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VIA ELECTRONIC MAIL

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

Re: Importance of Proper Vetting for Public Safety Policy Changes — Concerns About Item 18
“Authorization to Encrypt Berkeley Police Department Primary Radio Channels”

Honorable Mayor Ishii and Members of the Berkeley City Council,

As Director of Police Accountability and the Chair of the Police Accountability Board, we write to underscore the importance of proper procedural vetting for public safety policies, practices, and procedural changes that have the potential for significant community impact. The proposed transition to full radio encryption by the Berkeley Police Department (BPD), being considered as Item 18 on the Council’s October 28th Regular Meeting Agenda¹, warrants such scrutiny and appears, at this stage, to have moved forward without the expected public review or policy evaluation process consistent with Berkeley’s values of transparency and participatory governance.

The Role of Charter-Created Oversight Bodies

Both the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) are Charter-created entities entrusted with safeguarding public confidence in the operation of the BPD. As set forth in Berkeley City Charter Section 125(1)², their purposes are:

The purpose of the Police Accountability Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

Additionally, it recognizes that:

The purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the

¹ October 28, 2025 Berkeley City Council Regular Meeting Agenda: <https://berkeleyca.gov/city-council-regular-meeting-eagenda-october-28-2025>

² Berkeley Charter Section 125(1), Establishment and Purpose: [https://berkeley.municipal.codes/Charter/125\(1\)](https://berkeley.municipal.codes/Charter/125(1))

facts and recommend corrective action where warranted. The Director of Police Accountability may also serve as the Secretary to the Police Accountability Board and assist the Board in carrying out the duties prescribed herein.

Furthermore, Section 125(3)(a)(1) of the Berkeley City Charter³ grants the PAB the authority to advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department, including all written policies, practices, and procedures in relation to the Berkeley Police Department.

Currently, the City’s procedural frameworks for public safety technologies and policies — such as Berkeley Municipal Code (BMC) 2.99 “Acquisition and Use of Surveillance Technology”⁴ and BMC 2.100 “Police Equipment and Community Safety Ordinance”⁵— explicitly require public review and Council authorization before adoption. However, there is no parallel requirement for PAB or ODPa review of policy changes like encryption, despite their clear implications for transparency and oversight, until thirty days after the policy changes have been implemented per Charter Section 125(17)(a).

While BPD may submit policy changes to the PAB after a policy has been implemented and be strictly compliant with the Charter, informing the PAB and ODPa of substantive police policy changes before implementation and inviting feedback promotes collaboration and is consistent with the spirit and purpose of the Charter. In the same spirit of collaboration, whenever the PAB considers revisions to BPD policy, the PAB invites a BPD representative to participate in the review, even though the Charter does not require the PAB to do so. The Council and the community would benefit from the PAB and ODPa’s review, particularly when a proposal like full radio encryption redefines the balance between public transparency and officer safety.

Substantive Issues Identified by ODPa⁶

The ODPa’s September 2025 memorandum to the PAB outlined the primary advantages and trade-offs of radio encryption.⁷ While encryption protects personally identifiable information and enhances operational security, it also reduces transparency and limits real-time public oversight. The BPD’s staff report in support of encryption asserts⁸:

BPD officers and detectives have documented multiple incidents where suspects actively monitored unencrypted radio traffic while committing crimes, most often in coordinated overnight commercial burglaries involving multiple suspects. Intelligence shared through regional partnerships confirms that this is widespread, organized, and in some cases involves armed offenders.

³ Berkeley Charter Section 125(3)(a)(1): [https://berkeley.municipal.codes/Charter/125\(3\)\(a\)\(1\)](https://berkeley.municipal.codes/Charter/125(3)(a)(1))

⁴ Berkeley Municipal Code Chapter 2.99, Acquisition and Use of Surveillance Equipment: <https://berkeley.municipal.codes/BMC/2.99.010>

⁵ Berkeley Municipal Code Chapter 2.100, Police Equipment and Community Safety Ordinance: <https://berkeley.municipal.codes/BMC/2.100>

⁶ The PAB has not had an opportunity to identify issues or make a specific recommendation because this policy change was not presented to them prior to it being placed on the consent agenda.

⁷ The memo was presented to the PAB in light of reports that other Bay Area jurisdictions were moving to encrypt their radio. September 10, 2025 ODPa Memorandum to the PAB Titled “Overview and Considerations for Potential Police Radio Encryption at Berkeley Police Department”: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-09-17%20PAB%20Regular%20Meeting%20Packet.pdf#Page=74>

⁸ October 28, 2025 BPD Staff Report Titled “Authorization to Encrypt Berkeley Police Department Primary Radio Channels”: <https://berkeleyca.gov/sites/default/files/documents/2025-10-28%20Item%2018%20Authorization%20to%20Encrypt%20Berkeley%20Police%20Department.pdf>

However, the report offers no data or documentation on frequency, severity, or outcomes of these incidents. It remains unclear whether such events were verified through after-action reviews, internal investigations, or litigation. Key questions that must be addressed include:

- How many such incidents have occurred within the past five years?
- Were any injuries or tactical compromises documented?
- Have encryption policies elsewhere reduced these risks measurably?
- How does the department balance these claims against the loss of public situational awareness during emergencies?

Without empirical answers, the Council lacks a quantitative basis to determine whether the claimed benefits outweigh the civil rights and transparency costs of encryption.

Recommendations

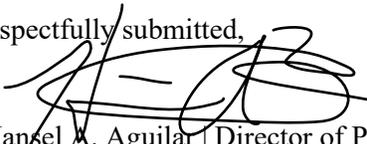
While recognizing the legitimate concerns for officer safety, the balance between safety and transparency must be guided by dialogue informed by the data. Accordingly, we recommend that the Council:

1. Move the item to the Action Calendar to permit public discussion and Council deliberation;
2. Refer the item to the PSPC for comprehensive review;
3. Encourage the PSPC to engage collaboratively with BPD, the PAB, and the ODPa in analyzing the proposal;
4. Utilize “Berkeley Considers” or a comparable platform to solicit structured community input; and
5. Direct staff to prepare a comparative report examining how peer jurisdictions balance confidentiality with public access, including selective encryption and delayed stream models.

We believe these actions would honor Berkeley’s Charter mandates for independent oversight and civic participation while ensuring that any decision on encryption is informed by evidence and law.

Berkeley’s leadership in civilian oversight is grounded in transparency, inclusion, and accountability. Residents and journalists rely on open access to BPD’s radio in order to provide updates to the community on issues of public safety, an important source of knowledge especially amidst increased enforcement by masked federal officers across the nation. Before turning off the radios, we must first listen to the data, to our Charter-established oversight bodies, and to the people of Berkeley.

Respectfully submitted,



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Office of the Director of Police Accountability
City of Berkeley, CA

Joshua Cayetano
Joshua Cayetano | Chair
Police Accountability Board
City of Berkeley, CA

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