



Jesse Arreguin  
Councilmember, District 4

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## **REVISED AGENDA MATERIAL**

**Meeting Date:** January 20, 2014

**Item Number:** 29

**Item Description:** Independent Investigation of Police Response to December 6, 2014 Protests

**Submitted by:** Councilmember Jesse Arreguin

The item has been revised to change the title of the report and recommendation. Changes to the recommendation include referring to the Police Review Commission to initiate an investigation, and not directing the City Manager to hire a third-party independent investigator.

In addition the item directs the Commission to return to Council with its findings no later than six months from the date of adoption of the item.

The item also empowers the Commission to produce documents and witnesses in order to conduct the investigation, including the use of subpoena power if necessary to gather necessary information for the investigation.



Jesse Arreguín  
City Councilmember, District 4

REVISED  
ACTION CALENDAR  
January 20, 2015

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: ~~Independent~~ Investigation of Police Response to December 6, 2014 protests

### RECOMMENDATION

Refer to the Police Review Commission to initiate an investigation into the police response to protests on December 6, 2014; the appropriateness of using tear gas, and other non-lethal munitions, and baton strikes to disperse the crowd; and make recommendations based on what was learned from the incident and what could be improved upon for revised policies and procedures on crowd control, the use of force in crowd control incidents (tear gas, non-lethal munitions, use of batons), as well as policies on mutual aid in First Amendment activity and crowd control incidents.

The Commission should report its recommendations to the City Manager, Chief of Police and City Council no later than six months.

The Council empowers the Commission to produce documents and witnesses for the purposes of the investigation, including using subpoena power in order to compel testimony and documents.

~~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 to the Police Review Commission 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 civilian 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 **it is** conducted **by an independent investigator** outside of City staff.

Since the events of December 6<sup>th</sup>, 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 Council should direct the Police Review Commission to conduct an investigation as soon as possible and empower them to produce documents and witness testimony in order to carry out the investigation, including the use of subpoena power if necessary to gather necessary information to find out what happened on December 6, 2014 and what led to the decisions regarding the use of force.

~~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

Jesse Arreguin, Councilmember, District 4      510-981-7140

## **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/>



Jesse Arreguín  
City Councilmember, District 4

## ACTION CALENDAR

January 27, 2015

*(Continued from January 20, 2015)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

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.

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