the Police Review Commission.
BLANK
APPEAL PROCESS

48 - Employees receiving discipline as a result of a "Sustained" finding made against them in any personnel complaint matter may appeal/grieve the findings such appeal or grievance shall be based upon and follow guidelines established by appropriate Memoranda of Understanding, City Personnel Rules and Regulations and Department Regulations.

POLICE OFFICER BILL OF RIGHTS

49 - When a sworn employee of the Berkeley Police Department is subject to either an external or internal complaint, the investigator(s) conducting that investigation shall ensure that the accused officer is aware of his/her rights enumerated within Sections 3300-3311 of the Government Code (the Public Safety Officers Procedural Bill of Rights Act).

POLYGRAPH EXAMINATIONS

50 - Employees, sworn and civilians, shall not be required to submit to a polygraph examination or to similar tests which test for deception. This shall not preclude the Internal Affairs Bureau from administering such tests at the request of an "accused" employee following approval by the Chief of Police.

CHEMICAL SUBSTANCE EXAMINATION

51 - During the administrative investigation of an incident covered by this Order, the Department shall adhere to the existing City of Berkeley policy regarding chemical substance testing (example: test of blood, breath or urine).

52 - Employees may be photographed for purposes of a complaint investigation. This is to include photographing for purposes of formation/presentation of a photo line-up by Internal Affairs investigators.

(a) Employees shall not be required to stand in "physical" line-up proceedings for the purpose of complaint investigations.

53 - Accused employees shall not be required to submit financial disclosure statements or other items of personal property records in connection with complaint investigations.
EMPLOYEES - RELIEF FROM DUTY

54 - Paid administrative leave is a last resort. In most cases, reassignment to another function is more appropriate. Such leave, except in a true emergency, shall not be promised or offered prior to the City Manager's approval. The City Manager's approval will be based on written justification that no alternatives exist which could equally protect the City's interest.

(a) Employees may be relieved from duty only by the Chief of Police or the Acting Chief of Police, or in their absence by a Command Officer acting pursuant to the authority of the Chief of Police. Supervisors may relieve employees from duty following the approval of such action by the on-call Duty Command Officer.

(1) An employee may be temporarily relieved from duty with pay and benefits intact due to demonstrated or suspected physical or psychological inability to perform his/her duties or as a result of allegations made in a complaint against the employee pending the completion of the investigation.

(b) Employees relieved from duty should be given specific instructions as follows:

(1) That they report on a daily basis to the Administrative Division Captain for instructions and updates until resolution of the matter.

(2) That they remain home during their regular work hours.

RETENTION OF RECORDS

55 - When a complaint has been reviewed and disposition made, the completed complaint investigation file or a legible copy thereof shall be reviewed and initialed by the accused employee and other employees listed on the face sheet of the complaint package. The original (initialed) copy of the completed complaint package will then be placed in the employee's personnel complaint file located in the Internal Affairs Bureau office.

(a) Records so maintained shall include all letters, documents or statements provided by complainants, accused officers and witnesses, all
investigative reports, a face sheet summarizing the complaint, disposition of the complaint and related information and the endorsement by the employee acknowledging the material being entered into his/her complaint file.

(b) The Internal Affairs Bureau will maintain a separate numbered file containing complete copies of all external and internal complaints received and processed. In this file the reports/investigations will be filed sequentially by the Internal Affairs Bureau control number.

(c) Both files shall be maintained in the offices of the Internal Affairs Bureau.

56 - Access to the employee's personnel complaint file is limited to the employee, the Chief of Police, the employee's Division Commander, the Administrative Division Commander, the City Attorney, Internal Affairs Bureau personnel, the Human Resources Director and the City Manager and others as required by law.

57 - When an employee terminates employment with the Department, his/her personnel complaint file is transferred to the custody of the Administrative Division. The personnel complaint records shall then be retained in accordance with the records management timetable set by the Department.

(a) If an investigation of officer conduct results in a suspension or dismissal, the officer shall receive a statement citing the reason for suspension or dismissal and the effective date(s) as provided for by Shelley v. State Personnel Board (1975) 15 Cal.3d 194.

(1) If the misconduct results in dismissal, the employee is referred to the following agencies for information concerning the status of fringe and retirement benefits:

| Public Employees' Retirement System: | City Auditor |
| Medical and Dental Benefits (COBRA): | Risk Management |
| Supplemental Retirement Income Program: | Finance |

(b) The City of Berkeley Employee Transaction Form will be completed by the Administrative Division Captain and will describe the specific reason for the suspension or termination. A copy of this form is provided to the employee.
POLICY COMPLAINTS

58 - Policy complaints are generally received as a result of external complaints, Police Review Commission complaints, findings made by the Police Department's Board of Review (e.g., when an officer followed an existing policy in need of revision), or special Review Boards (see General Order R-3).

(a) The Chief of Police normally assigns the Administrative Division Captain to investigate.

(b) If Department policy needs revision, the Chief of Police directs the Administrative Captain to make the necessary changes to appropriate documents (i.e., General Orders, Police Regulations, Manuals, Training and Information Bulletins, etc.).

MONTHLY AND ANNUAL REPORTS

59 - The Internal Affairs Bureau Sergeants are responsible to insure that the Monthly Management Report and Annual Report, as described in General Order M-3, are completed. These reports provide statistical summaries which include the type of complaints received on a monthly basis, as well as the total number of complaints received during the calendar year. The reports also compare statistics from previous years.

TRAINING NEEDS

60 - The Internal Affairs Bureau Sergeants are responsible for identifying areas of disciplinary concern where remedial/refresher training may be beneficial to one or more employees. After discussing the perceived training need with the Chief of Police and gaining his/her concurrence, IAB will work with the Personnel and Training Sergeant to devise an appropriate training course to address the problem(s).

(References:
General Orders E-3, P-12, and R-3
Government Code Sections 3300-3311, Public Safety Officers Procedural Bill of Rights of Act
Shealy v. State Personnel Board (1975) 15 Cal.3d 194
Memorandum re "Subject Officer Testimony" from City Penal Code 832.7 (a))
BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 1, 1998

GENERAL ORDER P-28

SUBJECT: PERFORMANCE APPRAISAL REPORT

- PURPOSE

1 - The purpose of the performance appraisal report system is to:

(a) Assess the individual performance of employees in day-to-day activities.

(b) Identify training needs for the individual which follow naturally from the assessment of the manner in which duties have been performed.

(c) Assess potential within the individual for future assignment, career development and suitability for promotion.

(d) Objectives of the performance appraisal report system are:

(1) To provide for fair and impartial personnel decisions.

(2) To maintain and improve performance.

(3) To provide a mechanism for personnel counseling.

(4) To facilitate proper decisions regarding probationary employees.

(5) To provide an objective and fair method for measurement and recognition of individual performance as compared with prescribed guidelines.

(6) To identify Department and employee training needs.

- POLICY

2 - It is the policy of the Berkeley Police Department that all employees shall be evaluated periodically, and within the guidelines set in this order.

- DEFINITIONS

3 - The following terms pertaining to performance appraisal reports are defined:

Evaluator: The individual rating another employee.
Evaluator's Comments: Narrative comments by the evaluator supporting the rating given.

Exceeds Requirements: The results achieved are measurably better than would be expected of most personnel assigned similar duties and responsibilities. This rating requires explanation and comment in the "comments" section.

Meets Requirements: The employee is meeting the position requirements in a manner which is acceptable. The results achieved are those expected of most employees with similar duties and responsibilities.

Needs Improvement: Performance is below the acceptable level for the position. Considerable supervision or learning may be required before performance is satisfactory. An employee whose performance is consistently evaluated at this level should be rated "unsatisfactory." This rating requires explanation and comment in the "comments" section.

Not Applicable: The performance factor does not pertain to the rated employee.

Rated Employee: The employee of the Police Department being rated.

Rated Employee's Comments: Written response by the rated employee to his/her evaluation.

Reviewing Officer: A command officer of the "rated employee's" division will review the completed Performance Appraisal Report and Employment Development Plan. The reviewing officer will resolve, to the degree possible, any apparent differences of opinion between the evaluator and the rated employee regarding the employee's performance.

Because of the importance of this process, the Reviewing Officer shall note the quality, fairness, impartiality and uniformity of performance evaluations submitted by evaluators that he/she supervises. Evaluators are to be rated by their supervisors regarding the quality of ratings given to employees.

Appeal Officer: A designated command officer appointed by the Chief of Police to arbitrate differences between an evaluator and a rated employee that could not be resolved to the satisfaction of both parties by the reviewing officer.

Unsatisfactory: The employee has not demonstrated the ability or willingness to meet position requirements. This rating requires explanation and comment in the "comments" section.
PROCEDURE

4 - Submission of Performance Appraisal Report: During probationary periods, police employees will be evaluated as follows. Non-sworn probationary employees (including Police Aides) will be rated every 2 months for the first six months, and then annually thereafter. PSA's and PSD's will be rated every 2 months for nine (9) months, and then annually thereafter. Probationary Officers will be rated daily/weekly while in the FTO program, every 6 months after completing FTO training (through their two year probation period)*, and then annually thereafter. The supervisor who has supervised the employee for at least three (3) months (in accordance with the MOU) shall be the primary rater. He/she should obtain input from other supervisors, if any, who have also supervised the employee during the rating period.

(a) With the exception of modifications in Commanding Officer and Inspectors/Sergeants evaluations listed in paragraph 19 below, evaluations shall take place in accordance with the schedule below:

(b) Employees will be evaluated in the month in which their appointment or promotion date falls. For promotions, the promotion date becomes the new anniversary date for scheduling semi-annual evaluations.

(c) Appraisal forms will be distributed by the Administrative Division on the first day of the month in which the evaluation is to occur.

(d) An assigned evaluator will complete the appraisal form and discuss it with his/her commanding officer. Following this discussion, the evaluator will review the evaluation with the rated employee. This process is to be completed by the twentieth day of the month in which the appraisal is due.

(e) The Employment Development Plan (last page of the Performance Appraisal Report) shall be detached from the report at the conclusion of the interview and given to the employee for completion. The employee shall complete and return it to the evaluator within five days following the interview.

(f) The evaluator shall route the completed Performance Appraisal Report form and Employment Development Plan to the reviewing officer for review and signature. If necessary, the reviewer will attempt to resolve any disagreement between the evaluator and the rated employee. If there is disagreement which cannot be resolved by the reviewer, another command officer, designated by the Chief of
Police as an appeal officer, shall act as an arbitrator. If resolution still has not been reached, this shall be indicated on the form.

(g) The completed Performance Appraisal Report and Employment Development Plan shall be submitted to the Administrative Division Captain no later than the last day of the month in which the evaluation is due. The Administrative Division Captain will review the form for completeness prior to its filing. If training needs are evident and clearly defined, the Personnel and Training Bureau will be directed to fill them.

PERFORMANCE

5 - Performance appraisals will be submitted in accordance with paragraph 4 above.

6 - The appraisal form will be completed by placing a check mark in the box which most closely describes the employee's level of performance for each descriptive trait listed.

7 - Ratings of "Needs Improvement" and "Unsatisfactory" require explanation in the Comment Section. Evaluators must also support ratings if traits are marked "Exceeds Requirements."

(a) When "needs improvement" or "unsatisfactory" work is noted by the supervisor, a written notification should be given to the employee when it occurs, and where possible, at least 90 days prior to the end of the rating period.

(1) The supervisor should also discuss the deficiencies with the employee and develop a plan to improve the "needs improvement" or "unsatisfactory" performance prior to the end of the rating period.

8 - The evaluator shall summarize, under "Evaluator's Comments," the rated employee's overall performance during the rating period. It is this summary, plus comments supporting ratings other than "Meets Requirements" that form the basis of discussion between the evaluator and the rated employee.

Following preparation of the evaluation, but prior to discussing it with the rated employee, the evaluator shall discuss it with his/her commanding officer. The evaluator shall then discuss it with the rated employee. The evaluator and the rated employee shall make every effort to come to an agreement on:
DATE ISSUED: November 1, 1998

(a) The level of performance during the rating period, i.e., "Unsatisfactory," "Needs Improvement," "Meets Requirements," or "Exceeds Requirements."

(b) Identification of training needs (if any) of the rated employee and the means to accomplish those needs.

(c) The establishment of objectives to be accomplished during the next rating period.

10 - The rated employee shall check the box indicating agreement or disagreement with the evaluation and sign the Employee’s Certification Section to indicate the report has been reviewed and discussed with the evaluator. The employee may comment positively or negatively regarding the evaluation in the Employee Comments Section, adding additional pages if necessary. Written comments are encouraged.

11 - At the conclusion of the discussion between the evaluator and the rated employee, the employee shall be given the Employment Development Plan Section of the appraisal report. The supervisor shall counsel the employee about the beginning of the new rating period, the tasks of the position occupied, the level of performance expected, and the evaluation rating criteria. It shall be completed by the employee and returned to the evaluator within five days of the date the evaluation was discussed. The employee shall list:

(a) His/her performance goals and objectives for the next rating period which, if accomplished, would meet or exceed expected standards of performance during that time;

(b) Specific methods by which the employee will meet these objectives; and,

(c) Plans to improve professional skills.

(d) Both the employee and the evaluator shall sign the Appraisal Report and the Employment Development Plan. A copy of the completed reports will be made by the rated employee for his/her use. Both the rated employee and the evaluator should retain a copy.

12 - The evaluator will then forward the completed Appraisal Report and the completed Employment Development Plan to the reviewing officer for review and signature.
In the event there is a disagreement between the evaluator and the rated employee, the reviewing officer will attempt to reconcile the disagreement.

Should the rated employee not be satisfied with the reviewing officer's attempts to reach agreement, an appeal may be lodged with the Chief of Police. In such cases, the Chief of Police will appoint a command officer to act as an appeal officer.

The appeal officer will review the evaluation and attempt to reach agreement between the evaluator and the rated employee.

There will be no further appeal process after the appeal officer. The disputed evaluation will stand as written with the rated employee's comments indicating disagreement, the reviewing officer's comments regarding attempts to reach agreement, and the appeal officer's actions toward resolution of the dispute.

The completed Performance Appraisal Report and Employment Development Plan will be forwarded to the Administrative Division Captain who will review them for completeness. If training needs are evident, the Personnel and Training Bureau will be directed to attempt to fill them.

The Administrative Division Secretary shall file copies of the performance evaluations in the employee's personnel file and shall forward appropriate original reports to the City Personnel Department. Performance appraisal reports shall be retained as long as the employee works for the police department. Thereafter, they shall be filmed with the employee's personnel file.

CAPTAIN, LIEUTENANT, INSPECTOR AND SERGEANT EVALUATIONS

Captains, Lieutenants, Inspectors, and Sergeants' performance evaluations will be processed in the same manner as outlined in paragraphs 1 through 18 above, except for the following:

(a) The evaluator and the employee being rated will discuss the performance of the previous 12 months. Any differences will be discussed and reconciled.

(b) Any rating area or specific job functions that are rated as "Unsatisfactory" or "Needs Improvement" will be discussed, and a plan to improve performance will be developed.
(1) Both the evaluator and the employee being rated will develop this plan, and the plan will have specific performance goals and objectives identified, including specific time frames set out for improvements.

(2) The improvement plan will be entered on Page 5, Employment Development Plan, of the Appraisal form.

(3) Both the evaluator and the employee being rated will sign the form.

(c)* The reviewing officer and appeal officer provisions listed above in paragraphs 12 through 16 shall apply.

(d)* Once the evaluation is completed and signed by the appropriate parties, the evaluation form will be placed in the personnel file of the employee being rated.

EVALUATOR TRAINING

20 - Upon promotion to supervisor, evaluator training shall be provided to all new supervisors by their immediate supervisor. In addition to providing training regarding the specific procedures covered in this order, the new supervisor should be sent to the P.O.S.T. Assertive Supervision Course.

ANNUAL INSPECTION

21 - An annual inspection of the performance appraisal report system shall be completed at the direction of the Chief of Police. The review should include the number of contested performance appraisal reports and the number of instances of extreme rating variances; and, the reasons for them.

USE OF PERFORMANCE EVALUATIONS

22 - Performance Appraisals and Employee Development Plans are an integral part of the personnel system. The reports are used as criteria for selection of personnel for special and temporary assignments and promotion.

(References: CALEA Standards
City of Berkeley Performance Appraisal Reports:
Field - Clerical - Technical and Professional - Administrative
MOU's: BPA, 790, and 535
Special Order 87-32928, Performance Evaluations, July 1, 1987
Special Order 89-03898, Performance Evaluations, February 15, 1989)
BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 27, 2005 GENERAL ORDER P-65

SUBJECT: PROCEDURES FOR CARE AND HANDLING OF PROPERTY AND EVIDENCE

PURPOSE

1. General Order P-65 describes the Departmental guidelines for the care and handling of property and evidence.

POLICY

2. Berkeley Police Department employees shall exercise the utmost care with property and evidence in their custody and control.

3. The professional management of evidence and property in the custody of the Berkeley Police Department is essential to the successful prosecution of criminal cases, a decreased level of civil liability on the part of the Department and its members, the maintenance of a high level of public trust, and the delivery of quality service to the community.

HOURS OF OPERATION

4. The business hours of the Property Room are Monday through Friday, from 0815 to 1200 hours and from 1300 to 1645 hours, excluding holidays. Should the need exist, additional appointments for the release of property may be made with the Property Officer.

PROPERTY AND DRUG PROPERTY OFFICER ASSIGNMENT

5. The Property Officer shall be a Community Service Officer Supervisor assigned to the Property Room. The Property Clerk, a Community Service Officer assigned to the Property Room, shall support Property Room operations. The Property Officer and Property Clerk shall maintain files listing the current location and status of all property in the custody of this Department, excluding drug and narcotic property. The Property Officer and the Property Clerk shall be responsible for the safe, secure and orderly operation of the Property Unit and shall comply with this general order and all laws relating to the care and disposition of property. A Police Aide may assist in the Property Room. At all times the Aide must be under the supervision of the Property Officer of the Property Clerk.

Entire text is revised.
6. The Drug Property Officer shall be the Administrative Narcotics Sergeant assigned to the Special Enforcement Unit. The Drug Property Officer shall be responsible for all narcotic or drug property or drug evidence booked by any Police employee. The Drug Property Officer shall maintain files listing the current location and status of all narcotics or drug property in the custody of this Department. The Special Enforcement Unit Lieutenant may designate another member of the Special Enforcement Unit to act as backup to the Drug Property Officer in the case of his/her absence. The Drug Property Officer and his/her backup shall be responsible for the safe, secure and orderly operation of the Drug Property Storage areas and shall comply with this general order and all laws relating to the care and disposition of property.

PROPERTY ROOM AREAS

7. The Property Room areas consist of the Property Room, the Bag & Tag Room, and the Marijuana Storage Room on the first floor of the Public Safety Building; the Drug Evidence Room in the Special Enforcement Unit offices on the second floor of the Public Safety Building; and the Bike Storage Room, which contains the Oversize Storage Area and Drug Storage Cage in the Annex building; and any other area designated by the Chief of Police as a property storage area.

LONG-TERM STORAGE LOCATIONS

8. The long-term storage of all evidence (excluding narcotics and drugs) shall be in the Property Room, the Oversized Storage Area, and other areas as approved by the Support Services Captain.

9. The long-term storage of all narcotics and drug evidence shall be the Drug Evidence Room and the Marijuana Storage Room.

TEMPORARY STORAGE LOCATIONS

10. The Property Room is equipped with eight temporary storage units, into which employees shall book evidence or other property.

(a) The individual lockers located in the Bag & Tag Room are used for the temporary storage of property and evidence. Should all lockers be in use, property shall be placed in the Oversize Storage Area.

(b) The Drug Drop Safe, located in the Bag & Tag Room, is used solely for the temporary storage of narcotic or drug evidence.

(c) The Special Enforcement Unit Drug Drop Safe located in the SEU offices may be used by SEU officers for the temporary storage of drug evidence.
(d) The High Value Drop Safe, located in the Bag & Tag Room, is used for the temporary storage of money, handguns, jewelry, or items of high value or sensitive nature.

(e) The refrigerator, located in the Bag & Tag Room, is used for the temporary storage of evidence requiring refrigeration or freezing, and for the temporary storage of urine samples.

(f) The Bike Storage Room “drop off” area in the Annex building is used for the temporary storage of bicycles.

(g) The Oversize Storage Area (inside the Bike Storage Room) is used for the storage of items of evidence or property that are too large for the temporary lockers in the Bag & Tag Room, or when all individual lockers in the Bag & Tag room are in use.

(h) The Drug Storage Cage (inside the Bike Storage Room and contained within the Oversize Storage cage) is used for the temporary storage of drugs (e.g. marijuana plants), which are too large or otherwise unsuitable for the Drug Drop Safes.

SECURITY OF THE PROPERTY STORAGE AREAS

11. Property storage areas shall be secured at all times.

12. One set of Property Room keys for the Non-Drug Evidence Property Room areas shall be issued to each of the following employees:

(a) The Property Officer;

(b) The Property Clerk;

(c) The Support Services Lieutenant responsible for the direct supervision of the Property Room. This Support Services Lieutenant will also be responsible for the direct supervision of the Crime Scene Unit and the Communication Center.

(d) The Support Services Captain; and

(e) The Chief of Police.

13. A fourth set of keys shall be located in the Patrol Sergeants Office, in a combination lock box. The Property Officer and the Property Clerk shall have the combination to this box. In the extraordinary event that entry must be made into the Property Room in the absence of the above two individuals, they will be
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contacted at home and they will provide the combination to a command officer or their designee. The person providing the combination shall be responsible for changing the combination after each and every use of this lock box. Instructions for changing the combination of the lock box shall be retained by the Property Officer.

14. The alarm code to the Property Room is restricted to the Property Officer, Property Clerk, Support Services Lieutenant, and Support Services Captain. The alarm code shall be changed immediately following the rotation of an individual from any of these assignments.

15. One set of Drug Evidence Property Room and Marijuana Evidence Room keys shall be issued to each of the following employees:

(a) The Drug Property Officer;

(b) The Special Enforcement Unit Lieutenant.

16. The Field Support Division Captain, Special Enforcement Unit Lieutenant, Administrative Narcotics Sergeant and his/her designated backup will each be issued individual alarm codes to the Drug Evidence Room and Marijuana Evidence Room. The alarm codes shall be changed immediately following the rotation of any individual from either of these assignments.

ACCESS TO LONG-TERM STORAGE LOCATIONS

17. Except as described in this General Order, no unauthorized personnel are to be admitted to the interior of any Property Room.

18. In the event that an employee other than the Property Room personnel need to enter a long-term property storage area, the employee shall be escorted at all times within the property storage area by the Property Officer or the individual key holder listed in paragraph 12 above who provided access to the employee.

19. In the event that an employee other than the Drug Property Officer needs to enter a drug storage area, the employee shall be escorted at all times within the drug storage area by the Drug Property Officer or the individual code holder listed in paragraph 16 above who provided access to the employee.

20. Entry to the Property Room is gained through the Property Room Officer, or as outlined in paragraphs 8 and 9 of this General Order. Entry to the Drug Evidence Room and Marijuana Storage Room is gained through the Drug Property Officer.
EMERGENCY AFTER-HOURS ACCESS TO LONG-TERM STORAGE LOCATIONS

21. If it is necessary for an employee other than the Property Room staff to enter the Property Room, the employee making entry shall send an electronic message detailing the date, time, reason for entry, and identity of the individuals making entry. The Property Officer shall maintain a record of these notifications. The Property Officer shall maintain a manual sign-in log for individuals entering either the Property Room or Drug Evidence Room.

(a) Paragraph 13 describes access to Property Room Keys.

22. If it is necessary for an employee other than the Drug Property Officer to enter the Drug Evidence Room or Marijuana Evidence Room, the employee making entry shall send the Drug Property Officer, the Special Enforcement Unit Lieutenant and the Support Services Captain an electronic message detailing the date, time, reason for entry, and identity of the individuals making entry. The Drug Property Officer shall maintain a record of these notifications. The Drug Property Officer shall also establish a manual sign-in log for individuals entering the Drug Evidence Room or Marijuana Evidence Room.

PROPERTY TYPES

23. Property which comes into the possession of the Department is usually one of five basic types:

(a) Evidence: Property, which is or may be related to a crime, and which, by its nature, may implicate or clear a person of a criminal charge.

(b) Recovered Property: Property which was illegally taken from its owner and subsequently recovered by this Department. For purposes of disposition, recovered property shall be treated as evidence.

(c) Found Property: Non-evidentiary property which is determined to be lost or abandoned and is not known or suspected to be connected with any criminal offense.

(d) Property Held for Safekeeping: Non-evidentiary property that is placed in the custody of this agency for temporary protection on behalf of the owner and for a period not to exceed sixty (60) days. (Civil Code section 2080.10)

(e) Unclaimed Prisoner Property: Personal property too large to be stored in the Jail’s oversized item storage area taken from a prisoner at the time of booking, and which is not claimed for 60 days following release from jail or court. (Civil Code sections 2080, et seq.)
PROPERTY BOOKING PROCEDURES

24. Employees coming into possession of property during the course of their duties shall exercise proper care in the handling of the property, and take all necessary steps to insure that the property does not become lost or unnecessarily damaged.

25. A numbered police report shall be made for all items of property or evidence coming into the possession of any employee of the Police Department. This report shall detail the circumstances by which the property came into the Department’s possession and describe each item of property obtained. The Property Officer and Drug Property Officer shall maintain files listing the current location and status of all items of property in the custody of this Department.

26. One (1) Computer Property System entry shall be completed for each item entered. Each item or container, other than narcotics evidence, shall have a Computer Property System printout attached which describes the item(s) or contents of the container to which it is attached. If a single item is sealed in a bag, the Computer Property System printout shall describe the single item. If two or more items are sealed in a single bag, the Computer Property System printout shall describe all items in the bag. If two or more items are sealed in two or more bags, each bag shall have a Computer Property System printout that describes the contents of the bag. If a list displays items not in the bag, employees shall highlight, circle, underline, or otherwise indicate those items actually contained in the bag.

27. Employees shall insure that the correct case number is entered in the Computer Property System, and that the case number is clearly printed on the Computer Property System printout(s).

28. Items booked for safekeeping and found property shall be segregated from items of criminal evidence in order to facilitate the timely disposition of such property.

29. All property coming into the custody of Department personnel during the course of their duties shall be placed in one of the designated Property Room temporary storage locations prior to the employee going off duty:

(a) Officers may deliver processed and bagged items directly to Property Room personnel during regular Property Room hours.

(b) The temporary storage of any item of property or evidence in desks, lockers, mailboxes or other Departmental facilities, not specifically authorized for that purpose is strictly prohibited.

(c) If property is to be used as part of an on-going investigation, the property shall be booked in and later checked out of the property room.
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(d) Prisoner's property shall not be left in the Bag & Tag Room lockers or Oversize Property Room without a Computer Property System Evidence printout attached.

30. Prior to booking any item of evidence or property into an appropriate Temporary Storage Location, employees shall first:

(a) Complete a Computer Property System record for the item, and

(b) Print and attach a Computer Property System printout to the item, as described in paragraph 26 (with the exception of drug or narcotics evidence, for which the Narcotics evidence envelope or Narcotics evidence sticker is used in place of the Computer Property System printout.)

31. In the event of a computer malfunction, employees shall complete a hand-written property evidence card, and substitute the card for the Computer Property System printout. In such cases, the employee shall notify the Property Officer of the problem experienced with the Computer Property System that necessitated the use of the handwritten property card. The employee shall make the notification during the work shift when the problem occurred, and shall include a description of the problem, the date and time, and the computer work station(s) used by the employee. During non-business hours, notification may be made by leaving a note attached to the booked item, or by placing a note in the Property Room mailbox, or by e-mail.

32. Items are to be placed in an available Bag & Tag Room locker and the locker secured. One Bag & Tag Room locker has been fitted with a mailbox type slot (locker #9). Small items should be stored in this modified locker. If the item is too large for the Bag & Tag Room lockers, the Oversize Storage area may be used. Bicycles are to be placed in the Bike Storage Room Drop Off area. The special procedures for narcotics and high-value items are described elsewhere in this Order.

33. Lockers are secured by closing the locker door.

(a) The Oversize Storage Locker and Bike Storage Room “Drop Off” areas can be accessed with the Departmental key.

(b) The Drug Storage Cage can be accessed via a key in the possession of the Drug Property officer, the Special Enforcement Lieutenant or the Support Services Captain.
LIQUID, BEVERAGE, AND PERISHABLES PROCEDURES

34. Containers of liquids or beverages are not to be stored except in situations where the preservation of the entire liquid in its original state is critical to the prosecution. In most instances, a sample may be placed in a small glass vial, and the vial attached to the original container.

35. Perishable items are not to be deposited for storage in the Property Room. These items may be photographed if appropriate and the item(s) returned to the owner or destroyed.

SHARP OR BLADED ITEMS PROCEDURES

36. When packaging sharp or bladed items such as knives, ice picks, etc., employees shall ensure that the sharp point of the item, or the blade of the item, is neither protruding nor exposed, by wrapping the blade with masking tape, or otherwise securely covering the point and/or blade of the item.

CURRENCY, HIGH VALUE, AND FIREARMS PROCEDURES

37. Items placed in the High Value Drop Safe shall have a Computer Property System Evidence printout attached.

(a) All monies placed in the High Value Drop Safe shall be counted by the booking officer and witnessed by another employee (if the amount is $50.00 or more). All monies are to be placed into self-sealing Berkeley Police Department Money Bags. All information requested on the Money Bag is to be filled out. All bags will bear a unique control number, and this number is to be listed in the corresponding police report.

(b) Cash count sheets shall be completed and included with all currency.

38. All money, handguns (including pellet guns), jewelry, or high value items shall be properly marked and placed into the High Value Drop Safe located in the Bag & Tag Room. All items shall be logged in on the clipboard adjacent to the High Value Drop Safe.

39. When booking currency, insure that the correct amount of the currency is entered in the “Exact Amount of Cash Booked” field of the Computer Property System entry.

(a) All currency shall be separated from other property in a case (e.g.: Book currency separately from the wallet in which it was found.)
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(b) When booking counterfeit or foreign currency, enter "0.00" in the "Exact Amount of Cash Booked" field of the Computer Property System entry.

40. All firearms are to be unloaded and ammunition placed in a plastic "Zip-Loc" bag and attached to the weapon.

41. Each firearm booked into the Property Room shall be entered into the Department of Justice Automated Firearm System and a copy of the AFS entry form submitted by the assigned officer shall be attached to the firearm prior to booking into the Property Room.

42. All shotguns and rifles shall be booked into the Property Room. These weapons shall be placed in the large pass through lockers in the Bag & Tag Room. If the weapon is too large to fit in these lockers or if these lockers are already in use, the weapon shall be properly tagged and placed in the Spare Shotgun Locker in the Equipment Room (Public Safety Building Room 1145). Whenever an officer places a weapon in the Spare Shotgun Locker, the officer shall make a copy of the Computer Property System Evidence printout, note on the printout that the weapon is stored in the Spare Shotgun Locker, and place the print-out in locker #9, the "small items" evidence pass through locker in the Bag & Tag Room.

43. A safe belonging to the Finance Department of the City of Berkeley will be housed in the Berkeley Police Department Property Room. This safe will contain payroll documents, cash, and vouchers that can be used in the case of an emergency. Property Room personnel will escort Finance staff in and out of the Property Room if access is needed. Keys and combinations for this safe will remain with the Finance Department.

URINE AND BLOOD SAMPLE PROCEDURES

44. Urine or Blood samples will be stored in the Berkeley Police Department Property Room as follows:

(a) Urine sample jars and envelopes will still be kept in the jail. Blood samples will be obtained from an appropriate medical facility.

(b) A Computer Property System entry will be created.

(c) A Computer Property System printout shall be attached to the sample envelope.

(d) Sealed urine sample envelopes and/or blood sample envelopes should be placed in the refrigerator in the Bag & Tag Room.

(e) A biohazard label should be attached.
(f) The Property officer will remove any sample envelopes and store them in the Property Room. The Property Officer will update the Computer Property System records.

(g) The Forensic Institute courier will obtain any urine/blood samples from the Property Officer and transport for testing.

**BICYCLE AND VEHICLE PROCEDURES**

45. Bicycles, tricycles, or parts thereof shall be deposited in the Bike Storage Room "drop off area" with a Computer Property System Evidence printout attached.

46. None of the Property Room storage areas are to be used for the storage of vehicles (except bicycles), discarded office furniture or equipment, or papers marked for destruction.

(a) Vehicles, including mopeds, shall be towed to a local garage in accordance with existing tow procedures.

**EXPLOSIVES AND FLAMMABLE OR TOXIC SUBSTANCES**

47. Flammable, explosive, or toxic materials: No flammable, explosive or toxic materials shall be stored in the Property Room.

48. Under no circumstances shall highly explosive, flammable, or toxic substances be stored in any portion of the Public Safety Building, or any Property Storage Area.

(a) Explosive materials shall be moved, stored, and destroyed only under the direct supervision of a Berkeley Police Department Explosive Ordnance Technician.

49. Flammable materials shall be referred to the Berkeley Fire Department Fire Prevention Bureau for storage and disposal. During non-business hours, the On-Duty Fire Chief shall be contacted for storage and disposal assistance and direction.

50. Toxic or hazardous substances shall be moved and stored ONLY under the direct supervision of the City of Berkeley Toxics Management Division or Berkeley Fire Department Hazardous Materials Response Team.
NARCOTICS EVIDENCE PROCEDURES

51. With certain stated exceptions, only narcotics and drugs will be accepted into the narcotic evidence system. Narcotics related paraphernalia shall be introduced into the property and evidence system as outlined previously (exceptions might include paraphernalia or syringes, properly packaged, which contain usable quantities of narcotics.)

52. A numbered report shall exist or be made for all items of narcotic or drug evidence coming into the possession of any employee of the Police Department. The Drug Property Officer shall, through the Computer Property System, maintain a record listing the location, disposition, or destruction of narcotic and drug evidence in the custody of this Department. All narcotics evidence shall be inspected by the Drug Property Officer to guard against tampering.

NARCOTIC AND DRUG DEPOSITING PROCEDURES

53. Employees taking possession of drug evidence and found drugs shall adhere to the following procedures:

(a) After its initial collection, employees shall, without delay, deposit any item of Drug Evidence or found drugs into the Drugs Drop Safe in the Bag & Tag Room, Drugs Drop Safe in the SEU Office or the Drug Storage Cage.

(b) Employees coming into possession of narcotics or drugs during the course of their duties shall exercise proper care in the handling of these items, and take all reasonable steps to insure that these items do not become lost or unnecessarily damaged.

(c) Employees shall use a drug evidence envelope and properly complete the information on the envelope when booking items of drug evidence.

(1) Employees shall fully and accurately complete the Computer Property System Evidence entry record.

(2) In all cases where narcotics and/or drugs are booked into the Computer Property System, the employees shall list the exact weight, number of dosage units, and/or exact quantity of narcotics and/or drugs, as accurately as could be reasonably expected. This listing shall be recorded in the appropriate entry field of the Computer Property System.
54. The following packaging procedure shall be followed by employees who take possession of narcotic or drug evidence, and found drugs:

(a) Weigh the quantity of drugs on the scale provided. If this is inappropriate, such as a seizure of pills, tablets, or individual dosage units such as LSD, count the exact quantity of pills, tablets, or individual dosage units that are collected. If the size of the seizure (i.e. 50 Marijuana Plants) makes it inappropriate to weigh, list the number of plants.

(b) Choose an appropriate size clear evidence pouch.

(c) Place the drugs inside the clear evidence pouch.

(d) Place a business card or note with the employee's name, badge number, and case number inside the clear evidence pouch. A notation describing where the contraband was originally located may also be included.

(e) Heat seal the clear evidence pouch with the heat sealer provided.

(f) Choose an appropriate size manila Narcotics Evidence Envelope. If it is necessary to use one of the larger envelopes that are not pre-printed, attach one of the printed white adhesive labels.

(g) Fill out all the required information requested on the face of this envelope. Initiate the “Chain of Custody.” If the drugs were seized from a suspect, write the suspect’s name in the “Received from” box on the envelope or label. The employee writes his or her name in the “Name” box. Write the date and time in the appropriate boxes.

(h) Place the clear evidence pouch inside the manila evidence envelope.

(i) Close the manila evidence envelope flap and use the metal clasp to hold the flap down.

(j) Apply a strip of red colored “evidence” tape to seal the manila evidence envelope flap. Be certain this action does not obscure any necessary information on the face of this envelope. Initial and date the evidence tape.

(k) Access the Computer Property System and create an evidence entry record for this item of evidence.

(l) Deposit the Narcotics Evidence Envelope into the Drug Drop Safe.
55. The following procedures shall be used when the drug evidence, or found property, is too large to be placed in any Drug Drop Safe.

(a) Use the same basic format, as previously listed, and modify as necessary. Make use of larger manila evidence envelopes and larger clear evidence pouches, as necessary. Should even these prove to be too small, standard “grocery” sized paper bags, found in the Property Room, should be used.

(b) A business card or note with the employee’s name, badge number, and case number shall be included in each large container used.

(c) If the evidence envelope or grocery bag used does not have a pre-printed chain of custody box on it, attach one of the white printed adhesive chain of custody labels to it.

(d) Seal the opening of any paper bag with red colored “evidence” tape and staple or secure, as necessary. Initial and date the evidence tape.

(e) Place the evidence into the Drug Drop Safe if at all possible. If not, place the item(s) in the Drug Storage Cage in the Oversize Property area.

PROHIBITED ITEMS IN THE DRUG DROP SAFE

56. Only the actual drugs, perhaps with its original packaging, should be placed into the Drug Drop Safe. Any packaging included should not obscure the drugs from sight.

(a) Needles, mirrors, razor blades, “kits,” in general, and any other “non-drug” item or tool, shall not be placed in the Drug Drop Safe.

(b) Smoking pipes and syringes should not be placed in the Drug Drop Safe unless they contain a usable quantity of drugs and it is impractical to separate them or were used in a crime or suspicious circumstance. An example of this would be a syringe suspected to being used in an assault with a deadly weapon case. In such cases, syringes should be packaged in plastic safety tubes provided.

SYRINGE MANAGEMENT

57. Except as described in (a) below, all syringes taken into possession shall be placed into the red colored “Sharps” collector to be destroyed. If the syringe is taken for evidentiary purposes alone, it is to be photographed along with the appropriate case number, then placed in the “Sharps” collector to be destroyed.
(a) Syringe packaging for narcotics analysis: Should a loaded syringe be obtained the following guidelines shall be used. First, employees must take their time and exercise due caution in this task. If there is a plastic shield over the needle, employees should remember that this is not puncture-proof. The syringe and needle must be packaged in a puncture-proof container such as a metal/fiber mailing tube or hard plastic containers. Furthermore, the presence and manner of packaging a syringe must be described explicitly on the container in which the syringe is sent.

PROCEDURES FOR PROCESSING BOOKED PROPERTY

58. The Property Officer or the Property Clerk shall check the Pass Through Lockers, High Value Safe, Bag & Tag Room refrigerator, Bike Storage Room “drop off area” and Oversize Storage Room each business day, retrieve the items from temporary storage, index them into the Computer Property System, barcode each package/bag/container and store them in an appropriate area of the Property Room.

59. The Property Officer or the Property Clerk shall query the Computer Property System each business day to confirm that all property or evidence entered into the Computer Property System has been located and accounted for by the Property Officer or the Property Clerk. If the Property Officer or the Property Clerk locates a Computer Property System entry and cannot locate the actual evidence, he/she shall take immediate action to resolve the inconsistency. If the Property Officer or the Property Clerk finds a piece of property or evidence without a corresponding entry in the Computer Property System; the Property Officer or the Property Clerk shall take action to resolve the inconsistency. Such action may include but is not limited to contacting the involved employee to determine the circumstances of the incident, contacting the employee’s supervisor for further assistance, or other action taken with the intent to rectify the situation, and provide feedback to the involved employee in order to avoid future mistakes.

60. The Drug Property Officer shall check the Drug Drop Safe, SEU Drug Drop Safe, and the Drug Storage Cage each business day, retrieve the items from temporary storage, confirm and update the corresponding record in the Computer Property System, barcode each package, bag, container or item, and store them in an appropriate area of the Property Room.

61. The Drug Property Officer shall query the Computer Property System each business day to confirm that all drug property or evidence entered into the Computer Property System has been located and accounted for by the Drug Property Officer. If the Drug Property Officer locates a Computer Property System entry and cannot locate the actual evidence, he/she shall take action to resolve the inconsistency. If the Drug Property Officer finds a piece of drug property or evidence without a corresponding entry in the Computer Property
System, the Drug Property Officer shall take action to resolve the inconsistency. Such action may include but is not limited to: contacting the involved employee to determine the circumstances of the incident, contacting the employee's supervisor for further assistance, or other action taken with the intent to rectify the situation, and provide feedback to the involved employee in order to avoid future mistakes.

**PROCESSING OF CURRENCY**

62. Property Room personnel shall place all currency in the security safe in the Property Room. Only the Property Officer, Property Clerk and the Support Services Lieutenant shall have the combination to the security safe. The combination shall be changed immediately following the rotation of an individual from any of these assignments.

63. With the exception of currency that must be retained in its original state, currency in the Property Room should not be allowed to accumulate over $5,000. The Property Officer shall periodically deposit currency in the Berkeley Police Department Property Room Fund account in the First United Services Credit Union. The deposit shall be witnessed and verified by the Property Clerk or another departmental employee designated by the Support Services Lieutenant, and a receipt obtained. The Support Services Captain shall be notified each time money is moved to the Credit Union.

64. All currency placed into the security safe shall be in sealed Berkeley Police Department Money Bags. Currency to be deposited shall remain sealed until removed from the security safe for deposit. The seals can then be broken only by the Property Officer and the witness described in paragraph 62 above. The Property Officer and witness shall perform a concurrent count of each package to verify the contents and amount prior to deposit.

(a) Any discrepancy between the amount on the property tag and the count prior to deposit shall be reported immediately to the Support Services Captain for follow-up investigation and resolution.

(b) The Watch Commander or in his/her absence the Duty Command Officer shall also be notified. The Watch Commander or Duty Command Officer will notify the Chief of Police, the City Manager, the Director of Finance and the City Auditor.

65. The Property Officer, Support Services Lieutenant, and the Administrative Division Lieutenant are the authorized signatories on the Property Room Fund account.

(a) Withdrawal forms shall be signed by at least two authorized signatories.
(b) All withdrawals from the Credit Union account shall be by check.

(c) A copy of all Credit Union transactions shall be filed in the Property Room in a cabinet under the control of the Property Officer, and a copy shall be provided to the Administrative Division Lieutenant.

WITHDRAWAL AND RETURN OF PROPERTY

66. When an investigation requires that an item be temporarily removed from the Property Room, the assigned employee shall contact the Property Officer/Drug Property Officer. The Property Officer/Drug Property Officer will check out the item to the employee and immediately update the Computer Property System records to indicate that the item(s) is in the temporary custody of the assigned employee. A chain of custody form shall be initiated by the Property Officer/Drug Property Officer, and attached to the item.

67. Property may be temporarily withdrawn from the Property Room for identification, laboratory examination, and court.

(a) Property shall be withdrawn on the date it is actually needed for identification, examination, or court. In special situations, the Property Officer should be contacted and arrangements made for the property to be available during early-morning hours or weekends, etc. Immediately following the withdrawal of an item of property, the Property Officer will update the Automated Property System on the status change of the item(s) including initiating a “Chain of Custody” record in the Automated Property System. Evidence leaving the Property Room shall have a Chain of Custody form attached.

68. No employee may place property in and then remove it from the Oversize Property Storage area or the Bike Storage Room, unless to return the property to the owner. In that event, a Property Receipt shall be obtained from the owner and forwarded to the Property Officer or the Property Clerk so he/she may update the Automated Property System entry. The Property Officer or the Property Clerk will update the system during the next business day.

69. Items shall be securely bagged, wrapped, tied, taped or placed in a suitable container for transport to the forensic laboratory or storage.

70. When property is temporarily released from the Property Room, the item’s change in status shall be immediately recorded in the Computer Property System by the Property Officer or Property Clerk releasing the item(s). A “Chain of Custody” form will be attached to the item and signed by the individual to whom the
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property is released. The Property Officer or Property Clerk will initiate a “Chain of Custody” entry in the Computer Property System for each item released. When the property is returned, the “Chain of Custody” form attached to the property will be retained with the item(s) of property. The Property Officer or Property Clerk will update the status of the item in the Computer Property System upon its return to the Property Room. The Property Officer or Property Clerk will also update the “chain of custody” record in the Computer Property System file.

71. The assigned employee shall be responsible for the proper maintenance of the chain of custody record and security of the item(s). At times the item is not actually needed, it shall be returned to the Property Room.

72. When property stored in the Property Room is returned to the owner by the Property Officer, Property Clerk or Drug Property Officer, a property receipt will be obtained. The property receipt will be forwarded to the Records Bureau for imaging with the case. The Property Officer/Drug Property Officer will immediately update the Computer Property System to reflect the release of the property.

73. If a piece of returned property has never been entered into the Computer Property System, the employee completing the property receipt should route it directly to the Report Review Unit with the notation “Not in Computer Property System.”

74. When indexed property is placed in evidence (and retained by the court) at trial, it is the responsibility of the employee submitting the evidence to the court to obtain a property receipt from the Court Clerk. This receipt (“Property Receipt/Court Property Receipt”) shall be routed to the Property Officer. The Property Officer or the Property Clerk shall make the necessary updates in the Computer Property System and forward it to the Records Bureau for attachment/imaging to the numbered report.

75. No item of property shall be released without a signature receipt from the person receiving the property. If the property is being released for identification, investigation, laboratory examination, or court, a Chain of Custody Form shall be attached to the property and signed by the officer/employee to whom the property is released.

**DISPOSAL OF PROPERTY**

76. Property shall be disposed of by either:

(a) Return of the property to its owner or finder;

(b) Sales of the property at auction;
(c) Conversion of the property to agency or other public use; or

(d) Destruction of the property.

(e) Property with no monetary or evidential value shall not be allowed to accumulate.

(f) Evidence on suspended misdemeanor investigations may be disposed of after twelve (12) months with the approval of the assigned employee's supervisor.

(g) Evidence in felony investigations may be disposed of with the approval of the assigned Detective Bureau supervisor. In deciding what evidence may be disposed of, the major consideration should be the value of the items in a criminal prosecution. Some items held in evidence have little or no value in court. If it will serve a useful prosecution purpose, photographs of the evidence may be requested prior to its disposal.

(h) In every instance where property in Departmental custody has been returned to its owner or finder, sold at auction, destroyed, or converted to agency or public use, the Property Officer, Property Clerk or Drug Property Officer shall immediately update the Computer Property System record's "Disposition" field. An appropriate comment may also be added to indicate the manner in which the item was disposed.

RETURN OF PROPERTY TO OWNER

77. The policy of this Department shall be that every item of found property, recovered property, or evidence is to be returned to the owner except in the following situations:

(a) Where there is an order from the court to destroy.

(b) Where there is written permission of the owner to destroy.

(c) Where the law provides for the destruction or other disposition of the item.

(d) Where all investigative measures have been taken and an owner cannot be identified or located.

(e) Where the owner is contacted by telephone and gives the employee permission to dispose of the property. In such instances, the employee must file a written report with the numbered case, setting forth all the circumstances of the contact. A copy of this report must be routed to the Property Officer or Property Clerk.
78. When property is to be returned to the owner, the Property Officer or Property Clerk shall forward the Property Receipt to the Report Review Unit. If the property has a serial number and has been entered into the Automated Property System of the Department of Justice, the Property Officer or Property Clerk shall notify the officer who authorized the release and that officer shall be responsible for insuring that item is removed from the Automated Property System or Automated Firearms System of the Department of Justice. If the authorization for release came from a court order, the Property Officer will request the item be removed from the appropriate Department of Justice automated system.

(a) In all cases, property shall be released only after the owner has provided satisfactory proof of ownership, presented proper personal identification, and signed a Property Receipt.

RETURN OF FOUND PROPERTY TO FINDER

79. Berkeley Municipal Code Section 2.64.110 provides that all found property or found money coming into the possession of any member of the Police Department shall remain in the custody of the Department for at least 90 days. Methods of disposing of such property (with the exception of returning found and unclaimed property to the finder) are set forth in the ordinance.

80. California law distinguishes between a police employee finding an article or money in the course of his/her employment and the usual case where the finder has superior title against anyone except the real owner. It is the duty of a police employee to forfeit all claim of title to any article found or surrendered to him/her in the course of employment.

81. When a citizen reports the finding of money or any article, he/she may request that this Department take custody of the item and stipulate that it be returned at the finder's expense if the rightful owner cannot be located. The citizen shall be advised:

(a) If no owner appears and proves ownership of the property within 90 days, the finder may take title to the property if requested within 30 days after expiration of the 90-day period.

(b) If the finder makes claim to the property within 30 days after expiration of the 90-day period, the Property Officer can release the property to the claimant if the value is less than $250.00.
BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 27, 2005

(c) If the property value is $250.00 or greater, the Property Officer shall arrange for a notice of the found property to be published in a local newspaper of general circulation. The notice shall appear in at least one local newspaper for a minimum of (1) week and costs shall be paid by the finder.

(d) If, after seven (7) days following the publishing of the notice, no owner appears and proves ownership, title to the property shall vest in the finder. The finder may claim the property upon presentation of valid (picture) identification, and reimbursement to the Police Department for the publication of the notice described in (c) above.

82. The Property Officer or Property Clerk shall be responsible for ensuring that all necessary cancellations are made in Departmental files whenever property is released under this Order. These cancellations are usually restricted to firearms entries in AFS.

83. It is not mandatory that citizens turn in found property to this Department; however, the procedure set forth above should be complied with to protect the finder from being in violation of Penal Code Section 485. This Section states that a finder is guilty of theft unless he/she makes a reasonable effort to find and restore the property to its rightful owner.

84. Should the finder wish to retain the property and proceed to gain title as set forth in this Order, a numbered report shall be prepared, a complete description of the property obtained, and the description checked against all appropriate files and systems (Local, State, etc) in an attempt to locate the owner.

PUBLIC AUCTION OF PROPERTY

85. State law provides for the sale of unclaimed property which cannot be returned, and which is not required to be destroyed. Once each year, or more often if necessary, the Property Officer shall arrange for unclaimed property to be sold at public auction.

(a) Unclaimed firearms and other weapons shall not be sold at auction. They shall be destroyed as provided by law.

DESTRUCTION OF STOLEN OR EMBEZZLED PROPERTY

86. Where the Property Officer has identified items of property for destruction, the Property Officer shall request approval for destruction of the item from the Police Department Bureau responsible for the criminal investigation involving the item.
(a) The Bureau supervisor shall determine if there are pending court actions regarding the item, whether the item should be returned to its owner, or whether the item is suitable for destruction.

(b) If the owner can be located, the Bureau shall notify the owner that the item is available for recovery within 30 days from the Police Department Property Room. The Bureau shall in turn notify the Property Officer that the owner is notified, and that the property shall be held for the owner.

(c) If no owner can be located, the Bureau shall so notify the Property Officer, and confirm that the item is suitable for destruction.

87. If there is a dispute as to the ownership of a piece of stolen property, all parties shall be advised to apply to the court of jurisdiction for a determination of ownership.

DESTRUCTION OF FIREARMS AND WEAPONS

88. Firearms and weapons defined as “nuisances” by Penal Code Section 12028 are subject to disposal. By June 30 of each year, the Property Officer shall apply for a court order authorizing the destruction of “nuisance” weapons. The application shall list the weapons to be destroyed by make, model, caliber, and serial number.

89. Weapons defined as “Destructive Devices” by Penal Code Section 12301 and machine guns defined in Section 12251 PC, which were unlawfully possessed, must be surrendered to the California Department of Justice unless a certificate signed by a Judge or District Attorney is filed with the Department of Justice. The certificate must state that the preservation of such destructive devices or machine guns is necessary to serve the ends of justice.

(a) Destruction of firearms and weapons shall be accomplished in such a manner so as to render the weapons absolutely useless. The destruction process shall occur at a commercial location arranged by the Property Officer and shall be witnessed by the Property Officer and Commanding Officer of the Support Service Division. A Sworn Supervisor may substitute for the Support Service Division Commander.

(b) The Property Officer or Property Clerk shall update information regarding all serialized weapons from the appropriate computer system(s) immediately following such destruction. The Property Officer/Drug Property Officer will update the Computer Property System immediately following any destruction of property or drugs.
(c) The Property Officer shall maintain information on all property that has been destroyed and shall forward that information to the Records Unit for placement in the applicable record storage system (e.g., optical disc storage.)

CONVERSION OF PROPERTY TO AGENCY OR PUBLIC USE

90. Civil Code Section 2080.4 and Penal Code Section 1411 provide that, if a City or county has enacted an enabling ordinance, certain unclaimed property held in the custody of the agency may be retained for agency or other public use, rather than being sold or destroyed. Penal Code Sections 12028 and 12030 provide the authority for acquisition of firearms for agency use.

(a) Requests for acquisition for Departmental or other public use of unclaimed property held by this Department shall be made in writing and forwarded to the Chief of Police via the Support Services Division Commander. All requests shall include complete justification for acquiring the property and copies of all relevant agency documents describing how the requested property came into possession of the Department.

(b) After a request has been approved by the Chief of Police, additional documents shall be obtained as described below when the property to be acquired is a firearm:

(1) A Certificate of Weapon Retention obtained from and signed by a Judge or District Attorney; and,

(2) A letter, describing the make, model, caliber, and serial number of the firearm, prepared for the signature of the Chief of Police, to the California Department of Justice.

(c) Notwithstanding an order from the court to the contrary, money which is in the possession of the property section and which cannot be lawfully returned to its owner (after consultation with the appropriate prosecuting attorney), shall, at the direction of the Chief of Police, be transferred from the BPD Property Fund to the City General Fund. (Ref. Penal Code Sections 335a and 1418, and Health and Safety Code Sections 11488, etc.)

(d) No property so acquired shall be used for personal or non-governmental purposes.
BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 27, 2005

GENERAL ORDER P-65

STORAGE OF SEIZED DRUG-RELATED FUNDS

91. Unless otherwise ordered by the District Attorney or Alameda County Superior Court, all seized drug-related funds shall be kept in the custody of the Police Department pursuant to Berkeley Municipal Code section 2.64.090, which requires a record be made thereof. Seized drug-related funds shall be kept a minimum of one year and ninety days from the date of seizure of the funds.

(a) "Drug-related funds" means all moneys, negotiable instruments, or securities described in California Health and Safety Code section 11470 (f).

(b) "Seized drug-related funds," means any drug-related funds seized by the Police Department pursuant to Division 10, Chapter 8 (commencing with Section 11470) of the Health and Safety Code.

DISPOSITION OF UNCLAIMED SEIZED DRUG-RELATED FUNDS

92. If the District Attorney or Attorney General institutes forfeiture proceedings for seized drug-related funds, the funds shall be disposed of in accordance with Division 10, Chapter 8 (commencing with Section 11470) of the Health and Safety Code.

93. Non-withstanding Berkeley Municipal Code section 2.64.110, if forfeiture proceedings are not instituted and if seized drug-related funds are not ordered to be disposed by a court, the Police Department shall comply with any notice to withhold issued with respect to the funds by the Franchise Tax Board. If no notice to withhold has been issued with respect to the funds by the Franchise Tax Board, the funds shall be disposed of in accordance with the terms of this section.

94. No sooner than one year from the date of seizure of drug-related funds, the Property Officer shall send a certified letter to the last known address of the individual whose funds were seized. The Property Officer shall simultaneously publish a notice once a week for three successive weeks in a newspaper of general circulation in Alameda County.

(a) Both the letter and the notice shall include the following:

(1) The case number of any criminal proceedings related to the funds;

(2) The Police Report number related to the funds;

(3) The date and place of seizure; and

(4) The amount of funds held by the Police Department.
(b) Both the letter and the notice shall direct the individual to apply for a court
date for release of the funds and shall specify the date by which the person
must apply.

(1) The date shall be no sooner than ninety (90) days after the certified letter
is deposited in the mail. The letter and notice shall further state that if such
a court order is not obtained, the funds shall become the property of the
City.

95. If court proceedings are not instituted and served on the City on or before the date
specified in the notice and letter, the funds shall be transferred to the Police
Department's asset forfeiture account.

INSPECTIONS OF EVIDENCE/PROPERTY STORAGE AREAS

96. A scheduled inspection of the Property Room will be made at least once every six
months. The Support Services Division Captain or his/her designee and Patrol
Division Captain or his/her designee shall conduct these inspections to determine
that:

(a) The respective Property Room storage facilities are being maintained in a
    clean and orderly fashion,

(b) The provisions of the General Orders are being followed,

(c) Property is being protected from damage or deterioration,

(d) Property accountability procedures are being maintained, and

(e) Property having no further evidentiary value is being disposed of in
    accordance with the law and Departmental policy.

97. The Patrol Division and Support Services Division Commanders or their
designees shall include the nature and results of these inspections in his/her
monthly management report to the Chief of Police.

98. Unannounced inspections of the Property Room will be conducted annually as
directed by the Chief of Police. These spot inspections shall be conducted to
determine that the Property Rooms are being maintained in a clean and orderly
fashion, that the General Orders are being followed, that property accountability
and security procedures are in compliance, that all property is being sent to the
main Property Rooms as soon as possible, and that the main Property Rooms
received the necessary paper work to dispose of evidence/property no longer
having evidentiary value. A random comparison of the records with physical

Entire text is revised.
property should consume most of the time allocated to the spot inspections. The
Patrol Division and Support Services Division Commanders or their designees
shall include the nature and results of these inspections in his/her monthly
management report to the Chief of Police.

AUDITS

99. In December 2000, an automated property system was instituted. In order to
insure the credibility of this automated property system, a series of regular audits
will be instituted. The following audits will be performed:

(a) Monthly Audits. At least once each month, the Property Officer and Drug
Property Officer will conduct a random audit of 25 items of property from
various location within their respective property rooms. This monthly audit
will examine the records for these items and confirm the status and location of
each of these items is correct. The Property Officer will additionally conduct a
“Cash” audit of the property room and determine the amount of cash currently
stored within the property room. Once each month, the Property Officer and
Drug Property Officer will check the “Chain of Custody” disposition records
in the Computer Property System, or a manual log. When an article has been
out of the Property Room for two weeks or more, the Property Officer will
contact the employee that checked out the item of property and determine its
status. Items out for more than two weeks shall have an explanation placed in
the “Property Message” field of the Computer Property System. The results of
each of these audits shall be reported to the respective Division Commanders
as part of the Monthly Management Report.

(b) Quarterly Audits. At least once each three months, the Property Officer and
Drug Property Officer will, using the portable barcode scanners, audit 100
pieces of property in their respective Property Rooms. The audit will check
for the correct locations and status of each item. This audit will also check at
least 5 different locations (2 locations in the case of the Drug Property
Officer) and confirm that those locations contain all the individual pieces of
property that the Computer Property System has assigned to those locations.
The results of each of these audits shall be reported to the respective Division
Commanders as part of that month’s Monthly Management Report.

100. Whenever a new Property Officer is appointed, outgoing and incoming
personnel shall conduct a joint inventory. The purpose of the inventory is to
ensure the continuity of custody and not require the accounting of every single
item of property. The inventory should be sufficient to ensure the integrity of
the system and the accountability of the property. The person assuming custody
of the property should ensure that all records are current and any discrepancies
recorded and reported to the Support Services Division Commander prior to the
assumption of property accountability by the newly appointed custodian.
References:
Berkeley Municipal Code Sections 2.64.090 and 2.64.110
California Civil Code Section 2080.3,* 2080.4
California Health and Safety Code Sections 11470 and 11488
California Penal Code Sections 335a, 1407, 1411, 1413, 1418, 12028, 12030, 12301 and 12251
General Order 4-4, P-66, P-67, R-17, V-2 and V-5
Special Order 29960, May 24, 1989
Special Order 26, March 21, 1992, "New Procedure for Handling Urine Samples."

*References may include a superscript asterisk to indicate a footnote or additional information.
BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 31, 1989

GENERAL ORDER B-4

SUBJECT: RESPONSIBILITY AND ACCOUNTABILITY OF DELEGATED AUTHORITY

PURPOSE

1 - The purpose of this General Order is to define that responsibility which is commensurate with authority and to establish accountability for the use of delegated authority.

POLICY

2 - It is the policy of the Berkeley Police Department that inherent with delegated authority is the latitude to make decisions and take the necessary actions to satisfy the requirements of each assigned position. Commensurate with the authority, each employee will accept the responsibility for the use, misuse, or failure to use that authority.

GUIDELINES

3 - Supervisors will be held accountable for the performance of employees under their immediate control.

4 - When delegating, the following guidelines shall be considered:

(a)—Delegation is a function and tool of good management and, when appropriate, Supervisors have the discretion and responsibility to delegate to subordinates.

(b)—When authority is delegated, it shall be the responsibility of the Supervisor to ensure the subordinate has the power to act and has the ability to carry out the assignment. Correspondingly, no one shall be assigned responsibility for work without being delegated authority to direct the manner of its performance.

(c)—Supervisors should advise subordinates that they will be held accountable for the exercise of the delegated authority.

(d)—Although the subordinate may be held accountable for his/her actions, nothing in this policy absolves the Supervisor from ultimate responsibility and accountability for the supervision of subordinates and the use of delegated authority.

(References: CALPE Standards
Municipal Police Administration)
CHAPTER 4

DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT ORGANIZATION

PR 400 General Responsibilities of Officers and Employees: It shall be the duty and responsibility of each officer and employee to fulfill to the greatest extent possible the functions of the Police Department and the bureau, division or unit to which one is assigned and to perform any duty assigned by a superior officer. An officer's and employee's work performance shall be in keeping with the goals of the Department's Mission Statement and the concept of Community-Involved Policing. The main goal of Quality Service, Community Engagement and Problem Solving shall be the foundation upon which all action is based.

PR 401 Individual Responsibilities of Officers and Employees: Each officer and employee of the Department is individually responsible for:

a. The proper execution of assigned duties.

b. The prevention of crime.

c. The suppression of crime.

d. The enforcement of laws.

e. The arrest of offenders, depending upon the nature of his/her specific assignment.

f. Maintenance of proper public relations.

g. Maintenance of discipline.

h. Adherence to rules, regulations, orders and Departmental procedures.

i. Enforcement of rules, regulations, orders and procedures among subordinates, depending upon the nature of his/her specific assignment.

j. Promptly reporting through channels developments that may adversely affect public or official relations.

k. Initiating police action when necessary.
DATE ISSUED: September 8, 1995  
SUBJECT: Police Regulations

1. The proper care and use of Departmental equipment, supplies and facilities.

PR 402  Responsibilities of Supervisory Officers and Supervisors: Each supervisory officer and supervisor, in addition to the general and individual responsibilities of each officer and employee, shall be responsible for:

a. The detailed inspection of all activities of the employee under one's supervision.

b. An intimate knowledge of the duties and responsibilities of one's subordinates.

c. Proper performance of duties and adherence to policies and procedures by each member of one's unit.

d. The enforcement of rules and regulations among members of one's unit.

e. Working as closely with one's subordinates as time and area permit.

f. Providing leadership in carrying out police activities.

g. Coordination of shift when more than one employee is involved and the proper assignment of duties to each person.

h. Functional supervision of employees not directly supervised.

i. Detailed training on the job as necessary to insure efficient operations by one's subordinates.

j. The effective operation of one's unit.

k. Providing command to members of one's division as necessary in the absence of divisional command or a ranking officer.
Responsibilities of Commanding Officers: Each Commanding Officer, in addition to the general and individual responsibilities of each officer, employee, supervisory officer and supervisor, shall be held responsible for:

a. The proper direction and control of personnel under one's command.

b. The maintenance of discipline among members of one's command.

c. Proper performance of duties and adherence to policies and procedures by each member of one's command.

d. The enforcement of rules and regulations among members of one's command.

e. Providing supervision and control to members of other divisions as necessary.

f. The proper discharge of detailed divisional responsibilities.

g. The proper condition and maintenance of quarters assigned to one's command.

h. The proper maintenance, use and operation of equipment, supplies and materials assigned for divisional use.

i. The prompt initiation of employee, supervisory, or administrative action when necessary to fulfill a functional responsibility of the Department when such action is not otherwise being taken.

j. The effective operation of one's division or unit.

k. Providing for continuation of command and/or supervision in one's absence.

l. Preparation of correspondence pertaining to activities of the division.

m. Complete Duty Command assignments as scheduled.
Functional Responsibilities of the Police Department: The functions of the Police Department are the maintenance of law and order in the City; the enforcement in the City of all laws of the United States and the State of California, and all Ordinances of the City, except when such enforcement is by such law, Ordinance, or the Charter of the City; the responsibility of a state or federal agency or officer; the administration of the City jail and the care, custody, and control of prisoners; the performance of such other functions as may be assigned by the City Manager or prescribed by Ordinance of the Council or by applicable State law.

Section 2.64.020 of the Berkeley Municipal Code provides that "...The Chief of Police, subject to the approval of the City Manager, shall organize and maintain such divisions in said department as the operations may in his judgment require."

In conformity with this legislation, the Department is divided into five major units, with sub-units as indicated below, all of which are responsible to the Chief of Police.

1. Office of the Chief
   a. Chief of Police
   b. Internal Affairs Bureau

2. Administrative Division
   a. Accreditation Program
   b. Bureau of Inspection and Control
   c. Personnel and Training
      - Underwater Search & Recovery Team (US & R)
3. Patrol Division
   a. Barricaded Subject/Hostage Negotiation Team
   b. Community Services Bureau
      (transferred to Patrol Division 6/21/92)
   c. Crime Analysis/Violence Suppression Unit
   d. Crowd Management Team
   e. Field Training Program
   f. Foot Patrol
   g. Patrol Teams
   h. Police Reserves
   i. Special Enforcement Unit
   j. Telephone Report Team

4. Support Services Division
   a. Detective Bureau
      1. Homicide
      2. Property Crimes
         a. Auto Theft
         b. Forgery/Fraud
      3. Robbery
      4. Sex Crimes
5. Youth Services
   b. Service Bureau
      1. Identification Unit
      2. Information Management
      3. Jail Operations
      4. Property Unit
      5. Public Safety Communications Center
      6. Records Unit
      7. Report Review
         - Data Entry Operations
         - Report Transcribing
      8. Warrant Detail
      9. Telecommunications Center
5. Traffic Division (established 7/1/90)
   a. Traffic Bureau
      - Traffic Enforcement Unit
      - Traffic Analyst
      - Commercial Enforcement/Tow Officer
      - Berkeley Junior Traffic Police/Adult Crossing Guards
b. Parking Bureau
   - Parking Enforcement
   - Meter Repair & Maintenance
   - City Garages
   - Center Street Garage
   - Berkeley Way Lot
   - Oxford/Palton Lot
   - Seiber Gate Garage
   - Elwood Lot

PR 405 OFFICE OF THE CHIEF

Administered by the Chief of Police

a. Chief of Police

Powers: To set objectives for the Department; make plans; develop procedures; organize and reorganize; provide for staffing and equipping the Department; adopt rules and regulations for the administration, discipline, equipment and uniform of the members and officers of the Department; fix powers and duties, and prescribing the penalties for violations of any such rules and regulations, and providing for their enforcement; inspect, assign and promote personnel; coordinate efforts and relationships, establish policies, report on Department accomplishments; maintain good public, employee and official relations; develop the Departmental budget; provide general direction for the Department; and keep the City Manager informed of incidents or developments that may adversely affect public or official relations.
b. Internal Affairs Bureau

Administered by two Sergeants who are directly responsible to the Chief of Police.

Function: To investigate citizen complaints alleging misconduct by Police Department personnel and to investigate internally originated personnel complaints as assigned by the Chief of Police; coordinate the Department's Board of Review process; assist the City Attorney's Office in the investigation of civil claims against the Department and/or its employees; assist the City Attorney's Office in the preparation and presentation of Police Merit; act as liaison with the Office of the City Attorney, the Police Review Commission and legal defense attorneys; prepare correspondence relating to personnel complaints and disciplinary actions; and advise the Chief of Police on matters relating to discipline and issues of liability and training as they relate to the disciplinary process.

PR 405 ADMINISTRATIVE DIVISION

Administered by a Captain who is directly responsible to the Chief of Police.

a. Administrative Bureau

Administered by a Captain who is directly responsible to the Chief of Police.

Function: Cooperate with CDP Personnel Department in the preparation and conduct of recruit and promotional examinations; process leaves of absence, terminations and reinstatements; process service rating reports on all probationary employees and Performance Evaluation reports on all non-probationary employees; provide administrative processing of disciplinary actions taken against members of the Department; participate as member(s) of Departmental Board of Review dealing with personnel complaints; develop and control employee incentive programs; develop, compile and disseminate information pertaining to the promotion of health, welfare and morale of police personnel; schedule examinations with contractors administering fitness program; maintain Departmental personnel files and develop personnel data as requested by the Chief of Police; compile Department strength and assignment reports on a monthly basis from data received from other units.
CHAPTER 1

PROPERTY ROOM PROCEDURES

Section 1.1 DEPOSITS

1 - Property Room staff will deposit funds with Treasury and maintain back up related thereto. City Treasury will deposit the funds in the Wells Fargo Bank Property Room account.

a) Cash will be counted weekly (unless volume necessitates more frequent money purge) by Property Room staff and Public Safety Accounting staff concurrently and placed in bank courier bags provided by City Treasury.

b) Public Safety Accounting staff will complete a Wells Fargo Bank deposit slip for account #7294071845 (Bank Code 11/Payment Code 91) and attach descriptive information including:

1) Date of seizure;
2) Amount;
3) Name of property owner;
4) Berkeley Police Department Case Number; and,
5) Involved person’s “Personal File Number” (PFN)

c) Deposits of cash that is property of unknown property owners will be made in one batch separate from the deposit of known property owners. Entry in FUND$ will be of total amount deposited. Supporting documentation as noted above will only include:

1) Date of seizure;
2) Amount; and,
3) Berkeley Police Department case number.

d) Prepare a cash receipts batch into FUND$. Select payment type: 91 (this code will automatically fill in the required budget codes)

e) Be sure to add the following additional comments (F10):

1) Berkeley Police Department Case Number; and,
2) PFN.
c) Transfers between Property Room Holding and Asset Seizure Holding accounts;

d) Interest earned on deposits; and,

e) Balance of unclaimed, cases under investigation, safekeeping, or unknown/found monies.
CHAPTER 2

SPECIAL ENFORCEMENT UNIT PROCEDURES

Section 2.1 SEIZURE

1 - Cash seizures are most typical. In the event of a cash seizure, the handling officer or their assisting officers will do the following:

a) Concurrently count the funds with a witness who should be at least the rank of officer.

b) Seal the funds in a Berkeley PD moneybag (clear, zipper-weld pouch with a chain of custody printed on it) and both the counting and verifying officers print and sign their names and be referenced in any report on the underlying incident.

c) Deposit the funds into the property room "valuables" drop safe.

d) Log the funds information onto the drop safe log.

e) Enter the funds information into the Property Management System "CRIMES".

f) Provide the suspect with "Intent to Seize" form itemizing the property subject to forfeiture.

g) Forward the original "Intent to Seize" form and 2 copies of the related police report to the Narcotics Administrative officer.

2 - The funds will be received by Property Room Staff and held as cash in the property room until weekly deposit.

Section 2.2 DEPOSIT:

3 - Public Safety Accounting Staff will deposit funds with Treasury and maintain back up related thereto. City Treasury will deposit the asset seizure funds in the Wells Fargo Holding account.

a) Cash will be removed from Berkeley PD moneybag and counted by Property Room Staff and Public Safety Accounting Staff concurrently and placed in bank courier bags provided by City Treasury.

b) Public Safety Accounting Staff will complete a Wells Fargo deposit slip for account # 7294071837 (Bank Code 13/Payment Code 93) which will contain:

1) Date of Seizure;

2) Amount;
Section 2.3  TRANSFER FROM PROPERTY ROOM:

4. - If funds received into Property have been deposited into the Property Holding Account # 7294071845 (Bank Code 11/Payment Code 91), the following steps are to be taken to move money to Asset Seizure Holding account # 7294071837 (Bank Code 13/Payment Code 93):

a) Narcotics Administrative officer will fill out a wire request form for the desired amount and submit to BIC.

b) BIC will fill out a Wire Transfer form to request the book transfer with the necessary backup to substantiate the disbursement. This is basically an interfund transfer between accounts.

c) Forward to Accounting for review.

d) Entire packet routed to A/P to complete the book transfer which will create the below entry between books:

   DR 010-0000-104.04-09  
   CR 010-0000-104.04-07


e) The original documentation and confirmation of the book transfer will be attached to the FNWIRE and returned to Accounting who will create the AJ to complete the transfer in FUNDS as well:

   DR. 010-0000-229-99-07  
   CR  010-0000-229.99-05

The accounting entries in Step 4 and this step 5 combine together to complete the transfer process in bank and FUNDS.

f) Both batches will be routed to Accounting Manager for review and approval and then updated.

Section 2.4  TRANSFER TO DISTRICT ATTORNEY:

5 - The Asset Forfeiture Unit of the Alameda County District Attorney’s office proceeds against the funds and accomplishes the seizure of the assets. At this point, the District Attorney notifies the department the proceedings have been concluded and provides a court order to forward the seized funds to the court for final distribution.

6 - Upon receipt of a request for transfer of funds, the Narcotics Administrative officer will:

a) Take documentation to BIC and request check cut to the “Treasurer, County of Alameda” (Vendor #2128) from the Holding/Impound account (# 7294071837 (Bank Code 13/Payment Code 93)) from FUNDS account 010-0000-229.99-05.
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Department. These funds are considered forfeited and are available for spending as prescribed by law.

8. Upon receipt of a check from the DA, the Narcotics Administrative officer logs receipt before delivering the check to BIC who does the following:

a) Public Safety Accounting Staff will complete a Wells Fargo deposit slip for account #7294071837 (Bank Code 13/Payment Code 94) which will contain:

1) Date of Seizure;
2) Amount;
3) Berkeley Police Department Case Number;
4) PERSONAL FILE NUMBER (PFN); and,
5) Reason for deposit.

b) Make separate deposit slips for each case.

c) Prepare a cash receipts batch into FUNDS. Select payment type: 94 (this code will automatically fill in the required budget codes:

DR. 014-0000-104.04-09
CR. 014-7304-352-01-02

d) Be sure to add the following additional comments (F10):

1) Amount;
2) Berkeley Police Department Case Number;
3) Personal File Number (PFN);
4) Reason for deposit; and,
5) Date of seizure.

e) Deposit will be delivered to City Treasurer’s office for deposit into Wells Fargo account #7294071837 (Bank Code 13).

f) Deposit receipt is copied and sent to “SEU, ATTN: Narcotics Administrative officer.”

g) The Narcotics Administrative officer will document the transaction in the form of a memo to Field Support Division chain of command detailing the case number, suspect, amount and reason for the deposit. The memo will be cc’d to the Bureau of Inspections and Control/Business Manager, A/P, and Accounting.
h) A check will be cut to the “United States Marshal’s Office following standard check issuance procedures unless United States Marshal’s Office deadline cannot be met by following standard procedures, at which time a Request for Manual Check form will be submitted;

i) Both batches will be routed to Accounting Manager for review and approval and then updated; and,

j) File the original request, court order, receipt, associated deposit memos, withdrawal memos, and supporting documents in the Asset Forfeiture case file maintained in the Narcotics Administrative office.

Section 2.7 RETURN OF FEDERAL FUNDS:

10 - Federal disbursements (receipts of revenue) are made via direct deposit into the Federal Account #7294071829 (Bank Code 12/Payment Code 92). These funds are considered forfeited and are available for spending as prescribed by law.

11 - Federal seizures are processed as separate seizures even if made under the same case. BIC will prepare the batch and complete an AJ for the receipt of these funds which would be DR.014-0000-104.04-08 and CR 014-7304-352.01-01.

   DR. 014-0000-104-04-08
   CR. 014-7304-352-01-01

12 - Upon notification from US Marshall’s office that funds are to be deposited, Narcotics Administrative officer shall notify Treasury and BIC and send copy of letter from US Marshall.

Section 2.8 SPENDING:

13 - Forfeited funds are only spent at the approval of the Chief of Police. Vendor is selected in accordance with City of Berkeley Municipal Code purchasing regulations. The Chief requests approval by the City Manager (or City Council, dependent on the purchase amount) in the form of a memo requesting the funds be transferred to the City to fund specific purchases. The Narcotics Administrative officer fulfills these requests from the Chief.

14 - When such a request is received, the Narcotics Administrative officer will:

   a) Take documentation to BIC and request goods or services from a vendor from the State Seizure account (# 7294071837(Bank Code 13/Payment Code 94) or Federal account (#7294071829 (Bank Code 1s/Payment Code 92));

   b) All transactions for returned funds will be made from the 014-7304-420. account with the appropriate object code for the expenditure;

   c) Enter a purchase requisition for the goods or service;
e) Balance of forfeited seizures.
The following table identifies FUNDS budget codes and external bank account numbers relevant to the asset management procedures described in this Manual:

<table>
<thead>
<tr>
<th>Account Description</th>
<th>FUNDS Credit Account No.</th>
<th>FUNDS Debit Account No.</th>
<th>Wells Fargo Account No.</th>
<th>Bank Code</th>
<th>Payment Type Code</th>
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</thead>
<tbody>
<tr>
<td>Property Room</td>
<td>010-0000-229.99-07</td>
<td>010-0000-104.04-07</td>
<td>7294071845</td>
<td>11</td>
<td>91</td>
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<td>Asset Seizure - Fed.</td>
<td>014-7304-352.01-01</td>
<td>014-0000-104.04-08</td>
<td>7294071829</td>
<td>12</td>
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<tr>
<td>Asset Seizure Holding</td>
<td>010-0000-229.99-05</td>
<td>010-0000-104.04-09</td>
<td>7294071837</td>
<td>13</td>
<td>93</td>
</tr>
<tr>
<td>Asset Seizure - State</td>
<td>014-7304-352.01-02</td>
<td>014-0000-104.04-09</td>
<td>7294071837</td>
<td>13</td>
<td>94</td>
</tr>
</tbody>
</table>
The following process flow chart presents the asset management procedures described in this Manual in a graphic format:
INFORMATION CALENDAR
January 29, 2008

To: Honorable Mayor and Members of the City Council
From: Disaster and Fire Safety Commission
Submitted by: Gil Dong, Secretary, Disaster and Fire Safety Commission
Subject: SMART 911

INTRODUCTION
On September 11, 2007, Councilmember Capitelli requested that the Disaster and Fire Safety Commission hear a presentation from Alan North about SMART 911 and report back to the City Council on their findings and recommendations. The Commission heard a presentation on October 24, 2007 and further discussed the item on December 5, 2007, at which time it made the following motion:

Moved by Jesse Townley, seconded by Roger Sharpe, to forward to Council a recommendation not to proceed with implementing the SMART 911 program at this time. The Commission encourages the City of Berkeley to reevaluate the SMART 911 system as well as other comparable systems when the implementation of the new Computer Aided Dispatch System is complete. Motion carried unanimously.

CURRENT SITUATION AND ITS EFFECTS
SMART 911 is a private, commercial venture located in Berkeley, that has developed a mechanism that would allow residents to use the Internet to pre-store critical care information about their home and family on a secure database. That information would automatically be made available to 9-1-1 call centers during emergencies.

BACKGROUND
On October 24, 2007 staff members from the Fire Department, Police Department and Office of Information Technology attended Mr. North’s presentation to the Disaster and Fire Safety Commission.

The Berkeley Police Department is in the initial stages of transitioning to a new Computer Aided Dispatch (CAD) System. This transition represents a total change in the way the Police Department does business in the Communications Center, as well as a change in how all emergency calls are dispatched. Staff members do not support the idea of implementing the SMART 911 program before the new CAD system is in place.

In addition, staff have reservations regarding SMART 911 being a for profit company, since similar services are currently available at no charge. Other concerns include
potential liability issues and the security and privacy of health data, as regulated by the Health Insurance Portability and Accountability Act (HIPAA).

POSSIBLE FUTURE ACTION
The Commission encourages the City of Berkeley to reevaluate the SMART911 system, as well as other comparable systems, when the implementation of the new Computer Aided Dispatch System is complete.

CONTACT PERSON
Gil Dong, Assistant Fire Chief, Fire Department, 981-5502
CITY CLERK DEPARTMENT
2008 UPCOMING CITY COUNCIL WORKSHOPS AND STANDING ITEMS

COUNCIL WORKSHOPS:
January 29, 2008
5:30 p.m. Measure G – Greenhouse Gas Reduction Plan Update
February 12, 2008
5:00 p.m. Possible Ballot Measure Discussion: Existing Taxes and Funding Options
February 26, 2008
5:00 p.m. Possible Ballot Measure Discussion: Public Safety & Youth
6:00 p.m. Quarterly Economic Development Status Report
March 11, 2008
5:00 p.m. Possible Ballot Measure Discussion: Infrastructure & Capital Improvements
March 25, 2008
5:00 p.m. Undergrounding
April 22, 2008
5:00 p.m. Instant Runoff Voting

<table>
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<tr>
<th>ONGOING REPORTS TO COUNCIL</th>
<th>FREQUENCY</th>
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<tbody>
<tr>
<td>Crime Reports (7/19/05/2/21/06)</td>
<td>2nd meeting – Jan/April/July/October</td>
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<tr>
<td>Bids &amp; Contracts (7/19/05)</td>
<td>Quarterly</td>
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<tr>
<td>Library Issues (11/15/05)</td>
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<tr>
<td>Audit: Follow-up Cash Receipts/Cash Handling (5/16/06)</td>
<td>Annually</td>
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<tr>
<td>Economic Development Reports (9/19/06)</td>
<td>1st meeting – Jan/April/July/October</td>
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<tr>
<td>Sustainability Workshop/Update</td>
<td>Annual</td>
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<td>Employee Safety &amp; Workers Compensation Update</td>
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<tr>
<td>Investments Report</td>
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<tr>
<td>Audit recommendation – Sports field Users (Parks)</td>
<td>Semi-Annual</td>
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<tr>
<td>2-1-1 Phone Service (Social Services Hotline) (9/11/07)</td>
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1/16/08
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<tr>
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(1) Appeals submitted - date listed is placeholder for possible public hearings. (2) Public Hearings Scheduled are dates for a public hearing as directed by the City Council. Council dates for the initial review of the appeal. Council directs management of Council meetings in the event that following the initial review of the appeal, Council directs that a hearing be set. This in no way infers that a hearing will in fact be set.

<table>
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<th>Type</th>
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Last updated 1/16/08 cc: Allison