



Jesse Arreguin  
City Councilmember, District 4

ACTION CALENDAR  
January 20, 2015

To: Honorable Mayor and Members of the City Council  
From: Councilmember Jesse Arreguin  
Subject: Independent Investigation of Police Response to December 6, 2014 Protests

RECOMMENDATION

Direct the City Manager to initiate an independent investigation into the police response to protests on December 6, 2014 and to return to Council as soon as possible, but no later than 60 days with a contract to hire a qualified independent investigator. In considering who to select to conduct the investigation, the City Manager should give preference to former police chiefs or law enforcement officials with experience conducting internal investigations. To avoid the appearance of or possibility of conflicts of interests, the City Manager should avoid selecting an individual or firm who previously worked for the Berkeley Police Department or who previously or currently worked for any law enforcement agency in the San Francisco Bay Area. The City Manager shall ensure that the selected individual or firm has no apparent conflicts of interest.

The Council also refers the attached questions for the City Manager and outside investigator to consider in conducting their investigation (Attachment 1).

FINANCIAL IMPLICATIONS

Unknown

BACKGROUND

The killings of Michael Brown and Eric Garner, and the resulting no-indictment rulings led to a nationwide movement against police brutality against the African American community. Berkeley experienced protests on a near-daily basis between December 6 and December 14, 2014.

On December 6, 2014, the first day of the protests, there was a heavy police presence and response, with the Berkeley Police Department (BPD) requesting mutual aid, and multiple law enforcement agencies responding.

Multiple accusations have since been made regarding the police response on December 6, alleging that the Berkeley Police Department and other departments that were invited through Mutual Aid violated procedures and used excessive force against

the demonstrators. Video footage taken the night of the incident also corroborates these allegations. These allegations include, but are not limited to:

- Baton strikes (including over the shoulder) and physical use of force against non-violent demonstrators.
- Use of chemical agents such as tear gas in a densely populated area, resulting in unnecessary exposure to bystanders and residents.
- Firing of projectiles such as bean bags and rubber bullets against a retreating crowd.
- Use of force against visibly identifiable members of the media, including baton strikes against observing journalists.
- Violations of General Orders C-64 (Crowd Control) and U-2 (Use of Force).

While BPD will conduct its own review of the events of December 6, 2014, a third party independent review is necessary to look clearly and objectively at what happened and what changes might be needed to Departmental policies and training to prevent similar incidents from occurring in the future. It will also instill greater public confidence in the results of the review if conducted by an independent investigator outside of City staff.

Since the events of December 6, the Council has received numerous phone calls and emails about the police response and use of force. In addition, at several protests and at the December 16, 2014 City Council meetings, citizens called on the Council to investigate and to reform police response to crowd control situations.

The Berkeley Police Review Commission on December 10, 2014 voted unanimously as an urgency item to call for an investigation into the improper use of tear gas on December 6, 2014.

Initiating an independent investigation after a major policing event is not unusual. For example, the City of Oakland hired an independent firm to investigate allegations of excessive police force in response to the Occupy Oakland protest on October 25, 2011. The resulting report led to a number of findings and recommendations to improve crowd control policies, procedures, and tactics of the Oakland Police Department.

To address these accusations, the City Manager should select a qualified consultant and come back to Council expediently for approval of a contract. To ensure the process is as thorough and independent as possible, the consulting firm must be from out of the region and have no conflict of interest with members of the BPD.

#### ENVIRONMENTAL SUSTAINABILITY

No adverse affects to the environment.

#### CONTACT PERSON

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## **Possible items for investigation.**

*"Less-than-lethal" (or less-lethal) force:*

- On December 6, 2014, did police officers fire less-than-lethal projectiles such as beanbags, rubber bullets, or others into a Berkeley crowd? If so, what agency conducted these shootings and under what authorization? What injuries resulted from these shootings?
- Were less-than-lethal projectiles deployed in violation of the following provision of General Order U-2 (Use of Force)?  
16 - Less-than-lethal force shall only be used in the following situations, and, where feasible, after some warning has been given:
  - (a) When an act of violence is occurring, or is about to occur;
  - (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;
  - (c) To deter a person who is reasonably believed to be armed and is threatening to harm him-/herself, another person, or an officer; or,
  - (d) To resolve a potentially violent incident not otherwise described above.
- Do BPD policies require a "clear shot" for less-than-lethal munitions such as rubber bullets?

*Baton use.*

- Are over-the-head baton strikes permitted or banned to BPD officers?
- How many such strikes were delivered on December 6, by what agency, and under what authorization?

*Media.*

- Confirm allegations of physical assaults on media representatives carrying visual identification, including a baton strike to the head. What agency conducted these strikes and under what authorization? What steps are being taken to prevent a recurrence, even in a chaotic situation?

*Mutual Aid.*

- Did BPD or City of Berkeley management authorize the deployment of armored vehicles on Saturday December 6?
- When responding departments' actions conflict with such BPD or City policies (e.g. deployment of militarized armored vehicles or baton strikes to the head), what action is taken by the BPD command? What is the process for a decision not to invite such a department back for future mutual aid events?

*Policing strategy.*

- What is the BPD's policing strategy with respect to the particular needs (including cultural and historical needs) of the African American community and other constituencies, including other communities of color, LGBT, homeless, mentally ill, otherwise disabled, and youth?
- How useful are such strategies and technologies (both formal and de facto) in achieving conflict reduction, respectful and restorative police practices, and a positive community perception of the BPD?<sup>i</sup>

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<sup>i</sup> “Police in riot gear and the tactics and equipment they use on protesters such as in Ferguson, Mo. and the Occupy movement in the Bay Area may not prevent violent clashes as much as inciting them...unnecessarily intimidating and alienating protesters.” Nicholas Adams, UC Berkeley, August 22, 2014, “The Deciding Force Project,” <http://sanfrancisco.cbslocal.com/2014/08/22/do-riot-police-prevent-violent-clashes-or-incite-them-uc-berkeley-researchers-analyze-police-protester-dynamics/>