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March 30, 2017

VIA EMAIL ONLY

To: Mayor Arreguin and the Berkeley City Council
cc: City of Berkeley Clerk, City of Berkeley Manager,
Berkeley Police Department, Kathy Lee
Re: Appointment of new Berkeley Chief of Police
From: Jim Chanin, Esq., and Rachel Lederman, Esq.

Dear Mayor Arreguin and Honorable City Councilpersons,

It is our understanding that the City Manager is nominating Andrew Greenwood to be the new permanent Chief of Police for the City of Berkeley.

This is the probably the most important appointment in the City of Berkeley, next to the City Manager. Therefore, prior to making this decision, we think it is necessary to evaluate the Berkeley Police Department concerning some very critical issues.

We also want to comment on the current status of the Berkeley Police Review Commission. While some may think the selection of a Police Chief is unrelated to the current status of the Berkeley Police Review Commission, we disagree. The PRC has been greatly weakened by a City Manager very different from early City Managers in Berkeley, who supported the PRC to the maximum extent allowed by the Charter. To cite only one example, in the 1970s, the Berkeley Police Chief, Wesley Pomeroy, with the consent of the City Manager, gave PRC commissioners the right to attend Internal Affairs Board of Review hearings. The Berkeley Police Association sued, but the commissioners' right to attend Board of Review hearings was upheld by the Alameda County Superior Court and the Court of Appeals.¹ Today, the current City Manager refuses to allow PRC Commissioners to look at Internal Affairs, interviews, etc., much less attend Board of Review hearings. Now this same City Manager is urging the appointment of Chief Greenwood with no input from the Berkeley Police Review Commission and very little open process at all.

¹ Berkeley Police Association v. City of Berkeley (1977) 76 Cal.App.3d 931, 143 Cal.Rptr. 255.

The Berkeley Police Department has many fine officers who work hard and do a good job. However, they have Use of Force Policies which lag behind other Police Departments in the Bay Area and are not up to contemporary law enforcement standards.

General Order U-2 lists Use of Force/Reporting Requirements. Berkeley Police Officers do not have to write Use of Force Reports when an officer strikes a subject with his/her fist or open hand and the subject does not complain of injury or the officer does not perceive that the subject was injured. This is unlike most departments where such uses of force (and others) do have to be reported. Moreover, until the settlement of our lawsuit against the BPD in February 2017, officers who used force in an “Unusual Occurrence” (See BPD General Order U-4), such as a political demonstration, did not have to write a police report under any circumstances unless they arrested someone. This is why there were no police reports by Berkeley Police at the Black Lives Matter demonstration in Berkeley in December 2014, where the other Police Departments who were in Berkeley during that demonstration (Oakland, Hayward, and Alameda), all wrote police reports. It is also why the Berkeley Police at that incident were unable to account for who used less lethal weapons in what amounts and who used CS gas in what amounts.

This failure to report uses of force means BPD supervisors are unable to account for many of the critical actions of their subordinates, and that BPD is unable to accurately account for their uses of force.

BPD officers also have lower standards for the use of less lethal weapons. In San Francisco, these weapons have not been used for years. In Oakland, there are great limitations on the use of less lethal weapons: “Direct Fired SIM may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive... [but] may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury.” The current Berkeley policies on gas and less than lethal weapons both allow for the use of these weapons, and lack the critical specificity of the Oakland policies.

BPD has also done little or nothing to deal with the problem of racial profiling. While the department’s own civilian stop statistics have shown a stark pattern of racial disparities for two years, it has never acknowledged the disparities, has out-sourced responsibility for analyzing if there is a problem to an external agency, and has taken no affirmative action to remedy this festering problem, at serious risk to the people of Berkeley.

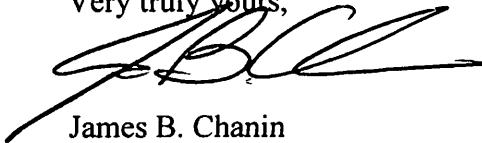
Furthermore, neither the Berkeley Police Department nor the City Council has committed to a schedule for full implementation of a camera program even though the BPD was part of a settlement agreement in United States District Court, which stated that “BPD commits to full implementation of a camera program, and not a pilot program, subject to City Council approval.” In Oakland, complaints dropped 40% following implementation of widespread use of cameras, and the camera program has been embraced by most police officers there as something that will

protect them against “frivolous complaints” and will often serve to establish an accurate reflection of exactly what happened in a specific incident involving police and citizens.

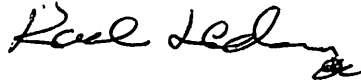
Chief Greenwood may be an effective leader, and he is well liked by many Berkeley police officers. However, the Berkeley City Council should carefully consider whether a broader search for candidates should be made prior to deciding if Chief Greenwood should be a permanent Chief of Police. At a minimum, Chief Greenwood should go on the record to provide a timeline by which the policies and practices referenced above will be brought in line with contemporary law enforcement standards.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'James B. Chanin', with a long, sweeping horizontal stroke extending to the right.

James B. Chanin

A handwritten signature in black ink, appearing to read 'Rachel Lederman', with a small flourish at the end.

Rachel Lederman