



Brent Blackaby
Councilmember District 6

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: January 27, 2025

Item Number: #21

Item Description: Rescission and replacement of the Police Equipment and Community Safety Ordinance

Submitted by: Councilmember Blackaby

Bringing forward proposed revisions to Item 21's Ordinance, based on feedback from the Police Accountability Board. Highlights of proposed edits include:

- Include State's findings in AB481 directly into our ordinance (p.1)
- Agree that we should rescind Ordinance No. 7760-NS (p. 2)
- Agree that we should streamline down to one consolidated annual report on military equipment, instead of the current two (p. 4)
- Continue to follow Chapter 12.8's framework which 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 (pp. 4-5)
- Recommend maintaining current practice of BPD reporting all "deployments" of military equipment, not just in the context of a "First Amendment activity" as proposed in current item (pp. 4-5)
- Maintain Police Accountability Board's process of reviewing proposed use policies and impact statements of new military equipment, as well as annual reports, but reduce review period to 60 days instead of 90 days before coming to City Council for final review/approval (pp. 5-8)

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.

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.

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.

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.](#)

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.

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.

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).
- (4) Strengthen existing state law requirements governing the acquisition, funding, use, and reporting of police equipment
- (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.
- (6) Specify how local requirements differ from State-level requirements.

- (7) Clarify roles and timelines with respect to BPD provision of Chapter 12.8 documents, the Police Accountability Board, and 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:
- (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 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:

- (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.
- (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.

(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 [Statement](#) and a Police Equipment Use Policy for that equipment.

(B) Submission to Police Accountability Board

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

(2) The final Police Equipment Impact Statement 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 Statements 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 Statement 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 Impact Statement 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.

(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.

(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).

(3) 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.

(4) 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.

(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.

2.100.080 Transparency

(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.

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.

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.

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.