



**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE  
REGULAR MEETING**

**Thursday, February 19, 2026  
2:00 PM**

Redwood Room – 2180 Milvia Street, 6th Floor, Berkeley, CA 94704  
Teleconference Location – 1390 Market Street, San Francisco CA 94102

Committee Members:

Councilmembers Rashi Kesarwani, Shoshana O’Keefe, and Brent Blackaby  
Alternate: Mayor Adena Ishii

This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using [Zoom](#). To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 161 013 6054**. To provide public comment, Press \*9 and wait to be recognized by the Chair. To submit a written communication for the Committee’s consideration and inclusion in the public record, email [policycommittee@berkeleyca.gov](mailto:policycommittee@berkeleyca.gov). All Committee meetings are recorded.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

**California Government Code Section 84308 (Levine Act)** Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

# AGENDA

## Roll Call

## Public Comment on Non-Agenda Matters

## Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

### 1. Minutes - January 29, 2026

## Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

### 2. **Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units And Updating Mutual Aid Policies**

**From: Councilmember Kesarwani (Author)**

**Referred: November 17, 2025**

**Due: May 26, 2026**

**Recommendation:** Adopt a resolution to rescind Resolution No. 51,408-N.S. which currently restricts the use of helicopters and police canine units by the Berkeley Police Department (BPD) and to update policies authorizing BPD to deploy these resources through mutual aid agreements directly with external agencies. The revised policy framework will replace the prior requirement for City Manager approval with post-deployment notification, ensuring rapid and effective responses during critical incidents. The policy will continue to explicitly prohibit the use of canines for crowd control.

**Financial Implications:** See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

## Committee Action Items

3. **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**

**From: Councilmember Kesarwani (Author), Councilmember Humbert (Co-Sponsor)**

**Referred: January 5, 2026**

**Due: June 9, 2026**

**Recommendation:** Adopt a resolution amending the Berkeley City Council's June 9, 2020 direction regarding smoke, OC spray, and tear gas to allow the Berkeley Police Department’s Special Response Team (SRT) to use tear gas under circumstances in which there is a significant risk of injury or death, maintain the prohibition on the use of tear gas for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.

**Financial Implications:** See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

- **None**

## Items for Future Agendas

- **Requests by Committee Members to add items to the next agenda**

## Adjournment

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*Written communications addressed to the Public Safety Committee and submitted to the City Clerk Department will be distributed to the Committee in advance of the meeting and retained as part of the official record.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900.*

### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at [ada@berkeleyca.gov](mailto:ada@berkeleyca.gov), (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other

attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

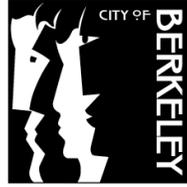
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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 11, 2026.



Mark Numainville, City Clerk

## **Communications**

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**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE  
SPECIAL MEETING MINUTES**

**Thursday, January 29, 2026  
2:00 PM**

Redwood Room – 2180 Milvia Street, 6th Floor, Berkeley, CA 94704  
Teleconference Location – 1619 Edith Street, Berkeley CA 94703

Committee Members:

Councilmembers Rashi Kesarwani, Shoshana O’Keefe, and Brent Blackaby  
Alternate: Mayor Adena Ishii

This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using [Zoom](#). To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 161 091 9781**. To provide public comment, Press \*9 and wait to be recognized by the Chair. To submit a written communication for the Committee’s consideration and inclusion in the public record, email [policycommittee@berkeleyca.gov](mailto:policycommittee@berkeleyca.gov). All Committee meetings are recorded.

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## MINUTES

**Roll Call:** 2:02 p.m.

**Present:** Kesarwani, O’Keefe, Blackaby

### **Election of Chairperson**

**Action:** M/S/C (Kesarwani/O’Keefe) to elect Councilmember Blackaby as Chairperson of the Public Safety Policy Committee.

**Vote:** All Ayes.

### **Minutes for Approval**

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes - October 16, 2025**

**Action:** M/S/C (O’Keefe/Blackaby) to approve the October 16, 2025 minutes.

**Vote:** All Ayes.

### **Committee Action Items**

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

**2. Resolution Rescinding Berkeley Police Department’s Pepper Spray Reporting Requirement**

**From:** Councilmember Kesarwani (Author)

**Referred:** November 17, 2025

**Due:** May 26, 2026

**Recommendation:** Adopt a resolution rescinding Berkeley Police Department’s current required notification process for reporting pepper spray use after each incident. Further, recommend recording the use of pepper spray within the existing use of force reporting system to minimize the administrative burden on staff. The department’s current transparency measures already provide the public with detailed data on all use of force incidents.

**Financial Implications:** None

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

**Action:** 54 speakers. M/S/C (Blackaby/O’Keefe) to send the item with a qualified positive recommendation to Council that includes 1) inviting Police Accountability Board review, 2) reaffirming the existing reporting requirements that remain in effect, and 3) direction to the Berkeley Police Department to work to maximize the availability of the reports through the Transparency Hub and the Annual Report.

**Vote:** All Ayes.

## Committee Action Items

- 3. Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units And Updating Mutual Aid Policies**  
**From: Councilmember Kesarwani (Author)**  
**Referred: November 17, 2025**  
**Due: May 26, 2026**  
**Recommendation:** Adopt a resolution to rescind Resolution No. 51,408-N.S. which currently restricts the use of helicopters and police canine units by the Berkeley Police Department (BPD) and to update policies authorizing BPD to deploy these resources through mutual aid agreements directly with external agencies. The revised policy framework will replace the prior requirement for City Manager approval with post-deployment notification, ensuring rapid and effective responses during critical incidents. The policy will continue to explicitly prohibit the use of canines for crowd control.  
**Financial Implications:** See report  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110  
**Action:** 30 speakers. M/S/C (O'Keefe/Blackaby) to continue Item 3 and Item 4 to a future meeting.  
**Vote:** All Ayes.
  
- 4. 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**  
**From: Councilmember Kesarwani (Author), Councilmember Humbert (Co-Sponsor)**  
**Referred: January 5, 2026**  
**Due: June 9, 2026**  
**Recommendation:** Adopt a resolution amending the Berkeley City Council's June 9, 2020 direction regarding smoke, OC spray, and tear gas to allow the Berkeley Police Department's Special Response Team (SRT) to use tear gas under circumstances in which there is a significant risk of injury or death, maintain the prohibition on the use of tear gas for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.  
**Financial Implications:** See report  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110  
**Action:** See action for Item 3.

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

- None

## Items for Future Agendas

- None

## Adjournment

**Action:** M/S/C (O'Keefe/Blackaby) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 4:11 p.m.

I hereby certify that the foregoing is a true and correct record of the Public Safety Committee meeting held on January 29, 2026.

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Wendy Sorensen, Assistant City Clerk

## Communications

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Rashi Kesarwani  
Councilmember District 1

CONSENT CALENDAR  
December 2, 2025

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Resolution Rescinding Resolution No. 51,408-N.S.  
Restricting the Use of Air Support and Canine Units  
And Updating Mutual Aid Policies

RECOMMENDATION

Adopt a resolution to rescind Resolution No. 51,408-N.S. which currently restricts the use of helicopters and police canine units by the Berkeley Police Department (BPD) and to update policies authorizing BPD to deploy these resources through mutual aid agreements directly with external agencies. The revised policy framework will replace the prior requirement for City Manager approval with post-deployment notification, ensuring rapid and effective responses during critical incidents. The policy will continue to explicitly prohibit the use of canines for crowd control.

CURRENT SITUATION AND ITS EFFECTS

Resolution No. 51,408-N.S., passed on July 15, 1982, imposes restrictions on deploying helicopters and canine units that function as essential support during high-risk emergencies. Per this resolution, mutual aid in the form of helicopter and canine unit deployment can only be used during high-risk situations. The resolution notes that police use of dogs from other law enforcement agencies is permitted only under the following circumstances:

- To apprehend suspects:
  - Where there is a threat to human life;
  - Where the suspect is reasonably believed to be armed with a deadly weapon; and
  - Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect.
- To locate missing persons;
- To locate crimes scenes;
- Provided that the use of dogs is explicitly prohibited for use in crowd control.

The resolution also notes that police use of helicopters from other law enforcement agencies is permitted in locating missing persons. This item proposes allowing the following uses for air support, in line with Lexipol policy recommendations:

- When the helicopter is activated under existing mutual aid agreements;
- Whenever the safety of law enforcement personnel is in jeopardy and the presence of the helicopters may reduce such hazard;
- When the use of the helicopters will aid in the capture of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community;
- When a helicopter is needed to locate a person who has strayed or is lost and whose continued absence constitutes a serious health or safety hazard; and
- Vehicle pursuits.

The 1982 resolution also requires the pre-approval of the City Manager which imposes a time-intensive effort during emergency situations.<sup>1</sup> Limiting the department's ability to quickly deploy both helicopters and canine units hinders response times and reduces operational flexibility. This limitation can compromise both the public and officer safety by preventing rapid access to resources that could significantly enhance situational awareness of the high-risk incident and on-scene effectiveness.

## BACKGROUND

Resolution No. 51,408-N.S. was originally enacted in 1982 to curb potential police overreach; it no longer reflects modern law enforcement practices. Today, mutual aid agreements with external agencies providing access to helicopters and police canine units are standard across many jurisdictions and do not require additional time-intensive approval processes. These resources offer real-time situational awareness, safer monitoring of dynamic incidents, non-lethal suspect apprehension, and enhanced capabilities in search and rescue operations.

## PROPOSED CHANGES AND RATIONALE FOR RECOMMENDATION

Resolution No. 51,408-N.S. is recommended for rescission so BPD can more effectively and quickly address high-risk situations using appropriate mutual aid tools. By updating our policies to allow the department to directly deploy these tools we will be aligning ourselves with regional mutual aid best practices and industry standards as well as aligning with our own recently updated agreements with other law enforcement agencies passed on July 22 earlier this year.<sup>2</sup> Rescission of this resolution will replace the outdated requirement for prior City Manager approval with a post-deployment notification. Rescinding the existing ordinance will remove barriers that delay the deployment of vital resources in emergencies. Mutual aid

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<sup>1</sup> See attachment 2, Resolution No. 51,408-N.S. as found in the annotated agenda from the July 15, 1982 City Council meeting.

<sup>2</sup> July 22, 2025 Public Hearing: Memorandum of Understanding (MOU) Compendium: Agreements with Other Law Enforcement Agencies and Private Organizations;  
<https://berkeleyca.gov/sites/default/files/documents/2025-07-22%20Item%2016%20Memorandum%20of%20Understanding%20%28MOU%29%20Compendium.pdf>

arrangements are widely recognized as an effective means of enhancing public and officer safety by providing rapid access to aerial and canine support. Updating the policy will not only modernize Berkeley's law enforcement capabilities but also ensure that resource deployment is carried out with greater efficiency, transparency, and adherence to current industry standards.

FISCAL IMPACTS

No significant new expenditures are expected from this rescission. Any costs incurred for mutual aid support will be managed through established reimbursement agreements. The policy revision is anticipated to deliver operational benefits without imposing undue financial burden on the City.

CONTACT PERSON

Rashi Kesarwani, Councilmember, District 1

(510) 981-7110

ATTACHMENTS

- 1) Resolution
- 2) Resolution No. 51,408-N.S.

RESOLUTION NO. ##,###-N.S.  
RESOLUTION MODERNIZING AIR AND CANINE SUPPORT MUTUAL AID  
POLICIES

WHEREAS, the Berkeley City Council recognizes that Ordinance Resolution No. 51,408-N.S.- adopted in 1982 imposes outdated restrictions that delay the timely deployment of air support and police canine units during critical law enforcement operations; and

WHEREAS, these restrictions hinder the Berkeley Police Department's ability to secure essential resources in high-risk incidents, thereby reducing operational flexibility and potentially compromising public and officer safety; and

WHEREAS, mutual aid agreements with external agencies providing access to helicopter support as well as police canine units are now standard practice nationwide, enhancing situational awareness, effective suspect apprehension, and search-and-rescue capabilities; and

WHEREAS, replacing the existing requirement for prior City Manager approval with post-deployment notification will facilitate rapid response during emergencies while ensuring accountability through comprehensive documentation and annual reporting;

NOW, THEREFORE, BE IT RESOLVED BY THE BERKELEY CITY COUNCIL THAT:

1. Resolution No. 51,408-N.S. is rescinded in full. All prior limits on the use of outside air support and police canine units are nullified.
2. The Berkeley Police Department may request and deploy canine teams from external agencies for the following purposes:
  - a. To apprehend suspects:
    - i. Where there is a threat to human life
    - ii. Where the suspect is reasonably believed to be armed with a deadly weapon, and
    - iii. Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect.
  - b. To locate missing persons
  - c. To locate crimes scenes
  - d. Provided that the use of dogs is explicitly prohibited for use in crowd control.
3. The Berkeley Police Department may request and deploy helicopter assistance from external agencies for any of the following purposes:
  - a. Activation under existing mutual aid agreements.
  - b. Support during incidents that place officers at risk when an aerial presence can reduce the danger.
  - c. Assistance in pursuing a fleeing felony suspect whose continued flight threatens the community.
  - d. Searches for missing or lost individuals whose absence creates a serious hazard.
  - e. Vehicle pursuits where aircraft can safely assist tracking or coordination.

4. The Berkeley Police Department may enter into and use mutual aid partnerships with outside agencies for all air support and canine deployments described in this resolution.
5. The former requirement for advance approval by the City Manager is replaced. After each deployment of outside air or canine support, the Chief of Police or a designee shall notify the City Manager as soon as practical.

RESOLUTION NO. 51,408 -N.S.

ESTABLISHING POLICIES FOR USE OF DOGS AND HELICOPTERS BY THE POLICE DEPARTMENT OF THE CITY OF BERKELEY, AND RESCINDING THE PROVISIONS OF RESOLUTION NO. 48,630-N.S. AS THEY APPLY TO THE USE OF DOGS AND HELICOPTERS.

BE IT RESOLVED by the Council of the City of Berkeley as follows:

That the following policies for use of dogs and helicopters by the Police Department of the City of Berkeley are hereby established:

1. Police use of dogs from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

- a. To apprehend suspects
  - (1) Where there is a threat to human life, and
  - (2) Where the suspect is reasonably believed to be armed with a deadly weapon, and
  - (3) Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect; or
- b. To locate missing persons; or
- c. To locate crime scenes.

Provided, however, that the use of dogs is explicitly prohibited for use in crowd control.

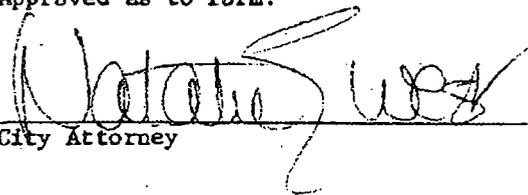
2. Police use of helicopters from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

- a. To assist in case of a disaster; or
- b. To assist in rescue efforts (specifically excluding the rescue of hostages); or

c. To assist in locating missing persons.

FURTHER, RESOLVED, that the provisions of Resolution No. 48,630-N.S. as they apply to the use of dogs and helicopters are hereby rescinded.

Approved as to form:

  
\_\_\_\_\_  
City Attorney





Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR  
January 20, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author),  
Councilmember Mark Humbert (Co-Sponsor)

SUBJECT: Resolution to Amend Berkeley City Council's 2020 Direction to Reinstatement 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

**RECOMMENDATION**

Adopt a resolution amending the Berkeley City Council's June 9, 2020 direction regarding smoke, OC spray, and tear gas to allow the Berkeley Police Department's Special Response Team (SRT) to use tear gas under circumstances in which there is a significant risk of injury or death, maintain the prohibition on the use of tear gas for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.

**CURRENT SITUATION AND ITS EFFECTS**

Tear gas has rarely been used by the Berkeley Police Department (BPD), having only been used three times over the last several decades. One of these incidents included responding to a barricaded subject. Making tear gas available to the Special Response Team will enable BPD's preparedness for these types of extreme situations.

On June 9, 2020, the Berkeley City Council banned the use of tear gas under any circumstances by the Berkeley Police Department and outside law enforcement agencies when providing mutual aid support in the City of Berkeley.<sup>1</sup> This action also placed a temporary moratorium on the use of smoke and OC spray. This was in part due to respiratory-related concerns heightened during the COVID-19 pandemic. BPD's Policies 300 (Use of Force), 303 (Control Devices and Techniques), and 428 (First Amendment Assemblies)<sup>2</sup> governed the use of tear gas before the Council's June

<sup>1</sup> June 9, 2020 4:00pm Special Meeting Annotate Agenda:  
<https://berkeleyca.gov/sites/default/files/city-council-meetings/06-09%20Annotated%20Agenda%204pm.pdf> p. 5 of 13.

<sup>2</sup> See Berkeley Police Department Law Enforcement Manual for details of each policy:  
[https://berkeleyca.gov/sites/default/files/documents/RELEASE\\_20240301\\_T161429\\_Berkeley%20PD%20Policy%20Manual.pdf](https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf)

2020 action, and they would resume that role if the Council approves this item under consideration.

While tear gas has seldom been deployed, it remains a vital option specifically for resolving high-risk incidents involving armed individuals. Without it, the Special Response Team cannot safely extract suspects from barricaded locations, creating a significant gap in its ability to manage several types of critical scenarios that include: armed standoffs, hostage situations, and encounters where shots have been fired. The use of tear gas can prompt a suspect's compliance and can also restrict their movement or capacity to inflict harm on officers or other members of the public.

## **BACKGROUND**

Tear gas has been a law enforcement tool since the 1920s and has been available for use by the Berkeley police department for decades. Officers tasked with using this equipment are members of the department's Special Response Team (Special Weapons and Tactics/SWAT). Team members train annually using this equipment with certified department instructors and have received specific training on the safe and proper use of this equipment. Although this is an essential law enforcement tool, its use is limited to high-risk low-frequency events.

The Department reserves tear gas for limited, high-risk situations where it is necessary to safely resolve dangerous incidents and protect the public, officers, and property. Because use of this tool is reserved for these types of situations, the department has deployed this tool on only three occasions over the last 40-plus years: once in response to a barricaded subject and twice in response to crowd violence. In all instances, the objective was to compel movement out of a building or away from officers. Additionally, the department has deployed smoke once. A brief summary of each incident follows:

In the early 2000s, the Special Response Team used tear gas during a warrant service involving an armed individual who refused to surrender. The deployment created the conditions needed for officers to take the suspect into custody without injury.

In December 2014, the Department used tear gas during a large-scale riot in Berkeley. Officers were assaulted with rocks and bottles, and despite repeated warnings and lawful orders to disperse, the violence escalated. Tear gas, smoke, and OC spray were deployed to stop the assaults and ongoing property destruction. Multiple officers were injured during the incident.

In 2017, a series of politically motivated demonstrations brought opposing groups into Berkeley. Several of these events devolved into large, chaotic fights. At one spring event, an officer deployed a smoke canister into a crowd actively engaged in violent confrontations to interrupt the violence and compel the group to disperse.

In May 2020, Berkeley officers responded to an Oakland Police Department (OPD) mutual-aid request during the civil unrest following the murder of George Floyd. Officers were assigned to protect OPD's main station when several thousand individuals attempted to force their way to the station with the intention of destroying

it. Officers came under attack from rocks, bottles, Molotov cocktails, and commercial-grade fireworks. Tear gas and less-lethal munitions were deployed to protect officers from the life-threatening assaults they were facing while protecting critical infrastructure.

In the wake of the murder of George Floyd and the beginning months of the COVID-19 pandemic, the Berkeley City Council adopted a motion that prohibited BPD and mutual aid agencies from using tear gas as well as a temporary ban on smoke and pepper spray out of concern the substances would exacerbate respiratory infections. Since then, public health responses to the virus have changed dramatically and most of the local population is inoculated against this disease.<sup>3</sup> As a result, serious infection and hospitalization rates have dropped, and the state of emergency has long since ended. Therefore, the specific health concerns that necessitated the temporary moratorium on smoke and OC spray are no longer present. The combination of the reduced risk and the rare use of these tools make it appropriate to now reevaluate this decision.

There have been several significant policy and law-related developments regarding the use of tear gas that warrant a re-evaluation of our policies. Since 2020, the California legislature has added new language that clearly articulates the circumstances under which tear gas can be used that includes a focus on limiting this tool to responding to violence, an emphasis on proportional responses, and protection of free speech. These legislative updates are already reflected in the department's broader use-of-force framework.<sup>4</sup>

### **ENVIRONMENTAL SUSTAINABILITY**

There are no significant or lasting environmental concerns regarding the use of these agents. Specifically, tear gas disperses quickly once air circulation improves, and the compounds break down without leaving persistent residue in soil or water.

### **RATIONALE FOR RECOMMENDATION**

Tear gas offers law enforcement a crucial option for stopping violent behavior or prompting an armed, barricaded individual to leave a building. Because of its value in safely resolving these situations, both the California Commission on Peace Officer Standards and Training and the National Tactical Officers Association expect SWAT teams to have it available.

Key reasons it would be advantageous for BPD to have renewed access to this tool:

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<sup>3</sup> According to the Vaccine Dashboard on the Alameda County website, 89.4% of the county has been fully vaccinated as of March, 2023: <https://www.alamedaca.gov/RESIDENTS/ALERTS-COVID-19/Vaccine/Vaccine-Dashboard>

<sup>4</sup> On September 20, 2021, Governor Newsom signed Assembly Bill 48 into law which was later incorporated into California Penal Code Section 13652 Section 2 in January of 2022. See: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB48](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48)([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=13652](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=13652)). This law embodies many principles currently in BPD's Policies 300 (Use of Force), 303 (Control Devices and Techniques), and 428 (First Amendment Assemblies) and aligns with the community's and the department's values related to the use of force.

- Tear gas is a time-and-distance de-escalation tool providing officers with a less-lethal option to gain compliance or disperse barricaded or violent suspects without having to resort to close-quarters force.
- By allowing officers to maintain distance and slow down an encounter, tear gas can reduce the likelihood of physical confrontations, serious injuries, or fatalities for both officers and community members.
- In situations where armed or dangerous suspects refuse to surrender, tear gas can compel compliance without direct physical engagement, thereby preserving life.
- Authorizing tear gas for tactical incidents is consistent with the City's and Department's commitment to de-escalation, as it provides a non-lethal alternative to firearms or physical force.
- Tear gas allows officers to influence behavior and end violence or the threat of violence without increasing the level of force.
- In prolonged, high-risk incidents, alternatives to tear gas (such as physical entry or prolonged standoffs) carry higher risks to officers, suspects, and bystanders.
- The use of tear gas offers a stand-off capability: gas can permeate rooms and reach behind barricades or enter through small openings.
- Controlled chemical deployment can resolve incidents faster and more safely, reducing neighborhood disruption and minimizing the community's prolonged exposure to danger.
- This agent can facilitate safe extractions and rescues, making it possible to remove hostages or wounded people while suspects are suppressed.
- If an incident escalates beyond BPD's control and they lack industry-standard tools, the city assumes unnecessary risk.

### **FISCAL IMPACTS**

The fiscal impacts of adopting this resolution are minimal; equipment costs associated with this recommendation pertain to inventory replacement depleted during trainings or through use or due to expiration. Replacement costs are approximately \$2,000 annually. Training costs will be nominal as associated fees will be reincorporated into existing budgeted training sessions.

### **CONTACT PERSON**

Rashi Kesarwani, Councilmember District 1

(510) 981-7110

Attachment:

1. Resolution

RESOLUTION NO. ##,###-N.S.

RESOLUTION REINSTATING THE BERKELEY POLICE DEPARTMENT'S ABILITY  
TO USE TEAR GAS UNDER LIMITED CIRCUMSTANCES AND LIFTING THE  
MORATORIUM ON SMOKE AND OLEORESIN CAPSICUM SPRAY

WHEREAS, on June 9, 2020, the Berkeley City Council placed a temporary ban on the use of smoke and pepper spray, and a permanent ban on the law enforcement use of tear gas; and

WHEREAS, the temporary ban on smoke and OC spray was enacted due to respiratory concerns associated with the COVID-19 pandemic, and the state of emergency for the pandemic has since ended; and

WHEREAS, the access to tear gas enables the police department to resolve dangerous and high-risk situations with less force, in a manner that supports safer outcomes for all; and

WHEREAS, the Berkeley Police Department seeks a limited, narrow use of tear gas by members of the Special Response team when responding to critical incidents that pose a significant threat to the safety of the public or officers, and that don't involve civil unrest; and

WHEREAS, the Berkeley Police Department Policies 303 (Control Devices), and Policy 300 (Use of Force) ensure proper use and oversight; and align with California Penal Code Section 13652 Section 2;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the June 9, 2020, ban on the use of tear gas is hereby modified to authorize the Berkeley Police Department's Special Response Team to use tear gas when responding to a critical incident that poses a significant threat to public or officer safety, and excluding its use for crowd control or in connection with civil unrest, in accordance with Policies 303 and 300, and that the temporary moratorium on the use of smoke and OC spray is hereby lifted.

