



CONSENT CALENDAR
September 15, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson and Ben Bartlett
Subject: Resolution: No Police Revolving Door

RECOMMENDATION

Adopt a resolution designating a history of serious misconduct and the act of previously resigning in the middle of a serious misconduct investigation as immediate disqualifiers in the Berkeley Police Department recruitment and selection process.

POLICY COMMITTEE RECOMMENDATION

This item received a positive recommendation from the Public Safety Committee, with an amendment that addresses concerns from the Police Review Commission by striking “or two unsustained complaints by different complainants” from the BPD Policy 1000 language.

On July 20, 2020, the Public Safety Committee adopted the following action: M/S/C (Robinson/Wengraf) to send the item, amending Section 1000.6.1 by removing two unsustained complaints by different complainants, with a positive recommendation to the City Council. Vote: All Ayes.

BACKGROUND

Senate Bill 1421, which went into effect in 2019, allows the public and the press to access police misconduct records that were previously undisclosed.¹ In the process of reviewing this data, new light has been shed on the “revolving door” of police brutality, in which police officers fired for misconduct are simply re-hired by another jurisdiction.

A San Jose State police officer, fired in 2017 for excessive use of force, was then hired by the Los Gatos-Monte Sereno Police Department. An Alameda County deputy sheriff, fired in 2015 for soliciting prostitution and filing a false police report, was later hired by the Pinole Police Department.² An SFPD officer resigned one day before the Internal Affairs division ruled to discipline him for his fatal shooting of Luis Gongora Pat, a homeless man.³ He was immediately hired by the Antioch Police Department, escaping the 45-day suspension and any consequences for his actions.

¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421

² <https://www.mercurynews.com/2019/07/23/editorial-records-expose-revolving-door-for-bad-california-cops/>

³ <https://www.nbcbayarea.com/investigations/sf-officer-jumps-to-another-department-before-being-disciplined-for-a-shooting/2304029/>

This revolving door phenomenon raises serious concerns about the ability of police departments to maintain accountability, create trust in the community, and eliminate police brutality and misconduct. Given the longstanding history of racial bias in policing and use of force nationwide, public trust is already badly damaged between law enforcement and many communities of color, particularly Black communities.

Furthermore, officers with histories of misconduct often cannot carry out a key part of their job: testifying in court. In *Brady v. Maryland* (1963), the Supreme Court ruled that prosecutorial suppression of evidence that could benefit the defendant violates the Due Process Clause of the Fourteenth Amendment.⁴ Police officers' credibility can be called into question if they have a documented history of misconduct or dishonesty, which can jeopardize their testimonies and entire cases.

San Francisco Supervisor Shamann Walton introduced a resolution on June 2, 2020, attached below, "urging the city's Civil Service Commission to prohibit the Police and Sheriff's Departments from hiring law enforcement personnel with histories of serious misconduct."⁵

The City of Berkeley should follow suit by adopting the attached resolution and amending BPD Policy 1000, "Recruitment and Selection," to prohibit the hiring of any police officer who has a history of serious misconduct or who has previously resigned in the midst of a serious misconduct investigation.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Resolution

2: BPD Policy 1000 "Recruitment and Selection"

https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/1000%20Recruitment_and_Selection.pdf

⁴ <https://www.law.cornell.edu/supremecourt/text/373/83>

⁵ <https://www.sfchronicle.com/bayarea/article/SF-supervisor-wants-a-ban-on-hiring-of-police-15311973.php>

3: Proposed San Francisco Resolution

<https://sfgov.legistar.com/View.ashx?M=F&ID=8582276&GUID=8C81E0F1-7BDA-4F2D-888E-F90F6E1807A5>

4: Berkeley Police Review Commission Referral Response

RESOLUTION NO. ##,###-N.S.

BANNING THE HIRING OF POLICE OFFICERS WITH A HISTORY OF SERIOUS MISCONDUCT

WHEREAS, the Berkeley Police Department (BPD) is entrusted with keeping all community members in the City of Berkeley safe and enforcing laws; and

WHEREAS, all residents of Berkeley equally deserve to feel safe when interacting with police and should be able to trust that the officers tasked with protecting them have no prior history of excessive force, racial bias, or other significant misconduct; and

WHEREAS, there is a national crisis over repeated instances of police brutality and killings of Black people and persons of color; and

WHEREAS, there is a longstanding history of racial bias in policing nationwide, especially towards Black people; and

WHEREAS, George Floyd, a Black man, was killed by a Minneapolis Police Officer who kneeled on his neck for over eight minutes while he struggled to breathe and who had 17 prior complaints against him, had been responsible for multiple officer-involved shootings, but was permitted to remain on the police force; and

WHEREAS, the Council of the City of Berkeley acknowledges that communities of color have borne the burdens of inequitable social, environmental, economic, and criminal justice policies, practices, and investments, and that the legacy of these injustices has caused deep racial disparities throughout the juvenile justice and criminal justice system; and

WHEREAS, members of the public cannot fully trust law enforcement officers or feel safe if they are uncertain whether an officer with whom they interact had a prior history of significant misconduct or abuse; and

WHEREAS, it is difficult, and in some cases prohibited, especially under California law for members of the public to know about prior complaints or findings related to law enforcement officer misconduct; and

WHEREAS, public trust, including in the City of Berkeley, is badly damaged between law enforcement and many of the communities they serve, particularly communities of color; and

WHEREAS, the Council of the City of Berkeley aspires to hold the Berkeley Police Department to the highest standard of professionalism and integrity.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Berkeley Police Department Policy 1000 be amended as follows:

Recruitment and Selection

1000.1 PURPOSE AND SCOPE

This policy provides a framework for employee recruiting efforts and identifying job-related standards for the selection process. This policy supplements the rules that govern employment practices for the Berkeley Police Department and that are promulgated and maintained by the Personnel and Training Bureau.

1000.2 POLICY

In accordance with applicable federal, state and local law, the Berkeley Police Department provides equal opportunities for applicants and employees, regardless of race, gender expression, age, pregnancy, religion, creed, color, national origin, ancestry, physical or mental handicap, genetic information, veteran status, marital status, sex or any other protected class or status. The Department does not show partiality or grant any special status to any applicant, employee or group of employees unless otherwise required by law.

The Department will recruit and hire only those individuals who demonstrate a commitment to service and who possess the traits and characteristics that reflect personal integrity and high ethical standards.

1000.3 RECRUITMENT

The Professional Standards Division Captain should employ a comprehensive recruitment and selection strategy to recruit and select employees from a qualified and diverse pool of candidates

The strategy should include:

- (a) Identification of racially and culturally diverse target markets.
- (b) Use of marketing strategies to target diverse applicant pools.
- (c) Expanded use of technology and maintenance of a strong internet presence. This may include an interactive department website and the use of department-managed social networking sites, if resources permit.
- (d) Expanded outreach through partnerships with media, community groups, citizen academies, local colleges, universities and the military.
- (e) Employee referral and recruitment incentive programs.
- (f) Consideration of shared or collaborative regional testing processes.

The Professional Standards Division Captain shall avoid advertising, recruiting and screening practices that tend to stereotype, focus on homogeneous applicant pools or screen applicants in a discriminatory manner.

The Department should strive to facilitate and expedite the screening and testing process.

1000.4 SELECTION PROCESS

The Department shall actively strive to identify a diverse group of candidates that have in some manner distinguished themselves as being outstanding prospects. Minimally, the Department should employ a comprehensive screening, background investigation and selection process that assesses cognitive and physical abilities and includes review and verification of the following:

- (a) A comprehensive application for employment (including previous employment, references, current and prior addresses, education, military record)
- (b) Driving record
- (c) Reference checks
- (d) Employment eligibility, including U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form I-9 and acceptable identity and employment authorization documents consistent with Labor Code § 1019.1. This required documentation should not be requested until a candidate is hired. This does not prohibit obtaining documents required for other purposes.
- (e) Information obtained from public internet sites
- (f) Financial history consistent with the Fair Credit Reporting Act (FCRA) (15 USC § 1681et seq.)
- (g) Local, state and federal criminal history record checks
- (h) Computer Voice Stress Analysis (CVSA) exam (when legally permissible) (Labor Code § 432.2)
- (i) Medical and psychological examination (may only be given after a conditional offer of employment)
- (j) Hiring authority review
- (k) Records of police misconduct

1000.4.1 VETERAN'S PREFERENCE

Qualifying veterans of the United States Armed Forces who receive a passing score on an entrance examination shall be ranked in the top rank of any resulting eligibility list. The veteran's preference shall also apply to a widow or widower of a veteran or a spouse of a 100 percent disabled veteran (Government Code § 18973.1).

1000.5 BACKGROUND INVESTIGATION

Every candidate shall undergo a thorough background investigation to verify his/her personal integrity and high ethical standards, and to identify any past behavior that may be indicative of the candidate's unsuitability to perform duties relevant to the operation of the Berkeley Police Department (11 CCR 1953).

The narrative report and any other relevant background information shall be shared with the psychological evaluator. Information shall also be shared with others involved in the hiring process if it is relevant to their respective evaluations (11 CCR 1953).

1000.5.1 NOTICES

Background investigators shall ensure that investigations are conducted and notices provided in accordance with the requirements of the FCRA and the California Investigative Consumer Reporting Agencies Act (15 USC § 1681d; Civil Code § 1786.16).

1000.5.2 STATE NOTICES

If information disclosed in a candidate's criminal offender record information (CORI) is the basis for an adverse employment decision, a copy of the CORI shall be provided to the applicant (Penal Code § 111105).

1000.5.3 REVIEW OF SOCIAL MEDIA SITES

Due to the potential for accessing unsubstantiated, private or protected information, the Professional Standards Division Captain shall not require candidates to provide passwords, account information or access to password-protected social media accounts (Labor Code § 980).

The Professional Standards Division Captain should consider utilizing the services of an appropriately trained and experienced third party to conduct open source, internet-based searches and/or review information from social media sites to ensure that:

- (a) The legal rights of candidates are protected.
- (b) Material and information to be considered are verified, accurate and validated.
- (c) The Department fully complies with applicable privacy protections and local, state and federal law.

Regardless of whether a third party is used, the Professional Standards Division Captain should ensure that potentially impermissible information is not available to any person involved in the candidate selection process.

1000.5.4 DOCUMENTING AND REPORTING

The background investigator shall summarize the results of the background investigation in a narrative report that includes sufficient information to allow the reviewing authority to decide whether to extend a conditional offer of employment. The report shall not include any information that is prohibited from use, including that from private social media sites, in making employment decisions. The report and all supporting documentation shall be included in the candidate's background investigation file (11 CCR 1953).

1000.5.5 RECORDS RETENTION

The background report and all supporting documentation shall be maintained in accordance with the established records retention schedule.

1000.5.6 BACKGROUND INVESTIGATION UPDATE

A background investigation update may, at the discretion of the Chief of Police, be conducted in lieu of a complete new background investigation on a peace officer candidate who is reappointed within 180 days of voluntary separation from the Berkeley Police Department or is transferred to a different department within the City as provided in 11 CCR 1953(f).

1000.6 DISQUALIFICATION GUIDELINES

As a general rule, performance indicators and candidate information and records shall be evaluated by considering the candidate as a whole, and taking into consideration the following:

- Age at the time the behavior occurred
- Passage of time
- Patterns of past behavior
- Severity of behavior
- Probable consequences if past behavior is repeated or made public

- Likelihood of recurrence
- Relevance of past behavior to public safety employment
- Aggravating and mitigating factors
- Other relevant considerations

A candidate's qualifications will be assessed on a case-by-case basis, using a totality-of-the-circumstances framework.

1000.6.1 DISQUALIFICATION FOR PAST MISCONDUCT

Notwithstanding section 1000.6 of this Policy, a candidate shall be immediately disqualified if:

- (1) The applicant has been the subject of a sustained finding against the applicant by any law enforcement agency or oversight agency, following an investigation and opportunity for administrative appeal by the applicant, that the applicant, while employed as a peace officer, engaged in serious misconduct, which includes but is not limited to the following: use of excessive force, racial bias, sexual assault, discrimination against any person or group based on race, gender, religion, nationality, or sexual orientation, or dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence; or
- (2) The applicant resigned or retired from their employment as a peace officer in any jurisdiction during the pendency of a disciplinary proceeding related to alleged serious misconduct by the applicant while they were employed as a peace officer, and the proceeding was suspended or terminated as a result of the applicant's resignation or retirement, until such a time that the applicant has been exonerated for the pending allegation.

1000.7 EMPLOYMENT STANDARDS

All candidates shall meet the minimum standards required by state law (Government Code §1029; Government Code § 1031; 11 CCR 1950 et seq.). Candidates will be evaluated based on merit, ability, competence and experience, in accordance with the high standards of integrity and ethics valued by the Department and the community. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

Validated, job-related and nondiscriminatory employment standards shall be established for each job classification and shall minimally identify the training, abilities, knowledge and skills required to perform the position's essential duties in a satisfactory manner. Each standard should include performance indicators for candidate evaluation. The Personnel and Training Bureau should maintain validated standards for all positions.

1000.7.1 STANDARDS FOR OFFICERS

Candidates shall meet the minimum standards established by POST (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.):

- (a) Free of any felony convictions
- (b) Citizen of the United States, or permanent resident alien eligible for and has applied for citizenship
- (c) At least 21 years of age at time of appointment

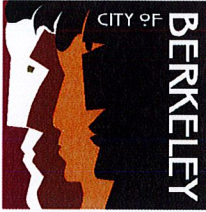
- (d) Fingerprinted for local, state and national fingerprint check
- (e) Good moral character as determined by a thorough background investigation (11 CCR1953)
- (f) High school graduate, passed the GED or other high school equivalency test and completed at least 60 college semester units or 90 college quarter units
- (g) Free from any physical, emotional or mental condition which might adversely affect the exercise of police powers (11 CCR 1954; 11 CCR 1955)
- (h) Candidates must also satisfy the POST selection requirements, including (11 CCR1950 et seq.):
 - 1. Reading and writing ability assessment (11 CCR 1951)
 - 2. Oral interview to determine suitability for law enforcement service (11 CCR1952)

In addition to the above minimum POST required standards, candidates may be subjected to additional standards established by the Department (Penal Code § 13510(d)).

1000.7.2 STANDARDS FOR DISPATCHER

Candidates shall satisfy the POST selection requirements, including (11 CCR 1956):

- (a) A verbal, reasoning, memory and perceptual abilities assessment (11 CCR 1957)
- (b) An oral communication assessment (11 CCR 1958)
- (c) A medical and psychological evaluation (11 CCR 1960)



Police Review Commission (PRC)

July 2, 2020

To: Honorable Mayor and Members of the City Council
Through the Public Safety Policy Subcommittee
From: Kitty Calavita, ^{KCM/KD} Chairperson, Police Review Commission
Re: Referral Response: Resolution on No Police Revolving Door

Thank you for seeking the feedback of the Police Review Commission regarding Councilmember Robinson's proposed resolution amending Berkeley Police Department Policy 1000, which would ensure that a candidate's history of serious misconduct and the act of previously resigning in the middle of a serious misconduct investigation will immediately disqualify the candidate from recruitment and selection by the Berkeley Police Department.

The PRC discussed proposed section 1000.6.1, Disqualification for Past Misconduct, at its June 24, 2020 meeting, and voted to support Councilmember Robinson's suggested provision with the caveat that the Police Review Commission has concerns about the language regarding two unsustained complaints. The PRC believes that greater discretion may be necessary in such cases.

The above sentiments passed on the following vote: Moved/Seconded (Mizell/Calavita) – Ayes: Calavita, Chang, Leftwich, Mizell, Perezvelez; Noes: Mikiten, Ramsey; Abstain: None; Absent: Allamby

cc: Dee Williams-Ridley, City Manager
David White, Deputy City Manager
PRC Commissioners