



Peace and Justice
Commission

ACTION CALENDAR

September 15, 2026

(Continued from July 14, 2026)

To: Honorable Mayor Ishii and Members of the Berkeley City Council

From: Peace and Justice Commission

Submitted by: Pastor Dwayne Phillips, Chairperson, Peace and Justice Commission

Subject: Social Justice Implications of Proposed Use of Controlled Weapons and Other Policing Tools

RECOMMENDATION

Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools:

1. Retain the existing 2020 bans on chemical weapons (CS and OC), and the 1982 bans on police dogs and helicopters.
2. Retain the 1997 requirement for public reporting of each use of pepper spray.
3. Request the City Manager to engage an academic institution such as UC Berkeley, UCSF, or Stanford to study the health impacts of tear gas and other chemical weapons and canine support, potential short-term and long-term impacts on vulnerable populations and possible alternatives to the use of chemical weapons that provide officer safety, suspect safety, and safety to the general public.

SUMMARY

The Peace and Justice Commission recommends applying a social justice lens to policing decisions that could have a significant impact on the lives of Berkeley's residents and visitors, including disparate impact on marginalized, low-income, disabled, elder, and community members of color.

It is the Commission's perspective that human rights must be prioritized above administrative convenience. The Commission further finds that in an era of great polarization, it is essential to build bridges among disparate constituencies, listen to people with diverse points of view, and create solutions that serve all the people in Berkeley. For that reason, we propose that the City Manager request academic support for an independent study of health effects of the proposed weapons and tools.

Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools

ACTION CALENDAR
September 15, 2026

FISCAL IMPACTS OF RECOMMENDATION

No significant fiscal impact on the City.

CURRENT SITUATION AND ITS EFFECTS

As of the date of this writing, Council members have introduced several resolutions for consideration bearing on BPD chemical weapons and other tools. Three items are currently pending in city council process:

1. "Proposed Resolution Rescinding Berkeley Police Department's Pepper Spray Reporting Requirement." This proposal has passed through the Public Safety Committee with a qualified positive recommendation, and has been placed on the March 10 city council agenda.¹ [NOTE: Council passed an amended version of this proposal on March 10.]

On February 11, the Police Accountability Board (PAB) recommended to Council to continue the requirement for the submission of use of pepper spray reports. The PAB demonstrates that while the proposed resolution is predicated on the existence of redundant reporting, other reports lack narrative information and/or are inaccessible.²

2. "Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate Berkeley Police Department's Use of Tear Gas in Limited Situations and Lift the COVID-19 Moratorium on the Use of Smoke and Oleoresin Capsicum (OC) Spray:" This proposal has passed through the Public Safety Committee with a qualified positive recommendation.³ The Police Accountability Board sent a memorandum to the Public Safety Committee questioning the necessity of resuming use of these chemical agents given how infrequently Berkeley has used them over several decades.⁴

¹ March 10 2026 City Council agenda, item 17, <https://berkeleyca.gov/sites/default/files/2026-02/2026-03-10%20Item%2017%20Resolution%20Rescinding%20Berkeley%20Police%20Department%E2%80%99s.pdf>

² "Re: Resolution Rescinding Berkeley Police Department's Pepper Spray Reporting Requirement," Police Accountability Board, Feb. 23 2026, berkeleyca.gov/sites/default/files/2026-02/2026-02-23%20PAB%20Letter%20to%20Council_%20Use%20of%20Pepper%20Spray%20Reporting%20%281%29.pdf

³ Public Safety Policy Committee Jan. 29 2026 agenda, item 4, 29, <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-02-19%20Agenda%20Packet%20-%20Public%20Safety.pdf>

⁴ "Proposed Resolution to Reinstate Berkeley Police Department's Use of Tear Gas and Related Chemical Agents," Police Accountability Board, Jan. 26 2026,

Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools

ACTION CALENDAR
September 15, 2026

3. “Resolution Rescinding Res. No. 51,408-N.S. Restricting the Use of Air Support and Canine Units and Updating Mutual Aid Policies”: Scheduled for hearing at the Public Safety Committee at its next meeting.⁵ As of March 9, the resolution is yet to be evaluated by the PAB.

The PAB’s February 11 regular meeting included a table prepared by the Office of the Director of Police Accountability (ODPA). This table describes the key differences between the existing and proposed policies with regard to police dogs and helicopters. The table can be found at <https://bit.ly/CopterDogProvisions>. The ODPA gave this interpretation of the table:

“The table ... shows that the primary changes concern the approval process for requesting helicopter and canine use and the circumstances under which helicopter assistance may be requested through mutual aid agreements.

“The previously permissible uses of helicopter assistance were limited to clearly defined humanitarian and emergency purposes, including disaster response, rescue efforts excluding hostage situations, and locating missing persons....

“The proposal introduces new, explicitly enforcement-oriented justifications, including felony suspect pursuits, vehicle chases, and deployments intended to reduce risk to officers, that go beyond the scope of the earlier permissions. Taken together, the proposed resolution reflects a shift in emphasis from primarily emergency assistance toward authorizing helicopter use as a tactical law enforcement tool, should it be adopted.”⁶

At the March 9 2026 meeting, the commission took the following action:

https://berkeleyca.gov/sites/default/files/2026-02/2026-02-23%20PAB%20Letter%20to%20Council_%20Use%20of%20Pepper%20Spray%20Reporting%20%281%29.pdf

⁵ Public Safety Policy Committee Jan. 29 2026 agenda, item 3, 21, <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-02-19%20Agenda%20Packet%20-%20Public%20Safety.pdf>

⁶ “Police Accountability Board Meeting Agenda Packet,” Feb. 11, 2026, 82-83, <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2026-02-11%20PAB%20AGENDA%20PACKET.pdf>

Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools

ACTION CALENDAR
September 15, 2026

Action: M/S/C (Lippman/Taylor) to adopt the following recommendation: Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools:

1. Retain the existing 2020 bans on chemical weapons (CS and OC), and the 1982 bans on police dogs and helicopters.
2. Retain the 1997 requirement for public reporting of each use of pepper spray.
3. Request the City Manager to engage an academic institution such as UC Berkeley, UCSF, or Stanford to study the health impacts of tear gas and other chemical weapons and canine support, potential short-term and long-term impacts on vulnerable populations and possible alternatives to the use of chemical weapons that provide officer safety, suspect safety, and safety to the general public.

Ayes: Commissioners Phillips, Marasovic, Taylor, Sani, Morizawa, Lippman, McNeil and Press

Noes: Commissioner Fink

Abstain: Commissioners Yasavul, Weisberg, Elias, Mencher and Lee

Absent: Commissioner Cassidy

Excused: None

BACKGROUND

The resolutions currently under consideration by the city council amend or replace ordinances and policies approved by the council in previous years. The existing ordinances and policies include:

On July 15 1982, the City Council passed Resolution 51,408-N.S., establishing a policy for police use of dogs and helicopters from other law enforcement agencies, requiring prior approval by the City Manager, and only for specified purposes, excluding crowd control. See the 1982 policy referenced in Footnote 5.

On September 16 1997, the City Council established a policy that "every time pepper spray is used by the Police Department a Use of Pepper Spray Report similar to the Use of Force Report currently in effect will be completed and sent" to the Council and the Police Review Commission. See the 1997 policy referenced in Footnote 1.

On June 6 2020, in the wake of the murder of George Floyd by Minneapolis police, the City Council established a permanent ban on the use of CS (tear gas) and a moratorium on the use of OC (pepper spray) and smoke. The moratorium was in part due to the effect of the COVID-19 pandemic which caused respiratory distress to large numbers of people. It was also a step toward addressing over-policing and the use of military-style weaponry on civilians.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Physicians for Human Rights states that chemical irritants including both CS (“tear gas”) and OC (pepper spray) can spread to affect people other than the intended target.⁷ CS often has a wide spray pattern. OC is considered more targeted than CS, but wind can affect the direction of the fumes to affect bystanders and even the user.⁸

RATIONALE FOR RECOMMENDATION

1. Pepper Spray (OC) reporting.

The Peace and Justice Commission supports the PAB letter calling for the continuation of pepper spray use reporting. We would add that if the BPD intends to continue or even expand use of pepper spray, it is to their benefit that the community understand the context of its usage.

2. “Tear gas” (CS), Pepper Spray (OC), and Smoke

This is a complex proposal covering multiple chemical weapons.

The Peace and Justice Commission recommends Council retain the ban on CS (“tear gas”) and the moratorium on OC and Smoke for these four reasons:

- A. CS and OC are dangerous weapons that are properly considered “less-lethal,” not “non-lethal.”
- B. CS and OC are particularly dangerous to the health of people with disabilities, especially respiratory or environmental sensitivities, and also those suffering from mental or behavioral disorders.

⁷ “Health Impacts of Crowd-Control Weapons: Chemical Irritants (Tear Gas and Pepper Spray),” Physicians for Human Rights, Jan. 1 2017, <https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-chemical-irritants-tear-gas-and-pepper-spray/>

⁸ “Pepper Spray Safety Precautions,” Sept. 12, 2024, <https://www.divasfordefense.com/blogs/self-defense-articles-educational-material/pepper-spray-handling-safety-precautions?srltid=AfmBOops00prGllerpYmjsPYnV5ElGesRj1WXJWr9Xrs5B8cuD6Hwos6>

- C. Approval of chemical weapons such as CS for any use opens the door to the possibility of use for other purposes and in other manners.
- D. Berkeley's Precautionary Principle ordinance requires showing that actions do no harm to human health or the environment.

Dangers of CS ("tear gas"), particularly to people with disabilities

Over decades of research, scientists have shown a strong potential harm from CS use in policing. An Oakland Police Department policy warns,

"Chemical agents can produce serious injuries, or even death," and officers are to "use the minimum amount of chemical agent needed to obtain compliance." Further, "the use of hand-thrown chemical agents or pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or serious bodily injury from shrapnel."

The common and incorrect term "tear gas" makes CS seem trivial. It is actually not even a gas but an aerosol, made up of ultra-fine particles, or UFPs. Aerosols are dangerous to lung health because, according to the U.S. National Library of Medicine,

"The small size of UFPs allows them to penetrate deep into the respiratory tract, causing effects from mild respiratory issues to cardiovascular and respiratory mortality, lung cancer, neurological diseases, and mutagenic or carcinogenic impacts.... Substantial evidence links [ultrafine particulate matter] exposure to increased hospital admissions and premature deaths among vulnerable populations, particularly the elderly and those with pre-existing conditions."⁹

Potential for non-compliant or unauthorized uses of CS

The Commission appreciates the exception to ban use of CS in crowd control.

However, good policy is necessary but not sufficient for good practice. Once a weapon is acquired and approved for limited use, it is almost inevitable that it will be

⁹ Damiani, "Aerosol Pollutants and Health: Role of Size and Chemical Composition," Sept. 26 2025, <https://pmc.ncbi.nlm.nih.gov/articles/PMC12466196/#:~:text=In%20densely%20populated%20areas%2C%20aerosols,COPD%20%5B31%2C%2032%5D>.

For more on the effect of CS on the lung, particularly on "people with preexisting respiratory conditions, see:

American Lung Association, Jan. 20 2026, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/toxic-air-pollutants/tear-gas>

used for out-of-policy use. As an example, we refer to the last large-scale use of CS, the police response to Black Lives Matter protests in December 2014.

On December 6, BPD drove a largely peaceful march almost a mile down Telegraph from the UC campus past the Oakland city line. The direction from BPD command to the officers was to “Get’Um Running!” To implement this direction, officers shot less-lethal projectiles into the crowd, hit marchers with batons, and launched some 50 cans of CS gas, such a large amount that they nearly exhausted their supply. The Police Review Commission’s (PRC) after-incident report stated:

“The crowd complied with officer demands to move south, but the police continued to pursue them, deploying CS gas at six intersections on Telegraph and using raised batons and baton jabs. No evidence of dangerous crowd activity has been provided to the commission to justify these repeated uses of force.

“The combination of repeated CS gas exposure along with the lengthy walk was extremely impactful, and there were reports of protestors suffering physical and emotional injuries as a result. The marchers were driven over the city line into Oakland around 1:30 AM.”¹⁰

For context, in 1991, after an earlier scandal regarding police action against protestors in People’s Park, the City enacted a policy that “no crowd could be forced to move faster than they were reasonably capable of moving.” But in 2014, the use of mass quantities of CS along with baton strikes were ordered explicitly to drive protestors on a forced run all the way to Oakland.

As Physicians for Human Rights has observed, “The physical symptoms of chemical irritants often result in disorientation and agitation, which can lead to a state of fear, anxiety, and panic.”¹¹ The 2014 use of CS was an escalation, not a move toward de-escalation, and made compliance with police orders extremely difficult.

Therefore, while CS use in crowd control was still legal in 2014, the manner of its use was contrary to City policy of that day. This recent history shows that stated policy is not enough to ensure that this department, when in possession of dangerous military armaments, will use them appropriately.

¹⁰ “Report of Investigation Into the Response to Protest on December 6, 2014,” Berkeley Police Review Commission, Dec. 1 2015, <https://berkeleyca.gov/sites/default/files/2026-01/2015-12-01-Item-32a-Report-of-Investigation.pdf>

¹¹ “Health Impacts of Crowd-Control Weapons: Chemical Irritants (Tear Gas and Pepper Spray),” Physicians for Human Rights, Jan. 1 2017, <https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-chemical-irritants-tear-gas-and-pepper-spray/>

Issues with OC (pepper spray) and smoke; the deadly and racially biased history of OC

The risk of OC should not be cavalierly dismissed by claiming, as the council proposal does, that “the specific health concerns that necessitated the temporary moratorium on smoke and OC spray are no longer present.” The ACLU reported in 1998 that in the first five years since the approval of its use by police, at least 33 people had died in California after being sprayed and restrained. Nearby Antioch paid the family of 29-year-old Derek Wallace \$362,000 after their officers subdued him with the spray.¹²

A Berkeley freelance journalist mapped the use of pepper spray in the mid 1990s and found that they largely affected Black men, in low-income, minority neighborhoods, and primarily an area in South Berkeley, centered on Alcatraz and Sacramento, dubbed the “Pepper Spray Triangle.”¹³

Berkeleyans have long memories. The author of the resolution speaks of a “large-scale riot” in 2014 in which BPD was compelled to use tear gas on residents. Demonstrators for Black Lives Matter remember a largely peaceful march which was provoked by a police gauntlet in which many were beaten with batons. For many in the community, time has not abated the blow. Today, with the federal government at war with the people, may be the worst time to suggest restarting use of CS/tear gas.

Smoke also cannot be called a safe police tool. Health impacts are dependent on the chemicals in the smoke, pre-existing health conditions, location of the smoke, and other police tactics applied. According to medical experts, hexachloroethane smoke is “demonstrably more dangerous” than tear gas. This chemical agent should be studied and proven safe before approved for police use.¹⁴

There appear to be no constraints on the use of either OC or smoke in the proposal before council.

¹² Heredia, “Antioch Settles Pepper Spray Case For \$362,000 / 29-year-old man died after police subdued him,” *SF Chronicle*, Feb 11 1998, <https://www.sfgate.com/news/article/antioch-settles-pepper-spray-case-for-362-000-3013916.php>

¹³ *East Bay Express*, Dec. 12, 1997

¹⁴ Foster, “The US Government Keeps Using Dangerous Chemicals on Protesters,” *Mother Jones*, Feb. 19, 2026, <https://www.motherjones.com/politics/2026/02/ice-facility-portland-what-chemicals-used-tear-gas-hc-smoke-protests/#:~:text=The%20smoke%20releases%20zinc%20chloride,and%20cancer%20with%20repeated%20exposure>

The Commission reminds the Council of the Precautionary Principle that it adopted in 2006. The Principle is an approach to decision-making that prioritizes preventing harm to human health and the environment. The Principle shifts the burden of proof, requiring actions to be proven safe, rather than waiting for proof of damage to restrict them. We recommend that lacking proof of safety, the proposal to authorize CS, pepper spray, and smoke should not be approved.¹⁵

Given the prevalence of Long COVID, Berkeley's rapidly aging population, the large number of environmentally sensitive residents, and the city's legacy as the birthplace of disability rights, it is neither sensitive nor appropriate for the proposal to state that the emergency is over and the health conditions that necessitated the moratorium are no longer present.

3. "Air Support" (police helicopters) and "Canine Support" (police dogs)

The Peace and Justice Commission shares the ODP's concerns about the shift in emphasis in use of helicopters from emergency assistance to tactical law enforcement.

Police helicopters provoke concern in a number of communities for "unhealthy noise pollution, inefficient spending and instances of bias by over-policing certain neighborhoods. Officers in the LAPD often disgracefully go so far as to call the helicopters 'ghetto birds,' sociologist Sarah Brayne wrote in her book *Predict and Surveil*."¹⁶

Berkeley restricted use of police dogs in the aftermath of their brutal use particularly in the South, but across the country as well.¹⁷ In the last two decades, at least two lawsuits were settled by Hayward, one for \$1.5 million. One dog is said to have bitten about 30 people, two or three of them uninvolved bystanders, one an 89-year-old who died of his wounds.¹⁸

The issues raised above with regard to chemical agents, about the Precautionary Principle, building trust between the people and the city government, and the possibility of out-of-policy use, apply also to helicopters and dogs.

¹⁵ BMC Chapter 12.29, Precautionary Principle, March 21, 2006, berkeleyca.gov/sites/default/files/documents/Precautionary%20Principle%20Ordinance%20-%206911.pdf

¹⁶ McQuarrie, "'Ghetto birds': California has yet to reckon with longstanding bias from police helicopters," *CalMatters*, July 3 2024, <https://calmatters.org/commentary/2024/07/california-longstanding-bias-police-helicopters/>

¹⁷ Dowd, "The Violent, Racist History of K-9 Units," *Vice*, Sept. 7 2022, <https://www.vice.com/en/article/k9-unit-history/>

¹⁸ Parr, "Hayward to pay \$1.5 million to settle police dog attack suit," *East Bay Times*, Jul. 17 2013, <https://www.eastbaytimes.com/2013/07/17/hayward-to-pay-1-5-million-to-settle-police-dog-attack-suit/>

Adopt a Policy approving the following actions with regard to the appropriateness of certain chemical weapons and other tools

ACTION CALENDAR
September 15, 2026

The Commission is also concerned about the removal of required pre-approval by the City Manager for both dog and helicopter deployment. When taken as a pattern, the removal of this check combined with the refusal of the police chief to fully cooperate with the PAB/ODPA's City Charter-mandated requests for department records, the chronic under-appointing of the PAB, and the vacant position of Director of Police Accountability, the City risks a public perception that it no longer values civilian oversight.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

Given that these policy matters are in the process of coming before the City Council, the City Manager will address them as they are heard by the City Council and recommends taking no action on them prior to the items being before the City Council.

CONTACT PERSON

Tasha Tervalon, Assistant to the City Manager, Commission Secretary, City Manager's Office, 510-981-7000