



SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: September 15, 2026

Item Number: #21a

Item Description: Resolution Reinstating the Berkeley Police Department's Ability to Use Tear Gas for Critical Life-Threatening Incidents Only and Lifting the COVID-19 Moratorium on Smoke and Oleoresin Capsicum (OC) Spray

Submitted by: Katherine Lee, Interim Director of Police Accountability

The Police Accountability Board continues to question the need to reauthorize tear gas use, but if permitted, the PAB proposes policy language for its use to be inserted into the BPD's Use of Force Policy 300.



Joshua Cayetano | Chair
Police Accountability Board
JCayetano@berkeleyca.gov

September 4, 2026

VIA ELECTRONIC MAIL [Email]

Berkeley City Council
Council@berkeleyca.gov
2180 Milvia Street,
Berkeley, CA 94704

Re: Resolution Reinstating the Berkeley Police Department's Ability to Use Tear Gas for Critical Life-Threatening Incidents Only and Lifting the COVID-19 Moratorium on Smoke and Oleoresin Capsicum (OC) Spray

Dear Honorable Mayor Ishii and Members of the City Council,

The Police Accountability Board (PAB) writes to follow up on Councilmember Kesarwani's proposal to reinstate the authority of the Berkeley Police Department (BPD) to use tear gas.

The PAB previously informed the Council in our January 26, 2026 correspondence that the PAB questions the necessity of reauthorizing tear gas given the undisputed fact that BPD has only used tear gas three times over the last several decades, and two of those times occurred in a crowd control context that would be prohibited by the Councilmember's resolution.¹ We continue to question whether the proposal reintroduces a tool associated with significant community concern for marginal operational benefit.

Nevertheless, in light of the City Council's discussion at the July 14, 2026 meeting, the PAB and BPD have approved policy language that can be inserted into the Use of Force Policy 300. See Attachment 1. The PAB believes that the approved policy language, in conjunction with the current Use of Force Policy, incorporates the requirements of California Penal Code section 13652,

¹ January 26, 2026 PAB Memorandum to the Public Safety Policy Committee Titled "Proposed Resolution to Reinstate Berkeley Police Department's Use of Tear Gas and Related Chemical Agents": https://berkeleyca.gov/sites/default/files/2026-01/2026-01-26%20PAB%20Memo%20to%20PSPC_UseofTearGas_Related%20Chemical%20Agents%20%28Final%29.pdf

which establishes criteria for chemical agent use policies. If the Council decides to approve the use of tear gas, we recommend that the Council's motion and recommendation incorporate the policy language approved and agreed upon by both the PAB and BPD.

If the Council does not agree with the jointly recommended policy language, then the PAB respectfully requests that the Council defer action on the item until after the revised Use of Force Policy has been reviewed and approved by the Council.

Sincerely,

A handwritten signature in black ink that reads "Joshua Cayetano". The script is cursive and fluid.

Joshua 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
Farimah Brown, City Attorney
Mark Numainville, City Clerk
Katherine Lee, Interim Director of Police Accountability

Attachment(s):

1. PAB and BPD Approved Policy Language Regarding the Use of Tear Gas in Limited Circumstances

Attachment 1.

PAB and BPD Approved Policy Language Regarding the Use of Tear Gas in Limited Circumstances

“Tear gas shall only be used upon approval by the Incident Commander by trained members of the Special Response Team during the following tactical operations, provided that the suspect refuses to comply, and the supervisor reasonably believes that the risks of deploying tear gas are outweighed by the risks of not deploying tear gas:

1. Barricaded subject operations
2. Service of a high-risk warrant during which a suspect is actively presenting a threat of death or serious injury to officers or others; or
3. Hostage situations.

If feasible, prior to the use of tear gas, the SRT should (1) issue verbal warnings and (2) take reasonable steps to ensure that the suspect is in a controlled, contained area and that non-suspects are provided the opportunity to leave the area. Following the use of tear gas, the SRT shall ensure that any impacted person is offered medical care as soon as feasible.

Tear gas shall not be used for crowd control or crowd management, or during homeless encampment abatements.”