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by email

Dear Chief Greenwood:

We are disheartened to hear of the actions of the Berkeley Police with regard to the crowd demonstrating against BPD's involvement in Urban Shield on Tuesday night. Only a few months ago, we reached a resolution of civil rights litigation over BPD's response to the November 2, 2014, Black Lives Matter demonstration and the culmination of two years of discussions in the Police Review Commission, with a number of changes in BPD's First Amendment and Use of Force policies and training. Yet, on Tuesday night we saw a recurrence of some of the same types of civil rights violations as in 2014.

### **1. Use of pain compliance techniques**

Pain compliance techniques were used in the arrests of persons who were holding a banner. These persons were not given any attempt to comply with verbal commands before pain compliance was applied. There was no justification for this use of force on nonviolent demonstrators and it understandably angered the crowd escalating tension between citizens and police.

The pain compliance violated General Order C-64, Section 6, quoted below.

- (a) *Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons, and chemical agents should not be used on persons participating in a crowd situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.*

*(1) Verbal commands to stand followed by control holds (e.g. wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.*

*(2) If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.*

*(3) Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.*

## **2. Use of batons**

Outside the building, rather than attempting to deescalate a now very tense situation, the police used batons aggressively and indiscriminately in an apparent attempt to move protesters, without required dispersal orders or warnings. There were no exigent circumstances. The protesters were nonviolent and simply expressing verbal opposition to the arrests and to Urban Shield – there was no physical attempt to interfere with the arrests. At least one, elderly person was hit on the head when he apparently crouched or stumbled in response to the police use of force. Officers struck other demonstrators in the face with their batons. People were shoved or hit when they were unable to move further back because of police and other vehicles blocking their way. There was no warning before this high level of force was used, and no specific directions as to where people were supposed to go. As far as we have determined, the verbal commands consisted only of some officers saying, “Move! Move!” or “Get back” while advancing, and essentially at the same time force was used - just as was done in 2014 which led to protracted litigation.

Rather than de-escalating or restoring order, the police actions caused anger, fear, and chaos.

This violated the following provisions of General Order C-64 as recently revised:

*Section 2: The mission of the Berkeley Police Department in crowd situations is to facilitate free expression, de-escalate violence, and resolve conflict peacefully with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly.*

Section 6 (b) *Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.).*

6(c)(1) *Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine or groin except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person.*

6(c)(2) *Officers on a skirmish line shall not use batons to collectively push a crowd in a particular direction prior to dispersal orders being given unless exigent circumstances exist. This requirement does not apply to officers on a skirmish line who are protecting their safety zone, or who are trying to move the skirmish line to a new location.*

56 - *Verbal requests or commands should be used before and when advancing on a crowd.*

(a) *Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step back!" or "Move onto the sidewalk!")*

We assume that the incident was video recorded per C-64, section 59. We would welcome an opportunity to review the complete police video of the event, and to hear your point of view on this incident. Please contact us at your earliest convenience.

Sincerely,

Rachel Lederman  
James B. Chanin

cc: City Attorney  
City Manager  
Mayor Arreguin  
City Council