

CONSENT CALENDAR

May 19, 2026

To: Honorable Mayor and Members of the City Council
From: Paul Buddenhagen, City Manager
Submitted by: Jen Louis, Chief of Police
Subject: Amendment to BMC Chapter 2.100 to Subject Pepper Spray to the Approval and Reporting Requirements of the Police Equipment Ordinance

RECOMMENDATION

Adopt the first reading of an Ordinance amending Berkeley Municipal Code Section 2.100.040 to add pepper spray to the list of police equipment subject to the approval processes and reporting requirements defined in Chapter 12.8 of the California Government Code and BMC Chapter 2.100, and to require reporting on the administration of first aid following each use of pepper spray.

CURRENT SITUATION AND ITS EFFECTS

On January 27, 2026, the City Council adopted the first reading of Ordinance No. 8,001–N.S., rescinding and replacing the Police Equipment and Community Safety Ordinance (Ordinance No. 7,760–N.S.) with the Police Equipment Ordinance. The new ordinance amended Section 2.100.040(A)(2), which previously included pepper spray among the additional categories of police equipment. The second reading of the Ordinance was adopted on February 10, 2026.

On March 10, 2026, the City Council unanimously adopted Resolution No. 72,159–N.S., rescinding the 1997 directive requiring the Berkeley Police Department to notify the City Council within seven days each time pepper spray is used. That resolution consolidated pepper spray reporting into the Police Department's use of force reporting system and the Transparency Hub, while directing that the City Manager bring back an amendment to BMC Chapter 2.100 to restore pepper spray to the controlled equipment framework, including reporting on the administration of first aid.

BACKGROUND

Pepper spray was included as controlled equipment in the original Ordinance No. 7,760–N.S., adopted in May 2021. Under that framework, the Berkeley Police Department was required to submit impact statements, use policies, and annual reports covering pepper spray to the Police Accountability Board and City Council.

The 1997 Council directive requiring separate per-incident pepper spray notification predated current use of force reporting practices under Policy 300, the Transparency Hub and the statewide AB 481 reporting framework. Resolution No. 72,159–N.S. eliminated that standalone notification requirement while strengthening Transparency Hub reporting and directing this ordinance amendment.

FISCAL IMPACTS

There are no direct financial implications associated with this item beyond existing staff time required to incorporate pepper spray into the annual police equipment report.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental impacts have been identified as a result of the adoption of this ordinance.

CONTACT INFORMATION

Jen Louis, Chief of Police, (510) 981-5700

ATTACHMENTS

1. Ordinance

ORDINANCE NO. ##-###N.S.

AMENDMENT TO BMC CHAPTER 2.100 TO SUBJECT PEPPER SPRAY TO THE APPROVAL AND REPORTING REQUIREMENTS OF 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. 7,760–N.S., the Police Equipment and Community Safety Ordinance, which included pepper spray as controlled equipment subject to local oversight and reporting.

B. On January 27, 2026, the City Council adopted the first reading of Ordinance No. 8,001–N.S., rescinding and replacing Ordinance No. 7,760–N.S. with the Police Equipment Ordinance, and during that meeting removed pepper spray from the additional categories of police equipment subject to local approval and reporting requirements listed in Section 2.100.040(A)(2). The second reading of the Ordinance was adopted on February 10, 2026.

C. On March 10, 2026, the City Council adopted Resolution No. 72,159–N.S., rescinding the 1997 pepper spray incident notification requirement while directing that the City Manager present an amendment to BMC Chapter 2.100 to the City Council to subject pepper spray to the approval and reporting requirements of the Police Equipment Ordinance, including the administration of first aid.

Section 2. That Berkeley Municipal Code Section 2.100.040 is amended to read as follows:

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) Batons 30 inches or longer in length.

(3) Pepper spray.

(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.

(3) Whether first aid was administered after a use of pepper spray.

(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. (Ord. 8001-NS § 4, 2026)

Section 3. 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.