



**AGENDA**  
**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE**  
**SPECIAL MEETING**

**MONDAY, JUNE 29, 2026**

**2:30 P.M.**

2180 Milvia Street, Berkeley, CA 94704

Committee Members:

Mayor Adena Ishii, Councilmembers Terry Taplin and Mark Humbert

Alternate: Ben Bartlett

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: 165 155 0414**. To provide public comment, Press \*9 and wait to be recognized by the Chair. To submit a written communication for 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

## Review of Agendas

1. **Approval of Minutes: June 22, 2026**
2. **Review and Approve Draft Agenda:**
  - a. 7/14/2026 – Regular City Council Meeting
3. **Adjournments In Memory**

## Scheduling

4. **Council Worksessions Schedule**
5. **Council Referrals to Agenda Committee for Scheduling**
6. **Land Use Calendar**

## Action Calendar

- **None**

## Unscheduled Items

7. **Review Policy Committees Structure**
8. **Review Boards and Commissions Structure**

## Items for Future Agendas

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

**Adjournment – Next Meeting Monday, July 13, 2026**

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## **Additional items may be added to the draft agenda per Council Rules of Procedure.**

*Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items*

*Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.*

*If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.*

*The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.*

*Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, 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 special meeting 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 Thursday, June 25, 2026.



Mark Numainville, City Clerk

## **Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [policycommittee@berkeleyca.gov](mailto:policycommittee@berkeleyca.gov).*



**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE  
SPECIAL MEETING MINUTES**

**MONDAY, JUNE 22, 2026**

**2:30 P.M.**

2180 Milvia Street, Berkeley, CA 94704

Committee Members:

Mayor Adena Ishii, Councilmembers Terry Taplin and Mark Humbert

Alternate: Ben Bartlett

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**Roll Call:** 2:31 p.m.

**Present:** Humbert, Ishii

**Absent:** Taplin

Councilmember Taplin present at 2:35 p.m.

Councilmember Taplin participated in the meeting remotely under the “just cause” exception in the Brown Act due to a caregiving need.

**Public Comment** – 1 speaker.

## **Review of Agendas**

**1. Approval of Minutes: June 15, 2026**

**Action:** M/S/C (Humbert/Taplin) to approve the minutes of 6/15/2026.

**Vote:** All Ayes.

**2. Review and Approve Draft Agenda:**

a. 7/7/2026 – Regular City Council Meeting

**Action:** M/S/C (Humbert/Taplin) to approve the agenda of 7/7/2026 with the changes noted below.

- Item 5 ZAB Appeal 600 Gilman St (City Manager) – item removed by City Manager due to appeal being withdrawn by the appellant
- Item 7 Policy Equipment Report (City Manager) – scheduled for Consent Calendar
- Item 9 Large Vehicle Parking (Taplin) – revised item submitted
- Item 10 Waterfront Specific Plan (Taplin) – revised item submitted; scheduled for Action Calendar
- Item 11 Miranda’s Rescue (Humbert) – withdrawn by the author

Order of Action Calendar

Item 4 Ambulance Transport Fee

Item 6 MOU Compendium

Item 9 Large Vehicle Parking

Item 10 Waterfront Specific Plan

Item 8 Five-Year Street Rehabilitation

**Vote:** All Ayes.

**3. Adjournments In Memory**

1. Carl Anthony, Architect, Educator, and Community Leader

## **Scheduling**

**4. Council Worksessions Schedule** – received and filed

**5. Council Referrals to Agenda Committee for Scheduling** – received and filed

**6. Land Use Calendar** – ZAB Appeal for 600 Gilman Street removed from July 7, 2026 City Council agenda due to appeal being withdrawn by the appellant.

## Action Calendar

- None

## Unscheduled Items

7. Review Policy Committees Structure
8. Review Boards and Commissions Structure

## Items for Future Agendas

- None

## Adjournment

**Action:** M/S/C (Humbert/Taplin) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 2:44 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on June 22, 2026.

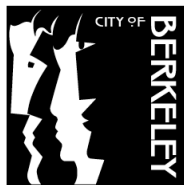
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Rose Thomsen, Deputy City Clerk

## Communications

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**DRAFT AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, July 14, 2026**  
**6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

ADENA ISHII, MAYOR

COUNCILMEMBERS:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SHOSHANA O’KEEFE

DISTRICT 6 – BRENT BLACKABY

DISTRICT 7 – CECILIA LUNAPARRA

DISTRICT 8 – MARK HUMBERT

*This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using Zoom. <<HYPERLINK WITH ZOOM URL>> 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: <<INSERT MEETING ID HERE>>**. To provide public comment, Press \*9 and wait to be recognized by the Chair. To submit a written communication for the public record, email [council@berkeleyca.gov](mailto:council@berkeleyca.gov).*

*Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via [internet video stream](#). All Council 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. The City Council may take action related to any subject listed on the Agenda.*

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## Preliminary Matters

### Roll Call:

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

**Ceremonial Matters:** *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

**City Manager Comments:** *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

**Public Comment on Non-Agenda Matters:** *Up to ten persons will be selected to address matters not on the Council agenda. If five or fewer persons are identified to provide non-agenda comment, each person selected will be allotted two minutes each. If more than five persons are selected to address matters not on the Council agenda, each person selected will be allotted one minute each.*

*In-person attendees wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to the moment that the Presiding Officer calls for public comment on non-agenda items. Remote attendees must raise their hand in the videoconference application when the Presiding Officer calls for non-agenda speakers. The first five raised hands on the videoconference application will be selected to speak and the first five cards drawn at the meeting will be selected to speak. The number of in-person and remote speakers selected may be adjusted by the Presiding Officer if fewer than five speakers from either format are identified.*

*The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

**Public Comment by Employee Unions (first regular meeting of the month):** *This period of public comment is reserved for officially designated representatives of City of Berkeley employee unions, with five minutes allocated per union if representatives of three or fewer unions wish to speak and up to three minutes per union if representatives of four or more unions wish to speak.*

## Consent Calendar

*The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Three members of the City Council must agree to pull an item from the Consent Calendar or Information Calendar for it to move to Action. Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.*

*No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.*

*For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.*

**Public Comment on Consent Calendar and Information Items Only:** *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer 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. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

*Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.*

## Consent Calendar

- 1. Police Accountability Board – Appointment of Alternate Member**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution appointing an Alternate Commissioner to the Police Accountability Board (PAB).  
**Financial Implications:** See report  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 2. Police Accountability Board – Appointment of New Member**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution appointing a new member to the Police Accountability Board (PAB) nominated by Mayor Ishii.  
**Financial Implications:** See report  
Contact: Mark Numainville, City Clerk, (510) 981-6900

## Consent Calendar

- 3. 2026 Capacity Building Request for Proposals Funding Recommendations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution to: 1. Approve a capacity building contract with Bay Area Community Land Trust (BACLТ) for Fiscal Years 2027 and 2028 for \$200,000 per fiscal year, subject to approval in the budget process; and 2. Authorize the City Manager or designee to execute all original or amended documents or agreements to effectuate this action.  
**Financial Implications:** See report  
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100
- 4. Accept Future of Public Health Funds from the State of California – Fiscal Year 2027 through Fiscal Year 2029**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or designee to execute grant agreements, and any resultant amendments, with the State of California for the Future of Public Health program in the amount of \$912,213 for each of the following fiscal years: Fiscal Year 2027, Fiscal Year 2028, and Fiscal Year 2029 (Total not to exceed \$2,736,639).  
**Financial Implications:** See report  
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100
- 5. Contract No. 32400161 Amendment: Building Opportunities for Self-Sufficiency for Representative Payee Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or designee to execute a contract amendment with Building Opportunities for Self-Sufficiency (BOSS) for Representative Payee Services in an amount not to exceed \$400,000 for the term of July 1, 2023, to June 30, 2027.  
**Financial Implications:** See report  
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100
- 6. Contract No. 32600032 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for Public Facilities Improvements Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager, or designee, to amend Contract No. 32600032 with Building Opportunities for Self-Sufficiency (BOSS), increasing the amount by \$54,480 for a public facility improvement project for a total amount not to exceed \$249,480 with the contract end date of June 30, 2027.  
**Financial Implications:** See report  
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

## Consent Calendar

- 7. Approval and Levy of 2018 Clean Stormwater Fee in FY 2027**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the proposed adjusted fees for the 2018 Clean Stormwater Fee and ordering the levy of the fees in Fiscal Year 2027.  
**Financial Implications:** See report  
Contact: Wahid Amiri, Public Works, (510) 981-6300
- 8. Contract No. 32300214 Amendment: Belfor USA Group for On-Call Emergency Restoration, Mitigation and Remediation Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment with Belfor USA Group for on-call emergency restoration, mitigation and remediation services, increasing the contract amount by \$400,000 for a new not-to-exceed amount of \$550,000 and extending the contract term through March 11, 2028.  
**Financial Implications:** See report  
Contact: Wahid Amiri, Public Works, (510) 981-6300
- 9. Contract Amendment: Metro Elevator for Maintenance, Repairs and Emergency Response Services for Citywide Elevators**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment with Metro Elevator to provide maintenance, repairs, and emergency response services to increase the contract amount by \$300,000 for a total not to exceed \$650,000.  
**Financial Implications:** See report  
Contact: Wahid Amiri, Public Works, (510) 981-6300
- 10. Contract: Daupler, Inc. for After-Hours Answering Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with Daupler, Inc. for after-hours answering services in an amount not to exceed \$375,000 for a three-year contract, with an option to extend for two additional one-year terms.  
**Financial Implications:** See report  
Contact: Wahid Amiri, Public Works, (510) 981-6300
- 11. Purchase Order: National Auto Fleet Group for Chevrolet Silverado Electric Trucks**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a purchase order with National Auto Fleet Group for ten all electric Chevrolet Silverado Trucks in an amount not to exceed \$790,000.  
**Financial Implications:** See report  
Contact: Wahid Amiri, Public Works, (510) 981-6300

## Consent Calendar

- 12. Purchase Order: Turf Star, Inc. for GO-4 Parking Enforcement Vehicles**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a purchase order with Turf Star, Inc. for nine GO-4 Parking Enforcement Vehicles in an amount not to exceed \$550,000.  
**Financial Implications:** See report  
Contact: Wahid Amiri, Public Works, (510) 981-6300

## Council Consent Items

- 13. Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units And Updating Mutual Aid Policies** *(Reviewed by the Public Safety Policy Committee)*  
**From: Councilmember Kesarwani (Author)**  
**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. Under the revised policy framework, mutual aid requests for air support resources will require pre-deployment approval by the Watch Commander or their designee and will be followed by post-deployment notification to the City Manager, comprehensive incident documentation, and annual public reporting to the City Council and Police Accountability Board. The policy will continue to explicitly prohibit the use of canines for crowd control and will codify additional categorical prohibitions on canine deployments for low-level offenses.  
*Policy Committee Recommendation: To send the item with a Qualified Positive recommendation to Council that includes: 1) clarifying Section 3(a) to more clearly define the purposes for which the canine team may be deployed, and 2) attaching the communication from the Police Accountability Board to the agenda item for consideration by the full City Council.*  
**Financial Implications:** See report  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110
- 14. Adopt a Position of Opposition to Initiative 25-0006A1, the California Two-Thirds Vote Requirement for Special Taxes and Charter City Real Estate Transfer Tax Prohibition**  
**From: Councilmember Tregub (Author)**  
**Recommendation:** Adopt a position in opposition to Initiative 25-0006A1, which would restrict how local governments may adopt certain taxes and limit the types of taxes local governments may impose related to real property and distribute copies of a letter of opposition to Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, and applicable Senate and Assembly Committees.  
**Financial Implications:** See report  
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

## Council Consent Items

### 15. Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds to Support of the Raising the Next Generation of Student Advocates (RISE) Program

**From: Councilmember Tregub (Author)**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember from the D13 Discretionary Accounts of members of the Berkeley City Council, including a contribution of \$250 from Councilmember Igor Tregub, and inviting additional Councilmembers to contribute, to support the Berkeley Public Schools Fund's RISE (Raising the Next Generation of Student Advocates) program.

**Financial Implications:** See report

Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

## Action Calendar

*The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during the Action Calendar public comment period on the item*

*The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer 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. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

*Action items may be reordered at the discretion of the Chair with the consent of Council.*

*The Presiding Officer may open and close an additional comment period for Action items on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters), at the start of the Action Calendar. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.*

## Action Calendar – Public Hearings

*Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by first the appellant and then the applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.*

*If ten or fewer persons are interested in speaking during a public hearing, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer 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. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

*When applicable, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.*

## Action Calendar – Public Hearings

- 16. Lease Agreement: International Child Resource Institute (ICRI) for 125-127 University Avenue Office Space**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance executing a five-year lease agreement with International Child Resource Institute to lease second floor office space located at 125-127 University Ave in the Berkeley Waterfront. The lease term is anticipated to begin September 1, 2026, and end August 31, 2031.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 17. Levy and Collection of Fiscal Year 2027 Street Lighting Assessments**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion adopt two Resolutions confirming the assessments for the Berkeley Street Lighting Assessment District No. 1982-1 and the Street Lighting Assessment District 2018, approving the Engineer’s Reports, and authorizing the levying and collection of assessments in Fiscal Year 2027.  
**Financial Implications:** See report  
Contact: Wahid Amiri, Public Works, (510) 981-6300

## Action Calendar – New Business

- 18. Initiative Petition – Ordinance Creating a Parcel Tax to Fund Arts Institutions and Programs**  
**From: City Manager**  
**Recommendation:**  
1. Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.  
2. If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.  
**Financial Implications:** No direct fiscal impacts  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 19. Initiative Petition – Ordinance Creating a Parcel Tax to Fund a Public Bank**  
**From: City Manager**  
**Recommendation:**  
1. Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.  
2. If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.  
**Financial Implications:** No direct fiscal impacts  
Contact: Mark Numainville, City Clerk, (510) 981-6900

## Action Calendar – New Business

20. **Initiative Petition – Ordinance Replacing the City’s \$0.01/oz General Tax on Sugar Sweetened Beverages With a \$0.02/oz Special Tax to Fund Public Health, Nutrition and Water Access**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 3, 2026 General Municipal Election.
2. If the Council wishes, designate by motion specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** No direct fiscal impacts

Contact: Mark Numainville, City Clerk, (510) 981-6900

## Council Action Items

21. **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** *(Reviewed by the Public Safety Policy Committee)*

**From: Councilmember Kesarwani (Author)**

**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 (BPD) 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 solely for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.

*Policy Committee Recommendation: To send the item with a Qualified Positive recommendation to Council that includes: 1) Making the resolution text explicit regarding permissible uses and policy limitations (particularly defining “critical incident” and excluding crowd control use), 2) Clarifying and attaching relevant use policies for public transparency, and 3) Developing an appropriate after-action reporting framework aligned with existing reporting and Transparency Hub practices.*

**Financial Implications:** See report

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

## Information Reports

22. **Grant Applications: Alameda County Transportation Commission Capital Investment Program 2028/Metropolitan Transportation Commission One Bay Area Grant Program Cycle 4**

**From: City Manager**

Contact: Wahid Amiri, Public Works, (510) 981-6300

23. **Zero Waste Commission Fiscal Year 2026-27 Work Plan**

**From: Zero Waste Commission**

Contact: Julia Heath, Commission Secretary, (510) 981-6300

# Public Comment – Items Not Listed on the Agenda

## Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

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Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street, and through the City's online records portal: <https://records.cityofberkeley.info/>.

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Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901  
Email: [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov)

Libraries: Main – 2090 Kittredge Street,  
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,  
North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

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Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900 or by email at [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov).

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Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR

July 14, 2026

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. Under the revised policy framework, mutual aid requests for air support resources will require pre-deployment approval by the Watch Commander or their designee and will be followed by post-deployment notification to the City Manager, comprehensive incident documentation, and annual public reporting to the City Council and Police Accountability Board. The policy will continue to explicitly prohibit the use of canines for crowd control and will codify additional categorical prohibitions on canine deployments for low-level offenses.

**POLICY COMMITTEE RECOMMENDATION**

On Monday, March 23, 2026, the Public Safety Policy Committee took the following action: 11 speakers. M/S/C (Blackaby/O'Keefe) to send the item with a Qualified Positive recommendation to Council that includes: 1) clarifying Section 3(a) to more clearly define the purposes for which the canine team may be deployed, and 2) attaching the communication from the Police Accountability Board to the agenda item for consideration by the full City Council. Vote: All Ayes.

This staff report incorporates both elements of the Committee's qualified positive recommendation: the canine deployment purposes have been clarified, with both authorized uses and categorical prohibitions specified, and the March 17, 2026 letter from the Police Accountability Board is attached for the Council's consideration.

## **CURRENT SITUATION AND ITS EFFECTS**

Resolution No. 51,408-N.S., passed on July 15, 1982, establishes the current framework governing when BPD may request helicopter and canine mutual aid from outside law enforcement agencies. As written, the resolution permits canine mutual aid only to apprehend specified suspects, locate missing persons, or locate crime scenes, and explicitly prohibits canine use in crowd control. It permits helicopter mutual aid only to assist in disaster response, rescue efforts (excluding hostage rescue), and locating missing persons. In every case, the resolution requires pre-deployment approval by the City Manager, or by the Chief of Police if the City Manager is not immediately available. This item proposes both modernizing the approval process and updating the list of permitted purposes to reflect current operational best practices.

In practice, the 1982 canine apprehension authority is rarely usable in the incidents for which canine support would be most appropriate. It requires BPD to simultaneously confirm a threat to human life, that the suspect is armed, that the suspect is in a controlled and contained area, and that no one else is present— conditions that almost never align at the moment a request must be made. A residential burglary with a barricaded suspect, a high-risk warrant on a subject with a documented firearms history, and pursuit of a violent fleeing felon each fail at least one of these elements, leaving BPD unable to request canine assistance in many of the very scenarios where it would reduce risk to officers, bystanders, and suspects.

The 1982 resolution also contains no authority for canine explosives detection—a defensible omission at the time—but a meaningful gap given Berkeley's role as host to frequent large public events and demonstrations. BPD has no in-house explosives detection capability and relies on mutual aid from the Alameda County Sheriff's Office or other regional partners. Under the current resolution, those requests run through the same multi-step pre-approval chain during incidents for which delay carries direct public-safety consequences.

This item proposes that the authorized uses, and the corresponding categorical prohibitions, be clarified as follows:

### **Canine teams may be deployed to locate or apprehend a suspect in any of the following circumstances:**

- The suspect is wanted for a violent felony; or
- There is a reasonable belief that the suspect possesses a weapon likely to cause serious bodily injury; or
- The suspect is wanted in connection with a residential burglary; or
- The deployment supports the service of a warrant on a subject who is wanted for a violent felony, has a documented history of violent offenses, has a documented history involving firearms, or has a documented history of felony evasion or physical assault against law enforcement.

### **Canine teams may also be deployed for purposes not involving the apprehensions of a suspect, including:**

- Locating crime scenes or physical evidence;
- Locating missing persons; or
- Detecting explosives.

**Canine teams shall not be deployed in any of the following circumstances:**

- Infractions;
- Misdemeanor offenses not involving a weapon likely to cause serious bodily injury;
- Flight from an officer absent any additional factor that would independently justify canine deployment under this resolution;
- Thefts that escalate to a robbery solely as a result of a suspect's resistance to the victim's effort to stop the theft, absent the use of a weapon or actions causing great bodily injury;
- Stolen vehicle incidents involving a named suspect or that are civil in nature; and
- Crowd control.

Under this proposal, the Berkeley Police Department may request and deploy helicopter assistance from external law enforcement agencies with whom mutual aid agreements exist, for any of the following purposes:

- To assist in disaster response;
- To assist in rescue efforts;
- To locate missing persons;
- When the safety of law enforcement personnel is in jeopardy and aerial presence may reduce that hazard;
- To aid in the apprehension of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community;
- To locate a person who is missing and whose continued absence constitutes a serious health or safety hazard; and
- To provide aerial coordination during a vehicle pursuit, where such coordination can reduce collision risk to bystanders or improve incident resolution.

The 1982 resolution also requires the pre-approval of the City Manager in order to deploy both helicopters and canine units, which imposes a time-intensive effort during emergency situations.<sup>1</sup> Limiting the Department's ability to quickly deploy 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 as well as on-scene effectiveness.

While BPD requests helicopter mutual aid approximately 4–5 times per year and canine mutual aid approximately 8–10 times per year, these requests are not routine. Each one represents a critical incident in which on-scene supervisors have determined that the resource is operationally necessary to protect life, most often an armed suspect who has fled containment, a missing child or at-risk adult whose location is rapidly becoming unrecoverable, a suspicious device requiring explosives detection, or a vehicle pursuit in which aerial coordination materially reduces collision risk to bystanders. In these incidents, the current multi-step pre-approval process, Sergeant to Watch Commander to Patrol Captain to Chief to City Manager and then back down the chain of command typically consumes 20 to 30 minutes before a request can even

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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.

be transmitted to a mutual aid partner. Those minutes are not administrative; they are operational. Containment perimeters fail in that window. Scent tracks cool. Suspects reach freeways and residential interiors. People at risk move further from rescue. Further, over the course of at least the last five years, and likely longer, there has never been an occasion where the City Manager has denied such a request from the Chief of Police. The infrequency of these requests is not an argument against modernizing the approval process; it is the reason modernization is justified. When BPD needs these resources at all, the need is acute, time-bound, and life-safety driven.

To address the time sensitivity and public safety concerns inherent with these types of incidents, requests for helicopters and canine mutual aid will require pre-deployment approval by the on-duty Watch Commander or their designee. Following deployment, the Watch Commander or designee will notify the Chief of Police who will provide post-deployment notification to the City Manager. This structure preserves a sworn supervisory check on every deployment while eliminating the procedural delay associated with City Manager approval mid-incident.

### **BACKGROUND**

Resolution No. 51,408-N.S. was originally enacted on July 15, 1982, in response to concerns about the use of specialized law enforcement resources from outside agencies within Berkeley. The values that motivated its adoption: local oversight, narrow tailoring of authorized uses, and explicit prohibition of canine deployment in crowd control, remain sound and are preserved in this proposal. The procedural mechanism it created, however, no longer reflects current operational practice or the broader accountability architecture now in place, which includes Lexipol aligned policy manuals, body-worn camera coverage, Police Accountability Board review of complaints, and the City's Surveillance Technology Use and Community Safety Ordinance (BMC Chapter 2.99). BPD does not own helicopters or maintain a canine unit; all such resources are obtained through mutual aid through mutual aid agreements with regional partners, including the Oakland Police Department, the Alameda County Sheriff's Office, the East Bay Regional Park District Police, and the Emeryville Police Department.

### **PROPOSED CHANGES AND RATIONALE FOR RECOMMENDATION**

Resolution No. 51,408-N.S. is recommended for rescission so BPD can match the operational tempo of the incidents in which mutual aid air and canine support are actually requested. The number of such requests is small, but each request is made because the on-scene supervisor has already concluded that ground resources alone cannot safely resolve the incident in the time available. Updating the city policy framework to permit Watch Commander pre-approval, rather than City Manager pre-approval, aligns Berkeley with regional mutual aid best practices, with current professional standards for law enforcement, and with the City's own updated mutual aid agreements with other law enforcement agencies adopted on July 22, 2025.<sup>2</sup>

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<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->

Replacing pre-deployment City Manager approval with a post-deployment notification preserves the City Manager's visibility into every deployment while removing a procedural delay that does not change the outcome of the approval decision; it only shortens the window in which the resource can still be operationally useful to victims, bystanders, officers, and the community. Expanding the listed purposes for air support to align with current professional standards ensures that when mutual aid is activated, its permitted uses reflect modern operational practice rather than the 1980s era restrictions. Updating the policy modernizes Berkeley's law enforcement capabilities while preserving accountability through pre-deployment supervisory approval, post-deployment notification, comprehensive documentation, and annual public reporting.

### **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.
- 3) March 17, 2026 letter from Chair Cayetano, Police Accountability Board

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[22%20Item%2016%20Memorandum%20of%20Understanding%20%28MOU%29%20Compendium.pdf](#)

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7110 TDD: 510.981.6903 Fax: 510.981.7111  
E-Mail: [rkesarwani@berkeleyca.gov](mailto:rkesarwani@berkeleyca.gov)

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

RESOLUTION MODERNIZING BERKELEY POLICE DEPARTMENT POLICIES  
GOVERNING THE USE OF MUTUAL AID HELICOPTER AND CANINE SUPPORT  
RESOURCES

WHEREAS, Resolution No. 51,408-N.S., adopted on July 15, 1982, imposes outdated procedural restrictions that delay the Berkeley Police Department's ability to request mutual aid air support and canine resources from outside law enforcement agencies 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, requests for mutual aid air support and canine resources are infrequent, averaging approximately 4 to 5 helicopter requests and 8 to 10 canine requests per year, each such request arises from an active life-safety incident in which procedural delay measurably increases risk to victims, bystanders, officers on scene, and the surrounding community; and

WHEREAS, replacing the existing requirement for pre-deployment City Manager approval with a structure of pre-deployment Watch Commander approval and post-deployment notification to the City Manager will facilitate rapid response during emergencies while ensuring accountability through sworn supervisory review, comprehensive documentation, and annual public reporting to the City Council and the Police Accountability Board;

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 helicopter support and police canine units are nullified.
2. The Berkeley Police Department may request and deploy canine teams from external law enforcement agencies only as follows:
  - a. Authorized deployments involving suspect apprehension. Canine teams may be deployed to locate or apprehend a suspect when any of the following is true:
    - i. The suspect is wanted for a violent felony; or
    - ii. There is a reasonable belief that the suspect possesses a weapon likely to cause serious bodily injury; or
    - iii. The suspect is wanted in connection with a residential burglary; or

- iv. The deployment supports service of a warrant on a subject who is wanted for a violent felony, has a documented history of violent offenses, has a documented history involving firearms, or has a documented history of felony evasion or physical assault against law enforcement.
    - b. Authorized deployments not involving suspect apprehension. Canine teams may be deployed to locate crime scenes or physical evidence, to locate missing persons, or to detect explosives.
    - c. Categorical prohibitions. Canine teams shall not be deployed in connection with: infractions; misdemeanor offenses not involving a weapon likely to cause serious bodily injury; flight from an officer absent an independent justification under this section; thefts that escalate to robbery solely from a suspect's resistance to the victim's effort to stop the theft, absent use of a weapon or actions causing great bodily injury; stolen vehicle incidents involving a named suspect or that are civil in nature; or crowd control.
3. The Berkeley Police Department may request and deploy helicopter assistance from external law enforcement agencies with whom mutual aid agreements exist, for any of the following purposes:
  - a. To assist in disaster response;
  - b. To assist in rescue efforts;
  - c. To locate missing persons;
  - d. When the safety of law enforcement personnel is in jeopardy and aerial presence may reduce that hazard;
  - e. To aid in the apprehension of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community;
  - f. To locate a person who is missing and whose continued absence constitutes a serious health or safety hazard; and
  - g. To provide aerial coordination during a vehicle pursuit, where such coordination can reduce collision risk to bystanders and improve incident resolution.
4. The Berkeley Police Department may enter into and use mutual aid partnerships with outside agencies for all helicopter support and canine deployments described in this resolution.
5. The former requirement for pre-deployment City Manager approval is replaced with the following framework:
  - a. Pre-deployment supervisory approval. Each deployment of mutual aid helicopter support or canine resources under this resolution shall require the pre-deployment approval of the on-duty Watch Commander or their designee.
  - b. Post-deployment notification. Within 72 hours of any deployment, the Chief of Police or a designee shall notify the City Manager in writing. The notification shall include the date, time, and location of the deployment; the requesting BPD supervisor and the assisting agency; the operational purpose; and a brief summary of the outcome.

- c. Incident documentation. All deployments shall be documented in the originating incident report consistent with existing Berkeley Police Department records practices.
- d. Annual public reporting. Annually, the Chief of Police shall transmit to the City Council and the Police Accountability Board a public report summarizing all deployments of mutual aid helicopter support and canine resources during the preceding calendar year, including aggregate counts by category of use, assisting agencies utilized, and any incidents resulting in injury or formal complaint.

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.

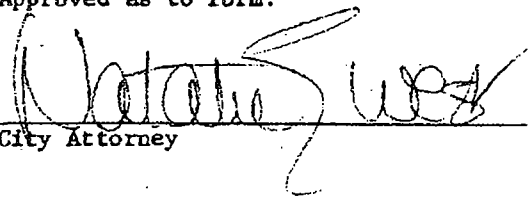
2. Police use of helicopters from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

- 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



Joshua Cayetano | Chair  
Police Accountability Board  
[JCayetano@berkeleyca.gov](mailto:JCayetano@berkeleyca.gov)

March 17, 2026

**VIA ELECTRONIC MAIL [Email]**

Hon. Members of the Public Safety Policy Committee  
[PolicyCommittee@berkeleyca.gov](mailto:PolicyCommittee@berkeleyca.gov)  
2180 Milvia Street  
Berkeley, California 94704

**Re: PAB Response to the Proposed Resolution Rescinding Resolution No. 51,408-N.S.  
Restricting the Use of Air Support and Canine Units and Updating Mutual Aid  
Policies**

Honorable Chair Blackaby and Members of the Public Safety Policy Committee:

On behalf of the Police Accountability Board (PAB), I would like to first express our appreciation to the Public Safety Policy Committee (PSPC) for granting the PAB additional time to review this item. The PAB met on March 11, 2026, to discuss the proposal, directing its review to two key questions:

1. Whether the PAB supports, opposes, or declines to comment on replacing the requirement for City Manager (or Chief of Police) approval of helicopter or canine (K9) use with an after-action notification to the City Manager.
2. Whether the PAB supports, opposes, or declines to comment on the proposed expansion and revision of the list of permissible uses for helicopters.

**City Manager Approval vs. After-Action Notification for Helicopter and K9 Use**

After reviewing the proposal to remove City Manager (or, in the City Manager's absence, Chief of Police) approval for both helicopters and K9 deployments, the PAB does not support this change. The PAB's position is based on the following considerations:

- **Lack of Demonstrated Need:** The PAB believes that no evidence has been presented showing that the current process imposes an undue burden on the Berkeley Police Department (BPD) that would warrant such a change in approval procedures. The PAB understands that requests for helicopter support occur approximately 4–5 times per year,

while canine units are requested about 8–10 times annually, most often for search operations, which does not indicate a frequency that would necessitate modifying the existing approval framework.

- **Preservation of Oversight:** The existing approval requirement provides an important oversight safeguard prior to the deployment of specialized policing resources. Replacing that requirement with an after-action notification reduces that oversight.
- **General Concern About Reduced Oversight:** The PAB notes a pattern of expanding police tools and/or authorities without sufficient justification or oversight.

### Expansion of Permissible Uses for Helicopters

The PAB does not support the proposed expansion and revision of the list of permissible uses for helicopters. The PAB's position is based on the following considerations:

- **Lack of Demonstrated Need:** The proposal did not include supporting data, operational analysis, or documented incidents demonstrating a need to broaden the circumstances under which helicopters may be deployed.
- **Relationship with Proposed Drone Technology:** The City is currently considering a proposal regarding the use of police drone technology. While the PAB acknowledges that drones would not be capable of performing all functions that a helicopter can provide, some of the expanded uses contemplated for helicopters appear to overlap with operations described in the drone proposal.
- **Need for Clear Policy Rationale:** Any expansion of permissible helicopter use should be supported by a clearly articulated operational rationale and relevant data regarding current deployment practices to ensure that these resources are used only when necessary and in a manner consistent with the City's objectives.

### Conclusion

For the reasons outlined above, the PAB respectfully opposes the proposed rescission of City Manager approval for helicopter and K9 deployments, as well as the proposed expansion of permissible helicopter uses. The Board emphasizes the importance of maintaining appropriate oversight and requiring a clearly demonstrated operational need for changes to these longstanding policies. The PAB appreciates the opportunity to provide its input and looks forward to continuing to work with all stakeholders to ensure that policies governing specialized police resources remain effective, accountable, and transparent.

Respectfully submitted,

  
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  
Jose Murillo, Acting Director of Police Accountability





Igor Tregub, Councilmember District 4

CONSENT CALENDAR

July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmembers Igor Tregub (Author)

Subject: Adopt a Position of Opposition to Initiative 25-0006A1, the California Two-Thirds Vote Requirement for Special Taxes and Charter City Real Estate Transfer Tax Prohibition.

RECOMMENDATION

Adopt a position in opposition to Initiative 25-0006A1, which would restrict how local governments may adopt certain taxes and limit the types of taxes local governments may impose related to real property and distribute copies of a letter of opposition to Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, and applicable Senate and Assembly Committees.

BACKGROUND

Initiative 25-0006A1, titled the “Local Taxpayer Protection Act to Save Proposition 13,” has qualified for potential placement on the November 2026 statewide ballot. The measure would amend the California Constitution to significantly restrict local government authority to adopt and maintain certain local taxes. Specifically, the initiative would require all local special taxes to receive two-thirds voter approval; prohibit local governments from imposing most taxes related to real property, including property transfer taxes; and invalidate existing taxes that do not comply with the initiative’s proposed constitutional requirements.

If approved, this initiative will have significant fiscal consequences for local governments throughout California. Fiscal analyses prepared by local government organizations estimate annual statewide revenue losses of approximately \$2 billion to \$3 billion beginning two years after enactment. The Legislative Analyst’s Office similarly projects annual local government revenue reductions of up to \$2 billion, largely due to the

invalidation of locally adopted property transfer taxes and parcel taxes that were approved under existing constitutional and statutory requirements.<sup>1</sup>

Revenue sources targeted by the initiative support a wide range of municipal services, including public safety, emergency response, homelessness and housing programs, infrastructure maintenance, parks and recreation, libraries, and other community services. Because many of these revenues are general-purpose funds, they provide the City with flexibility to maintain balanced budgets, address economic fluctuations, and respond to emerging priorities. Reductions in these revenues could lead to devastating effects on service levels, capital improvement projects, staffing, and operational capacity.

The initiative would also invalidate certain voter-approved special taxes adopted through citizen initiatives that received less than two-thirds voter approval. Statewide estimates indicate that approximately \$300 million in annual parcel tax revenues could be eliminated across cities, counties, school districts, and special districts. These revenues support various services including fire protection, infrastructure maintenance, childcare programs, educational services, libraries, and climate resiliency efforts.

At a time when local governments continue to face increasing costs associated with public safety, homelessness response, infrastructure maintenance, affordable housing production, and climate resilience, Initiative 25-0006A1 would significantly constrain local fiscal flexibility. Revenue losses of this magnitude would be difficult to absorb without reducing services or delaying investments that residents rely upon. The City of Berkeley is concerned that the initiative would not only prevent new revenue from being created, but it will also override local voter decisions and create substantial uncertainty regarding long-term municipal budgeting and service delivery.

## CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley is going to be directly affected by these provisions if it passed. Berkeley voters have historically exercised their local authority to approve revenue measures that fund essential municipal services and community priorities. The initiative, if approved, will undermine local voter-approved funding mechanisms by retroactively invalidating revenues that were lawfully adopted under existing rules.

Potentially impacted measures include Measures P (2022) and W (2024), the “Real Property Transfer Tax to Fund Homeless Services,”<sup>2</sup> and Measure FF, “SAFE Streets”

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<sup>1</sup> <https://oag.ca.gov/system/files/initiatives/pdfs/fiscal-impact-estimate-report%2825-0006A1%29.pdf>

<sup>2</sup> [https://acvote.alamedacountyca.gov/acvote-assets/02\\_election\\_information/PDFs/20241105/en/Measures/15%20-%20Measure%20W%20-%20City%20of%20Berkeley%20-%20Transfer%20Tax.pdf](https://acvote.alamedacountyca.gov/acvote-assets/02_election_information/PDFs/20241105/en/Measures/15%20-%20Measure%20W%20-%20City%20of%20Berkeley%20-%20Transfer%20Tax.pdf)

(2024).<sup>3</sup> Each of these measures required only a simple majority to pass but would be below the two-thirds majority threshold required if the initiative passes.

Currently, the city’s property transfer tax rate is 1.5% for properties up to \$1,700,000 and 2.5% for properties over \$1,700,000. Although Measure P, the “Real Property Transfer Tax to Fund Homeless Services” (2018) passed with a 72% supermajority,<sup>4</sup> the initiative 25-0006A1 would de facto restrict City property transfer taxes to a rate of \$0.55 per \$1,000 or 0.055%. Measure W (2018), which comes into effect on January 1, 2027, establishes a progressive tax rate for the top 1/3 most expensive properties. This measure will also be affected by initiative 25-0006A1 if it passes.

	FY 2028 Projected	FY 2029 Projected	FY 2030 Projected
Measure W (2024)	\$3,000,000	\$3,000,000	\$3,000,000
Measure FF “SAFE Streets” (2024) <sup>5</sup>	\$15,000,000	\$15,000,000	\$15,000,000
Measure P (2018) <sup>6</sup>	\$12,237,750	\$12,849,638	\$13,492,119
Totals	\$30,237,750	\$30,849,638	\$31,492,119

Adoption of this measure will cause long-term financial planning disruptions and reduce the City’s ability to deliver basic services and respond to evolving community needs. For these reasons, the City of Berkeley should oppose Initiative 25-0006A1 and supports preserving local authority to maintain voter-approved revenue sources that fund essential public services and community priorities.

**FINANCIAL IMPLICATIONS**

Minimal staff time is associated with outreach to recipients regarding the City’s position on Initiative 25-0006A1.

If enacted, Initiative 25-0006A1 could have substantial long-term fiscal implications for the City of Berkeley by reducing or eliminating locally approved revenue sources that support municipal operations and capital investments. The precise fiscal impact would

<sup>3</sup> [https://acvote.alamedacountyca.gov/acvote-assets/02\\_election\\_information/PDFs/20241105/en/Measures/24%20-%20Measure%20FF%20-%20City%20of%20Berkeley%20-%20SAFE%20Streets.pdf](https://acvote.alamedacountyca.gov/acvote-assets/02_election_information/PDFs/20241105/en/Measures/24%20-%20Measure%20FF%20-%20City%20of%20Berkeley%20-%20SAFE%20Streets.pdf)

<sup>4</sup> <https://berkeleyca.gov/your-government/our-work/bond-revenue-measures/measure-p-w>

<sup>5</sup> <https://berkeleyca.gov/your-government/our-work/bond-revenue-measures/measure-ff-sidewalk-and-street-repairs-parcel>

<sup>6</sup> <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/Item%2002%20General%20Fund%20Revenue%20Update%20and%20Overview%20of%20Revenue%20Enhancements%20%28Revenue%20Presentation%29.pdf>

depend on implementation, legal interpretation, and the extent to which existing local revenue measures are affected.

### ENVIRONMENTAL SUSTAINABILITY

The City of Berkeley relies on locally controlled revenues to support environmental sustainability initiatives, climate action programs, infrastructure maintenance, urban forestry, parks, and resilience investments. Preserving local fiscal authority helps ensure that the City can continue implementing environmental programs and infrastructure improvements necessary to advance community sustainability goals and respond to climate-related challenges.

### CONTACT PERSON

Councilmember Igor Tregub, 510-981-7140, [itregub@berkeleyca.gov](mailto:itregub@berkeleyca.gov)

Olga Bolotina, Chief of Staff, [obolotina@berkeleyca.gov](mailto:obolotina@berkeleyca.gov)

Amy Johnson, Legislative Aide, [amjohnson@berkeleyca.gov](mailto:amjohnson@berkeleyca.gov)

### ATTACHMENTS

1. Proposed Language for Letter of Opposition



Berkeley City Council  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704

July 14, 2026

**RE: Notice of OPPOSITION to Initiative 25-0006A1; “Local Taxpayer Protection Act to Save Proposition 13”**

Dear Governor Newsom, Senator Jesse Arreguín, and Assemblymember Buffy Wicks,

The City of Berkeley respectfully **opposes** Initiative 25-0006A1, the “Local Taxpayer Protection Act to Save Proposition 13,” sponsored by the Howard Jarvis Taxpayers Association. The City of Berkeley urges the Legislature to recognize the significant threat this initiative poses to city fiscal stability, local voter-approved revenues, and the essential services Californians rely on daily.

Initiative 25-0006A1 would make sweeping and permanent changes to the California Constitution by restricting how local governments may adopt certain taxes and by limiting the types of taxes local governments may impose related to real property. Specifically, the measure would:

1. Require all local special taxes to receive two-thirds voter approval.
2. Prohibit local governments from imposing most taxes related to real property, such as property transfer taxes.
3. Most concerning, the initiative would invalidate existing taxes, including decades of locally approved measures, that do not comply with its new constitutional requirements.

For cities, the fiscal consequences would be severe. Cal Cities’ fiscal analysis estimates that Initiative 25-0006A1 could reduce local government revenues by approximately \$2 billion to \$3 billion annually statewide beginning two years after enactment. The Legislative Analyst’s Office similarly projects an annual loss of up to two billion dollars in local government revenues, primarily due to the invalidation of charter city property transfer taxes and certain parcel taxes passed with less than two-thirds voter approval.

The largest share of the initiative’s losses would fall directly on cities. Estimates show that eliminating the 27 locally adopted property transfer taxes would reduce city revenues by over \$2 billion annually across affected cities, even after accounting for

replacement with the much lower statutory Documentary Transfer Tax allowed under state law. The proportional impact on city general-purpose revenues would vary significantly by jurisdiction, ranging from 1% to more than 25% of general-purpose city revenues. Losses of this magnitude would significantly destabilize local budgets and could require cities to reduce services, delay infrastructure projects, or reduce staffing and operational capacity.

The City of Berkeley would be directly affected by Initiative 25-0006A1 because it would invalidate or severely restrict several voter-approved revenue measures that fund essential municipal services and community priorities. Measures P and W, which support homelessness services through the City's property transfer tax, and Measure FF ("SAFE Streets") would be particularly impacted. Measures W and FF were approved by a simple majority and would not meet the initiative's proposed two-thirds voter approval requirement, while the initiative's restrictions on real property taxes would effectively eliminate Berkeley's voter-approved property transfer tax structure by limiting it to the state Documentary Transfer Tax rate of just 0.055%.

As a result, Berkeley could lose tens of millions of dollars annually in locally approved revenues beginning in Fiscal Year 2028, including funding for homelessness services, public safety, infrastructure, and other community priorities. Such a significant loss would undermine local voter decisions, disrupt long-term financial planning, and reduce the City's ability to respond to evolving community needs.

These revenues are not abstract budget figures. For many cities, property transfer taxes are a major, longstanding source of locally controlled revenue that supports police and fire protection, emergency response, homelessness programs, housing initiatives, infrastructure maintenance, parks and recreation, libraries, and other community programs. Many property transfer taxes are general-purpose revenues, which give cities the flexibility to maintain balanced budgets, respond to changing community needs, and protect core services.

Initiative 25-0006A1 would also invalidate a number of voter-approved special taxes adopted by citizen initiative with less than two-thirds voter approval. This includes approximately \$300 million in annual losses from parcel taxes across local governments, schools, and special districts. These revenues fund services such as fire services, infrastructure maintenance, libraries, childcare, schools, and climate resiliency.

At a time when cities are facing rising costs, increasing service demands, infrastructure needs, housing and homelessness challenges, and public safety obligations, Initiative

25-0006A1 would significantly restrict local fiscal flexibility. Revenue reductions of this magnitude cannot be absorbed through minor administrative efficiencies alone.

The City of Berkeley is deeply concerned that the measure would override local voter decisions and disrupt long-term planning for public services and capital investments, hire employees, and maintain infrastructure. Retroactively invalidating decades-old revenues would create significant uncertainty for the city and the communities it serves.

For these reasons, City of Berkeley strongly opposes Initiative 25-0006A1. We urge that any legislative or executive discussion related to this measure, property transfer taxes, or local revenue authority include meaningful engagement with cities before any proposal moves forward that could permanently alter local fiscal authority or threaten the services Californians depend on.

Sincerely,

City of Berkeley Council





Igor Tregub, Councilmember District 4

CONSENT CALENDAR

July 14th, 2026

To: Honorable Mayor and Members of the City Council  
From: Councilmember Igor Tregub (Author)  
Subject: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds to support of the Raising the Next Generation of Student Advocates (RISE) Program

**RECOMMENDATION**

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember from the D13 Discretionary Accounts of members of the Berkeley City Council, including a contribution of \$250 from Councilmember Igor Tregub, and inviting additional Councilmembers to contribute, to support the Berkeley Public Schools Fund's RISE (Raising the Next Generation of Student Advocates) program.

**BACKGROUND**

The Berkeley Public Schools Fund RISE (Raising the Next Generation of Student Advocates) program supports youth leadership, civic engagement, and student advocacy initiatives across Berkeley schools, with a strong focus on equity and access for students who have historically been underserved.

The program provides students many of whom are first-generation youth going to college, low-income students, and students navigating significant personal and systemic challenges, with opportunities to develop leadership skills, elevate student voice, and participate in meaningful projects that strengthen their schools and communities.

Through mentorship, advocacy training, and student-led initiatives, RISE helps young people build confidence, civic awareness, and practical leadership experience, while fostering pathways for long-term educational and personal success.

### **CURRENT SITUATION AND ITS EFFECTS**

The RISE program operates without a dedicated budget line for program expenses and does not have stable or sufficient funding to support basic student-facing needs. As a result, program staff and students rely on informal fundraising and outside contributions to sustain programming and cover essential costs.

Even modest expenses, such as graduation recognition materials, cannot be covered through program funds and must instead be covered by students. For example, students were required to fundraise for graduation sashes totaling \$595.76 for 30 sashes due to the absence of allocated program funding.

This lack of consistent funding places ongoing strain on both students and staff. Many of the youth served by the program are facing significant life challenges, including housing instability, loss of family support, and other traumatic circumstances. Despite this, the program serves as a critical source of stability, mentorship, and support.

Without additional resources, RISE is limited in its ability to consistently provide student leadership opportunities, recognition, and basic program support aligned with its mission.

### **FINANCIAL IMPLICATIONS**

No impact to the General Fund. Contributions of up to \$250 per participating members of the Berkeley City Council will come from existing Council Office Budget discretionary accounts.

### **CONTACT PERSON**

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Olga Bolotina | Chief of Staff, Council District 4 | [obolotina@berkeleyca.gov](mailto:obolotina@berkeleyca.gov)

Shamaila Ahmed | Legislative Aide | [sahmed@berkeleyca.gov](mailto:sahmed@berkeleyca.gov)



Rashi Kesarwani  
Councilmember, District 1

ACTION CALENDAR  
July 14, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: 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

**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 (BPD) 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 solely for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.

**POLICY COMMITTEE RECOMMENDATION**

On Thursday, February 19, 2026, the Public Safety Policy Committee adopted the following action: M/S/C (O’Keefe/Blackaby) to send the item with a Qualified Positive recommendation to Council that includes:

- 1) Making the resolution text explicit regarding permissible uses and policy limitations (particularly defining “critical incident” and excluding crowd control use),
- 2) Clarifying and attaching relevant use policies for public transparency, and
- 3) Developing an appropriate after-action reporting framework aligned with existing reporting and Transparency Hub practices.

The Police Accountability Board submitted a memo to the Committee expressing concern about the proposal, noting the infrequency of historical use and significant liability associated with chemical agents. The limitations identified in this resolution, restricting tear gas exclusively to SRT deployments in non-crowd critical incidents, directly address those concerns.

**CURRENT SITUATION AND ITS EFFECTS**

***The Moratorium on the Use of Tear Gas, Smoke, and OC Spray Was Driven by Health-Related Concerns During the COVID-19 Pandemic.*** On June 9, 2020, the Berkeley City Council banned the use of tear gas under any circumstances by the

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Berkeley Police Department (BPD) 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 action was largely driven by health-related concerns associated with COVID-19, a respiratory infection. Since this action was taken in June 2020, a COVID-19 vaccine is widely available and 89.4 percent of Alameda County residents are fully vaccinated, as of March 2023.<sup>2</sup> As a result, serious infection and hospitalization rates have dropped, and the public health state of emergency has long since ended. Therefore, the specific health concerns that supported 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 reevaluate this decision.

**Existing BPD Policies Govern Use of Tear Gas, Smoke, and OC Spray.** BPD Policy 300 (Use of Force), Policy 303 (Control Devices and Techniques), and Policy 428 (First Amendment Assemblies) governed the use of these tools before the Council's June 2020 action, and they will resume that role if the Council approves this item under consideration.<sup>3</sup> A summary of each of the three relevant policies is provided below.

### **Policy 300 (Use of Force)**

Policy 300 establishes the overarching framework governing any use of force, including tear gas and OC spray, and its protections remain fully in place regardless of any change to the 2020 ban. Under Policy 300, all uses of force must be objectively reasonable, objectively necessary, and proportional to the circumstances. Officers are required to attempt de-escalation before resorting to force, and the policy explicitly requires that force be minimized at all times. Every deployment of tear gas or OC spray constitutes a Level 3 use of force, triggering mandatory documentation requirements: the involved officer must prepare a written report articulating why the use of force was objectively reasonable and necessary, an uninvolved supervisor must respond to the scene when feasible, conduct an investigation, photograph injuries, identify witnesses, and review body-worn camera footage. The Chief of Police reviews all use-of-force reports and makes a finding of whether the use was within policy. Reports are retained for at least five years and reported publicly on a quarterly basis to the Police Accountability Board and annually to the City Council.

### **Policy 303 (Control Devices and Techniques)**

Policy 303 governs the specific conditions under which chemical agents, including tear gas and OC spray, may be deployed, and incorporates the requirements of California Penal Code Section 13652 directly into BPD policy. Under Policy 303, kinetic energy projectiles and chemical agents may only be used by officers who have received POST-certified crowd control training, and

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<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> 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>3</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). Each is additionally attached.

only when objectively reasonable to defend against an active threat to life or serious bodily injury or to bring an objectively dangerous and unlawful situation safely under control. Before deployment, de-escalation must have been attempted and failed; repeated, audible announcements of intent to deploy must be made from multiple locations and in multiple languages where appropriate; and persons must be given a reasonable opportunity to disperse. Officers must make an objectively reasonable effort to distinguish individuals engaged in violent acts from those who are not, and chemical agents must be targeted accordingly — never fired indiscriminately into a crowd. Use must be proportional and minimized to reduce incidental impact on bystanders, journalists, and medical personnel. Medical assistance must be provided promptly when safe to do so. Separately, Policy 303 expressly reiterates that tear gas remains prohibited for crowd control — only SRT use in critical, non-crowd incidents is authorized under the proposed resolution.

**Policy 428 (First Amendment Assemblies)**

Policy 428 provides additional protections specifically applicable to crowd situations where smoke and OC spray may be deployed. Under Policy 428, the use of any chemical agent in a crowd context is subject to the direction of the Field Commander, who determines both the type and quantity of agents to be used and must continuously re-evaluate whether their use remains necessary. The policy prohibits the use of chemical agents against individuals engaged only in passive resistance and bars their use solely due to a curfew violation, verbal threat, or noncompliance with a directive — consistent with California Penal Code Section 13652. Officers must issue dispersal orders prior to forcibly dispersing a crowd absent exigent circumstances, and must make reasonable efforts to provide medical resources and extract individuals in distress. Following any crowd incident in which smoke or OC spray is deployed, Policy 428 requires a comprehensive After Action Report documenting arrests, injuries, property damage, personnel costs, and a full inventory of all less-lethal munitions deployed. Additionally, for OC spray deployments in crowd situations, a public summary must be posted to the department's website within 60 days of the incident, extendable to 90 days for good cause, per Policy 428 Section 428.14(c) and California Penal Code Section 13652.1.

**State Law Adds Further Guardrails for the Use of Tear Gas.** Since 2020, the California Legislature has added new language that clearly articulates the circumstances under which chemical agents, including tear gas, may be used. California Penal Code Section 13652 (AB 48, effective January 1, 2022) prohibits the use of chemical agents to disperse any assembly, protest, or demonstration except where objectively reasonable to defend against an active threat to life or serious bodily injury, and requires that the use be proportional, targeted at individuals engaged in violence rather than at a crowd indiscriminately, and preceded by de-escalation efforts where feasible. The law also expressly prohibits use solely in response to a curfew violation, verbal threat, or noncompliance with a directive. These legislative updates are already reflected in the Department's broader use-of-force framework.<sup>4</sup>

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<sup>4</sup> On September 20, 2021, Governor Newsom signed Assembly Bill 48 into law, adding California Penal Code Section 13652 (restrictions on the use of chemical agents and kinetic energy projectiles) and Section 13652.1 (public reporting requirements) both effective January 1, 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.legi>

Subsequent to the temporary ban, on July 26, 2022, the Council approved BPD Policy 709, Military Equipment, which authorized the continued funding, acquisition, and use of military equipment including tear gas (CS and OC canisters) in accordance with Assembly Bill 481. The Council's 2022 approval of Policy 709, which encompasses tear gas in BPD's military equipment inventory, demonstrates that the Council understood the 2020 action as a restriction on the use of tear gas, not a directive to eliminate it from the Department's inventory altogether.

***Tear Gas for Life-Threatening Situations and the Use of Smoke and/or OC Spray in a Crowd Situation Allows Officers to Respond Without Escalating to Higher Levels of Force.*** Officers tasked with deploying tear gas are members of the Department's Special Response Team (Special Weapons and Tactics/SWAT), who train annually with certified Department instructors and have received specific training on the safe and proper use of this equipment. Although an essential law enforcement tool, tear gas is reserved for high-risk, low-frequency events—armed standoffs, hostage situations, high-risk warrant service, and encounters where shots have been fired. Restricting its use to the Special Response Team ensures this capability is available for precisely the dangerous scenarios where it is needed most, enabling officers to prompt suspect compliance and limit a subject's capacity to inflict harm without requiring physical breach or escalation to lethal force. OC spray and smoke serve an analogous function in crowd situations: interrupting active violence, creating distance between opposing groups, and allowing officers to respond proportionally rather than escalating to higher levels of force.

**De-Escalation and Minimizing Levels of Force.** Tear gas allows officers to influence behavior, compel compliance, and interrupt active violence without physical contact or escalating to a higher level of force, including lethal force. By creating distance and slowing an encounter, it reduces the likelihood of serious injury for officers, suspects, and bystanders alike. Authorizing tear gas for SRT tactical incidents is directly consistent with the City and Department commitment to de-escalation.

**Tactical Effectiveness in Critical Incidents.** For the use of these tools, a critical incident is defined as a rapidly evolving or complex, high-risk event in which the subject poses a threat to life or substantial risk of serious bodily injury, and conventional tactics are unlikely to resolve the situation safely. These incidents typically involve armed, barricaded, or violent individuals who are actively resisting lawful commands and have demonstrated the capacity and intent to cause harm. In barricade and hostage situations, tear gas provides a standoff capability that physical entry cannot; gas can permeate rooms, reach behind cover, and enter through small openings. This enables resolution of prolonged, high-risk incidents faster and more safely than the alternatives (physical breach or extended standoffs), which carry significantly higher risks to all parties. Tear gas also enables safe extractions, allowing officers to remove hostages or injured individuals while a suspect is suppressed.

**Risk to the City and Accountability.** Without this industry-standard tool, BPD's SRT faces critical gaps in its ability to safely manage armed standoffs, hostage situations,

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[slature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=13652](https://slature.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.

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and active-threat incidents, creating unnecessary risk for officers, the community, and the City. Every deployment of tear gas requires supervisor authorization and is subject to policy review, documentation, and the use-of-force framework established under Policies 300, 303, and 428. This limitation also restricts BPD's ability to serve as a full partner in regional mutual aid responses.

### **Smoke and OC Spray: De-Escalation and Safety in Crowd Situations**

Like tear gas in critical incidents, smoke and OC spray serve as lower-level force options that support de-escalation and officer and public safety specifically in crowd contexts. Smoke can create a visual barrier, interrupt active violence between groups, and allow officers to reposition or withdraw without direct physical engagement. OC spray allows officers to respond to targeted acts of violence with a proportional, less-lethal tool rather than escalating to physical force or impact weapons. Together, these tools give officers the ability to manage volatile situations more safely, reduce the likelihood of injury on all sides, and maintain tactical options that support de-escalation rather than requiring an immediate escalation of force. The following examples illustrate how each tool would be used:

#### **Examples by Tool**

The following examples illustrate the types of incidents for which each tool may be deployed.

**Tear gas:** for use in critical incidents only (not crowd control):

- Armed barricaded suspect refusing to exit an enclosure;
- Suspect shooting at officers during a high-risk SRT warrant service;
- Hostage rescue situations; and
- Other high-risk situations presenting an imminent threat of death or serious bodily injury, such as injured officer or citizen rescue where a suspect must be suppressed.

**Smoke:** for use in crowd situations involving active violence:

- Violence between two opposing groups;
- Officers repositioning away from a violent crowd; and
- Directing a crowd away from an area of active violence.

**OC Spray:** for targeted use in crowd situations:

- A specific individual committing violence against another person; and
- A specific individual committing violence against an officer.

#### **After Action Documentation and Reporting of Incidents**

All deployments of tear gas and OC spray are classified as Level Three (chemical agent) uses of force and are subject to the reporting requirements outlined in Policy 300. Policy 300 requires that all uses of force be documented promptly, completely, and accurately in an appropriate report. The officer must articulate the factors perceived and why the use of force was objectively reasonable and necessary under the circumstances. Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the appropriate level of reporting, investigation, documentation, and review. After an incident, an uninvolved supervisor, when feasible, will respond to the scene, conduct an investigation, and complete a Use of Force Investigation Report. The supervising officer is expected to:

- Obtain the basic facts from the involved officers;
- Ensure any injured parties are examined and treated;

- After initial medical assessment and/or first aid has been rendered, ensure that photographs have been taken of any injuries or areas corresponding to complaints of pain;
- Identify witnesses not already included in related reports;
- Review and approve all related reports; and
- Review body-worn camera footage related to the incident.

In addition to the internal use of force documentation required under Policy 300, California Penal Code Section 13652.1 requires the Department to publish a summary of each tear gas or OC spray deployment for crowd control on the Department's website. This public reporting requirement does not apply to smoke, which is not a chemical agent under that statute.<sup>5</sup>

### **Reporting Requirements for Smoke and OC Spray in a Crowd Situation**

Both smoke and OC spray, if used within the context of a crowd situation, are governed under Policy 428 (First Amendment Assemblies, attached) and are subject to the post-event reporting requirements stipulated in section 428.14. Those requirements apply to all less-lethal munitions deployed in a crowd context, including smoke and OC spray, and require documentation of arrests, injuries, property damage, personnel costs, and the inventory of all less-lethal munitions deployed, including smoke and chemical agents.

In addition, for OC spray deployments specifically, Policy 428, section 428.14(c) and California Penal Code Section 13652.1 require that the BPD prepare and publish a public summary on the Department's website within 60 days of the incident, extendable to 90 days for good cause. That summary must include the information required under Penal Code Section 13652.1. Smoke is not a chemical agent under PC 13652 and is not subject to this public posting requirement; however, its use will be documented and publicly available through the Policy 428 post-event report.

As a new commitment established by this item: upon posting of any required public summary to the Department website, the Department shall notify the City Manager, who will provide this information to the City Council and to the Police Accountability Board within ten days of notice.

Tear gas and OC spray deployments will also be reported under Use of Force on the Transparency Hub and as well as annually via the Berkeley Municipal Code 2.100 Police Equipment Ordinance. Additionally, the City Council's March 11, 2026, resolution requires BPD to enhance Use of Force level definitions on the Transparency Hub and include clear navigational guidelines so the public can easily access information on chemical agent use, including tear gas and OC spray.

### **BACKGROUND**

***Tear Gas Has Been Deployed for One Special Response Team Incident Over the Last 40 Years.*** The Department reserves the use of chemical agents and smoke for limited, high-risk situations where it is necessary to safely resolve dangerous incidents

and protect the public, officers, and property. Because the use of tear gas is reserved for these types of situations, the department has deployed this tool on only limited occasions over the last +40 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, to achieve resolution of a critical incident. 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 civil unrest 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 May 2020, Berkeley officers responded to an Oakland Police Department mutual-aid request and were deployed in Oakland 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.

The Department has deployed smoke on several occasions in conjunction with the incidents described above. Smoke was deployed during the December 2014 civil unrest and during the May 2020 Oakland mutual aid response alongside tear gas. Additionally, on August 27, 2017, an officer deployed a smoke canister into a crowd actively engaged in violent confrontations to interrupt the violence and compel the group to disperse.

***Police Review Commission Supported the Use of Tear Gas Only by the Special Response Team in a 6-1-1 Vote on September 23, 2020.*** The Police Review Commission evaluated the moratorium enacted by the City Council and recommended a revision to the tear gas policy to allow the Special Response Team to use it during tactical operations.<sup>6</sup> The motion read as follows:

**303.6 TEAR GAS GUIDELINES** Tear gas may only be used by trained members of the Special Response Team during SRT tactical operations (e.g., during barricaded subject operations or responding to armed attacks during an SRT operation), in accordance with Policy 300, to protect people from the risk of serious bodily injury or death.

The above paragraph notwithstanding, as per City Council policy (June 9, 2020), the use of tear gas by any employees of the Berkeley Police Department, including the Special Response Team, is prohibited in crowd control and crowd management situations.

<sup>6</sup> Police Review Commission Regular Meeting Minutes, Sept. 23, 2020, <https://records.cityofberkeley.info/PublicAccess/paFiles/cqFiles/index.html>

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When practicable, fire personnel should be alerted or summoned to the scene prior to deployment of tear gas by SRT, in order to control any fires and to assist in providing medical aid or gas evacuation if needed.

### **ENVIRONMENTAL SUSTAINABILITY**

There are no significant or lasting environmental concerns regarding the use of tear gas, smoke, or OC spray at the frequency and in the contexts contemplated by this item. Tear gas disperses quickly once air circulation improves, and the compounds break down without leaving persistent residue in soil or water. OC spray is derived from natural capsicum, is biodegradable, and does not present persistent environmental concerns. Expired OC canisters are disposed of in accordance with standard hazardous materials protocols. Smoke canisters produce particulate matter at the point of detonation; however, dispersal is rapid and there are no known persistent soil, water, or air quality impacts from the limited tactical deployments contemplated by this item. The infrequency of use (tear gas has been deployed three times in over 40 years, smoke on a similarly limited basis) and the contained or outdoor environments in which these tools would be deployed further minimize any environmental impact. No significant or lasting environmental impacts are anticipated from adoption of this resolution.

### **RATIONALE FOR RECOMMENDATION**

Both the California Commission on Peace Officer Standards and Training (CA POST) and the National Tactical Officers Association (NTOA) consider tear gas basic required equipment for SWAT teams. Its value lies in providing a less-lethal option that creates distance between officers and dangerous subjects, reducing the need for close-quarters force or lethal action. The 2020 ban was not premised on opposition to tactical use, but on COVID-19 respiratory concerns and crowd control misuse, neither of which applies to the narrow Special Response Team authorization proposed here.

### **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

### **Attachments:**

1. Resolution
2. Berkeley Police Department Law Enforcement Services Manual Policy 300: Use of Force
3. Berkeley Police Department Law Enforcement Services Manual Policy 303:

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Control Devices and Techniques

4. Berkeley Police Department Law Enforcement Services Manual Policy 428:  
First Amendment Assemblies
5. Policy 709 Military Equipment
6. BPD Special Order 2020-0007: Prohibition on Tear Gas, Pepper Spray, and  
Smoke

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

RESOLUTION REINSTATING THE BERKELEY POLICE DEPARTMENT'S ABILITY TO USE TEAR GAS FOR LIFE-THREATENING CIRCUMSTANCES AND LIFTING THE COVID-19 MORATORIUM ON SMOKE AND OLEORESIN CAPSICUM (OC) SPRAY

WHEREAS, on June 9, 2020, the Berkeley City Council placed a temporary ban on the use of smoke and OC 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, on July 26, 2022, two years after the June 9, 2020 ban on the use of tear gas, the Berkeley City Council approved Berkeley Police Department Policy 709, Military Equipment, which authorized the continued funding, acquisition, and use of military equipment including tear gas, pursuant to Assembly Bill 481, reflecting the Council's understanding that the 2020 action restricted the deployment of tear gas rather than directing its removal from the Department's inventory; and

WHEREAS, 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 exclusively by members of the Special Response Team when responding to critical incidents, defined as rapidly evolving or complex, high-risk events posing a significant threat of death or serious bodily injury in which conventional tactics are unlikely to resolve the situation safely, including but not limited to: armed barricaded suspects refusing to exit an enclosure; suspects shooting at officers during a high-risk warrant service; hostage rescue situations; and other potential high-risk situations outside these categories that present a threat to officer or public safety. This authorization expressly does NOT include use for crowd control; and

WHEREAS, the use of smoke and OC spray by the Berkeley Police Department is governed by Policies 300 (Use of Force), 303 (Control Devices and Techniques), and 428 (First Amendment Assemblies). OC spray is authorized as a use of force, and smoke as a non-force tactical tool, in crowd situations to address: violence between opposing groups; violence committed by a specific individual against another person or an officer; directing a crowd away from an area of active violence; or when distance is needed for officers repositioning away from a violent crowd; and

WHEREAS, the Berkeley Police Department Policies 303 (Control Devices and Techniques), 300 (Use of Force), and 428 (First Amendment Assemblies) ensure proper use and oversight, consistent with California Penal Code Section 13652(b);

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 critical incidents as defined that pose a significant threat to public or

officer safety, and excluding its use solely for crowd control, in accordance with Policies 300, 303, and 428, and that the temporary moratorium on the use of smoke and OC spray is hereby lifted.

## Use of Force

### 300.1 SANCTITY OF LIFE

The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force. Officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

#### 300.1.1 PURPOSE AND SCOPE

This policy sets forth criteria governing the use of force. All officers are responsible for knowing and complying with this policy and conducting themselves in a manner that reflects the Berkeley Police Department's Use of Force Core Principles. Violations of this policy may result in disciplinary action, including and up to termination, and may subject the officer to criminal prosecution. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it.

#### 300.1.2 USE OF FORCE STANDARD

In dealing with suspects, officers shall use alternatives to physical force whenever reasonably possible. In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.

The United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), held that, in order to comply with the U.S. Constitution, an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force. But these standards merely set the minimum standard for police conduct, below which an officer's conduct would be regarded as unlawful.

In fulfilling this Department's mission to safeguard the life, dignity, and liberty of officers themselves and all members of the community they are sworn to protect and serve, this policy requires more of our officers than simply not violating the law. As a result, this policy is more restrictive than the minimum constitutional standard and state law in two important respects.

First, it imposes a higher duty upon officers to use a minimal amount of force objectively necessary to safely achieve their legitimate law enforcement objective. And, second, this policy imposes a stricter obligation on officers to exert only such force that is objectively proportionate to the circumstances, requiring a consideration of the seriousness of the suspected offense, the availability of de-escalation and other less aggressive techniques, and the risks of harm presented to members of the public and to the officers involved.

## *Use of Force*

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Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force.

### 300.1.3 CORE PRINCIPLES

**A. DE-ESCALATION AND FORCE MINIMIZATION.** Every officer's goal, throughout an encounter with a member of the public, shall be to de-escalate wherever possible and resolve the encounter without resorting to the use of force. Wherever possible, officers shall employ de-escalation techniques to increase the likelihood of voluntary compliance with law enforcement requests or directives and, thereby, decrease the likelihood that a use of force will become necessary during an incident. Further, in any encounters that do call for applying force, officers must always use a minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.

**B. PROPORTIONALITY.** When determining the appropriate level of force, at all times officers shall balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is unarmed or armed with a weapon other than a firearm.

**C. MINIMIZING THE USE OF DEADLY FORCE.** Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

**D. DUTY TO INTERCEDE.** Whenever possible, officers shall intervene when they know or have reason to know that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

**E. VULNERABLE POPULATIONS.** Officers should be particularly sensitive when considering the use of force against vulnerable populations, including children, elderly persons, pregnant women, people with physical and mental disabilities, and people with limited English proficiency.

**F. FOSTER STRONG COMMUNITY RELATIONSHIPS.** The Berkeley Police Department understands that uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. The Department is committed to fostering strong community relations by building on its historic tradition of progressive policing, ensuring accountability and transparency, and striving to increase trust with our community.

**G. FAIR AND UNBIASED POLICING.** Members of the Berkeley Police Department shall carry out their duties, including the use of force, in a manner that is fair and unbiased, in accordance with Policy 401, Fair and Impartial Policing.

### 300.1.4 DEFINITIONS

Definitions related to this policy include:

## *Use of Force*

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**Minimal amount necessary** – The least amount of force within a range that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.

**Deadly force** - Any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

**Force** - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained.

**Less-Than-Lethal Force** – Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options. Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

**Non-Lethal Force** – Any use of force other than lethal force or less-than lethal force.

**Compliant Suspect** – Cooperative and/or responsive to lawful commands.

**Passive Resistance** - When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way.

Examples: A person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.

**Active Resistance** - An individual who is uncooperative and fails to comply with the lawful verbal commands of a police officer, and attempts to avoid physical control and/or arrest by physically struggling to free oneself from being restrained. The individual may also use verbal non-compliance (refusing a lawful order or direction).

Examples: A person who attempts to avoid physical control and/or arrest by pulling or pushing away from the officer, tensing arm or muscles, hiding from the officer, and/or fleeing.

**Combative Resistance** - An individual not only resists the officer, but poses a threat of harm to the officer or others, in an aggressive manner that may cause physical injury.

Examples: A person who violently attempts to or attacks an officer. This action is sometimes preceded by “pre-assault” cues such as taking a threatening stance (clenching fists, facial expressions, threats, etc.) and verbal non-compliance.

## *Use of Force*

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**Control Hold** - Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.). A control hold can be applied without implementing pain.

**Pain Compliance Technique** - Involves either the manipulation of a person's joints or activating certain pressure points intended to create sufficient pain for the purpose of motivating a person to comply with verbal commands (examples of pressure points include buccal nerve, gum nerve, sternum rub).

**Control Techniques** – Personal Impact Weapons and Take Downs.

**Personal Body Weapons** - An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of kinetic energy transfer (impact) to gain control of a subject.

**Blue Team (BT)** – Computer software that allows officers to enter use of force and other incidents from a Department computer.

**Concealment** - Anything which conceals a person from view.

**Cover** - Anything which provides protection from bullets or other projectiles fired or thrown. Cover is subjective and its effectiveness depends upon the threat's ballistic capability (handgun, rifle, etc.).

**Blocking** - The positioning of a police vehicle in the path of an occupied subject vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal.

**Ramming** - The use of a vehicle to intentionally hit another vehicle

**Serious bodily injury** - A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement or results in a prolonged loss or impairment of the functioning of any bodily member or organ

**Officer (or) Police Officer** - Any sworn peace officer.

**Authorized Employee** - Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.

**Employee** – Any non-sworn employee of the Berkeley Police Department, including those deemed “authorized employees.”

**Objectively Reasonable** – “Objectively reasonable” means an officer's conduct will be evaluated through the eyes of the hypothetically reasonable officer standing in the shoes of the involved officer.

**Totality of the circumstances** – All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force.

## *Use of Force*

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### **300.2 DUTY TO INTERCEDE AND DUTY TO REPORT**

Any officer who observes another officer or member of the Berkeley Police Department using force that is clearly in violation of this policy shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, when in a position to do so, physical intervention. Further, any officer who learns of a potentially unauthorized use of force, even if the officer did not witness it personally, shall promptly report this information to an on-duty sergeant or a command officer at the first opportunity.

Any officer who observes an employee or member of a different law enforcement agency use force that exceeds the degree of force permitted by law shall promptly report these observations to an on-duty sergeant or a command officer at the first opportunity.

#### **300.2.1 FAILURE TO INTERCEDE**

An officer who has received the required training on the duty to intercede and then fails to act to intercede when required by law, may be disciplined in the same manner as the officer who used force beyond that which is necessary (Government Code § 7286(b)).

### **300.3 USE OF FORCE TO EFFECT AN ARREST**

Any peace officer may use objectively reasonable, objectively necessary, and proportional force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. For the purpose of this policy, "retreat" does not mean tactical repositioning or other de-escalation tactics.

#### **300.3.1 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY, AND PROPORTIONALITY OF FORCE**

When determining whether to apply force and evaluating whether an officer has used reasonable, objectively necessary, and proportional force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer.
- (e) The effects of drugs or alcohol.
- (f) The individual's apparent mental state or capacity.
- (g) The individual's apparent ability to understand and comply with officer commands.
- (h) Proximity of weapons or dangerous improvised devices.

## *Use of Force*

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- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness.
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force. It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is objectively reasonable, objectively necessary, and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant. Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:

- Compliant – In general, when dealing with a compliant person, officers may rely on police presence and/or verbal control techniques, but should not use greater force.
- Passive resistance – In general, when dealing with a suspect involved in passive resistance, officers may rely on police presence, verbal control techniques, or control holds, but should not use greater force.
- Active resistance – In general, in dealing with a suspect involved in active resistance, in addition to the options available for passive resistance, officers may rely on pain compliance techniques or takedowns, but should not use greater force.
- Combative resistance – In general, in dealing with a suspect involved in combative resistance, officers have all use-of-force options available to them, but deadly force shall only be used in compliance with this policy as described in Section 300.4.

## *Use of Force*

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### 300.3.2 USE OF FORCE CONTINUUM

The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions.

#### **Continuum of Force**

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
  - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
  - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not physical.**
  - Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
  - Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Weaponless defense — Officers use bodily force to gain control of a situation.**
  - Pain Compliance and control holds. Officers use grabs, holds and joint locks to restrain an individual.
  - Personal body weapons. Officers may use punches and kicks to restrain an individual.
- **Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**
  - Blunt impact. Officers may use a baton or projectile to immobilize a combative person.
  - Chemical. Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
- **Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**

### 300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be

## *Use of Force*

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restricted. Officers are encouraged to use techniques and methods taught by the Berkeley Police Department for this specific purpose.

### 300.3.4 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and shall be used when it is safe to do so. De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member shall be called upon as a resource.

Officers shall gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to any levels of force. Officers should move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

- (a) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; "waiting out" subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
- (b) Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
- (c) Officers should consider a variety of options, including lesser force or no force options.
- (d) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.
- (e) A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
- (f) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use of force.

## *Use of Force*

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- (g) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.
- (h) Establishing communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.
- (i) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

When time and circumstances allow, officers shall consider the following tactical principles:

1. Make a tactical approach to the scene.
2. Maintain a safe distance.
3. Use available cover or concealment and identify escape routes.
4. Stage Berkeley Fire Department.
5. Control vehicle and pedestrian traffic.
6. Establish communication, preferably with one officer.
7. Create an emergency plan and a deliberate plan with contingencies.
8. The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

### 300.3.5 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.

The purpose of pain compliance is to direct a person's actions. The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

### 300.3.6 USE OF NON-LETHAL FORCE

When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use objectively reasonable, objectively necessary, and proportional approved non-lethal force techniques and weapons in the following circumstances:

- (a) To protect themselves or another person from physical injury;

## *Use of Force*

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- (b) To restrain or subdue a resistant individual; or
- (c) To bring an unlawful situation safely and effectively under control.

### 300.3.7 RESTRAINT AND CONTROL DEVICES

Restraint and control devices shall not be used to punish, to display authority or as a show of force. Handcuffs, body wraps and spit hoods shall only be used consistent with Policy 302. Batons, approved less-lethal projectiles, and approved chemical agents shall only be used consistent with Policy 303. As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

### 300.3.8 CHOKEHOLD PROHIBITION

The use of a Carotid Restraint Hold is prohibited. Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."

The term bar-arm refers to a variety of techniques. The use of any chokehold is strictly prohibited. A chokehold is any hold or contact with the neck – including a carotid restraint -- that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck. As defined in the City Council Resolution, "bar-arm hold" refers to use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.

### 300.3.9 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once the individual is safely secured, officers should promptly check and continuously monitor the individual's condition for signs of medical distress (Government Code § 7286.5).

## *Use of Force*

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### **300.4 USE OF DEADLY FORCE**

An officer's use of deadly force is justified only when it is objectively reasonable, based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided that it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Penal Code § 835a).

An officer shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily endanger innocent people.

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

Officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

#### **300.4.1 DRAWING AND POINTING FIREARMS**

Given that individuals may perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines:

- (a) If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- (b) If it is objectively reasonable that a significant threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward said threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

## *Use of Force*

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### **300.4.2 DIRECTED FIRE**

Officers may use controlled gunfire that is directed at the suspect, reducing the suspect's ability to return fire while a group or individual movement is conducted, such as in a rescue operation.

Officers may only employ this tactic when dealing with a suspect who poses an immediate and ongoing lethal threat and only under circumstances where the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Officers remain accountable for every round fired under these circumstances. Officers must consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

### **300.4.3 SHOOTING AT OR FROM MOVING VEHICLES**

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force. When feasible, officers shall take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

Because this policy may not cover every situation that may arise, a deviation from this policy may be objectively reasonable and objectively necessary depending on the totality of the circumstances. A deviation from this policy would, for instance, be justified if the officer used a firearm in an attempt to stop an imminent vehicle attack on a crowd or a mass casualty terrorist event.

Factors that may be used to evaluate the reasonableness of the use of a firearm against a vehicle include:

- (a) The availability and use of cover, distance and/or tactical relocation
- (b) Incident command and personnel placement
- (c) Tactical approach
- (d) Regard for viable target acquisition and background including location, other traffic, the presence of innocent persons, and police officers.

### **300.5 USE OF VEHICLES**

Officers shall not use police vehicles to ram other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in section 300.4 and in Policy V-6 that covers vehicle operations.

The Vehicle Containment Technique (VCT) is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be

## *Use of Force*

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minimal. VCT shall only be used on vehicles that are either stationary or moving at a slow speed. This technique is designed to contain a suspect vehicle to a single stationary location, thereby preventing a pursuit from initiating, or a potentially violent situation (e.g. a hostage situation or person barricaded inside a vehicle) from becoming mobile.

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation. See the VCT policy for more details on this tactic.

### **300.5.1 REPORT RESTRICTIONS**

Officers shall not use the term "excited delirium" to describe an individual in an incident report. Officers may describe the characteristics of an individual's conduct, but shall not generally describe the individual's demeanor, conduct, or physical and mental condition at issue as "excited delirium" (Health and Safety Code § 24402).

### **300.6 REPORTING REQUIREMENTS**

All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a "Use of Pepper Spray Report." Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a "Use of Restraint Device Report" and document, review and report such uses in accordance with section 300.11.

Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation, documentation and review requirements.

#### **300.6.1 SUPERVISOR RESPONSIBILITY**

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports.
- (f) Review body worn camera footage related to the incident.

## *Use of Force*

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In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

### 300.6.2 USE OF FORCE REPORTING LEVELS

#### **Level 1**

The officer used any of the following, and the circumstances of the application would lead an objectively reasonable officer to conclude that the subject did not experience more than momentary discomfort:

1. Control holds/ pain compliance techniques
2. Leverage
3. Grab
4. Bodyweight
5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.
6. Takedown

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

#### **Level 2**

- (a) No suspect injury or complaint of continuing pain due to interaction with officer.
- (b) Officer's use of force was limited to the following:
  1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual, and/or pointed at an individual. For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.
  2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor, when feasible, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of all involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

#### **Level 3**

- (a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.

## *Use of Force*

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- (b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.
- (c) The officer used any of the following force options:
  - 1. Chemical Agents/Munitions
  - 2. Impact Weapon Strikes
  - 3. Personal Body Weapons
- (d) The officer used any of the following pursuit intervention tactics:
  - 1. Vehicle Containment Tactic (VCT), if vehicle contact is made
  - 2. Ramming
  - 3. Pursuit Immobilization Technique (PIT)
  - 4. Roadblocks, if vehicle contact is made

An uninvolved supervisor, when practical, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into the Blue Team template.

The supervisor will also complete a Use of Force Investigation Report narrative in Blue Team for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation.

### **Level 4**

Any incident involving deadly force or any force likely to cause death or serious bodily injury will be investigated under the protocols outlined in Policy P-12.

#### **300.6.3 EMPLOYEE USE OF FORCE**

When any Berkeley Police Department employee has engaged in a use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy.

- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence, such as a widespread disaster or civil disturbance, the officer shall prepare a supplemental report as soon as practical following the incident.
- (b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

#### **300.6.4 PUBLIC RECORDS**

Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and the Records Management and Release policy.

## *Use of Force*

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### **300.7 MEDICAL CONSIDERATIONS**

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain, or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

See the Medical Aid and Response Policy for additional guidelines.

### **300.8 USE OF FORCE ADMINISTRATIVE REVIEW**

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in Policy 301 instead of utilizing Division Captain Review.

The Chief of Police shall make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

Any determination concerning the propriety of force used shall be based on the facts and information available to the officer at the time the force was employed, and not upon information gained after the fact.

## *Use of Force*

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All Use of Force Reports shall be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; 3) require further investigation; and/or, 4) require revision or additional training.

Use of Force Reports shall be held in file for at least five (5) years

### **300.9 WATCH COMMANDER RESPONSIBILITY**

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy.

### **300.10 TRAINING**

Officers, investigators, and supervisors will receive annual training on this policy and demonstrate their knowledge and understanding (Government Code § 7286(b)).

#### **300.10.1 TRAINING REQUIREMENTS**

Required annual training shall include:

- (a) Legal updates.
- (b) De-escalation tactics, including alternatives to force.
- (c) The duty to intercede.
- (d) The duty to request and/or render medical aid.
- (e) All other subjects covered in this policy (e.g., use of deadly force, chokehold and carotid hold prohibition, discharge of a firearm at or from a moving vehicle, verbal warnings).
- (f) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

See the Training Policy for restrictions relating to officers who are the subject of a sustained use of force complaint.

#### **300.10.2 STATE-SPECIFIC TRAINING REQUIREMENTS**

Required state-specific training shall include guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities (Government Code § 7286(b)).

### **300.11 USE OF FORCE ANALYSIS**

The Professional Standards Division Captain or his or her designee shall prepare a comprehensive analysis report on use of force incidents. The report shall not contain the names of officers, suspects or case numbers, and should include but not be limited to:

- (a) An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.
- (b) All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2).

## *Use of Force*

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- (c) The identification of any trends in the use of force by members.
- (d) Training needs recommendations.
- (e) Equipment needs recommendations.
- (f) Policy revisions recommendations.

### 300.11.1 REPORTING FREQUENCY

- (a) On a quarterly basis via the City's Open Data Portal website;
- (b) On a quarterly basis to the Police Accountability Board; and
- (c) On a yearly basis as part of the Police Department's Annual Report to City Council

### **300.12 CIVILIAN COMPLAINTS**

Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police Accountability Board (PAB). Complaints will be investigated in compliance with the respective applicable procedures of the IAB and the PAB.

### **300.13 POLICY REVIEW AND UPDATES**

This policy shall be regularly reviewed and updated to reflect developing practices and procedures.

At least annually, the Berkeley Police Department and the PAB shall convene to review and update the Use of Force Policy to reflect developing practices and procedures per SB 230.

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## Control Devices and Techniques

### 303.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and maintenance of control devices that are described herein.

### 303.2 POLICY

In order to control subjects who are violent or who demonstrate the intent to be violent, the Berkeley Police Department authorizes officers to use control devices and techniques in accordance with the guidelines in this policy and the Use of Force Policy.

### 303.3 ISSUING, CARRYING AND USING CONTROL DEVICES

Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police, or his/her designee.

Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device.

Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices.

When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

Except as otherwise provided in Section 303.9, kinetic energy projectiles and chemical agents shall not be used to disperse any assembly, protest, or demonstration (Penal Code 13652).

### 303.4 RESPONSIBILITIES

#### 303.4.1 WATCH COMMANDER RESPONSIBILITIES

The Watch Commander may authorize the use of a control device by selected personnel or members of specialized units who have successfully completed the required training.

#### 303.4.2 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

The Personnel and Training Sergeant, or designated instructor, shall control the inventory and issuance of all control devices and shall ensure that all damaged, inoperative, outdated or expended control devices or projectiles are properly disposed of, repaired or replaced.

Every control device will be periodically inspected by the Personnel and Training Sergeant or the designated instructor for a particular control device. The inspection shall be documented.

## *Control Devices and Techniques*

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### **303.4.3 USER RESPONSIBILITIES**

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices.

Any damaged, inoperative, outdated or expended control devices or projectiles, along with documentation explaining the cause of the damage, shall be returned to the Personnel and Training Sergeant for disposition. Damage to City Property forms shall also be prepared and forwarded through the chain of command, when appropriate, explaining the cause of damage.

### **303.5 BATON AND COLLAPSIBLE BATON GUIDELINES**

The need to immediately control a suspect must be weighed against the risk of causing serious injury. The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

When carrying a baton, including a collapsible baton, uniformed personnel shall carry the baton in its authorized holder on the equipment belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

### **303.6 OLEORESIN CAPSICUM (OC) SPRAY GUIDELINES**

As with other control devices, OC spray (aka pepper spray) and pepper projectiles may be considered for use to bring under control an individual or groups of individuals who are engaging in, or are about to engage in violent behavior. Pepper projectiles and OC spray should not, however, be used against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

#### **303.6.1 OC SPRAY**

Uniformed personnel carrying OC spray shall carry the device in its holster on the equipment belt or external vest carrier. Plainclothes and non-field personnel may carry OC spray as authorized, in accordance with the needs of their assignment or at the direction of their supervisor.

#### **303.6.2 PEPPER PROJECTILE SYSTEMS**

Pepper projectiles (aka "Pava" rounds) are plastic spheres that are filled with a derivative of OC powder. Because the compressed gas launcher (aka "less lethal" launcher) delivers the projectiles with enough force to burst the projectiles on impact and release the OC powder, the potential exists for the projectiles to inflict injury if they strike the head, neck, spine or groin. Therefore, personnel using a launcher should not intentionally target those areas, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

Officers encountering a situation that warrants the use of a launcher shall notify a supervisor as soon as practicable. A supervisor shall respond to all incidents where the suspect has been hit or

## *Control Devices and Techniques*

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exposed to the chemical agent. The supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

### **303.6.3 TREATMENT FOR OC SPRAY EXPOSURE**

Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

### **303.7 POST-APPLICATION NOTICE**

Whenever OC has been introduced into a residence, building interior, vehicle or other enclosed area, officers should provide the owners or available occupants with notice of the possible presence of residue that could result in irritation or injury if the area is not properly cleaned. Such notice should include advisement that clean up will be at the owner's expense. Information regarding the method of notice and the individuals notified should be included in related reports.

### **303.8 LESS LETHAL PROJECTILE GUIDELINES**

This department is committed to reducing the potential for violent confrontations. "Less lethal" projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

#### **303.8.1 DEPLOYMENT AND USE**

Only department-approved projectiles shall be carried and deployed. Approved projectiles may be used to compel an individual to cease his/her actions when such projectiles present a reasonable option.

Approved projectiles include:

- (a) "Less Lethal" rounds: impact projectiles
- (b) "Pava" rounds: impact projectiles containing OC/pepper spray
- (c) "Marking" rounds: impact projectiles containing paint

Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

- (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles.
- (b) The suspect has made credible threats to harm him/herself or others.
- (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

## *Control Devices and Techniques*

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### **303.8.2 DEPLOYMENT CONSIDERATIONS**

Before discharging projectiles, the officer should consider such factors as:

- (a) Distance and angle to target.
- (b) Type of projectiles employed.
- (c) Type and thickness of subject's clothing.
- (d) The subject's proximity to others.
- (e) The location of the subject.
- (f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

### **303.8.3 SAFETY PROCEDURES**

Officers will inspect the launcher and projectiles at the beginning of each shift to ensure that the launcher is in proper working order and the projectiles are of the approved type and appear to be free from defects.

When it is not deployed, the launcher will be unloaded and properly and securely stored.

### **303.9 CROWD CONTROL REQUIREMENTS**

Pursuant to California Penal Code 13652, kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

- (a) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
- (b) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively

## *Control Devices and Techniques*

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- reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
- (c) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
  - (d) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
  - (e) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
  - (f) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.
  - (g) An objectively reasonable effort has been made to extract individuals in distress.
  - (h) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
  - (i) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
  - (j) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:
    - 1. A violation of an imposed curfew.
    - 2. A verbal threat.
    - 3. Noncompliance with a law enforcement directive.

As per City Council resolution (June 9, 2020), pepper spray for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

### **303.10 TRAINING FOR CONTROL DEVICES**

The Personnel and Training Sergeant shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

- (a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.
- (b) All training and proficiency for control devices will be documented in the officer's training file.
- (c) Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot

## *Control Devices and Techniques*

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demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

### **303.11 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES**

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to California Penal Code 13652.1 and the Berkeley Use of Force Policy.

## First Amendment Assemblies

### 428.1 PURPOSE

The purpose of this policy is to provide policy and procedural guidance to Berkeley Police Department personnel involved in the planning, response and/or deployment of police personnel for crowd situations.

### 428.2 MISSION STATEMENT

The mission of the Berkeley Police Department in crowd situations is to facilitate free expression, de-escalate violence and resolve conflict peacefully with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly.

- (a) Appropriate action will be determined by the Incident Commander in the field, and will be based on the behavior of the people in the crowd.
- (b) Police action shall be reasonable, intended to prevent lawlessness or restore order, and may include responses ranging from no police action to full crowd control tactics.

### 428.3 POLICY

In the event a crowd situation is determined to be a peaceful protest or demonstration, wherein participants are exercising their rights to free speech in a lawful manner, the policy of the Berkeley Police Department shall be to facilitate the event to the extent possible.

The Department shall make it a priority to establish lines of communication with the demonstrators both before and during the crowd situation. The Department shall consider social media as one means of communication.

In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of criminal behavior and violence, the Berkeley Police Department will take steps to restore order.

- (a) Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes or a dispersal order.
- (b) Prior to issuing a dispersal order, BPD shall make efforts to safely arrest those committing crimes while preserving the rights of citizens to demonstrate.
- (c) Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.

### 428.4 USE OF FORCE

Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in the Use of Force Policy.

- (a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons and chemical agents should not be used on persons participating in a crowd

### *First Amendment Assemblies*

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situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.

1. Verbal commands to stand followed by control holds (e.g., wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.
  2. If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.
  3. Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.
- (b) Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)
- (c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a "rake" or "jab") as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.
1. Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine or groin except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person.
  2. Officers on a skirmish line shall not use batons to collectively push a crowd in a particular direction prior to dispersal orders being given unless exigent circumstances exist. This requirement does not apply to officers on a skirmish line who are using force in compliance with *Graham v. Conner*.
- (d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).
- (e) Less-lethal munitions shall only be fired at a specific target and officers shall be mindful of the increased risk of hitting an unintended target due to unexpected movement of members of the crowd. Officers may never use less-lethal munitions indiscriminately against a crowd or group of people.

Personnel deployments during demonstrations should include clear and specific objectives.

In squad or team movement, the type and scope of force used shall be at the discretion of the Incident Commander, Field Commander, Squad or Team Leader.

De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed prior to the use of any force, consistent with the Department's Use of Force policy.

Kinetic energy projectiles and chemical agents for crowd control purposes shall only be deployed by officers who have received POST training for crowd control if the use is objectively reasonable

## *First Amendment Assemblies*

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to defend against a threat to life or serious bodily injury to any individual, including an officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control (Penal Code 13652).

Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

- A violation of an imposed curfew.
- A verbal threat.
- Noncompliance with a law enforcement directive.

For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agent, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed.

### **428.5 USE OF VEHICLES**

BPD shall enhance mobility and flexibility by using police vehicles such as trained bicycle officers and motorcycle officers, in addition to foot patrols, to maintain peaceful crowd management. Parking Enforcement Officers will only be used for traffic control purposes.

Specialized police vehicles (e.g., police motorcycles, off-road motorcycles, parking enforcement vehicles, mobile command vehicles, etc.) may be used in crowd situations at the discretion of the Incident Commander.

- (a) Specialized police vehicles shall not be used to contact demonstrators for the purpose of physically pushing people back or forcibly dispersing them from an area.
- (b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.

### **428.6 DEFINITIONS**

Control Hold: Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.).

Counter Demonstration: An assembly of persons in conflict with a different demonstration at the same location.

Crowd Control: Law enforcement response to a pre-planned event or spontaneous event, activity or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd. These strategies include but are not limited to skirmish lines, mobile field force techniques, targeted and mass arrests and the use of force generally.

Crowd Management: Strategies and tactics employed before, during and after a gathering for the purpose of maintaining the event's lawful activities. These strategies include, but are not limited to:

## *First Amendment Assemblies*

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communication with leaders before and during the event, police presence and event participation, blocking traffic to facilitate a march, and bicycle officers monitoring the crowd.

Demonstration: A public assembly of persons to exhibit thoughts, ideas or opinions.

Incident Commander: A sworn officer, usually a lieutenant or captain, responsible for all personnel assigned to an event.

During the initial stages of a spontaneous event, the Incident Commander will be the highest ranking or senior officer available to take charge, until relieved of responsibilities by a higher ranking officer.

Mobile Field Force (MFF): A statewide tactical concept that utilizes groups of trained officers with standard marked police vehicles and equipment, who have the capability to respond to crowd events that are highly mobile or that break up and quickly reform in other locations.

Non-Permitted Event: Any demonstration, whether spontaneous or planned, wherein organizers have not obtained permits or licenses that are lawfully required under the circumstances.

Operations Commander: A sworn officer, usually a lieutenant or sergeant, responsible for the movement and actions of a platoon, squad, or other identified group of officers at the scene of an event.

Pain Compliance Technique: Any technique designed to inflict pain for the purpose of motivating a person to comply with verbal commands (e.g., buckle nerve, gum nerve, sternum rub).

Passive Resistance: When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way (i.e., a person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.)

Persons who lock arms, use lockdown devices, or physically resist officers in any other way are not considered “passive”.

Permitted Event: Any demonstration or event wherein organizers have obtained all applicable permits or licenses.

Platoon: Any group of officers, usually 36 or more in number, organized into 3 or more squads. Each platoon will have a commander, usually a lieutenant, who is responsible for the actions of the platoon in the field.

Protected First Amendment Activity: Various forms of expression including, but not limited to, speech, assembly, marching, holding signs, street theater, distribution of literature, or displaying banners.

- (a) Freedom of speech and assembly are rights protected by the First Amendment of the United States Constitution, and Article 1 Sections 2 & 3 of the California Constitution subject to reasonable time, place and manner regulations, such as, compliance with lawful permit requirements and traffic regulations.

## *First Amendment Assemblies*

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**Riot:** Any group of two or more people, acting together, who use force, violence, or the threat of force or violence, to disturb the public peace (Penal Code § 405).

**Riot Gear:** Police equipment visible to the public and generally associated with crowd control, such as, helmets, batons, flex-cuffs, special uniforms, specialized vehicles, etc.

**Spontaneous Event:** Any unplanned event that develops, usually as a result of some catalyst, such as sporting events, parties, concerts, court rulings, festivals, major political events, major news events, or any combination thereof.

**Squad:** A group of sworn officers, usually 12 in number, with an identified squad leader responsible for the actions of the squad.

**Squad Leader:** A sworn officer, usually a sergeant, responsible for the movement and actions of a squad.

**Team:** A group of four sworn officers within a squad, inclusive of an identified leader responsible for the actions of the team.

**Team Leader:** A sworn officer, sometimes a sergeant, responsible for the movement and actions of a team of officers within a squad.

**Time, Place or Manner Restrictions:** Reasonable restrictions on protected activity imposed by law (e.g., an applicable permit) intended to serve a specific governmental interest (e.g., public safety), with regard to the time, location, or manner in which protected activity is to be conducted.

**Unlawful assembly:** Two or more persons, assembled together to commit an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner (Penal Code § 407).

The prohibition in Penal Code § 407 against persons in an assembly doing a lawful act in a violent, boisterous or tumultuous manner is limited only to situations where the conduct poses a clear and present danger of imminent violence ((1973) 9 Cal. 3d 612, 623).

### **428.7 PLANNED EVENTS**

- (a) At such time as a special event or crowd situation comes to the attention of police department personnel, the Operations Division Captain or Watch Commander shall be notified, and forwarded all information regarding the event.
- (b) The Incident Command System (ICS) shall be used for managing all crowd situations. ICS should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.
- (c) The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.
  1. Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.

*First Amendment Assemblies*

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- i. Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.
  - ii. If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.
- (d) Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.
  1. Initial assessment may include on-duty personnel in the Operations Division and other divisions within the Department.
  2. If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies.
- (e) Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Captains to secure their participation.
- (f) Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.
  1. An Operations Plan shall contain sufficient detail to allow an uninvolved party who reads it to understand the nature of the event, department policy involved, planned response and the department resources dedicated to it.
  2. The Operations Plan shall include specific guidelines and priorities to consider when making deployment decisions and shall reflect the department's commitment to crowd management.
  3. Upon approval by the Operations Captain and signed by the Chief of Police, the original Operations Plan shall be **scanned into the Professional Standards folder (within the Department's internal GDrive)** and copies distributed to all appropriate personnel.

**428.8 SPONTANEOUS EVENTS**

- (a) Sworn officers shall respond to a reported spontaneous crowd situation to assess immediate hazards to public safety.
- (b) The ranking sworn officer, or senior officer, shall assume the role and responsibilities of Incident Commander, and take the following immediate actions:
  1. Broadcast the type of event, if known, and estimated number of participants.
  2. Report known or imminent public safety hazards.
  3. Request sufficient on-duty personnel resources to address life-threatening public safety emergencies.

*First Amendment Assemblies*

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- (c) The on-duty Watch Commander, or if absent or unavailable, the senior Patrol Sergeant, shall respond to the event scene and take the following actions:
  - 1. Assume the role and responsibilities of Incident Commander.
  - 2. Assess the potential risks to public safety.
  - 3. Assess whether or not a static event has the potential to go mobile, either on foot in the form of a march, or in vehicles.
  - 4. Assess the number of officers and type of equipment required to maintain order and their manner of response.
  - 5. Assess the potential need for outside resources:
    - i. On-duty personnel from other police agencies.
    - ii. Fire Department personnel and resources.
    - iii. Media relations personnel.
  - 6. Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.
- (d) The Incident Commander should consider the following factors when making decisions regarding the police response:
  - 1. The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
  - 2. The level of disruption to those not involved in, but impacted by the event.
  - 3. The level of vehicular traffic.
  - 4. The number of people involved in the event and their behavior.
  - 5. The personnel and equipment available for the task.
- (e) The Incident Commander may use on-duty personnel from other divisions or units to assist in the police response to a spontaneous event.
- (f) The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:
  - 1. Assign personnel to monitor the event only.
  - 2. Use personnel to maintain order at the event and/or divert uninvolved, affected traffic away from the area.
- (g) If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:
  - 1. Let the group proceed with no police presence.
  - 2. Assign officers to facilitate the mobile event by providing traffic control.
  - 3. Attempt to direct the path of the mobile event by denying access to certain roadways.

### *First Amendment Assemblies*

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4. Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.
  5. Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.
- (h) There is no required order of response; the Incident Commander shall be responsible for continually assessing the event and adjusting the response strategies and tactics accordingly. Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.
- (i) The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished to another officer who officially assumes the responsibility.
1. Any change of command shall be broadcast on the radio frequency used to manage the police response.

#### **428.9 GENERAL EVENT PROCEDURES**

- (a) Employees dispatched or pre-assigned to a crowd situation shall be in a department-approved uniform appropriate for their assignment.
1. Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.
- (b) Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment, (i.e., helmet, chemical agent mask, etc.).
- (c) Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander. The Incident Commander shall be responsible for assuring that there is an inventory of less-lethal munitions, CS gas, and/or smoke prior to deployment, including any outside agencies assisting BPD. Absent exigent circumstances, such less-lethal munitions, CS gas and smoke shall not be deployed prior to determination of an accurate inventory.
- (d) The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.
1. Information communicated in an operational briefing shall include, at minimum:
    - (a) The nature of the event.
    - (b) The mission and operational goal(s) of the department.
    - (c) The chain of command managing the event.
    - (d) The individual's assignment and any special equipment he/she may require to accomplish it.

*First Amendment Assemblies*

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- (e) When possible, the identity and appearance of all undercover personnel involved in the police response.
  - Undercover personnel should be present at operational briefings for planned events.
- (e) Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.
- (f) Verbal requests or commands should be used before and when advancing on a crowd.
  1. Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step back!" or "Move onto the sidewalk!")
- (g) Employees in a crowd situation shall conduct themselves in a professional and courteous manner, answering questions when appropriate.
- (h) When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating the law.
  1. Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.
- (i) Visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.
  1. Activities that should be documented via visual recording device include, but are not limited to:
    - i. Criminal activity (misdemeanor or felony);
    - ii. Violation of a Permit condition, City Ordinance, or traffic violation.
    - iii. Use of force by officers.
    - iv. Arrests by officers.
    - v. Any person who, by words or action, is inciting violence.
    - vi. Dispersal orders issued by police.
- (j) Employees shall adhere to information release and media liaison protocols set forth in the Records Maintenance and Release policy and the Media Relations policy, respectively.
  1. The Incident Commander shall ensure legitimate "credentialed" members of the media are provided access to areas available to them by law.
  2. A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be treated like any other citizen with regard to event area access.
- (k) In any first amendment assembly, if feasible the Field Commander should ensure that medical resources are available. An objectively reasonable effort should be made to extract individuals that appear to be in distress. Medical assistance should be promptly

*First Amendment Assemblies*

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provided, if properly trained personnel are present, or requested, for injured persons, when it is reasonably safe to do so.

**428.10 DISPERSAL ORDERS**

- (a) The Incident Commander at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.
- (b) Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:
  - 1. "I am () () with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at () to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal projectiles, baton strikes, or use of tear gas, which may pose a risk of serious injury. The following routes of dispersal are available: () You have () to leave the area."
- (c) Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.
- (d) The Incident Commander, or his/her designee, shall issue a dispersal order:
  - 1. As close to the crowd as practical;
  - 2. In a manner clearly audible to persons in the crowd;
    - i. Use sound amplification systems when necessary;
    - ii. When practical, shall record the dispersal order to establish that the orders were audible to the crowd.
    - iii. When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.
  - 3. In more than one language if possible, depending on the needs of the crowd.
- (e) Additional dispersal orders may be given following a reasonable period of time to allow for crowd dispersal. Ongoing dispersal orders should be avoided.
- (f) If after a dispersal order is given, a crowd is discovered in a different location, the new location should be evaluated to determine if it is an ongoing unlawful assembly.

**428.11 MASS ARRESTS**

- (a) When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:
  - 1. Resource Availability: Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.

### *First Amendment Assemblies*

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2. In-Field Arrest Processing: Equipment and logistics should be available to facilitate in-field processing of mass arrests.
3. Transportation: In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.
4. Booking/Jail Capacity: The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of persons not released on citation.
5. Documentation: Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.

#### **428.12 MUTUAL AID**

- (a) An official request for mutual aid resources shall adhere to procedures set forth the Mutual Aid Policy.
  1. Emergency requests for immediate assistance may be made directly to local agencies.
- (b) The Chief of Police or his/her designee shall contact the liaison from the Alameda County Sheriff's Department to coordinate a plan for mutual aid resources and response.
  1. This plan should include the number of officers potentially needed, any special equipment requested, and an expected response time if called out.
  2. Absent exigent circumstances, responding mutual aid personnel shall be briefed prior to deployment and should be given clear and specific objectives.
- (c) In preparation for mutual aid forces, the Incident Commander shall ensure that liaison officers from BPD are assigned to work with the outside agency to assist with response routes into the staging area, parking vehicles, checking in with the staging area supervisor, communications and response to event location.
- (d) MFF organization should be employed when integrating mutual aid personnel into local crowd event response, or when responding to another jurisdiction as a mutual aid unit.
  1. Personnel should be formed into squads or teams that are easily integrated into squads and platoons.
- (e) When responding to another jurisdiction as a mutual aid unit, personnel will have with them enough vehicles and equipment to allow the deployed team or squad to patrol a designated area, use less-than-lethal munitions or authorized chemical agents, if necessary, and have enough food and water to last for a reasonable operational period until relieved.

## *First Amendment Assemblies*

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### **428.13 MEDIA ACCESS**

If officers close the immediate area surrounding any emergency field command post or any other command post, or establish a police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged in a protected activity pursuant to the First Amendment, officers shall comply with the requirements of Penal Code § 409.7 relating to media access (i.e., access to recently closed areas) (Penal Code § 409.7).

### **428.14 POST-EVENT**

Once a normal work schedule has resumed, the Incident Commander shall ensure that an After Action Report is prepared within 72 hours after the resumption of the Incident Commander's normal work schedule. Should an extension be necessary in order to properly and fully complete the report, such a request may be made to the Chief of Police.

- (a) An After Action Report shall document arrests, injuries, property damage, personnel costs, inventories of less lethal munitions, CS gas and smoke, and an overall critique of the police preparation and response.
- (b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.
- (c) The Operations Division Captain or the authorized designee should ensure that a summary of each deployment of kinetic energy projectiles or chemical agents for crowd control purposes is prepared and published on the department website within 60 days of each incident. The time frame may be extended for another 30 days where just cause is demonstrated, but no longer than 90 days from the time of the incident. The summary shall be limited to the information known to the Department at the time of the report and include the information required in Penal Code 13652.1.

### **428.15 TRAINING**

When possible, training in crowd management and crowd control shall be incorporated into general departmental in-service training.

When possible prior to a major pre-planned event, updated training should be provided to all assigned officers.

## Military Equipment

### 709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment ( Government Code § 7070; Government Code § 7071; Government Code § 7072).

#### 709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

**Governing body** – The Berkeley City Council.

**Military equipment** – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

## *Military Equipment*

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### **709.2 POLICY**

It is the policy of the Berkeley Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment. Consistent with Section 7071(a)(1)(E), uses of military equipment for purposes, in a manner, or by a person not authorized in this policy are prohibited. For the purposes of this provision, "uses" does not include activities such as those associated with maintenance, transportation, or training.

### **709.3 MILITARY EQUIPMENT COORDINATOR**

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Berkeley Police Department (Government Code § 7071).
- (e) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).

### **709.4 MILITARY EQUIPMENT INVENTORY**

The following constitutes a list of qualifying equipment for the Department:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM Single Launcher
- Milkor LTL Multi-Launcher
- FN 303 Launcher & FN Pava Impact Projectile
- Oleoresin Capsicum Spray
- Chlorobenzylidene Malononitrile and Oleoresin capsicum
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/Sound Diversionary Device
- Long Range Acoustic Device
- Mobile Command Vehicle

## *Military Equipment*

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- Barret Model 99

### 709.4.1 BERKELEY POLICE DEPARTMENT'S INVENTORY

#### **Rifles and Associated Ammunitions**

##### **Rifle:**

##### **M4 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

##### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Colt M-4 patterned rifle, which fires the .223 Remington cartridge

**Quantity:** The Berkeley Department currently owns and maintains 96 rifles

**Capabilities:** The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

**Lifespan:** Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

**Manufacturer's Description:** This specially designed law enforcement weapon system features many of the combat proven advantages of the military Colt M4. With the 4-position buttstock fully retracted, the Colt Law Enforcement Carbine is less than 32 inch length and weighs only 6.9 lb - ideal for tactical deployment and traditional patrol.

##### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. An officer considering the use of this firearm in a non-preplanned incident should consider the factors set forth in the Risk Assessment section of Policy 607, Operations, Planning, and Deconfliction.

## *Military Equipment*

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### **FISCAL IMPACT:**

**Initial Cost:** Exact costs unknown. Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000 and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

**Annual cost:** Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

**Training costs:** Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

**Maintenance costs:** Vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Remington 700 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Remington 700 rifle, which fires the .308 caliber ammunition.

**Quantity:** The Berkeley Department currently owns and maintains 6 rifles

## *Military Equipment*

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**Capabilities:** The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

**Lifespan:** The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

**Manufacturer's Description:** The Model 700 SPS Tactical is a highly maneuverable member of the family. It's built for tack-driving accuracy with a 20" heavy-contour tactical-style barrel and dual-point pillar bedding in its black synthetic stock. Hogue® overmoldings on the stock facilitate sure handling, and it has a semi-beavertail fore-end for added stability off a rest.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. An officer considering the use of this firearm in a non-preplanned incident should consider the factors set forth in the Risk Assessment section of Policy 607, Operations, Planning, and Deconfliction.

### **FISCAL IMPACT:**

**Initial Cost:** The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

**Annual cost:** If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

**Maintenance costs:** Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

## *Military Equipment*

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There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 300 Use of Force. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force, Policy 354-Precision Rifle. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Barret Model 99 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle

**Quantity:** The Berkeley Department currently owns and maintains 1 rifle.

**Capabilities:** This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

**Lifespan:** This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

**Manufacturer's Description:** The Model 99 brings new levels of long-range precision shooting. Known as much for its dependability as its versatility, the Model 99 has unfailing accuracy you can rely on.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. An officer considering the use of this firearm in a non-

## *Military Equipment*

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preplanned incident should consider the factors set forth in the Risk Assessment section of Policy 607, Operations, Planning, and Deconfliction.

### **FISCAL IMPACT:**

**Initial Cost:** The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

**Annual cost:** The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **RIFLE AMMUNITION:**

**.223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. (Use in the Colt M4 Rifle)**

**(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

**Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:**.223 Remington ammunition: 55 grain FMJ (full metal jacket)

.223 Remington ammunition 62 grain soft point for duty purposes

## *Military Equipment*

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**Quantity:** Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

**Capabilities:** The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

**Lifespan:** Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

### **Product Description:**

.223 Remington ammunition: 55 grain FMJ (full metal jacket)

The full metal jacket ammunition features a 55 grain weight and includes 200 rounds. The caliber is .223 Rem, and the ammunition is made in the USA.

.223 Remington ammunition 62 grain soft point

Federal TRU 223 ammo is custom made ammunition for the Urban Law Enforcement Officer in mind. It features a lead core Hi Shock Soft Point bullet which offers great stopping power and excellent penetration, a non corrosive primer and brand new never fired brass casing and nickel plated brass primer. This LE Tactical ammo can be reloaded up to 5 times for those shooters that reload their 223 ammo. Federal LE 223 Remington has a muzzle velocity of 3050 feet per second and a muzzle energy of 1281 ft lbs. This 223 Federal ammo is new production packaged in 20 round boxes and 200 rounds per case. Federal TRU ammunition is engineered using Mil-Quality specifications. Each Federal TRU cartridge is made using select mil-quality low flash powders that do not disrupt an officer's night vision. The TRU case and web are built using thicker brass, adding the extra strength needed for the high powered rifle. TRU primers are crimped for added holding ability. This virtually eliminates backed out primers that can lock-up your weapon. With TRU ammunition, potentially disastrous situations are greatly reduced. TRU bullets are specifically engineered ranging from fragmenting designs for tactical entry to deeper penetrating bullets for patrol.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This rifle ammunition is capable of incapacitating an individual from a distance and providing greater accuracy at a distance. This ammunition is used in the M4 rifle.

## *Military Equipment*

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**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

**Annual cost:** The annual cost of the equipment is minimal, and is dependent on the amount of training.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Hornady .308-caliber ammunition (for the Remington 700 Rifle)**

**(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

**Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Hornady .308-caliber ammunition

**Quantity:** The Berkeley Department currently possess approximately 1800 rounds of this ammunition.

**Capabilities:** This rifle ammunition is capable of incapacitating an individual or disabling an object in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation. This ammunition is specifically designed for accuracy at distances of 500 yards.

## *Military Equipment*

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**Lifespan:** Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

**Manufacturer's Description:** Millions of successful hunts have proven the accuracy and deadly effect of the famous Hornady<sup>®</sup> InterLock,<sup>®</sup> SST,<sup>®</sup> InterBond<sup>®</sup> and CX<sup>™</sup> bullets we load into Hornady<sup>®</sup> Custom<sup>™</sup> rifle ammunition.

Every round of Hornady<sup>®</sup> Custom<sup>™</sup> ammunition is hand inspected before packaging to ensure the highest levels of quality control. At Hornady,<sup>®</sup> we manufacture Custom<sup>™</sup> ammunition to give shooters and hunters the advantage of handloaded accuracy in a factory load.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** \_ This rifle ammunition is capable of incapacitating an individual from a distance of 500 yards and providing greater accuracy at a distance. This ammunition is used in the Remington 700 rifle.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$1 dollars per bullet; \$20 for a box of 20, plus shipping and handling. We currently possess 1800 rounds of BMG ammunition, \$1800.

**Annual cost:** The annual cost of the equipment is minimal, and is dependent on the amount of training.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

## *Military Equipment*

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### **Summit Ammunition.50-caliber BNG rounds of ammunition (for the Barrett Model 99)**

**(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Summit Ammunition.50-caliber BNG rounds of ammunition

**Quantity:** The Berkeley Department currently possess approximately 100 rounds of this ammunition.

**Capabilities:** This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

**Lifespan:** Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

**Manufacturer's Description:** This is 50 Cal. BMG Summit Ammunition 700gr. M-2 Armor Piercing Ammo. Summit Ammunition has been manufacturing 50 Cal. BMG for over 10 years and they manufacture a premium quality product. They are a fully licensed and insured manufacturer. This ammo is loaded with NEW Winchester brass, New USGI powder and Pulled Lake City M-2 AP bullets.

#### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

#### **FISCAL IMPACT:**

**Initial Cost:** The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 per bullet; \$60 for a box of 10, and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

**Annual cost:** The annual cost of the equipment is minimal.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

#### **LEGAL AND PROCEDURAL RULES:**

## *Military Equipment*

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Authorized use must comply with state, federal laws, and Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **ROBOTS:**

#### **ReconRobotics Recon Scout XT (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** ReconRobotics Recon Scout XT

**Quantity:** The Berkeley Police Department currently owns and maintains 2.

**Capabilities:** The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

**Lifespan:** Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

**Manufacturer's Description:** The Recon Scout XT is just eight inches long and weighs just 1.3 lbs., making it extremely easy to carry and throw. Moreover, deploying the Recon Scout XT takes just 5 seconds, and using it requires no special training. Simply pull the activation pin and throw the device through a doorway or over a wall, or drop it down a vertical shaft using a tether. Using a single joystick on the operator control unit (OCU), a tactical team leader or warfighter can then direct the device to move through the environment and send back real-time video. Equipped with an infrared optical system that automatically turns on when the ambient light is low, the Recon Scout XT can transmit video up to 100 feet indoors and 300 feet outdoors, day or night. The Recon Scout XT may also be specified in any of three transmitting frequencies, allowing police and military personnel to operate up to three robots in the same environment at the same time.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent

## *Military Equipment*

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encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

**Authorized Uses:** The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

### **FISCAL IMPACT:**

**Initial Cost:** The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

**Annual cost:** There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

**Training costs:** The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

**Maintenance costs:** There are no annual or storage costs.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 708 Robot Cameras.

### **TRAINING:**

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel who have familiarized themselves with the product manual, operations, procedures, and demonstrated competency in the product through hands on training, these trainings are often referred to as a train-the trainer training. The cost of training is staff time.

### **Andros Remotec HD-1 Hazardous Duty Robot (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Andros Remotec HD-1 Hazardous Duty Robot

**Quantity:** The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

**Capabilities:** Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it

## *Military Equipment*

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is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- (a) A spike to break glass and access vehicles or homes with potential explosive devices inside
- (b) An X-ray mount in order to remotely X-ray suspected explosive devices.
- (c) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- (d) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
- (e) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- (f) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

**Lifespan:** The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

**Manufacturer's Description:** The Remotec ANDROS fleet of hazardous duty unmanned vehicles is the preferred choice of first responders worldwide. The robust, mission-proven design of the ANDROS line keeps danger at a distance with:

- Simultaneous tool mounts for rapid response during dynamic missions (i.e. suits changing needs as the mission unfolds)
- A versatile array of two-way audio, video, advanced sensors, tools and controllers
- Easy maintainability for minimal downtime

Made in the USA and backed by world-class training and post-sale support, it's no wonder there are over 1,000 ANDROS robots deployed around the globe.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

**Authorized Uses:** Used to examine and possible destroy hazardous materials such as an explosive device.

### **FISCAL IMPACT:**

**Initial Cost:** Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

## *Military Equipment*

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**Annual cost:** There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

**Training costs:** Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

**Maintenance costs:** Remotec offers occasional maintenance and upkeep workshops free of charge.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 708 Robot Cameras.

### **TRAINING:**

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. All Berkeley Police Bomb Technicians are required to attend a federally mandated training that lasts approximately six weeks.

### **Less Lethal Launchers:**

#### **Penn Arms 40mm Single Launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Penn Arms 40mm Single Launcher

**Quantity:** The Berkeley Department currently owns and maintains 20.

**Capabilities:** The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**Lifespan:** The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**Manufacturer's Description:** A 40mm compact single-shot break-open frame launcher with a rifled barrel and folding stock. Features include: Double-action trigger, trigger lock push button and hammer lock safeties.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles

## *Military Equipment*

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allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

**Authorized Uses:** Use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **FISCAL IMPACT:**

**Initial Cost:** Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

**Annual cost:** Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**Training costs:** Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

**Maintenance costs:** Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

## *Military Equipment*

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Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

### **Milkor LTL Multi-launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Milkor LTL Multi-launcher

**Quantity:** The Berkeley Police Department currently owns and maintains 2.

**Capabilities:** The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**Lifespan:** The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

**Manufacturer's Description:** Developed with our partner company, Abrams Airborne Manufacturing, The 40mm Multi-Shot Less-Lethal Tactical Launcher (LTL) was manufactured with the needs of the modern tactical team at the forefront. The launcher is capable of firing a wide variety of 40mm LTL ammo.

#### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before

## *Military Equipment*

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such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

**Authorized Uses:** Use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **FISCAL IMPACT:**

**Initial Cost:** Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

**Annual cost:** Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**Training costs:** Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

**Maintenance costs:** Maintenance costs vary depending on use.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

### **FN 303 and FN Pava Impact Projectile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** FN 303 and FN Pava Impact Projectile

**Quantity:** The Berkeley Department currently owns and maintains 8 FN 303 less lethal launchers.

## *Military Equipment*

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**Capabilities:** The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

**Lifespan:** The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**Manufacturer's Description:** The FN 303® Less Lethal Launcher is constructed from durable lightweight polymer with comfortable ergonomics and an easy to operate safety. The FN 303® Launcher is equipped with both flip-up iron sights and an integrated MIL-STD-1913 top mounting rail for optical or electronic sights or other accessories. The lightweight polymer magazine holds 15 projectiles and offers a clear rear cover to allow the operator to instantly verify both the payload type and the number of projectiles remaining.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

**Authorized Uses:** Use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

## *Military Equipment*

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### **FISCAL IMPACT:**

**Initial Cost:** Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

**Annual cost:** Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**Training costs:** Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**Maintenance costs:** Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

### **Light/sound Diversionary Devices:**

**CTS 7290 Diversionary Device (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

**Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** CTS 7290 Diversionary Device

**Quantity:** The Berkeley Department currently owns and maintains 50.

**Capabilities:** When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

**Lifespan:** The lifespan of the CTS 7290 Diversionary Device is 5 years.

**Manufacturer's Description:** The CTS 7290 is the standard for diversionary flash-bang devices. The 7290 produces a 165-180 db and 6-8 million candela of light output. The patented design of

## *Military Equipment*

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the 7290, incorporates a porting system that eliminates movement of the body at detonation even if the top or bottom of the device should be in contact with a hard surface. In addition, internal adjustments have greatly reduced smoke output.

Flash Bangs are used by special tactical units during hostage rescue and high-risk warrants. It is an ATF-controlled Class-C explosive device that emits a bright light and thunderous noise to distract potentially dangerous individuals.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

**Authorized Uses:** The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

### **FISCAL IMPACT:**

**Initial Cost:** Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

**Annual cost:** See below training cost.

**Training costs:** Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

**Maintenance costs:** The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 353 Diversionary Devices.

### **TRAINING:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices.

### **Long Range Acoustic Device**

## *Military Equipment*

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### **The Long-Range Acoustic Device (LRAD)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** The Long Range Acoustic Device (LRAD)

**Quantity:** The Berkeley Department currently owns and maintains possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

**Capabilities:** Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

**Lifespan:** The lifespan for both LRADs is 25 years.

**Manufacturer's Description:** LRAD 100x In addition to being 20 – 30 decibels louder than bullhorns and vehicle-based P.A. systems, the LRAD 100X is also up to 6X louder and much more intelligible than other hailing devices of comparable size and weight. Live or recorded broadcasts from the portable LRAD 100X easily overcome engines, sirens and noisy crowds to ensure every message is heard and understood. The LRAD warning tone safely alerts attention to the voice messages that follow, establishes large standoff zones, and is the safer crowd control alternative to non-lethal and kinetic measures.

LRAD 450XL- The LRAD 450XL utilizes technology developed and patented\* by Genasys Inc. to provide the audio output of larger acoustic hailers almost twice its size and weight, while delivering the same outstanding vocal clarity inherent in all LRAD systems. The LRAD 450XL broadcasts powerful warning tones to command attention to the highly intelligible voice messages that follow, enabling operators to change behavior and enhance response capabilities with safe, scalable escalation of force. Lightweight and designed for use on tripods or mounted on vessels, vehicles, and Remote Weapon Stations (RWS), the LRAD 450XL is a highly effective, long range communication system in use around the world for public safety, law enforcement, maritime and defense applications.

#### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events

## *Military Equipment*

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- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

**Authorized Uses:** The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

### **FISCAL IMPACT:**

**Initial Cost:** The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

**Annual cost:** BPD has not incurred any additional cost to date for this equipment.

**Training costs:** Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

**Maintenance costs:** There are no maintenance or storage costs for this equipment.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 707 Long Range Acoustic Device.

### **TRAINING:**

Training is conducted by members of the Berkeley Police Department who have extensively reviewed the product manual, become knowledgeable and familiar in the operations and procedures of the LRAD. All trainers have proven demonstrated proficiency and competency in the product through hands on training, these trainings are often referred to as a train-the trainer training.

### **Mobile Command Vehicle**

## *Military Equipment*

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### **Mobile Command Vehicle (MCV)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** MCV is a 2003 Freightliner MT55

**Quantity:** The Berkeley Department currently owns and maintains 1 MCV, a 2003 Freightliner MT 55.

**Capabilities:** The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

**Lifespan:** This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

**Manufacturer's Description:** The 22' Freightliner MT55 P1200 is the biggest stepvan option for your delivery fleet, offering maximum capacity, accessibility and maneuverability. Built with a powerful Cummins 6.7L 200HP Diesel Motor, this route truck has folding lower shelves to optimize your cargo space and rear sonar for safety.

#### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4<sup>th</sup> of July, critical incidents or natural disasters.

**Authorized Uses:** This vehicle is used as a mobile command post for large scaled events.

#### **FISCAL IMPACT:**

**Initial Cost:** The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

**Annual cost:** There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

**Training costs:** Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

**Maintenance costs:** There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

#### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 811 Mobile Command Vehicle.

## *Military Equipment*

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**TRAINING:** Training is conducted by members of the Berkeley Police Department who have extensively reviewed the product manual, become knowledgeable and familiar in the operations of the 2003 Freightliner MT 55. All trainers have proven demonstrated proficiency and competency in the product through hands on training, these trainings are often referred to as a train-the trainer training. All operators have had behind the wheel practical training, wherein the operator drives various routes through the City of Berkeley with a trainer during training.

### **Chlorobenzylidene Malononitrile and Oleoresin Capsicum**

#### **Chlorobenzylidene Malononitrile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

##### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Chlorobenzylidene malononitrile (CS)

**Quantity:** The Berkeley Department currently owns and maintains Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

**Capabilities:** CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

**Lifespan:** CS and OC canisters expire in approximately 5 years.

**Manufacturer's Description:** Unable to locate from the manufacturer, provided by the subject matter experts. Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily

## *Military Equipment*

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temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**Authorized Uses:** Use must comply with local, state, federal laws, and BPD Special Order 2020-0007 (Policy 1107).

### **FISCAL IMPACT:**

**Initial Cost:** The cost for CS canisters ranges from \$20.00 to \$39.00 per unit.

**Annual cost:** See below cost of training.

**Training costs:** When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**Maintenance costs:** The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

### **Oleoresin Capsicum (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Oleoresin capsicum (OC)

**Quantity:** The Berkeley Department currently owns and maintains Inventory for OC canisters:  
Inventory for OC canisters:

## *Military Equipment*

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Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

**Capabilities:** A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

**Lifespan:** CS and OC canisters expire in approximately 5 years.

**Manufacturer's Description:** Unable to locate from the manufacturer, provided by BPD subject matter experts. Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**Authorized Uses:** Use must comply with local, state, federal laws, and BPD Special Order 2020-0007 (Policy 1107).

### **FISCAL IMPACT:**

**Initial Cost:** The cost for OC canisters ranges from \$36.00 to \$44.00 per unit.

**Annual cost:** See below cost of training.

**Training costs:** When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**Maintenance costs:** The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### **LEGAL AND PROCEDURAL RULES:**

## *Military Equipment*

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Authorized use must comply with state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### **TRAINING:**

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

### **Oleoresin Capsicum Spray (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Oleoresin capsicum (OC) spray

**Quantity:** The Berkeley Department currently owns and maintains Inventory for OC canisters:

Qty 23- First Defense MK-9 OC spray (13 ounces)

**Capabilities:** The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

**Lifespan:** Aerosol products eventually lose pressure over time. The lifespan the MK-9 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

**Manufacturer's Description:** The MK9 features an easy to use trigger handle, is intended for use in crowd management and will deliver 14 short bursts of OC at an effective range of 18-20 ft. This 1.3/% MC OC aerosol product utilizes a stream delivery method providing a target-specific, strong concentrated stream for greater standoff.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**Authorized Uses:** OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

### **FISCAL IMPACT:**

**Initial Cost:** The MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply

## *Military Equipment*

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or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

**Annual cost:** See below cost of training.

**Training costs:** Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**Maintenance costs:** All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

### **LEGAL AND PROCEDURAL RULES:**

Use must comply with local, state, federal laws, and BPD Special Order 2020-0007 (Policy 1107).

### **TRAINING:**

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

### **709.5 APPROVAL**

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

## *Military Equipment*

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### **709.6 COORDINATION WITH OTHER JURISDICTIONS**

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

#### **709.6.1 TEMPORARY USE IN EXIGENT CIRCUMSTANCES**

The Berkeley Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the acquisition requirements in BMC 2.100.040, however the Department must take the following actions:

- (a) Provide written notice of the acquisitions or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state, or federal law
- (b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and received approval, as applicable from the City Council pursuant to BMC 2.100.040
- (c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

### **709.7 ANNUAL REPORT**

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

### **709.8 COMMUNITY ENGAGEMENT**

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

### **709.9 MILITARY EQUIPMENT QUESTIONS**

Any member of the public may direct their questions regarding this policy and ordinance to a Sergeant in the Professional Standards Bureau at 510-981-5734 or 510-981-5974. Questions may also be directed to [police@cityofberkeley.info](mailto:police@cityofberkeley.info). Questions will be answered in a timely manner by a member of the Berkeley Police Department.

## *Military Equipment*

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### 709.9.1 MILITARY EQUIPMENT COMPLAINTS

Any member of the public may direct their complaints regarding this policy and any of the military equipment to Internal Affairs Bureau at 510-981-5706.

### **709.10 ASSOCIATED EQUIPMENT USE POLICIES**

The below links will direct to the respective use policies:

[300-Use of Force](#)

[303-Control Devices and Techniques](#)

[349-Tactical Rifle Operator Program](#)

[353-Flash/Sound Diversionary Devices](#)

[354-Precision Rifle Operator Program](#)

[428-First Amendment Assembly](#)

[607-Operations, Planning, and Deconfliction](#)

[707-Long Range Acoustical Device \( LRAD\)](#)

[708-Robot Cameras](#)

[811-Mobile Communications Vehicle \(MCV\)](#)

### **709.11 COMPLIANCE**

The Department's Audit and Inspection Sergeant will ensure that the Department members comply with this policy. The Audit and Inspection Sergeant will conduct an annual audit with the assistance from members of the Professional Standards Bureau. Any violations will be referred to the Internal Affairs Bureau and handled in accordance with General Order P-26 (Personnel Complaint Procedures). All instances of non-compliance will be reported to the City Council via the annual military equipment report.

The Police Accountability Board shall review and make recommendations to the City Council, with the same procedures and requirements of the Police equipment and Community Safety Ordinance, as described in Berkeley Municipal Code section 2.100.040.

## PROHIBITION ON TEAR GAS, PEPPER SPRAY, AND SMOKE: Special Order 2020-0007

### 1103.1 COUNCIL POLICY: PROHIBITIONS ON THE USE OF TEAR GAS, PEPPER SPRAY, AND SMOKE.

On June 9, 2020, The Berkeley City Council established an official City of Berkeley policy 1) prohibiting the use of tear gas by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, and 2) prohibiting the use of pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. Based on their actions, the following policies are now in effect.

### 1103.2 EFFECTIVE IMMEDIATELY AND UNTIL FURTHER NOTICE:

1. Tear Gas shall not be carried in the field or deployed in any way on any operation.
  - (a) This Order overrides all existing policies with regards to the use of tear gas, including but not limited to Policy 303.6 Tear Gas Guidelines, and Policy 428 First Amendment Assemblies.
2. The use of pepper spray or smoke for crowd control is prohibited during the COVID-19 pandemic, until such time as the City Council removes this prohibition, except as set forth in (c) and (d) below.
  - (a) The use of pepper spray during routine patrol duties is not affected by this prohibition, and is governed by Policy 303 and General Order U-2.
  - (b) The use of pepper projectiles (aka "Pava" rounds) is not affected by this prohibition, except for crowd control purposes, and is governed by Policy 303.
  - (c) General Order U-2 Use of Force, Section 20, still applies. Pepper spray may still be used in accordance with Council's existing policy.
    - i. Officers shall not use pepper spray as a crowd control technique to disperse or move a crowd. Oleoresin Capsicum (pepper spray) shall not be directed against a person or persons who are engaged in legal speech or other expression that is protected by the First Amendment, nor upon those committing unlawful acts by non-violent or passive resistant means, (e.g. sitting or lying down to block a street or doorway).
  - (d) General Order U-2, Use of Force, Section 18 remains in effect.

18 - In crowd situations, less-than-lethal force and/or chemical agents [including smoke] shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police

*PROHIBITION ON TEAR GAS, PEPPER SPRAY, AND SMOKE: Special Order  
2020-0007*

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personnel (e.g., [incendiary weapons, explosives] rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).

(a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.

(b) In the event a use of force as described in Section 23 of this Order occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.

(c) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g., the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

(d) Officers deploying pepper spray in a crowd situation shall attempt to limit collateral exposure to non-involved parties. Where there is probable cause to arrest for a crime, officers shall prioritize where practical the arrest of individuals upon whom pepper spray has been deployed.

This Order will remain in effect until it is rescinded or otherwise issued in the form of a policy.

Andrew R. Greenwood

Chief of Police

Issued: August 5<sup>th</sup>, 2020



Office of the City Manager

INFORMATION CALENDAR

July 14, 2026

To: Honorable Mayor and Members of the City Council

From: Zero Waste Commission

Submitted by: Steven Sherman, Chair

Subject: Zero Waste Commission Fiscal Year 2026-27 Work Plan

INTRODUCTION

The Zero Waste Commission (ZWC) advises the City Council on solid waste (“zero waste”) policy and goals, including refuse, composting, and recycling services, budgets, and other decisions relating to solid waste. The ZWC unanimously adopted the FY 2026-27 Work Plan on April 15, 2026.

CURRENT SITUATION AND ITS EFFECTS

The City is enacting important changes and improvements to its Zero Waste services and long-term plans, including:

- Continuing the process to design the re-build of the Solid Waste & Recycling Transfer Station;
- Implementing various local ordinances and state laws to reduce the generation of discarded products, packaging and materials, and to increase the composting of food scraps; and
- Developing a division-level strategic plan for zero waste.

The City’s long standing goals regarding zero waste include:

1. Provide state-of-the-art, well-maintained publicly-owned infrastructure, amenities, and facilities; and
2. Serve as a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

The following topics have shaped Zero Waste in the City and are monitored closely by the ZWC, including the goals for the upcoming fiscal year.

Zero Waste Strategic Plan: A draft plan has been completed by the City’s consultants. Whereas new programmatic and policy elements of the draft plan are relatively modest in scope and cost, infrastructure upgrades to the Transfer Station, as currently conceived by staff and its consultant, are very substantial in scope and estimated cost.

SB 1383 - Food Recovery and Organics Diversion: This State of California law requires local governments to reduce the landfilling of compostable materials, to reduce climate change effects associated with methane emissions resulting from the landfilling of such items. Implementation of State Law SB 1383 requires the City and subsequently the Zero Waste Division to provide education and outreach to residents and businesses, monitor contamination, manage an edible food recovery program, and many more activities.

Zero Waste Ordinances: The City has adopted various zero waste ordinances over time. Now that their effects are being observed in practice, some of them may merit modifications to improve their effectiveness. Many Zero Waste ordinances and programs have been evaluated for effectiveness in the City of Berkeley in the draft Zero Waste Plan.

Accepted Materials in City Collection Programs: Periodically, the list of accepted materials in City collection programs deserves review. This is especially prudent with the adoption of SB 54, which becomes effective January 1, 2026. Review of accepted materials lists for the City's recycling and composting programs will be required. Additionally, consideration of harder-to-recycle materials potentially could be added to City collection services, such as batteries.

Zero Waste Program Oversight: Two primary topics for consideration involve the Commission's role in advising Council on whether the content of draft competitive solicitations for zero waste services (e.g., compostables, recyclables, refuse, reusables, household hazardous waste, etc.), and review of any draft zero waste rate adjustments, are consistent with the City's zero waste-related goals, services, and policies.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Potential to reduce the disposal of products, packaging, and other materials via waste reduction, re-design, reuse, repair, recycling, and composting, with positive effects on resource conservation, climate change mitigation, and local economic development.

#### POSSIBLE FUTURE ACTION

The ZWC may provide recommendations to the City Council from time to time regarding topics contained in this report.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The work of the Zero Waste Commission does not have any fiscal impact on the City directly. However, recommendations, including the City's draft Zero Waste Strategic Plan will contain numerous recommendations that have potential fiscal impacts, particularly infrastructure upgrades, compliance requirements, and program service expansion.

CONTACT PERSON

Julia A. Heath, Recycling Program Manager, Public Works, (510) 981-6357

Attachments:

1: Zero Waste Commission Work Plan Matrix



Zero Waste Commission

### FISCAL YEAR 2026-27 WORK PLAN

The following goals and activities for the ZWC have been identified for fiscal year (FY) 2026-27 and are provided in Table 1, below:

Goal	Resources	Program Activities	Outputs	Outcomes
Advocate for City Council to adopt the Zero Waste Strategic Plan	Consulting team, City staff, other commissions	Work to build momentum towards adoption of the zero waste plan and rates to support zero waste activities. Distribute information to increase public input and build consensus with other commissions	Articulation of the benefits of and risks of non-adoption to Councilmembers and other identified stakeholders	Support for the adoption of a comprehensive, detailed strategic plan and funding to achieve City's zero waste goals
Support community engagement regarding zero waste in Berkeley	City Staff, Ecology Center, UC Berkeley/Cal Zero Waste, BUSD, the public	Presentations at ZWC by practitioners. Join other Commission meetings and zero waste events in the community	Foster public support for zero waste activities and programs. Have attendance by a least one commissioner at 10 events during the year	Foster zero waste goals and awareness in the community
Strengthening existing and adopting new zero waste ordinances outlined in the draft zero waste plan	City Staff, consulting team, Ecology Center, UC Berkeley/Cal Zero Waste, BUSD	Through subcommittees, and then the commission as a whole, evaluate and recommend ways to strengthen existing City ordinances and to support adoption new ones that further efforts to achieve zero waste goals	Staff reports, draft ordinance language, and recommendations to Council as needed	Support for strengthened and new zero waste ordinances

Review and assessment of accepted materials: inclusion or exclusion in City collection services	City staff, Urban Ore, CCC, Ecology Center, CAW, NCRA, CPSC, StopWaste, others	Presentations at ZWC by specialists. Review list of accepted materials, and recommend changes, particularly with the onset of SB 54	Recommendations to Council as needed	To help Council have an accurate understanding of City's collection services and the extent to which they align with the City's goals
Monitor outside resources and funding opportunities	City Staff, StopWaste, CalRecycle, California Product Stewardship Council	Presentations by outside organizations to help ZWC track and understand proposed legislation, for the purpose of advising Council	Recommendations to Council as needed	To help establish effective, fiscally prudent laws that support City's zero waste goals
Preliminarily assess organization and oversight considerations regarding the City's Zero Waste Program	City staff, consulting team, other commissions, other communities	Research other communities' practices for: (a) public oversight of rate-setting processes; (b) administrative structure for leading zero waste programs	Preliminary assessment of organization and oversight considerations regarding the City's Zero Waste Program	Hold preliminary discussions with City Councilmembers about preliminary findings and potential opportunities



Upcoming Worksessions and Special Meetings	
Scheduled Dates	
July 14 (4pm)	ODPA Annual Report

Unscheduled Presentations and Special Meetings
1. None


Future Information Reports
<ol style="list-style-type: none"><li>1. Affordable Housing Fee Feasibility Study</li><li>2. Berkeley Fire Department Annual Report</li></ol>

	<p><b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b></p>
1.	<p><b>12. Social Justice Implications of Proposed Use of Controlled Weapons and Other Policing Tools</b> <i>(Referred to the Agenda &amp; Rules Committee for scheduling on April 21, 2026)</i>  <b>From: Peace and Justice Commission</b>  <b>Recommendation:</b> 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.  <b>Financial Implications:</b> None  Contact: Tasha Tervalon, Commission Secretary, (510) 981-7000</p>

CITY CLERK DEPARTMENT			
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL			
Address	Board/ Commission	Appeal Period Ends	Public Hearing
<b>NOD – Notices of Decision</b>			
2620 Telegraph Ave (add alcohol retail sales to existing general retail store)	ZAB	6/29/2026	
<b>Public Hearings Scheduled</b>			
<b>Remanded to ZAB or LPC</b>			
<b>Notes</b>			
ZAB: Zoning Adjustments Board			
LPC: Landmarks Preservation Commission			

6/25/2026






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