



Joshua Cayetano | Chair
Police Accountability Board
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January 23, 2026

VIA ELECTRONIC MAIL [Email]

Honorable Mayor Adena Ishii and Members of City Council

Re: Item 21 on the Berkeley City Council's January 27, 2026 Agenda – Proposal to Rescind and Replace the Police Equipment and Community Safety Ordinance

Dear Mayor and Honorable Councilmembers,

The Police Accountability Board recommends that the City Council reject Item 21 unless it makes significant revisions to the proposal. Item 21 proposes to rescind and replace the Police Equipment and Community Safety Ordinance (BMC 2.100 or the Ordinance), which provides for public oversight of the funding, acquisition, use, and deployment of military equipment.¹ We agree with Item 21's goals of eliminating duplicative reporting and standardizing definitions across state law, local law, and BPD policy in order to reduce unnecessary administrative burdens. However, Item 21 would also eliminate important local requirements that strengthen and clarify the transparency, accountability, and oversight measures required by state law, primarily AB 481. We recommend that the Council retain those local requirements.

Attached to this letter is a red-line of our recommended revision to Item 21 for the Council's convenience. As red-lined, the PAB's proposal would (1) integrate existing state law requirements into Berkeley's local framework and (2) retain the elements of BMC 2.100 that augment state law.

Recommendations and Rationale:

I. Eliminate Duplicative Reporting

We agree that BPD should not be subject to duplicative reporting. BPD currently submits two reports on military equipment that are nearly identical: the BMC 2.100 report in March and the AB 481 report in the summer. There is nothing in BMC 2.100 or AB 481, or the interaction between the two, that requires that BPD submit two separate reports as they are

¹ Berkeley Municipal Code 2.100 et. seq.

In fact, the PAB strongly recommended that BPD consolidate these reports, similar to how the Oakland Police Department submits one report.² To facilitate that request, the PAB advised BPD that it may submit a single report in the summer.³ If the Council takes no action on Item 21, we believe that BPD would be permitted to submit a single report this year. Still, we would welcome Council’s clarification that BPD should not submit two separate reports on two separate timelines.

II. Retain BMC 2.100’s additional substantive reporting requirements and oversight mechanisms that promote transparency and accountability.

California’s AB 481—a state law supported by some of the same community groups that co-authored Berkeley’s Ordinance—is a floor, not a ceiling. Item 21 incorrectly suggests that AB 481’s framework is “comprehensive” and that the state-mandated requirements “satisfy the objectives originally intended by [BMC 2.100].” Not so. AB 481 expressly contemplates, and even encourages, local governments to implement additional requirements and standards, which BMC 2.100 does.⁴

BMC 2.100 undoubtedly strengthens the reporting and oversight requirements that are set forth in AB 481. Over the course of five public meetings, we heard from many community members who expressed support for retaining the Ordinance. At the June 11, 2025 meeting, former Councilmember Kate Harrison, who co-authored the Ordinance, provided a presentation that detailed the substantive differences between AB 481 and BMC 2.100. We also heard from John Lindsay-Poland, a subject-matter expert on military equipment civilian oversight, and Brian Hofer, the Executive Director of Secure Justice—both of whom warned that repealing BMC 2.100 would eliminate substantive reporting requirements and oversight mechanisms that promote transparency and accountability and are not mandated under AB 481. Many other community members either spoke in person or wrote separately in support of BMC 2.100.

After conducting its own review of BMC 2.100, the PAB concluded that BMC 2.100 contains seven additional substantive reporting requirements and oversight mechanisms. A full chart is appended to this letter for ease of reference.⁵ Here, we highlight two important differences for the Council’s consideration.

A. Unique Element #1: Reporting on Deployments of Military Equipment

² Oakland Police Department issues a single annual report that complies with both state law reporting requirements and Oakland’s local requirements. In fact, the language in BMC 2.100.050—the section governing the submission of BPD’s report—is nearly identical to the language in Oakland Municipal Code 9.65.030, Oakland’s local military equipment reporting ordinance, which was also passed before AB 481.

³ BMC 2.100.050(A)(1) states that “[t]he report shall be provided no later than March 15th of each year, unless the Police Accountability Board advises the Department that an alternate date is preferred.”

⁴ Government Code Section 7075 (“Nothing in this chapter shall preclude a county or local municipality from implementing additional requirements and standards related to the purpose, use, and reporting of military equipment by local law enforcement agencies.”); Government Code Section 7070(c)(15) (defining military equipment as “[a]ny other equipment as determined by a governing body or a state agency to require additional oversight”).

⁵ See Attachment 1.

BMC 2.100 strengthens AB 481, and demonstrates Berkeley’s commitment to police transparency and accountability, by requiring BPD to report on deployments of military equipment, not just “uses.”⁶

i. Retaining deployment reporting is important, but aligning the definition of deployment with BPD Policy 300 would reduce inefficiencies.

The definition of “deploy” was subject to extensive discussion by the Council, the PRC, BPD, and community groups.⁷ Those in favor of including a deployment reporting requirement made clear that the public has a right to know when law enforcement deliberately utilizes police equipment like less-lethal or pepper spray in order to provoke some response, as opposed to simply when they are discharged. At the time, BPD raised concerns about administrative and operational burdens and, as a compromise, the Council made clear that merely wearing a piece of military equipment does not amount to a “deployment” and specifically exempted the deployment of batons, with a limited carveout for crowd control situations.⁸

During our conversations with BPD, it became clear that BPD’s continued concern is the administrative burden caused by the deployment reporting requirement. BPD suggested that reporting on deployments is too resource-intensive because BPD manually reviews body worn camera to determine if a deployment occurred. BPD explained that it performs multiple levels of review in order to ensure that its sworn officers are not overreporting deployments of military equipment, as defined by the Ordinance.

While we do not understand why it is necessary for BPD to manually review body camera footage instead of relying on officer reports, we believe BPD’s reported administrative burden is caused by the different definitions of deployment in BMC 2.100 and BPD’s Policy 300. Because BPD understands the definitions to be different, they believe they are required to do additional work to meet the reporting requirement in BMC 2.100. We support a revision of the definition of

⁶ As the California state legislature found: “the acquisition of military equipment *and its deployment* in our communities impacts the public safety and welfare, including increased risk of civilian deaths, significant risks to civil rights, civil liberties, and physical and psychological well-being.”

⁷ BMC 2.100.020(D): <https://berkeley.municipal.codes/BMC/2.100.020>

“Except as provided below, ‘Deployed’ means to utilize or employ Controlled Equipment for a deliberate purpose in the presence of members of the public during management or control of crowds, during any Special Response Team deployment or to affect some response from members of the public during any other operation or critical response.

‘Deployed’ shall not mean an officer merely wearing a piece of Controlled Equipment on their belt or elsewhere on their person. (1) Batons 30 inches or longer in length shall only be deemed ‘deployed’ when used for management or control of crowds.”

⁸ It should be noted that state law AB 481 requires annual reporting of “use” of military equipment, but does not define what “use” means. A local definition of reportable use is therefore important and helpful.

deployment in BMC 2.100 to match that in Policy 300 to ensure BPD is not required to take on additional administrative burden beyond what is already required under Policy 300.

ii. Item 21’s definition of a reportable deployment would cause confusion, increase administrative burdens, and result in incomplete data.

Item 21’s proposed definition limits “reportable deployments” to the context of a First Amendment Activity. That definition does not align with BPD policy, as we recommend in the section above, but would instead cause confusion, add to BPD’s administrative burden, and ultimately exclude key instances in which military equipment is deployed.

Critically, Item 21 is not clear on what a “First Amendment activity” even is. Under existing case law, First Amendment activity can be anything from honking, to raising a middle finger, to sleeping in front of City Hall. If this definition is adopted, BPD would have to keep the additional layer of review to determine whether a deployment occurred within the context of a First Amendment activity. And determining whether a deployment occurred within the context of a “First Amendment activity” would be a tall task for anyone.

The proposed definition of deployment in Item 21 would also exclude some of the most significant deployments of military equipment that we have seen in recent past. For example, military equipment was deployed in Berkeley last year at 8th and Harrison. In general, encampments sweeps are a context in which BPD should continue to report on the deployment of military equipment. Although rarer, the deployment of military equipment can also occur at routine traffic stops, which historically have disproportionately impacted Black and Brown people. Artificially excluding these situations would result in incomplete data and undermine the transparency and accountability goals of the ordinance.

B. Unique Element #2: Use Policy and Annual Report Review and Approval Procedures that Delegate Initial Review to the PAB

BMC 2.100 also complements AB 481 because it (1) provides clear procedures for the review and approval of state-required use policies and (2) delegates the review process to the PAB. AB 481 asks local governments to specify “the mechanisms to ensure compliance with the military equipment use policy, *including which independent persons or entities have oversight authority*, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.” BMC 2.100 clearly establishes those mechanisms, whereas Item 21 does not.

Under AB 481, law enforcement agencies are required to submit “use policies” to the local governing body for approval prior to soliciting proposals, seeking funds, or acquiring military equipment. AB 481 defines a use policy as a “a publicly released, written document governing the use of military equipment by a law enforcement agency or a state agency that addresses, at a minimum” various elements required by state law.

AB 481 mandates that the governing body (i.e. City Council) only approve a military equipment use policy if the following elements are met:

(d) (1) (A) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

(B) The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(C) If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.

(D) Prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.⁹

AB 481 also instructs local governments to review BPD's annual report for compliance with the standards above. It says, "[i]f the governing body determines that a type of military equipment identified in that annual military equipment report has not complied with the standards for approval set forth in subdivision (d), the governing body shall either disapprove a renewal of the authorization for that type of military equipment or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance."¹⁰

BMC 2.100 smartly delegates the initial review of BPD use policies and the annual report to the PAB so that we may provide the City Council with an informed opinion. After all, one of the core duties of the PAB is to "to advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department, including all written policies, practices, and procedures in relation to the Berkeley Police Department."¹¹ Under the Ordinance, BPD is required to submit proposed use policies and the annual report to the PAB. BPD can submit use policies to the Council 90 days after submitting them to the PAB and the annual report 60 days after submitting it to the PAB.

Item 21 compresses the review timeline for both use policies and the annual report to 30 days. That timeline is not sufficient to allow adequate review of military equipment uses, which requires both community input – also a requirement of AB 481 - and a dialogue with BPD about why there was no reasonable alternative in a particular instance and whether the use of military equipment safeguarded civil liberties. The PAB appreciates that Item 21 allows for the Rules and Agenda

⁹ Government Code Section 7071(d)(1)

¹⁰ Government Code Section 7071(e)(2)

¹¹ Berkeley Municipal Code Section 125(3)(a)(1).

Committee to provide the PAB with more time, but advises that, historically, it needs more than 30 days to conduct an adequate review.

Item 21 also limits the scope of the PAB's review to "provid[ing] comments." The PAB has a clear mandate under Berkeley's current Ordinance, which provides standards for review that are consistent with state law.¹² Item 21's revision unnecessarily eliminates that clear mandate in favor of an ambiguous one. The Council should retain and reiterate the mandate in the Ordinance and state law.

Finally, we have not heard any justification for diluting the local transparency and oversight measures provided in BMC 2.100. The delegation to the PAB of the authority to review BPD's military equipment use policies and reports streamlines the City's review process and facilitates compliance with state law requirements. Item 21 would effectively deprive the Council of the PAB's subject-matter expertise and leave a gap in City processes governing this important oversight function.

III. Conclusion

We urge the Council to not weaken Berkeley's legally enforceable safeguards that are in place to protect the public's welfare, safety, civil rights, and civil liberties before military equipment is funded, acquired, deployed, or used.

Respectfully submitted,



Josh Cayetano

Chair, Police Accountability Board

Cc: Paul Buddenhagen, City Manager
David White, Deputy City Manager
Jennifer Louis, Chief of Police
Jen Tate, Deputy Chief of Police
Hansel A. Aguilar, Director of Police Accountability

¹² BMC 2.100.040(E)(1) ("The Police Accountability Board shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy, and notify the Police Department of its recommendations.") and BMC 2.100.050(B) ("The Police Accountability Board shall determine, based on the report, whether each piece of Controlled Equipment reported on has complied with the standards for approval set forth in Section [2.100.040](#).... If the Police Accountability Board determines that any Controlled Equipment has not complied with the standards for approval set forth in Section [2.100.040](#), it shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations shall be forwarded to City Council in accordance with the approval process in Section [2.100.040](#).")

Farimah Brown, City Attorney
Mark Numainville, City Clerk

ATTACHMENTS: Differences between BMC 2.100 and AB 481
Red-lined revisions for Item 21 on the Berkeley City Council's January
27, 2026 Agenda

ATTACHMENT 1
Differences between BMC
2.100 and AB 481

Differences between BMC 2.100 and AB 481

Category	Brief Description of Substantive Difference	PAB Recommendation
Definition of Controlled or Military Equipment	<p>BMC requires BPD to report on the deployment of all assault rifles, pepper spray, and batons while AB 481 does not.</p> <p>AB 481 specifically allows local governments to determine that other police equipment requires additional oversight.¹³</p>	Retain the additional categories of military equipment.
Differences in Components of the Annual Report	<p>Elements in the annual report that are required by BMC 2.100 but not in AB 481:</p> <p>(a) Reporting on deployments of military equipment. BMC 2.100 requires reporting on “deployments,”¹⁴ while AB 481 requires reporting only on “use,” which is not defined in the legislation.</p> <p>(b) Geographic impact. A breakdown of where the military equipment was used in Berkeley.</p> <p>(c) Other requirements. The number of days equipment was used and the percentage of these uses that were authorized by warrant or a</p>	Retain deployment reporting requirements with some definitional adjustments.

¹³Government Code Chapter 12.8 Section 7070(c)(15) (defining military equipment as “[a]ny other equipment as determined by a governing body or a state agency to require additional oversight”): https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481

¹⁴ The definition of “deploy” was subject to extensive consideration by Council, BPD, and the then-existing Police Review Commission. See the April 27, 2021 Supplemental Material for Item 32 “Police Equipment and Community Safety Ordinance”: https://berkeleyca.gov/sites/default/files/documents/2021-04-27%20Item%2032%20Adopt%20an%20Ordinance%20Adding%20Chapter%202.100%20to%20the%20Berkeley%20Municipal%20Code%20Regulating%20Police%20Acquisition%20and%20Use%20of%20Controlled%20Equipment%20-%20Rev%20Harrison_0.pdf

Category	Brief Description of Substantive Difference	PAB Recommendation
	court (similar to Oakland's militarized equipment ordinance).	
Use Policies	With respect to military equipment use policies, BMC 2.100 requires defining authorized <i>and</i> prohibited uses; AB 481 requires defining only authorized uses.	No recommendation.
Impact Statements	<p>BMC 2.100 (like Oakland's militarized equipment ordinance) requires the Department to elaborate an impact statement when it proposes to acquire new types of controlled equipment.</p> <p>The provisions of an impact statement not included in AB 481 are: statement of potential impact; mitigations to safeguard against such impacts; rationale for not selecting alternative methods to achieve the same purpose as the equipment; and whether the equipment requires third party services.</p>	Retain to the extent that the impact statement augments existing state law requirements.
Review by Oversight Entity	<p>BMC 2.100 requires that proposed use policies receive the recommendation of PAB; AB 481 requires identification of an independent oversight entity, but does not define such entity's authority.</p> <p>BMC 2.100 requires the PAB to determine that each piece of military equipment complies with the standards set forth in the Ordinance, which are substantially similar to the standards set forth in AB 481; if the PAB identifies any noncompliance it shall either recommend revocation</p>	Retain orderly and transparent review process by maintaining existing delegation to PAB, consistent with state law.

Category	Brief Description of Substantive Difference	PAB Recommendation
	<p>of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance.¹⁵</p> <p>BMC 2.100 provides that if the PAB does not act within 90 days (30 days in time-sensitive circumstances), BPD may proceed to City Council for approval.</p>	
Exigent Circumstances	<p>Unlike AB 481, BMC 2.100 includes provisions governing the use in exigent circumstances of controlled equipment that has not been approved.</p>	<p>No recommendation.</p>
Private Right of Action and Protections for Whistleblowers	<p>BMC 2.100 provides for a private right of action and protection for whistleblowers, while AB 481 does not.</p>	<p>No recommendation, but we note that these provisions do not place any administrative burden on the Police Department.</p>

¹⁵ We recommend modifying the language in BMC 2.100.050(B)(1) and (2) establishing this compliance review function from mandatory to permissive language in order to reduce the administrative burden on the PAB while still retaining the PAB's authority to conduct a compliance review of military equipment.

ATTACHMENT 2

Red-lined revisions for Item 21 on the
Berkeley City Council's January 27, 2026
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PAB DRAFT REVISIONS TO ITEM 21: Rescission and replacement of the Police Equipment and Community Safety Ordinance CONSENT ACTION CALENDAR: June 17 26, 2025 January 27, 2026

RESCINDING AND REPLACING ORDINANCE 7760-N.S. POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE WITH THE POLICE EQUIPMENT ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Findings

A. On May 11, 2021, the City Council adopted Ordinance No. 7760-NS, the Police Equipment and Community Safety Ordinance, to enhance local oversight, transparency, and accountability in the management of police equipment.

B. On October 1, 2021, the State of California enacted Assembly Bill 481, establishing a ~~comprehensive~~ statewide framework for police equipment reporting and oversight, codified in Chapter 12.8 (Sections 7070 to 7075) of Division 7 of Title 1 of the California Government Code (hereafter referred to as Chapter 12.8).

C. The City adopts all of the State's findings articulated in Assembly Bill 481, Section 1:

- The acquisition of military equipment and its deployment in our communities adversely impacts the public's safety and welfare, including increased risk of civilian deaths, significant risks to civil rights, civil liberties, and physical and psychological well-being, and incurment of significant financial costs. Military equipment is more frequently deployed in low-income Black and Brown communities, meaning the risks and impacts of police militarization are experienced most acutely in marginalized communities.
- The public has a right to know about any funding, acquisition, or use of military equipment by state or local government officials, as well as a right to participate in any government agency's decision to fund, acquire, or use such equipment.
- Decisions regarding whether and how military equipment is funded, acquired, or used should give strong consideration to the public's welfare, safety, civil rights, and civil liberties, and should be based on meaningful public input.
- Legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before military equipment is funded, acquired, or used.
- The lack of a public forum to discuss the acquisition of military equipment jeopardizes the relationship police have with the community, which can be undermined when law enforcement is seen as an occupying force rather than a public safety service.

D. Chapter 12.8's framework explicitly encourages local governments to implement additional requirements and standards related to the purpose, use, and reporting of military equipment by local law enforcement agencies.

PAB DRAFT REVISIONS TO ITEM 21: Rescission and replacement of the Police Equipment and Community Safety Ordinance CONSENT ACTION CALENDAR: June 17 26, 2025 January 27, 2026

E. The City's local Ordinance No. 7760-NS extends oversight to additional categories of police equipment and identifies the mechanisms to ensure compliance with the military equipment use policy, including which independent persons or entities have oversight authority, consistent with Chapter 12.8.

~~C. The State mandated requirements of Chapter 12.8 satisfy the objectives originally intended by the City's local ordinance, while also extending oversight to additional categories of equipment not addressed by Ordinance No. 7760-NS.~~

F. Specifically, Ordinance No. 7760-NS requires the reporting of additional categories of police equipment, the reporting of deployments of police equipment, the submission of an impact statement, and the delegated review of use policies and the annual report to the Police Accountability Board, all of which further the purposes of Chapter 12.8, but are not required by state law.

~~D-G. Ordinance No. 7760-NS has resulted in duplicative administrative burdens and inefficiencies for City staff, in part due to definitional ambiguity and operational misalignment. The continued implementation of both the local ordinance and the State-mandated reporting requirements has resulted in duplicative administrative burdens and inefficiencies for City staff.~~

E-H. Rescinding and replacing Ordinance No. 7760-NS will streamline the City's reporting processes, eliminate redundant tasks, and enable staff to focus on higher-priority operational responsibilities, while maintaining robust public transparency and accountability under State and local law.

F-I. The City Council finds that rescission and replacement of Ordinance No. 7760-NS is consistent with the City's goals of effective governance, operational efficiency, and fiscally responsible policymaking.

Section 2. Rescission

Ordinance No. 7760-NS, known as the Police Equipment and Community Safety Ordinance, is hereby rescinded.

Rescission and replacement of the Police Equipment and Community Safety Ordinance CONSENT ACTION
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Section 3. Compliance with State Law

The City of Berkeley shall comply with all applicable provisions of Chapter 12.8 (Sections 7070 to 7075) of Division 7 of Title 1 of the California Government Code and any subsequent amendments thereto governing the acquisition, funding, use, and reporting of police equipment.

Section 4. Chapter 2.100 POLICE EQUIPMENT ORDINANCE

2.100.010 Name of Ordinance

(A) This Ordinance shall be known as the Police Equipment Ordinance. (Ord. XXXX-NS § X.)

2.100.020 Purposes of Ordinance

(A) The purposes of this ordinance are to:

- (1) Restate requirements for the Berkeley Police Department (BPD) to produce policies and reports regarding the acquisition, funding, deployment, and use of covered Military Equipment.
- (2) Ensure ongoing consistency between local and State requirements with respect to Military Equipment policies, acquisition, funding, and reporting.
- (3) Avoid duplication of reporting and other effort by the Berkeley Police Department and the Police Accountability Board (PAB).
- ~~(3)~~(4) Strengthen existing state law requirements governing the acquisition, funding, use, and reporting of police equipment.
- ~~(4)~~(5) Ensure that local requirements remain in place in the event State-level requirements established by Chapter 12.8 (Sections 7070 to 7075) of Division 7 of Title 1 of the California Government Code are rescinded or struck down.
- ~~(5)~~(6) Specify how local requirements differ from State-level requirements.

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Rescission and replacement of the Police Equipment and Community Safety Ordinance CONSENT ACTION
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~~(6)~~(7) Clarify roles and timelines with respect to BPD provision of Chapter 12.8 documents, the Police Accountability Board, the PAB's involvement in effectuating Chapter 12.8.

2.100.030 Local consistency with California State standards

- (A) All provisions of Chapter 12.8 (Sections 7070 to 7075) of Division 7 of Title 1 of the California Government Code, including definitions, reporting requirements, policy requirements, review by elected officials, public meetings, and all other provisions, is hereby incorporated into the Berkeley Municipal Code by reference.
- (1) In the event that Chapter 12.8 and/or its requirements are amended/altereD by the State Legislature or by a court whose jurisdiction covers Berkeley, those revisions shall also be incorporated by reference; this includes amendments made to the original statute or new statutes that may add to the requirements of Chapter 12.8.
- (B) The Berkeley Police Department shall be responsible for fulfilling the requirements and provisions of Chapter 12.8.
- (C) The use policies and reports produced in compliance with Chapter 12.8 (or requirements amended/established by successor legislation) by the Berkeley Police Department shall serve to meet these local reporting requirements.
- (1) In no event shall this ordinance be interpreted to require BPD to produce multiple versions of the policies/reports required by Chapter 12.8.

2.100.040 Additional City of Berkeley Standards

- (A) ~~The following police equipment shall also be subject to the same approval processes and reporting requirements defined in Chapter 12.8 and herein: Subsequent to the adoption of this ordinance, the Berkeley Police Department's Policy 300 (or any successor policy) shall maintain any necessary provisions governing the reporting of instances of Military Equipment Use and/or deployment.~~
- (1) ~~All specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code.~~
- (2) ~~Pepper spray and pepper balls.~~
- (3) ~~Batons 30 inches or longer in length.~~
- (B) In addition to reporting requirements of Government Code Section 7072, the annual report shall include:
- (1) ~~A summary of how the Police Equipment was used or deployed. "Deployment" shall mean any instance in which military equipment was pointed or aimed at an individual, or otherwise deployed, during an interaction. "Interaction" shall be defined as a situation in which an individual could reasonably believe the deployment could be an attempt to gain compliance." Deployment shall not include the transport or wearing of military equipment.~~
- (a) ~~Batons 30 inches or longer in length shall only be deemed "deployed" when used for management or control of crowds.~~
- (2) ~~If applicable, a breakdown of where Controlled Equipment was used geographically by~~

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individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.

(C) For purposes of this Ordinance, "Impact Statement" means a publicly released, written document that includes, at a minimum, all of the following:

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(1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.

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(2) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.

(3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.

(4) Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public.

(5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.

(6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, and rationale for selection over alternative methods.

(7) Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third party service providers.

2.100.050 Acquisition and Use of Police Equipment.

Commented [A1]: Currently BMC 2.100.040 with revisions to integrate Gov Code

(A) Restrictions Prior to Submission and Approval

(1) The Police Department shall not engage in any of the following activities enumerated in Government Code Section 7071(a)(1)(A)-(G) and Government Code 7073(a) regarding a piece of Police Equipment before the Berkeley Police Accountability Board ("Police Accountability Board"), or any successive agency, reviews and recommends, and the City Council approves, a Police Equipment Impact Report and a Police Equipment Use Policy for that equipment.

Commented [A2]: Integrating Gov Code

(B) Submission to Police Accountability Board

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(1) At least 15 days prior to any public meeting to consider the adoption of any Police Equipment Use Policy or Police Equipment Impact Report, the Use Policy and Impact report shall be published for public review.

(2)The final Police Equipment Impact Report and Police Equipment Use Policy shall be made publicly available on the Department's website for as long as the Police Equipment is available for use.

(3)The Police Accountability Board shall consider Police Equipment Impact Reports and Police Equipment Use Policies as an agenda item for review at an open session of a meeting.

(C) Criteria for Police Accountability Board Recommendations

(1)The Police Accountability Board shall recommend approval of a request to fund, acquire, or use Police Equipment pursuant to this chapter only if it determines compliance with the standards articulated in Government Code Section 7071(d)(1).

(2)If the submitted Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, the Police Accountability Board's recommendation for approval for the funding, acquisition, or use of the Police Equipment shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need for the Police Department to take proactive steps to minimize those effects.

(D) Police Accountability Board Review Required Before City Council Consideration of Approval

(1)The Police Accountability Board shall recommend that the City Council adopt, modify, or reject the proposed Police Equipment Use Policy, and notify the Police Department of its recommendations.

(2)The Police Accountability Board shall present its recommendations to City Council.

(3) Failure by the Police Accountability Board to make its recommendation on a proposal within ninety (90) days, or thirty (30) days in instances where the proposal is subject to a time-sensitive grant application, of submission shall enable City Staff to proceed to the City Council for approval of the proposal.

(E) Police Accountability Board Review of Prior Recommendations

(1)The Police Accountability Board shall determine, as part of its annual Work Plan, whether to include the review of any Police Equipment use policy in the coming year.

(2)A Police Accountability Board recommendation to City Council that a prior approval be revoked shall be presented to Council. If City Council does not act on such a recommendation within four (4) City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Police Equipment.

(F) City Council Approval Process

(1) After the Police Accountability Board review requirements have been met, the Police Department shall schedule for City Council consideration the proposed Police Equipment

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Impact Report and proposed Police Equipment Use Policy, and include Police Accountability Board recommendations, at least fifteen (15) days prior to a public meeting.

(2) If the City Council does not approve such item within four (4) regular City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Police Equipment until such review and approval occurs.

2.100.060 Reports on the Use of Police Equipment

Commented [A3]: Currently BMC 2.100.050 with revisions to integrate Gov Code

(A) The Police Department shall annually submit a report on Police Equipment that incorporates the reporting requirements of both Government Code Section 7072 and local law, as described herein.

Commented [A4]: Integrated Gov Code

(B) Compliance or Revocation of Approval

(1) Within 60 days of the Police Department submitting an annual report, the Police Accountability Board shall place the report as an agenda item for an open session of a regular meeting.

(2) The Police Accountability Board shall have the authority to review the annual report and issue recommendations to the City Council. Specifically, in accordance with Government Code 7071(e)(2), the Police Accountability Board may determine, based on the annual report submitted pursuant to Government Code Section 7072 and Berkeley Municipal Code 2.100.060, whether each type of military equipment identified in that report has complied with the standards for approval set forth in Government Code Section 7071(d).

Commented [A5]: Integrated Gov Code

(2) If the Police Accountability Board determines that any Police Equipment has not complied with the standards for approval set forth in Government Code Section 7071(d), it shall either recommend revocation of the authorization for that piece of Police Equipment or modify the Police Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations shall be forwarded to City Council in accordance with the approval process in Section 2.100.050.

Commented [A6]: Integrated Gov Code

(3) After review by the Police Accountability Board, the Police Department shall submit the annual report to City Council, indicating its approval or lack of compliance for each piece of Police Equipment.

2.100.070 Enforcement

Commented [A7]: Currently BMC 2.100.060

(A) Remedies for Violations of this Ordinance. This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if they are personally obligated to pay such fees.

Rescission and replacement of the Police Equipment and Community Safety Ordinance CONSENT ACTION
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2.100.080 Transparency

Commented [A8]: Currently BMC 2.100.070

(1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

(2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary.

2.100.090 Whistleblower Protections.

Commented [A9]: Currently BMC 2.100.080

All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016, and including any updates or replacements thereto, shall apply.

2.100.010 Severability.

Commented [A10]: Currently BMC 2.100.090

2.100.050 Timelines and Police Accountability Board Role

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(A) The Berkeley Police Department shall make all Chapter 12.8 policy and reporting documents available to the public and the Police Accountability Board no less than 30 days prior to the Berkeley Council Meeting where they will be considered for acceptance.

(B) The Police Accountability Board may review and provide comments on Chapter 12.8 policy and reporting documents.

(C) Police Accountability Board review is not required for the Berkeley City Council to accept and/or approve Chapter 12.8 policy and reporting documents.

(D) The Agenda and Rules Subcommittee of the Berkeley City Council may, at its discretion, provide additional time for the Police Accountability Board to complete its review of Chapter 12.8 documents before agendaizing City Council review of such documents.

2.100.060 Additional Reporting

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If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Rescission and replacement of the Police Equipment and Community Safety Ordinance CONSENT ACTION
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- ~~(A) Police use of force (irrespective of whether it involved military equipment) shall continue to be reported in a manner consistent with Policy 300 (or a successor policy).~~
- ~~(1) Any reporting on military equipment use shall include, at a minimum:~~
- ~~(i) The type of military equipment used;~~
 - ~~(ii) The type and amount of munitions used (if applicable);~~
 - ~~(iii) Key outcomes from the military equipment use~~
- ~~(2) "Less lethal" weapons which fall outside of the definitions in Chapter 12.8 but are subject to reporting requirements established by Policy 300 must continue to be reported in a manner consistent with Policy 300 (or any successor policy).~~
- ~~(B) As part of its annual Chapter 12.8 reporting, the Berkeley Police Department shall report the deployment of military equipment on a limited basis, consistent with the following definition of "reportable deployment" below:~~
- ~~(1) Reportable deployment shall include instances where military equipment was pointed or aimed at an individual, group, or crowd in the context of a First amendment activity.~~
 - ~~(2) Reportable deployment shall include instances in the context of a First amendment activity where an individual present would have reasonably believed that use of the military equipment was not merely possible, but imminent.~~
 - ~~(3) Reportable deployment shall not include the transport of military equipment.~~
 - ~~(4) Reportable deployment shall not cover any instance outside the context of a First amendment activity (for example, apprehension of an individual for which a judicial arrest warrant has been issued).~~

Section 5. Effective Date

This ordinance shall be effective upon the second reading and shall apply to the 2025 report and to all subsequent reports.

Section 6. Posting, Filing, and Publication Requirements

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.