



Leah Wilson | Vice-Chair
Police Accountability Board
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February 23, 2026

VIA ELECTRONIC MAIL [Email]

Honorable Mayor Ishii and Members of the City Council
Council@berkeleyca.gov
2180 Milvia Street
Berkeley, California 94704

Re: Resolution Rescinding Berkeley Police Department's Pepper Spray Reporting Requirement

Honorable Mayor Ishii and Members of the City Council:

On behalf of the Police Accountability Board (PAB), I write to convey the Board's recommendation that the City Council (council) reincorporate reporting on the use of pepper spray into the Berkeley Police Department's (BPD) annual military equipment report before eliminating the standalone pepper spray reporting requirement. This recommendation is intended to preserve key narrative details not otherwise available through BPD's other reporting channels, such as the Transparency Hub or use-of-force reports.

The PAB reviewed the proposal to rescind the reporting requirement at its February 11, 2026. While the PAB supports the streamlining goals motivating the proposal, circumstances have changed since the initial introduction of the proposed reporting change, as described in item three on the following page.

The proposal to eliminate the standalone pepper spray reporting requirement is predicated on the existence of other similar (and therefore redundant) reporting mandates or data-access options, specifically as noted in the item introducing the elimination of this requirement: the use-of-force reporting requirements under BPD Policy 300.6, BPD's Transparency Hub and Open Data Portal, and the former Police Equipment and Community Safety Ordinance (BMC § 2.100). There are limitations associated with each of these reporting mechanisms as currently structured:

1. **Use-of-force reports:** Use-of-force reports are generally treated as part of an officer's personnel file and are not publicly accessible except in cases involving death or serious bodily injury, as provided under California Penal Code § 832.7.

2. **Transparency Hub:** As shown in Attachment 1, reporting through the Transparency Hub remains limited. Uses of OC spray are reported through the use-of-force portal and classified as Level 3 uses of force. Currently, the Transparency Hub provides the public with statistical data but does not contain any narrative explanation of the basis for or context of chemical agent use. Access to Transparency Hub information is further constrained by usability barriers, as meaningful review often requires familiarity with Microsoft Excel to open and analyze .csv files, as well as general proficiency in navigating the Transparency Hub, which limits broader public accessibility.
3. **Military equipment report:** At the time the rescission proposal was advanced, controlled equipment reporting under BMC 2.100.020(A)(11) required reporting on pepper spray use. However, following the City Council's February 10, 2026, adoption of Ordinance No. 8,001-N.S., which rescinded and replaced Ordinance No. 7,760-N.S., the BPD's military equipment reporting requirements were aligned with state law. Under California Government Code § 7070(c)(12), service-issued handheld pepper spray is excluded from reporting requirements. Eliminating the standalone pepper spray report without an alternative reporting mechanism would therefore result in the complete elimination of any public narrative reporting on pepper spray utilization.

With this context in mind, the PAB recommends modifying the military equipment reporting framework to reintroduce pepper spray use reporting, allowing for greater efficiency without a loss of transparency. Examples of prior narrative disclosures under the Controlled Equipment ordinance are included as Attachment 2.

We appreciate the PSPC for inviting the PAB's input on this matter and thank the City Council for considering the Board's recommendation.

Respectfully submitted,

/s/ Leah Wilson

Leah Wilson, Vice-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
Jose Murillo, Acting Director of Police Accountability
Farimah Brow, City Attorney
Mark Numainville, City Clerk

Attachment(s):

1. Examples of Current Pepper Spray Use Reporting Through the Transparency Hub
2. Examples of Pepper Spray Use Reporting Pursuant to Berkeley's Controlled Equipment Ordinance (Berkeley Municipal Code § 2.100)

Attachment 1. Examples of Current Pepper Spray Use Reporting Through the Transparency Hub

Figure 1. Screenshot of a Level 3 Chemical Agent Use-of-Force Report from the Transparency Hub, dated October 9, 2025.

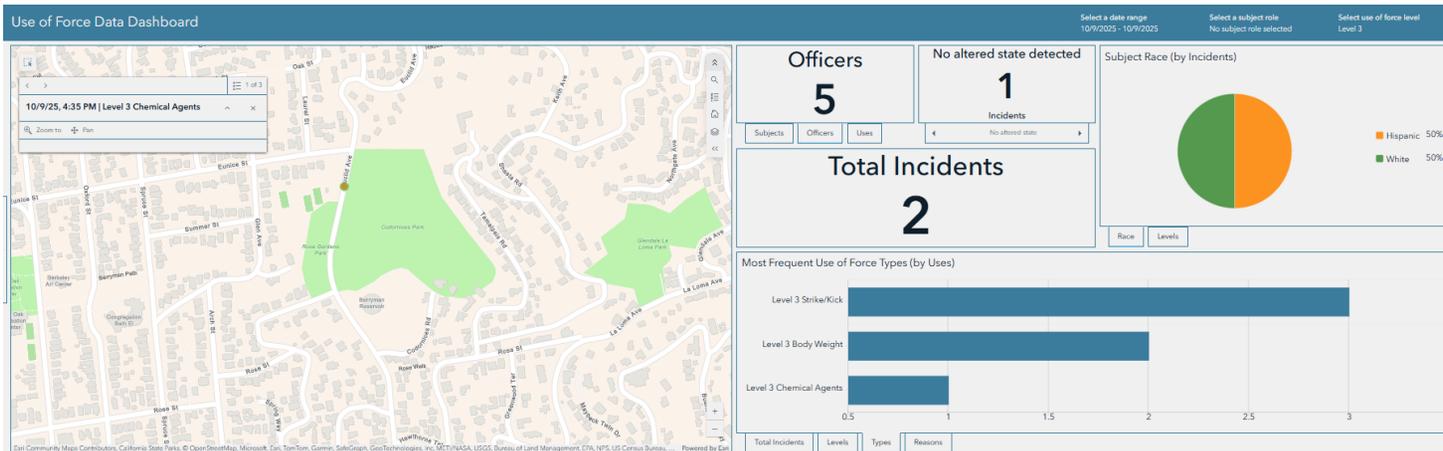


Figure 2. Excerpt of a data entry reflecting pepper spray use in the Open Data Portal, dated October 9, 2025.

Subject_Incident	Sex	Race	Subject Role	Subject Age	Block Address	City	Use of Force Number	Officer_Icident	Officer Role	Use of Force	Use of Force Type	OccurredDate	Subject Arrested	Use of Force Reason	Subject Altered State	NonBerkeley Address
2628	Male	White	Arrested	29	1200 Avenue	Berkeley	6759	8832	Trainee	Level 3	Level 3 Chemical Agents	2025-10-09 07:00:00+00:	Yes	Combative	Unknown Drugs	

Attachment 2. Examples of Pepper Spray Use Reporting Pursuant to Berkeley’s Controlled Equipment Ordinance (Berkeley Municipal Code § 2.100)

Figure 3. Example of Controlled Equipment Reporting of OC Spray from the 2023 Controlled Equipment Report

#	<u>Equipment Deployed</u>	<u>Summary of Deployment</u>	<u>Beat</u>
29	OC spray	A victim called the police and reported a man kicking down her fence. An officer arrived on scene and contacted the subject who refused to speak to the officer. The officer followed the suspect on foot as he gave commands for him to stop. The suspect yelled and cursed at the officer and refused to stop. A second officer arrived and immediately recognized the suspect from prior police contacts as someone violent with the police. This officer ordered the suspect to stop but was ignored. He attempted to grab the suspect's arms, but the suspect pulled his arms away and ran. The suspect physically resisted the officer as he continued his attempts to detain him. This officer sprayed the suspect with OC spray as the suspect continued to resist. When the second officer arrived, they were able to detain him. Medical aid was provided and he was placed on a psychiatric evaluation hold. The suspect is on probation for robbery. The criminal case was forwarded to the District Attorney’s Office for review.	8

Figure 4. Example of Controlled Equipment Reporting of OC Spray from the 2024 Controlled Equipment Report

#	<u>Equipment Deployed</u>	<u>Summary of Deployment</u>	<u>Beat</u>
47.	OC Spray	After responding to a report of an individual causing a disturbance with excessive noise and door knocking—and who became physically aggressive—OC spray was used, and the subject complied and was detained without further incident.	5