BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING

MONDAY, AUGUST 31, 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: 165 782 0993**. 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. 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: July 13, 2026**
2. **Review and Approve Draft Agenda:**
   a. 9/15/2026 – 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

7. **Discussion of possible changes to the 2027 City Council meeting schedule**

Unscheduled Items

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

Items for Future Agendas

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

Adjournment – Next Meeting Monday, September 14, 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, (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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BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING MINUTES

MONDAY, JULY 13, 2026
2:30 P.M.

2180 Milvia Street, Berkeley, CA 94704
Teleconference Location – 1027 Bancroft Way, Berkeley, CA 94710

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: 165 288 1856**. 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. 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.

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Roll Call: 2:34 p.m. All present.

Public Comment: 8 speakers

Review of Agendas

1. **Approval of Minutes: June 29, 2026**
   Action: M/S/C (Humbert/Taplin) to approve the minutes of 6/29/2026.
   Vote: All Ayes.

2. **Review and Approve Draft Agenda:**
   a. 7/28/2026 – Regular City Council Meeting
   Action: M/S/C (Humbert/Taplin) to approve the agenda of 7/28/2026 with the changes noted below.
   - *Item 13 Dell Computers (City Manager) – item removed from the agenda*
   - *Item 22 Adult-Oriented Businesses (Tregub) – moved to Action Calendar*
   - *Item 26 Excused Absence (Ishii) – moved to Consent Calendar*
   - *Item 27 Endangerment Finding (Ishii) – moved to Consent Calendar*
   - *Item 28 Commercial Districts (Tregub) – moved to Consent Calendar*

   Order of Action Calendar
   Item 24 Housing In-Lieu Fee
   Item 25 Hopkins Street Paving
   Item 22 Adult-Oriented Businesses
   Vote: All Ayes.

3. **Adjournments In Memory** – None

Scheduling

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

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

6. **Land Use Calendar** – received and filed

Action Calendar

7. **Discussion of possible changes to the 2027 City Council meeting schedule**

   Action: Discussion of adjusting the Council summer recess to occur in July instead of August. Item continued to the August 31, 2026 meeting.

Unscheduled Items

8. **Review Policy Committees Structure**

9. **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 3:06 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on July 13, 2026.

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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.

DRAFT AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, September 15, 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

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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.*

1. Pledge of Allegiance

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. Grant Application: California Strategic Growth Council, Community Resilience Center (CRC) Planning Grant for Civic Center
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or their designee to: 1. Submit a grant application under the California Strategic Growth Council's Community Resilience Centers (CRC) Program for a Planning Grant for an amount up to $500,000 for planning activities to prepare the two historic buildings in Berkeley's Civic Center, the Maudelle Shirek Building ("MSB" or "Old City Hall") and the Veterans Memorial Building ("VMB") for future structural upgrades including capital improvements and seismic retrofits; 2. and subject to its award, to accept the grant, execute any resultant revenue agreements and amendments, accept any additional funding allocations from the CRC Program and designate the City Manager or their designee as the applicant's authorized agent.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

Consent Calendar

2. Contract: Downtown Berkeley Association for Addison Street Catenary Lighting
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to: 1. Enter into a sole source contract and any amendments with the Downtown Berkeley Association (DBA) for the City to provide $150,000 to the DBA for actual incurred costs associated with the Addison Street Catenary Lighting project to support Downtown revitalization and placemaking in the Downtown Addison Street Arts District, and 2. Advance the city's approval to utilize city property as part of this effort (namely the connection/anchor points for the support guide wires for the lighting on the Addison Street side of the Center Street Garage building located at 2025 Center St).
Financial Implications: See report.
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

3. Loan Administration Board Dissolution; Repealing BMC Chapter 3.72
From: City Manager
Recommendation:
1. Adopt a Resolution authorizing the City Manager or their designee to assume direct administrative and operational oversight of the Revolving Loan Fund (RLF) program and the RLF Administrative Plan, upon dissolution of the Loan Administration Board (LAB); and
2. Adopt first reading of an ordinance repealing Berkeley Municipal Code Chapter 3.72. Loan Administration Board enabling legislation, thereby dissolving the Loan Administration Board.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 15, 2026
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: $25,822,884 - Various Funds
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

5. Contract No. 32200227 Amendment: Fire Aside for Wildfire Resilience Software
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32200227 with Fire Aside, LLC for defensible space inspection and community chipper management increasing the amount by $150,000 for an amended total amount not to exceed $410,000 and maintaining the same term which ends on May 17, 2028.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473

6. Purchase Orders for Bauer Compressors Inc. for Firefighting Supplies and Equipment
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute annual purchase orders using a piggyback contract and any amendments with Bauer Compressors Inc. using the National Purchasing Partners (NPP) contract No. PS26090 in an amount not to exceed $1,579,472 for Firefighting supplies and equipment from October 1, 2026 through March 4, 2030, with an option to extend one (1) year to Mar 4, 2031.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473

7. Purchase Orders: Stryker Sales for Gurneys, Stair Chairs, and Mechanical CPR Units
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or their designee to utilize Sourcewell Contract No. 041823 to issue purchase orders and any amendments to Stryker Sales LLC for the lease of ten gurneys, ten powered gurney fastener systems (power load system), and ten evacuation chairs (stair chair), and twelve cardiopulmonary resuscitation (CPR) units for Fire Department response vehicles.
Financial Implications: $1,591,355 - Various Funds
Contact: David Sprague, Fire, (510) 981-3473

8. Contract No.32300207 Amendment: Easy Does It for Accessible Wheelchair Van Services for Seniors & the Disabled
From: City Manager
Recommendation: Adopt a Resolution rescinding Resolution No. 72,259-N.S and authorizing the City Manager, or designee, to amend Contract No. 32300207 with Easy Does It increasing the amount by $57,000 for the period of July 1, 2026, through June 30, 2027, for a total contract amount not to exceed $307,000. These services support accessible wheelchair van services to customers of the Aging Services Division’s Berkeley Rides for Seniors & the Disabled program.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

Consent Calendar

9. Revenue Contract: MARU for Aging Services - Information and Assistance Fiscal Years 2027 - 2030
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to accept grant funding and execute any resultant revenue agreements and amendments with MARU (formally known as Korean Community Center of the East Bay), an East Bay non-profit organization. This funding will support Information and Assistance Services for Berkeley seniors from Fiscal Year 2027 through Fiscal Year 2030 (FY 2027 - FY 2030) in the projected annual amount of $169,347.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

10. Revenue Contracts: Aging Services - Nutrition Programs Fiscal Years 2027 - 2030
From: City Manager
Recommendation: Adopt two Resolutions authorizing the City Manager or designee to receive grant funding and execute any resultant revenue agreements and amendments with Alameda County to provide congregate and home-delivered meals for seniors for Fiscal Year 2027 through Fiscal Year 2030 (FY2027-FY2030):
a. Congregate Meals in a projected annual amount of $696,800; and
b. Home Delivered Meals in a projected annual amount of $860,515.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

11. Shattuck Senior Homes Loan Modification Request
From: City Manager
Recommendation: Adopt a Resolution approving the following actions to modify two existing Housing Trust Fund (HTF) loans for Shattuck Senior Homes, located at 2425 Shattuck Avenue, by: 1. Combining the outstanding principal balances of the two existing loans into one new City loan in the amount of $970,603 plus accrued interest. 2. Reducing the interest rate from 6% to 3% simple interest. 3. Extending the loan maturity date by 55 years to September 1, 2082. 4. Waiving the HTF Guidelines requirement to restrict 20% of units at 30% Area Median Income (AMI) and maintaining affordability requirements at 50% and 60% AMI. 5. Extending the Regulatory Agreement so that it is coterminous with the new loan maturity date of September 1, 2082. 6. Authorizing the City Manager or designee to execute all original or amended documents or agreements to effectuate these actions, including amendments to the existing loan agreements.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

Consent Calendar

12. Grant Application: Safe Routes to Transit and Bay Trail Program (SR2TBT)
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or his designee to submit a grant application to the Metropolitan Transportation Commission's Regional Measure 3 Safe Routes to Transit and Bay Trail Program (SR2TBT) for up to $25,000,000 for construction of portions of the landside elements of the Berkeley Water Transportation Pier-Ferry Project.
Financial Implications: $25,000,000 (Revenue)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

13. Supporting a Neighborhood Decarbonization Pilot Project in Berkeley
From: Environment and Climate Commission
Recommendation: The Berkeley Environment and Climate Commission recommends that the City Council adopt the attached resolution Supporting a Neighborhood Decarbonization Pilot Project in the City of Berkeley, which would: -Express the City's formal support for a neighborhood decarbonization pilot in Berkeley under Senate Bill 1221 (2024), with the goal of modeling equitable whole-home electrification for a neighborhood zone; and -Commit the City to being an active partner in pilot implementation, asking the City Manager to designate at least one staff member to participate in regular coordination meetings and support collaboration across relevant City departments; and -Affirm the City's intent to work collaboratively with PG&E, community organizations, Community Choice Aggregators, public health advocates, workforce development partners, and regional agencies to advance a pilot and help secure resources for its success.
Financial Implications: See report
Contact: Sarah Moore, Commission Secretary, (510) 981-7400

14. Whistleblower Program Special Report: Evaluation of Workplace Relationship Policies
From: Auditor
Recommendation: We recommend that City Council receive this report and direct the City Manager to implement Recommendations 1 and 2 consistent with Management's Response. We further recommend that City Council refer Recommendation 3 to the Agenda and Rules Committee for consideration of whether to pursue adoption of nepotism and cronyism provisions in the Berkeley Municipal Code.
Financial Implications: See report
Contact: Jenny Wong, Auditor, (510) 981-6750

Council Consent Items

15. District 1 Funding Allocation to Support the Gilman District Merchants Association to Promote Longterm Sustainability and Area Improvements
From: Councilmember Kesarwani (Author)
Recommendation: Allocate $65,000 from the FY 2026-27 office budget of District 1 Councilmember Rashi Kesarwani to provide a one-time capacity building grant to support the Gilman District Merchants Association (GDMA) to promote economic development, district-wide improvements and long-term sustainability of the Gilman District Street Fair (GDSF).
Distribution of funds should be approved by the Gilman District Coordinating Committee, the representative advisory board established to comply with the fiscal agent, the Berkeley Chamber of Commerce. Use of funds should prioritize: -Salary/stipend for part-time director of the GDMA; Stipends for key volunteers for the Gilman District Street Fair; -Business Administration for the GDMA outside of salaries including: -Publicity, promotion, membership building and website maintenance for the GDMA; -Event planning and execution of GDMA networking and social gatherings; -Public Safety Enhancement Grants to local businesses.
Financial Implications: $65,000
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

16. Resolution in Support of AB 1761 (Rogers) — Electricity: Calculation Methodology: Data Disclosure
From: Councilmember Tregub (Author)
Recommendation: Adopt a resolution in strong support of Assembly Bill (AB) 1761 (Rogers), which would improve transparency in the calculation of the Power Charge Indifference Adjustment (PCIA) and other nonbypassable charges, and distribute copies to Governor Gavin Newsom; Senate President pro Tempore Monique Limón, Senate Utilities, Energy, and Communications Committee Chair Benjamin Allen and Senator Jesse Arreguín; Assembly Speaker Robert Rivas, Assembly Utilities and Energy Committee Chair Cottie Petrie-Norris and Assemblymembers Chris Rogers and Buffy Wicks; and Senator Steven Bradford, Chair of the Senate Energy, Utilities and Communications Committee to support its passage.
Financial Implications: Staff time
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 Calendar

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.

17. Amendments to Berkeley Municipal Code (BMC) Section 23.304.100 (Site Features in Residential Districts) to require undergrounding of electrical transformers on private land
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion adopt the first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 23.304.100 (Site Features in Residential Districts) to prohibit the above-ground installation of electrical transformers serving new residential, commercial, and mixed-use projects grade on private property, consistent with the Planning Commission's recommendation.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar – Old Business

18a. 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 *(Continued from July 14, 2026) (Item Contains Supplemental Material) (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

18b. Social Justice Implications of Proposed Use of Controlled Weapons and Other Policing Tools *(Continued from July 14, 2026)*

From: Peace and Justice Commission

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

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

Financial Implications: None

Contact: Tasha Tervalon, Commission Secretary, (510) 981-7000

Action Calendar – Policy Committee Track Items

19. Referral for an Information Report Assessing all Housing Related Impact, Development and Local Parcel Tax Fees to Provide Guidance and Better Understand the True and Total Costs of Developing Housing of All Types in the City of Berkeley

From: Councilmember Kesarwani (Author)

Recommendation: Referral to the City Manager to direct Planning staff to prepare a comprehensive housing fee study to be presented to Council as an information report that would:

1. Collect Fee and Parcel Tax Data from Berkeley and other cities to create a housing production comparison matrix. Information should include a summary of categories, amounts, and bases for calculating impact fees, other development fees, and parcel taxes in all cities in the matrix; and
2. Calculate local fee and parcel tax costs for housing development prototypes. Information should include the total fee burden applicable to several multifamily housing prototypes (examples could include fourplex/town homes; 10 unit small multifamily; 8-story midrise; 18-story high-rise) and estimate each selected jurisdiction's approximate applicable amount of impact fee, other development fee, and parcel taxes for the respective prototypes.

Financial Implications: Staff time

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

20. Zoning Ordinance Modification for Manufacturing Research and Development (M-RD) District

From: Councilmember Kesarwani (Author)

Recommendation: Referral to the City Manager and Planning Commission to amend Berkeley Municipal Code (BMC) Chapter 23.206.020 to allow for a reduced level of discretion for Vehicle Repair and Service in the Manufacturing Research and Development (M-RD) District.

Financial Implications: See report

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

21. Resolution in opposition to the handling, storage, and transport of coal and petroleum coke in the San Francisco Bay Region, urging stringent regulation of such facilities by the Bay Area Air District, and in support of Assembly Bill (AB) 40

From: Councilmember Tregub (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Taplin (Co-Sponsor)

Recommendation: Adopt a resolution opposing the handling, storage, and transport of coal and petroleum coke in the San Francisco Bay Region, urging stringent regulation of such facilities by the Bay Area Air District, and in support of Assembly Bill (AB) 40.

Financial Implications: Staff time

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

22. Referral to the City Manager: RENAISSANCE (Revitalizing Enterprise and Neighborhoods through Activation, Investment, Safety, Streamlining, Accessibility, Networking, Collaboration, and Equity) – Part 2: Commercial Vacancy Blight Prevention and Mitigation
From: Councilmember Tregub (Author)
Recommendation: Commercial Vacancy Blight Prevention and Mitigation
Refer to the City Manager and City Attorney the development of an integrated strategy to prevent and reduce unmitigated ground-floor retail vacancies and blight, increase activation, and support the vitality and resilience of local businesses and other community-serving uses in Berkeley's Commercial Districts.
Recommendations include but are not limited to developing regulations around the following solutions:
1. Subdivision of Larger Storefronts.
Develop policies that encourage the conversion or subdivision of larger storefront commercial spaces to allow for more diverse business and community uses.
2. Flexible Mixed-Use Occupancy.
a. Review Berkeley's existing zoning regulations for live/work, maker, creative, and related uses to identify regulatory barriers to the flexible use of underutilized commercial storefronts and modify the Zoning Ordinance and establish or update performance standards where necessary to address such barriers.
b. Explore performance standards to ensure that live/work, maker, and other creative uses help activate and enhance the vibrancy of the adjacent neighborhood.
3. Financial Assurances Tied to Property Maintenance and Site Conditions.
To the extent permissible under state law, develop regulations requiring, as a condition of applicable development permits, performance bonds or other financial assurances sufficient to ensure appropriate property maintenance and site conditions if an approved development project is substantially delayed, suspended, or abandoned.
4. Cold Shell Prevention.
a. Explore a regulatory framework to prevent premature deactivation of tenant-ready commercial spaces (commonly referred to as "cold shelling") in buildings planned for demolition by considering indicators of project readiness, which could include demonstrated financial capacity, evidence that a portion of project funding is secured, and other relevant factors are considered.
b. Require a permit for the removal or decommissioning of utility hook-ups as part of building safety and habitability standards, to prevent practices that create and perpetuate prolonged vacancy and disinvestment.
5. Warm Shell Development.
Establish requirements and/or incentives to ensure that ground floor retail spaces in new developments are delivered with basic utility connections (commonly referred to as "warm shells"), including utility and electricity hookups, when those services are available and have been connected to the rest of the building.
6. Shared Commercial Facilities.
Explore and, where feasible, facilitate the creation of customer-accessible shared restroom facilities serving multiple ground-floor commercial spaces or buildings, including through zoning allowances, coordinated development standards, and

incentives. These should emphasize cost-neutral or revenue-supporting implementation approaches, such as integration into private development projects, public-private partnerships, or maintenance models funded by participating property owners, while ensuring compliance with applicable building, accessibility, and public health requirements.
7. Demonstration of Utility-Related Delays.
Where delays in utility approvals or service connections are cited, require developers to provide reasonable documentation from utility providers demonstrating that such delays are outside of the developer's direct control. Explore opportunities for improved coordination with utility providers and City processes to help mitigate such delays and support the timely delivery of usable ground floor commercial space.
8. Utility Equipment Undergrounding.
Develop regulations requiring large new residential and commercial mixed-use developments to locate transformers and other large utility equipment below grade, to the extent feasible and consistent with applicable utility requirements.
Financial Implications: See report
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

Public Comment – Items Not Listed on the Agenda

Adjournment

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Environment and Climate Commission

CONSENT CALENDAR
September 15, 2026

To: Honorable Mayor and Members of the City Council

From: Berkeley Environment and Climate Commission (ECC)

Submitted by: Alison LaBonte, Chairperson, ECC

Subject: Supporting a Neighborhood Decarbonization Pilot Project in Berkeley

RECOMMENDATION

The Berkeley Environment and Climate Commission recommends that the City Council adopt the attached resolution Supporting a Neighborhood Decarbonization Pilot Project in the City of Berkeley, which would:

- Express the City's formal support for a neighborhood decarbonization pilot in Berkeley under Senate Bill 1221 (2024), with the goal of modeling equitable whole-home electrification for a neighborhood zone; and
- Commit the City to being an active partner in pilot implementation, asking the City Manager to designate at least one staff member to participate in regular coordination meetings and support collaboration across relevant City departments; and
- Affirm the City's intent to work collaboratively with PG&E, community organizations, Community Choice Aggregators, public health advocates, workforce development partners, and regional agencies to advance a pilot and help secure resources for its success.

FISCAL IMPACTS OF RECOMMENDATION

Adoption of this resolution does not require a new appropriation. The primary fiscal commitment is staff time for one City staff member to participate in coordination meetings with PG&E and community partners.

Under SB 1221, essential pilot costs, including zero-emission equipment and installation for participating properties, are funded through avoided gas infrastructure replacement costs, and the resolution conditions Berkeley's participation on the pilot being no additional cost to participating customers. The fiscal opportunity for Berkeley securing an SB 1221 pilot is significant; potentially over $20,000 of utility funds per household are spent to switch the household to a zero-emission alternative from the avoided cost of replacing gas pipeline at a cost of $3 million per mile.[1]

[1] California state Senator Dave Min (D), SB 1221's author, stated "pipeline replacements... can cost ratepayers over $3 million per mile" during an April 2024 hearing in Sacramento, available at

CURRENT SITUATION AND ITS EFFECTS

Senate Bill 1221, signed into law in 2024, directs the California Public Utilities Commission (CPUC) to establish a voluntary zonal building decarbonization program. Under SB 1221, a gas utility may, instead of replacing a gas line that is due for replacement, use the money saved to offer participating properties zero-emission alternatives such as the electrification of all properties served by that line. Up to 30 neighborhood pilot projects may be designated statewide.[2]

The CPUC sets the following parameters: PG&E may receive approval for up to 14 of the 30 statewide pilot slots (7 in the first application period and 7 at the second submission deadline); PG&E may submit up to three additional proposals in anticipation of attrition; the first application deadline is April 1, 2027; and applications must provide supporting evidence that it is reasonable to expect the required consent from at least 67% of property owners with natural gas service within the proposed pilot boundary.[3]

Berkeley is a strong candidate for one of these pilot slots. The CPUC has already designated several Berkeley census blocks as initial priority neighborhood decarbonization zones in an earlier decision, as shown on PG&E's SB 1221 map portal.[4,5] Because Berkeley has among the strongest building electrification policies in the state, Berkeley residents are more likely than those in other communities to understand and embrace electrification. Resident support of a pilot project over the 67% consent threshold is likely, and would put an application to PG&E for a pilot in the City of Berkeley in a strong position.

SB 1221 requires the Commission to establish a preference for pilot projects that provide prevailing wage and use high road job programs. Berkeley also recognizes that the clean energy transition must deliver equitable economic opportunity alongside emissions reductions. Berkeley, through the Just Transition Residential Electrification Pilot Program completed in July 2026, piloted advancing high-road, family-sustaining jobs in the residential building decarbonization sector.

PG&E is expected to begin active engagement with local governments and community-based organizations following the CPUC's final decision issued July 10, 2026. Cities that have demonstrated institutional commitment through formal resolutions and designated staff contacts will be better positioned to shape pilot design and secure

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https://calmatters.digitaldemocracy.org/hearings/257885#t=1052&f=097d5bea8096d67ab0da80e4017d8cf2

[2]California Public Utilities Commission Decision (D.) 26-07-030 Establishing Application Process for SB1221 Neighborhood Decarbonization Pilot Program issued June 9, 2026, on Rulemaking 24-09-012 available at https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=610760591

[3]https://www.cpuc.ca.gov/industries-and-topics/natural-gas/SB-1221-implementation

[4]California Public Utilities Commission Decision 25-12-042 Designating Initial Priority Neighborhood Decarbonization Zones on Rulemaking 24-09-012 available at https://apps.cpuc.ca.gov/apex/f?p=401:56::::RP,57,RIR:P5_PROCEEDING_SELECT:R2409012

[5]https://sb1221.pge.com/

selection. San Francisco took this step in December 2025, when its Board of Supervisors unanimously adopted a resolution affirming support for an SB 1221 pilot and committing City staff to coordination.[6]

At the July 22, 2026 meeting, the Commission took the following action:

Action: M/S/C (Tahara/Kesselman) to approve the SB 1221 Zonal Decarbonization Pilot Recommendation and Resolution for Council with revisions in the July 22, 2026, meeting packet.

Vote: Ayes – Ranney, LaBonte, Tahara, Mahmoudian, Kesselman, Binns, Brown, Athanasiou; Noes – None; Abstain – None; Absent – Syed.

BACKGROUND

Berkeley has been a national leader in building decarbonization for over a decade, passing a first-in-the-nation ban on natural gas in new construction in 2019. In 2021, Council adopted the Berkeley Existing Buildings Electrification Strategy, which explicitly identified neighborhood-scale electrification as a key implementation pathway[7]. A successful SB 1221 pilot would be a direct expression of that strategy.

SB 1221 addresses a structural challenge in the transition away from gas: the cost of maintaining aging gas infrastructure for a shrinking customer base. By allowing utilities to use avoided gas line replacement costs to fund electrification of all properties on a given line, SB 1221 offers a pathway to managed, cost-effective decommissioning of gas infrastructure, as an alternative to indefinite maintenance.

Today, neighborhood-scale pilots in California require unanimous consent. The lower 67% threshold under SB 1221, combined with Berkeley's electrification-aware population, brings neighborhood scale electrification well within the realm of possibility.

Community engagement will be essential. Broad-based outreach, particularly to renters, lower-income households, and residents less familiar with electrification technologies, will be necessary to ensure the pilot is equitable and the consent process genuinely informed. The City's commitment to staff coordination is a prerequisite to this work happening well.

[6]San Francisco Board of Supervisors Resolution No. 590-25 (File No. 251192), adopted December 9, 2025. https://sfgov.legistar.com/View.ashx?M=F&ID=15043538&GUID=CE645F46-8E6A-422C-A60A-3163C32259DC

[7]https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Existing-Buildings-Electrification-Strategy.pdf

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

A successful neighborhood decarbonization pilot in Berkeley would:

- Meaningfully reduce building-sector greenhouse gas emissions across a full neighborhood zone, advancing the City's 2045 carbon neutrality goal;
- Improve indoor air quality by eliminating gas combustion pollutants — nitrogen oxides, carbon monoxide, and others linked to respiratory illness and asthma — at the point of origin, particularly benefiting children, the elderly, and other vulnerable residents;
- Reduce methane leak risk and system-wide maintenance costs by decommissioning aging gas lines rather than replacing them;
- Improve climate resilience, as all-electric homes with modern heat pumps better maintain comfort during extreme heat events; and
- Create local workforce opportunities for trained electrification contractors in Berkeley and the East Bay.

The pilot would also demonstrate to the state and other cities that neighborhood-scale decarbonization is achievable and replicable.

Equity Considerations

Because the resolution conditions Berkeley's participation on the pilot incurring no additional costs to participating customers, whole-home electrification under the pilot reaches households that could not otherwise afford heat pumps, necessary electrical upgrades, stove, pans compatible with induction stoves, and appliance replacement. This will deliver improved home comfort, healthier indoor air, and modern all-electric service regardless of income.

Furthermore, retiring entire gas lines, rather than removing scattered geographically dispersed affluent households from gas service, reduces the total miles of gas infrastructure requiring repair, maintenance, and eventual replacement. Every decommissioned line shrinks the cost base that all remaining gas customers must fund. A neighborhood-scale pilot therefore delivers meaningful equity benefits wherever in Berkeley it is located.

Equity is embedded in pilot selection by statute. Public Utilities Code Section 662(a), subsections (1) through (4), directs the CPUC to consider factors including the presence of disadvantaged or low-income communities in high- or low-temperature climate zones that disproportionately lack cooling or heating; the presence of environmental and social justice communities as defined in the CPUC's Environmental and Social Justice Action Plan; the availability of supportive local government or community partners; and the concentration of gas distribution line replacement projects. The City does not need to construct its own site-selection criteria — the statutory framework ensures equity factors are weighed in every application. Berkeley's most valuable contribution is to maximize the one factor squarely within its control: demonstrating a supportive local government, ready to partner.

RATIONALE FOR RECOMMENDATION

1. Timing is critical. The Commission recommends that Council act swiftly to pass this resolution. PG&E is expected to begin active collaboration with local governments and community organizations as early as July 2026, following the CPUC's decision on SB 1221 implementation issued July 10, 2026. A resolution adopted now positions Berkeley to participate with certainty.
2. Berkeley is uniquely positioned to succeed. Existing electrification policy, CPUC-designated candidate census blocks, and a resident population with high electrification awareness give Berkeley a strong potential for exceeding the 67% consent threshold.
3. Staff designation is the minimum necessary commitment. Without a designated City contact, PG&E and community organizations lack a consistent partner for the engagement and planning work that must precede a pilot application. Staff support is the foundation on which everything else is built.

ALTERNATIVE ACTIONS CONSIDERED

n/a

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission’s Report. This recommendation is consistent with the Berkeley Existing Building Electrification Strategy (2021) and Office of Energy and Sustainable Development work.

CONTACT PERSON

Sarah Moore, Commission Secretary, (510) 981-7400
Alison LaBonte, Chairperson, ECC

Attachments:
1: Resolution

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

SUPPORTING A NEIGHBORHOOD DECARBONIZATION PILOT PROJECT IN BERKELEY

WHEREAS, the City of Berkeley has long recognized that climate change poses an existential threat to public health, environmental quality, and community resilience, and has committed to achieving carbon neutrality by 2045; and

WHEREAS, natural gas combustion in buildings is a significant source of greenhouse gas (GHG) emissions and indoor air pollution, including nitrogen oxides (NOx) and particulate matter, which pose known risks to public health; and

WHEREAS, as customers transition off gas, remaining customers will bear a disproportionate burden of gas infrastructure costs unless this upward pressure on gas rates is managed through systematic decommissioning and reduction of miles of gas lines requiring repair and maintenance; and

WHEREAS, the Berkeley Existing Buildings Electrification Strategy, adopted by Council in 2021, identified neighborhood-scale electrification as a key implementation pathway, and a zonal pilot would directly advance that strategy; and

WHEREAS, the state legislature in 2024 through Senate Bill 1221 directed the allowance for up to 30 neighborhood decarbonization zone pilot projects in California, where a gas utility can, instead of replacing a gas line due for replacement, offer zero-emission alternatives such as electrifying all properties served by the gas line, using the money saved from avoided gas line replacement; and

WHEREAS, community engagement is critical to obtaining community consent for a zonal decarbonization project, as SB 1221 requires that no less than 67% of property owners with natural gas service within a pilot project boundary consent to participation; and

WHEREAS, SB 1221 requires the California Public Utilities Commission (CPUC) to review and approve neighborhood decarbonization pilot projects with a preference for projects that provide prevailing wages and use high-road jobs programs; and

WHEREAS, the City of Berkeley is well-positioned to meet this SB 1221 priority, having implemented the Just Transition Residential Electrification Pilot Program which established a direct installation program for residential electrification measures in existing affordable housing buildings and for low-to-moderate income households, and which required all participating contractors to meet rigorous labor standards; and

WHEREAS, a neighborhood decarbonization pilot in Berkeley would deliver multiple benefits including elimination of NOx emissions, improved home comfort, local workforce

opportunities, greenhouse gas reduction, and ensuring Berkeley residents are among the first to benefit from a zero-emission alternative.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City hereby expresses its support for a neighborhood decarbonization pilot project in Berkeley under SB 1221, with the stated goal of modeling equitable whole-home electrification for an entire neighborhood zone that will eliminate NOx emissions, improve home comfort, add local workforce opportunities, and ensure Berkeley residents are among the first to benefit from a zero-emission alternative; and

BE IT FURTHER RESOLVED that the City of Berkeley commits to being an active and avid partner in supporting successful implementation of a zonal decarbonization pilot provided the pilot is designed to be no additional cost to participating customers, and asks the City Manager to identify at least one staff member to participate in regular coordination meetings and to support collaboration across relevant City departments; and

BE IT FURTHER RESOLVED that the City of Berkeley affirms its intent to work collaboratively with Pacific Gas and Electric Company, community organizations, Community Choice Aggregators, public health advocates, workforce development partners, and regional agencies to advance a neighborhood decarbonization pilot, and to help secure resources to support these efforts.

BERKELEY CITY AUDITOR

CONSENT CALENDAR
September 15, 2026

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor

Subject: Whistleblower Program Special Report: Evaluation of Workplace Relationship Policies

RECOMMENDATION

We recommend that City Council receive this report and direct the City Manager to implement Recommendations 1 and 2 consistent with Management's Response. We further recommend that City Council refer Recommendation 3 to the Agenda and Rules Committee for consideration of whether to pursue adoption of nepotism and cronyism provisions in the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There is no direct fiscal impact associated with receiving this report or referring Recommendation 3 to the Agenda and Rules Committee. Implementation may involve staff time for policy development, meet-and-confer obligations, training, legal review, and administrative process updates.

CURRENT SITUATION AND ITS EFFECTS

The City Auditor's Office conducted a policy review following a whistleblower report raising concerns about a workplace relationship involving a supervisor and an employee and the potential for perceived favoritism. While the conduct described was not prohibited under current City policy and the allegation could not be substantiated, the report identified a gap in the City's policy framework.

The review found that current City policies do not address romantic, dating, or cohabiting relationships when those relationships intersect with hiring, supervision, or other employment decisions. As a result, employees are not required to disclose these relationships, and the City does not have a consistent process to manage potential conflicts of interest when they arise.

The review also found that the City's definition of family relationships is narrower than those used in peer jurisdictions, limiting the City's ability to identify and address potential or perceived conflicts of interest. These gaps create a risk of actual or perceived favoritism and may undermine confidence in the fairness and objectivity of employment decisions.

Management reviewed the report and agreed with its findings and recommendations. Management's response commits to reviewing and updating Administrative Regulation 2.12 through the City's policy development and labor relations process and providing guidance and training following implementation. Recommendation 3 concerns whether broader nepotism and cronyism standards should be established in the Berkeley Municipal Code for elected

officials, Charter Officers, appointed officials, boards, commissions, and employees. Because these standards would extend beyond the City Manager's administrative authority, Council consideration is needed.

BACKGROUND

This review was initiated after the City Auditor's Office received a whistleblower report through the Whistleblower Program raising concerns about workplace relationships and potential favoritism. Because the conduct described was not addressed under current City policy, the Auditor's Office did not open an investigation and instead conducted a policy-focused review.

The review included analysis of Administrative Regulation 2.12 (Employment of Near Relatives) and other relevant City policies, as well as comparison with policies from peer jurisdictions and state-level guidance. This report is issued as part of the City Auditor's Whistleblower Program to identify and address risks related to fraud, waste, and abuse, including gaps in policy that may allow such risks to occur.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental sustainability or climate impacts associated with this report.

RATIONALE FOR RECOMMENDATION

Management has agreed to implement Recommendations 1 and 2 by reviewing Administrative Regulation 2.12 through the City's policy development and labor relations process and providing guidance and training following implementation. These actions will strengthen the City's conflict-of-interest framework related to workplace relationships by addressing a broader range of personal relationships, establishing clear disclosure and recusal expectations, and implementing a consistent conflict-management process.

Recommendation 3 presents a broader governance question regarding whether the City should establish nepotism and cronyism standards in the Berkeley Municipal Code that apply consistently to City employees, elected officials, Charter Officers, appointed officials, boards, and commissions. Referring this recommendation to the Agenda and Rules Committee would allow the Council to consider the appropriate legislative path forward before determining whether amendments to the Municipal Code should be pursued.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

1: Berkeley City Auditor Whistleblower Program Special Report: Evaluation of Workplace Relationship Policies April 2026

BERKELEY CITY AUDITOR

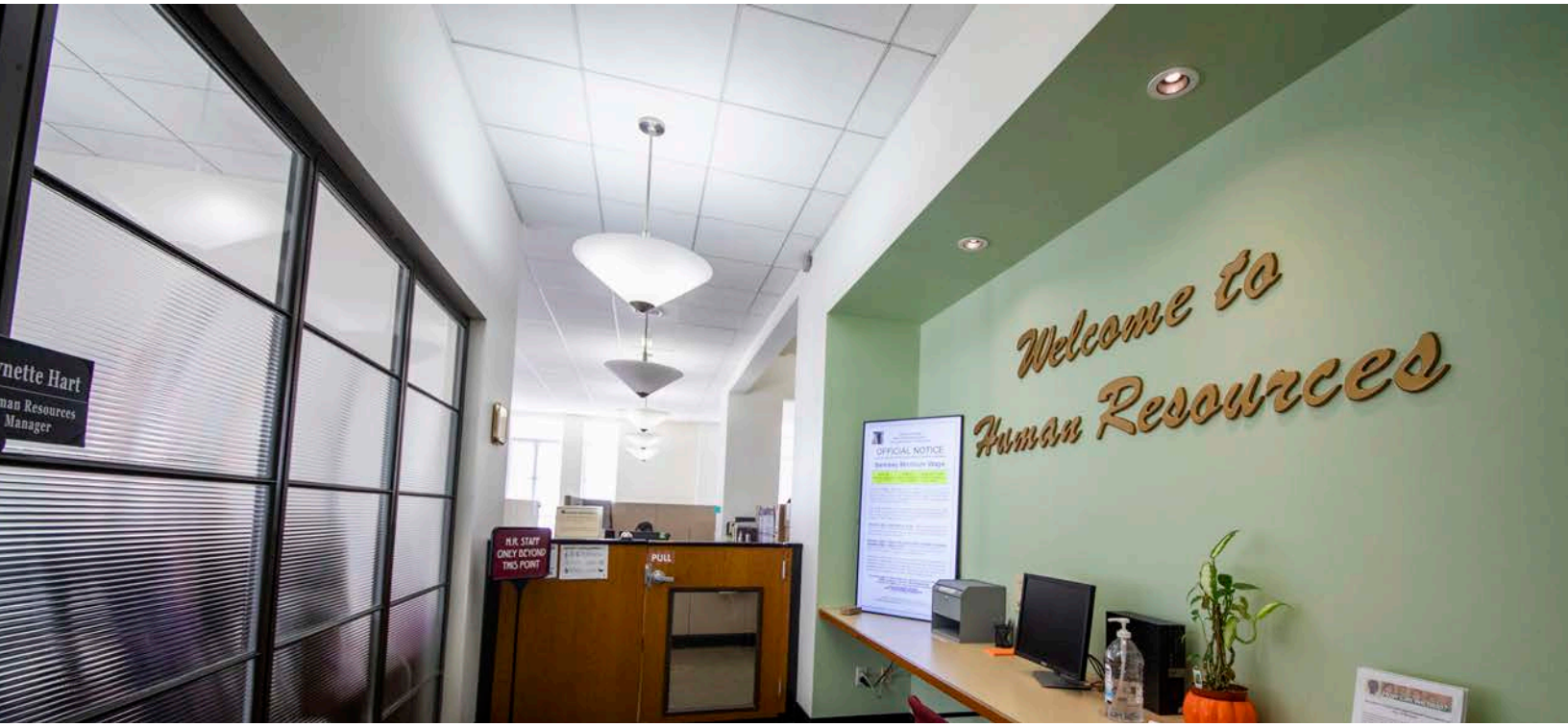
Special Report

Whistleblower Program: Evaluation of Workplace Relationship Policies

August 2026

Jenny Wong, City Auditor

Erin Mullin, Whistleblower Program Manager



Berkeley's current policies do not address romantic, cohabitating, or extended family relationships, creating potential conflicts of interest and undermining fairness in employment decisions. Expanding and updating these policies would align Berkeley with peer jurisdictions and improve transparency.

Contents

Purpose 2

Allegation History 3

Conclusions 3

Findings 4

Current City policy does not address disclosure of romantic or cohabiting relationships in the workplace. 4

Berkeley's definition of family relationships is narrower than peer jurisdictions and creates additional coverage gaps. 6

Peer jurisdictions have adopted broader policy frameworks to manage conflicts arising from personal relationships. 8

Recommendations 9

Implementation Considerations 10

Management Response 10

Scope and Methodology 10

Purpose

A whistleblower report raised concerns about a workplace relationship that intersected with City employment and the potential for perceived favoritism. We reviewed the complaint and found that City policy did not address the conduct described and therefore could not substantiate the allegation. However, the report prompted a review of the City's policies regarding workplace relationships.

Berkeley's primary policy governing workplace relationships is Administrative Regulation 2.12 (Employment of Near Relatives), which is intended to prevent nepotism by requiring disclosure and restricting supervision among certain family members. This report examines whether that framework, together with other related policies adequately address romantic, cohabiting, and related family relationships that may affect, or appear to affect, employment decisions, such as decisions regarding hiring, promotion, transfer, discipline, or termination.

Allegation History

The Berkeley City Auditor's Whistleblower Program received a report concerning a romantic relationship involving a manager and an employee within the same work unit, and the potential for perceived favoritism connected to supervisory influence. The allegation highlighted a category of workplace relationships that is not currently addressed by City policy. The information was used solely to inform a policy review. The Whistleblower Program has also received other reports raising similar concerns involving close personal relationships in the workplace that fall outside current policy coverage, indicating the issue is not isolated and reinforcing the need for policy review.

Conclusions

We found that Berkeley's current policies do not address romantic, dating, or cohabiting relationships in the workplace, leaving the City without a way to identify or manage situations where such personal relationships overlap with hiring, supervision, or other employment decisions. As a result, employees are not required to disclose these relationships, managers may participate in personnel decisions involving a romantic or cohabitating partner, and no formal recusal or conflict-management process applies when supervisory or decision authority is involved. These conditions create a risk of actual or perceived favoritism and can undermine employee confidence in the fairness and objectivity of employment decisions.

We also found that Berkeley's Employment of Near Relatives policy defines family relationships more narrowly than comparable policies in peer jurisdictions. While Berkeley covers core family members, it does not include certain extended family relationships that San Francisco and Oakland address, even though these relationships can present similar conflict-of-interest concerns. This narrower definition creates additional gaps in the City's ability to manage potential or perceived conflicts arising from workplace relationships.

Taken together, these findings indicate that Berkeley's current policies do not fully address the range of personal relationships that may affect, or appear to affect, employment decisions. Updating the City's policy framework to address romantic and cohabitating relationships and to reassess the scope of covered family relationships would strengthen conflict-of-interest controls, align Berkeley with peer jurisdictions, and support transparency and fairness in the City's employment practices.

Findings

Current City policy does not address disclosure of romantic or cohabiting relationships in the workplace.

Berkeley's current policies do not address romantic, dating, or cohabiting relationships when those relationships intersect with hiring, supervision, or other employment decisions. As a result, the City lacks a framework to identify or manage conflicts of interest that may arise from these relationships. While the City has policies governing harassment, discrimination, retaliation, financial conflicts of interest, and the employment of near relatives, none require disclosure of romantic or cohabiting relationships, restrict supervisors from participating in employment decisions involving a partner, or provide a mechanism for managing related conflicts of interest.

The table below summarizes how Berkeley's policies compare with peer jurisdictions and state-level guidance with respect to coverage, disclosure requirements, and conflict-management tools related to romantic and cohabiting workplace relationships.

Table 1: Comparison of Policies Addressing Romantic and Cohabiting Workplace Relationships

Key Feature	Oakland	San Francisco	California State Guidance	Berkeley
Who is covered	Broad (officers, officials, and employees)	Broad (officials, employees, interns, volunteers)	Agencies determine	Employees only
Romantic relationships covered	Yes	Yes	Only if cohabitating	No
Cohabiting relationships covered	Yes (romantic and non-romantic)	Romantic only	Romantic only	No
Disclosure required	Yes	Yes	Yes (department policy required)	Yes (near relatives only; not romantic or cohabiting relationships)
Restrictions on hiring or supervision of covered relationships	Yes (direct and indirect)	Yes (direct and indirect)	Yes (agency-defined)	Yes (applies only to near relatives; not romantic or cohabiting relationships)

Note: California state guidance provides recommended practices for state agencies and does not impose requirements on local governments.
Source: Auditor analysis of City of Oakland Municipal Code Chapter 2.40; San Francisco Civil Service Commission Family and Romantic Relationships at Work Policy; California CalHR Nepotism Guidance; and City of Berkeley AR 2.12

Peer jurisdictions, including Oakland and San Francisco, have adopted more comprehensive approaches. These cities require disclosure and active management of romantic and cohabitating relationships when such relationships intersect with employment decisions. State-level guidance for California public agencies similarly recommends managing conflicts of interest arising from romantic, cohabitating relationships through disclosure, recusal, and mitigation to address both actual and perceived conflicts.

Berkeley's existing policy framework focuses on compliance-based risks, such as harassment, discrimination, financial conflicts of interest, and nepotism. Romantic and cohabitating relationships fall outside the scope of these policies and have not been explicitly addressed through an administrative regulation or standalone policy.

Without a policy framework, employees are not required to disclose such relationships, and managers may participate in employment decisions involving a partner without a recusal or conflict-management process. These gaps create a risk of actual or perceived favoritism and can undermine employee trust and confidence in the fairness and objectivity of personnel decisions, even when no misconduct occurs. In the absence of clear disclosure and recusal requirements, the City also lacks a consistent basis for responding to complaints or concerns involving personal relationships that intersect with employment decisions.

Berkeley's definition of family relationships is narrower than peer jurisdictions and creates additional coverage gaps.

In addition to the absence of policies covering romantic or cohabitating relationships, Berkeley's Employment of Near Relatives policy reflects a more limited definition of family relationships than those used by peer jurisdictions like San Francisco and Oakland. While all three cities include core family relationships such as spouses, parents, and siblings, Berkeley does not include certain extended family categories that peer jurisdictions address.

The table below compares how Berkeley and peer jurisdictions define family relationships in employment policies, with emphasis on extended and non-traditional relationships that may present similar conflict-of-interest concerns but are not included in Berkeley's current definition.

Table 2. Comparison of Family Relationships Definitions

Relationship Category	Included in Berkeley	Included in San Francisco	Included in Oakland
Cousin	✗	✓ (First)	✓ (First and Second)
In-laws, Step Relations	✓ (Specific)	✓ (Broad)	✓ (Broad)
Foster Relations	✗	✓	✓
Great-grandparent / great-grandchild	✗	✗	✓
Cohabitants (Non-Domestic Partner)	✗	✗	✓
Spouses, domestic partner of any relative or cohabitant	✗	✗	✓

Source: Auditor analysis of City of Oakland Municipal Code Chapter 2.40; San Francisco Civil Service Commission Family and Romantic Relationships at Work Policy; and City of Berkeley AR 2.12

Berkeley does not include certain extended family categories like cousins or foster relationships that San Francisco and Oakland include. These relationships can raise similar conflict-of-interest concerns in hiring and supervisory contexts. While Berkeley includes some in-law and step relationships, it does so through a fixed list rather than a broader categorical definition. As a result, certain relationships, such as a step-grandparent, step-aunt or uncle, or aunt- or uncle-in-law, are not explicitly covered, even though they may present similar risks. By contrast, Oakland defines covered family relationships more expansively by category, extending beyond immediate family to include multiple degrees of relatives, foster relationships, cohabitants, and the spouses or domestic partners of covered individuals. A broader approach allows jurisdictions to identify and manage conflicts of interest across a wider range of familial and household relationships. Berkeley's narrower definition, by comparison, creates gaps in coverage and limits the City's ability to proactively identify and manage potential or perceived conflicts of interest arising from personal relationships.

Peer jurisdictions have adopted broader policy frameworks to manage conflicts arising from personal relationships.

Berkeley's Employment of Near Relatives policy establishes a framework for managing conflicts of interest arising from specified familial relationships. However, the structure and authority of Berkeley's policy limit its reach. The policy applies only to employees and does not apply to elected officials, appointed officers, or other non-employee City officials. It is established through an administrative regulation issued by the City Manager and is confined to the specific relationships listed in the definition of "near relative." As a result, the City has limited authority to address conflicts of interest arising from other personal relationships or to apply consistent standards across elected officials, officers, and other individuals working for the City.

Berkeley's current policy relies primarily on transfer or reassignment authority when a prohibited near-relative supervisory relationship exists. While the City Manager may grant written exceptions to supervisory-relationship prohibitions, the policy does not establish a structured conflict-management plan process for how supervisory conflicts or approved exceptions must be mitigated. In some operational settings, such as small divisions, specialized technical teams, or public safety departments with limited supervisory layers, reassignment alone may not fully remove indirect supervisory relationships. By contrast, San Francisco requires a formal written conflict-management plan when supervisory conflicts cannot be fully removed, and Oakland mandates documented alternate arrangements and mitigation controls through its Personnel Director and City Attorney process.

San Francisco's policy, adopted by its Civil Service Commission, and Oakland's policy, codified in its municipal code, apply to a wider range of individuals, including elected officials and City officers. Oakland also requires annual disclosure of specified personal relationships by City officials and supervisors, reinforcing ongoing accountability rather than one-time reporting.

In addition to disclosure requirements, Oakland's policy explicitly defines and prohibits cronyism, meaning participation in employment decisions involving close personal, professional, political, or commercial relationships that could result in preferential treatment or compromise the appearance of fairness. While this prohibition does not expand disclosure requirements, it establishes broader expectations for individuals covered by the policy to avoid conflicts of interest arising from relationships beyond those specifically identified for disclosure. This approach recognizes that conflicts of interest and the potential for favoritism are not limited to predefined familial relationships.

As a result, the policy provides a clear basis for reviewing and addressing employment decisions influenced by personal relationships that fall outside narrowly defined categories. Oakland's policy also requires the Director of Personnel to provide an annual report to the City Council describing the nature and number of prohibited relationships disclosed and the alternate arrangements implemented. Together, these features provide broader authority, clearer oversight, and more flexible mitigation tools than those currently available under Berkeley's policy framework.

Recommendations

1. To ensure comprehensive conflict-of-interest controls within employment and supervisory contexts, we recommend that the Human Resources Department update AR 2.12 to:
    - require disclosure of romantic, dating, and cohabiting relationships, in addition to near-relative relationships.
    - extend supervisory and decision-making restrictions to romantic and cohabiting relationships that create actual or perceived conflicts of interest.
    - update the definition of "near relative" to better align with peer jurisdictions.
    - incorporate a clear definition and prohibition of cronyism in supervision and employment decisions.
    - establish a documented conflict-management process that clearly defines responsibilities for reviewing relationship disclosures, implementing mitigation measures, maintaining records of all actions taken, and alternate decision authority where needed.

2. To support effective implementation, we recommend the Human Resources Department provide training to supervisors and managers on the updated relationship conflict-of-interest policy.
3. To extend relationship conflict safeguards beyond employees, we recommend the City consider adopting both nepotism and cronyism provisions in the Berkeley Municipal Code. These provisions should apply to all City employees, elected officials, charter offices, appointed officials, boards and commissions, ensuring consistent citywide standard.

Implementation Considerations

Implementation of the recommended policy updates will require coordination among Human Resources, the City Attorney's Office, and City leadership. Relationship disclosures should be limited to information necessary for conflict management and treated as confidential. Clear guidance and documentation standards will be important to ensure consistent application of recusal, conflict-management measures, and exceptions. The City may also wish to consider how updates to AR 2.12 align with existing ethics and conflict-of-interest policies to support clarity and effective administration. Currently, Human Resources maintains relationship disclosures within individual paper-based personnel files, which may present challenges for consistently tracking and managing disclosures as policy coverage expands.

Management Response

Management agrees that the City should review and update its framework for identifying and managing actual or perceived conflicts of interest arising from workplace relationships. Human Resources will work with City leadership to evaluate potential revisions to AR 2.12, including appropriate disclosure requirements, supervisory and decision-making restrictions, definitions of covered relationships, confidentiality safeguards, and conflict-management procedures.

The specific policy provisions recommended in this report should not, however, be understood as predetermined outcomes. Changes of this nature would affect represented employees and may implicate matters within the scope of representation. Accordingly, any proposed policy changes will require extensive notice, consultation, and meet-and-confer with the City's labor organizations. The final scope, definitions, disclosure obligations, mitigation procedures, and implementation requirements will be developed and refined through that process. The City must also carefully consider employee privacy, consistent application across departments, operational feasibility, records management, and compliance with applicable law.

Following completion of the policy-development and labor-relations process, Human Resources will provide appropriate guidance and training to managers and supervisors regarding the final requirements and their responsibilities.

Management also agrees that the City should evaluate whether broader nepotism or cronyism standards are appropriate for elected officials, charter officers, appointed officials, boards, and commissions. Because those individuals may fall outside the scope of an administrative regulation issued by the City Manager, any such expansion would require separate legal and governance review, coordination with affected offices, and possible action by the City Council.

Scope and Methodology

We conducted a policy-focused review to assess whether the City's current policies address romantic and cohabiting relationships that intersect with hiring, supervision, or other employment decisions, and whether the City's definition of family relationships provides sufficient coverage to manage related conflicts of interest.

Specifically, we analyzed Berkeley's relevant policies, including:

- AR 2.12 – Employment of Near Relatives
- AR 1.2 – Conflicts of Interest
- Harassment Prevention Policy
- Equal Employment Opportunity Policy

Reviewed workplace-relationship and conflict of interest policies from peer jurisdictions, including Oakland and San Francisco, as well as state-level guidance applicable to California public agencies.

This review was limited to evaluating policy design and coverage in employment and supervisory context. We did not conduct an investigation related to the reported relationship, did not interview individuals, and did not review personnel files, as the conduct described in the Whistleblower Report is not prohibited under current City policy. Additionally, we only examined one specific aspect of conflict-of-interest risks, those arising in employment and supervisory decisions. Other types of conflicts, such as financial interests in contracting, procurement, or policy decisions, as well as other potential conflicts in governance or personal financial dealings, are governed by separate policies and legal frameworks and were outside the scope of this review.

Office of the City Auditor

City of Berkeley

Mission Statement

Promoting transparency and accountability in Berkeley government.

Report Preparation

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BERKELEY CITY AUDITOR

02a.15

Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR
September 15, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: District 1 Funding Allocation to Support the Gilman District Merchants Association to Promote Longterm Sustainability and Area Improvements

RECOMMENDATION

Allocate $65,000 from the FY 2026-27 office budget of District 1 Councilmember Rashi Kesarwani to provide a one-time capacity building grant to support the Gilman District Merchants Association (GDMA) to promote economic development, district-wide improvements and long-term sustainability of the Gilman District Street Fair (GDSF).

Distribution of funds should be approved by the Gilman District Coordinating Committee, the representative advisory board established to comply with the fiscal agent, the Berkeley Chamber of Commerce. Use of funds should prioritize:

- Salary/stipend for part-time director of the GDMA
  Stipends for key volunteers for the Gilman District Street Fair
- Business Administration for the GDMA outside of salaries including:
  - Publicity, promotion, membership building and website maintenance for the GDMA
  - Event planning and execution of GDMA networking and social gatherings
- Public Safety Enhancement Grants to local businesses

CURRENT SITUATION AND ITS EFFECTS

The nascent Gilman District Merchants Association Fills a Vital Gap in a Challenging Area. West Berkeley's Gilman District has long been the city's industrial heart. Bound by Codornices Creek, Camelia Street, the railroad tracks and San Pablo Avenue, this expansive area now hosts a diverse mix of wineries, breweries, artisanal food producers, startups, nonprofits, maker spaces, auto shops and an urban farm. This sheer variety and physical footprint have made community cohesion among district stakeholders more challenging. For years, self-appointed independent merchants organized periodic networking events with City of Berkeley staff support. The official Gilman District Merchants Association, however, launched just last year.

This paid-membership organization now employs a part-time staff member dedicated to advocating for and supporting the district.

This staff person works in a limited capacity though has wide-ranging responsibilities including:

- GDMA publicity and promotion;
- Membership recruitment and acquisition;
- Advocacy for enhanced placemaking and safety improvements;
- Organizing social and networking events; and
- Maintaining a social media presence to encourage additional foot traffic into the district.

Since its Launch in 2023, The Gilman District Street Fair (GDSF) Has Grown into a Premier Annual Event Celebrating the District's Diversity and Economic Vitality. Originally established to revitalize and uplift a challenging area, the fair has successfully united local volunteers around a shared community vision. Each year, the event showcases local artisans, businesses, food, drink and live music. Its rapid growth culminated in the 2026 fair, which hosted over 200 vendors and 7,000 attendees, earning the Silver award for Best Outdoor Art Event in the East Bay Express Reader's Poll. Now a highly anticipated citywide tradition for families and residents of all ages, the fair's expanding scale can no longer be sustained by volunteer labor alone.

Although the Street Fair Fosters Strong Cohesion Among GDSF Volunteer Organizers, the Operational Demands and Expenses Remain Substantial. Planning for the April event begins each September, and while the 2026 fair generated a $7,225 profit on $29,600 in expenses, these margins are insufficient to fund dedicated administrative staff. Ultimately, sole reliance on volunteer efforts for an initiative of this scale is unsustainable; an allocation of surplus office funds would help secure the long-term viability of the street fair.

BACKGROUND

The District 1 Office Has a Significant History of Materially Supporting the Gilman District and Its Stakeholders. A partial list of the policy and budget referrals and material support include the following:

- "Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours"[1] - a proposal to address the high concentration of RVs located in the Gilman District: February 2020;

[1] February 11, 2020 City Council Meeting, item #17: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours: https://www.dropbox.com/scl/fi/xf3ozlzlp57own2b7rb1r/2_11_2020-CLK-Agenda-Packet-Public-District-1-REGULAR-Resolution-for-Safe-Recreational-Vehicle-RV-Parking-at-Designated-City-Owned-Parking-Lots-During-Overnight-Non-Business-Hours-Supp.pdf?rlkey=sv7rofsla6eqf3oeassclht6m&st=8io99qd4&dl=0

- "Refer to the City Manager to Establish a Framework for Parking Benefits Districts in the Gilman and Lorin Commercial Districts" - a referral to create a framework in which to establish a Parking Benefits Improvement District where revenues from meters would stay within the district to help make streetscape and safety improvements: January 2022;[2]
- "Budget Referral: Expand Scope of the Downtown Streets Team to Include Services within the Gilman District" - a referral to expand the scope of the Downtown Streets Team that would assist with regular cleaning and street condition improvements in the Gilman District: April 2022;[3]
- "Budget Referral: Capacity Building for Merchant Associations in the Gilman and Lorin Districts" - a budget referral for a one-time grant of $10,000 to support economic development within the district with the funds being contingent upon establishing a community advisory board of stakeholders and obtaining fiscal sponsorship. This process led to the creation of the Gilman District Coordinating Committee which is still active: May 2022;[4]
- Gilman District Street Fair Organizing Committee - District 1 office support in creating and institutionalizing the award-winning annual street fair showcasing the Gilman District: April 2023 and beyond.

These collected efforts were made in recognition of the unique and valuable aspects of a commercial district in need of institutional support. As challenging conditions remain, so does the need for advocacy and an organizing body such as the Gilman District Merchants Association.

Previous Grants and Budget Allocations Are Insufficient to Ensure Long-term GDMA Sustainability. To date, the Gilman District Coordinating Committee has applied for several grants and thus far has received two: a Commotion West Berkeley grant of $3,000 for civic arts related activities (2023); and a City of Berkeley FY 2026 Civic Arts (Community Festivals) grant. The funds have been used for general street fair expenses and to compensate artists (community muralists), performers (live musicians and dance teachers) and sound technicians for the GDSF in 2024 and 2026.

In FY 2025 and FY 2026, the city allocated $20,000 to the Gilman District. This allocation was redirected from the budget referral to establish a Parking Benefits

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[2] January 18 2022, City Council Meeting, Item #18: Refer to the City Manager to Establish a Framework for Parking Benefits Districts in the Gilman and Lorin Commercial Districts: https://berkeleyca.gov/sites/default/files/2022-04/2022-01-18%20Item%2018%20Parking%20Benefits%20Districts%20in%20the%20Gilman%20and%20Lorin.pdf

[3] April 26 2022, City Council Meeting, Item #25: Budget Referral: Expand Scope of the Downtown Streets Team to Include Services within the Gilman District:https://berkeleyca.gov/sites/default/files/2022-04/2022-04-26%20Item%2025%20Budget%20Referral%20%20Expand%20Scope%20of%20the%20Downtown%20Streets.pdf

[4] May 24 2022, City Council Meeting, Item #8: Budget Referral: Capacity Building for Merchant Associations in the Gilman and Lorin Districts:https://berkeleyca.gov/sites/default/files/documents/2022-05-24%20Item%208%20Rev%20Kesarwani.pdf

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Improvement District (PBID) in the Gilman and Lorin Districts. The money had originally been earmarked to hire a consultant to draft the enabling PBID legislation, but the endeavor was put on hold due to the longstanding deficit in the City's Parking Fund. The Gilman District Coordinating Committee, now functioning as the board for the GDMA was allocated $10,000 per year for FY 2025 and FY 2026, and will be allocated an additional $5,000 for FY 2027. The funds have been used for:

- Monthly stipends for GDMA director: $1,050/month ($12,600 annually)
- Acquisition and installation of public art at 5th and Gilman: $5000
- GDSF 2026 Event Fees including (partial list):
    - City of Berkeley Special Event Permit: $384
    - COB Environmental Health Food Vendor Coordinator Permit: $182
    - COB Environmental Health Sound Permits: $132
    - City of Berkeley required Traffic Control Plan: $363.14
    - Insurance for Special Events: $733.38
    - Herc Rentals Delineators and No Parking signs for event set up: $524.55

FISCAL IMPACT

The District 1 office recommends allocating $65,000 from its surplus office budget to support the Gilman District Merchants Association.

RATIONALE FOR RECOMMENDATION

The Gilman District Merchants Association provides an essential service for Gilman District stakeholders yet has limited funds to ensure long-term sustainability. To date, the GDMA and the GDSF have been primarily staffed by volunteer labor. As the level of time and responsibilities associated with the association and street fair grow, volunteers are unable to fulfil the needs without compensation. The allocation of surplus District 1 office funds could be used to supplement the stipend for the part-time staff for the GDMA and to more fairly compensate some of the lead volunteers with the GDSF Organizing Committee.

ENVIRONMENTAL SUSTAINABILITY

Funds allocated for staff and district-wide improvements could help maintain the overall conditions in the Gilman District, including assisting with addressing garbage, debris and illegal dumping.

CONTACT

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

02a.16

Igor Tregub, Councilmember District 4

CONSENT CALENDAR

September 15, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Igor Tregub

Subject: Resolution in Support of AB 1761 (Rogers) — Electricity: Calculation Methodology: Data Disclosure

RECOMMENDATION

Adopt a resolution in strong support of Assembly Bill (AB) 1761 (Rogers), which would improve transparency in the calculation of the Power Charge Indifference Adjustment (PCIA) and other nonbypassable charges, and distribute copies to Governor Gavin Newsom; Senate President pro Tempore Monique Limón, Senate Utilities, Energy, and Communications Committee Chair Benjamin Allen and Senator Jesse Arreguín; Assembly Speaker Robert Rivas, Assembly Utilities and Energy Committee Chair Cottie Petrie-Norris and Assemblymembers Chris Rogers and Buffy Wicks; and Senator Steven Bradford, Chair of the Senate Energy, Utilities and Communications Committee to support its passage.

BACKGROUND

The City of Berkeley is a member agency of Ava Community Energy, a Community Choice Aggregator (CCA) serving customers throughout Alameda and San Joaquin Counties. CCAs provide an alternative to electricity generation service to an investor-owned utility (the investor-owned utility is still responsible for the transmission and distribution side of the electrical grid).[1]

Under California law, customers who leave investor-owned utility generation service for a CCA or Energy Service Provider remain responsible for their fair share of certain

[1] https://avaenergy.org

legacy power costs. These costs are recovered in part through the Power Charge Indifference Adjustment (PCIA).[2]

The PCIA is a nonbypassable charge associated with the costs of power and other resources procured by investor-owned utilities for customers who subsequently receive generation service from a CCA or other eligible provider.

The PCIA is intended to ensure that customers who depart investor-owned utility generation service do not leave remaining utility customers responsible for costs associated with power contracts and other resources that were procured on their behalf. The charge is therefore an important component of California's community choice energy framework.

However, there has not been a consistent statutory standard governing the disclosure of all underlying data used in CPUC proceedings to calculate or modify the PCIA. Without timely access to the data underlying PCIA calculations and proposals, CCAs and other load-serving entities may face difficulty independently evaluating calculations, forecasting future costs, and determining the potential effects of proposed changes on their customers.

This lack of transparency can also contribute to repeated disputes over access to information and increase the time and resources required to resolve regulatory questions before the California Public Utilities Commission (CPUC).

California's CCA framework is intended to provide customers with local control and additional choices regarding electricity generation while ensuring that customers who remain with investor-owned utilities are not disadvantaged by customers departing bundled generation service.

For that framework to function effectively, affected parties must be able to understand and evaluate the costs being allocated through the PCIA. Transparent and timely access to the underlying data can help CCAs forecast future obligations, evaluate proposed changes, participate meaningfully in CPUC proceedings, and provide customers with more reliable information about future electricity costs.[3]

CURRENT SITUATION AND ITS EFFECTS

California electricity customers continue to face significant affordability challenges. Rising electricity costs affect households, local businesses, nonprofit organizations, and

[2] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB1761
[3] *Ibid.*

public agencies, making enhancements to transparency and predictability in utility rates increasingly important.

Electricity affordability depends not only on the level of rates but also on the ability of public agencies and energy providers to understand, forecast, and effectively participate in the processes that determine those rates.

AB 1761 does not change the PCIA itself or establish a new rate. Rather, it establishes transparency around the information used to calculate and evaluate these charges.

Greater transparency regarding the PCIA would allow CCAs and other affected entities to independently evaluate the assumptions and data underlying proposed charges. This can improve accountability, reduce unnecessary disputes over information, and help identify errors or inconsistencies before they affect customers.

AB 1761 does not eliminate protections for confidential or market-sensitive information. Instead, the bill provides for disclosure of protected information to a nonmarket-participant reviewing representative under a CPUC-approved nondisclosure agreement.

For Berkeley residential and commercial energy customers, greater certainty regarding PCIA costs can also support more reliable financial planning and reduce the risk of unexpected changes in electricity costs.[4]

FINANCIAL IMPLICATIONS

Minimal staff time is associated with outreach to the recipients.

ENVIRONMENTAL SUSTAINABILITY

The proposed action supports Berkeley's energy and climate goals by promoting a more transparent and predictable regulatory framework for community choice energy and electricity costs. Improved transparency can help public energy providers better plan for procurement costs and continue providing clean electricity while protecting customers from unnecessary or unexpected cost increases.

AB 1761 is supported by the California Community Choice Association, Ava Community Energy Board of Directors, and other community choice energy agencies.

[4] *Ibid.*

CONTACT PERSON

Councilmember Igor Tregub, 510-981-7140, itregub@berkeleyca.gov

Olga Bolotina, Chief of Staff, obolotina@berkeleyca.gov

Amy Rodas, Legislative Aide, amrodas@berkeleyca.gov

ATTACHMENTS

1. Resolution
2. Letter

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

RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1761 (ROGERS) TO STRENGTHEN POWER CHARGE INDIFFERENCE ADJUSTMENT TRANSPARENCY AND CONSUMER PROTECTION

WHEREAS, electricity bills in California continue to rise, in part due to challenging market conditions and outdated regulatory policies, placing a growing burden on families and businesses in our community; and

WHEREAS, Ava Community Energy serves as the Community Choice Aggregator for Alameda and San Joaquin Counties, providing clean, affordable power to more than two million Californians, including residents and businesses within Berkeley; and

WHEREAS, the Power Charge Indifference Adjustment (PCIA) is a fee on nearly all energy bills designed to ensure customers who leave investor-owned utility generation service, such as those served by Community Choice Aggregators (CCAs) or Energy Service Providers (ESPs), pay their portion of legacy power costs; and

WHEREAS, since the PCIA was implemented, there has been no consistent standard for what data must be made available in California Public Utilities Commission (CPUC) processes or proceedings regarding the PCIA, creating significant transparency and verification challenges; and

WHEREAS, without adequate transparency and consistent data standards, CCAs and ESPs are unable to verify the accuracy of PCIA charges that their customers must pay and cannot confidently forecast rates – both essential tools for protecting customers from unexpected rate increases; and

WHEREAS, this lack of consistent data has created costly disputes and inefficiencies in CPUC proceedings, diverting resources from consumer protection and energy affordability initiatives; and

WHEREAS, Assembly Bill 1761 (Rogers) addresses these fundamental problems by requiring the CPUC and investor-owned utilities (IOUs) to disclose all data used to calculate PCIA costs, and ensuring that when parties or the CPUC make proposals to change the PCIA, they provide all underlying data informing those proposals; and

WHEREAS, greater transparency through AB 1761 will enable CCAs and ESPs to better advocate for their customers, assess proposals to change the PCIA, reduce repeated disputes over information, improve regulatory efficiency, encourage utilities to verify calculations, and shield customers from sudden rate swings; and

WHEREAS, AB 1761 maintains appropriate protections for sensitive information through Commission-approved nondisclosure agreements, a practice already successfully used in other regulatory compliance areas; and

WHEREAS, this legislation represents an important energy affordability tool that will strengthen consumer confidence that customers pay their fair share for their service.

NOW, THEREFORE, BE IT RESOLVED by the Berkeley City Council hereby supports Assembly Bill 1761 (Rogers) relating to Power Charge Indifference Adjustment transparency and consumer protection.

BE IT FURTHER RESOLVED that a copy of this resolution will be sent to Governor Gavin Newsom; Senate President pro Tempore Monique Limón, Senate Utilities, Energy, and Communications Committee Chair Benjamin Allen and Senator Jesse Arreguín; Assembly Speaker Robert Rivas, Assembly Utilities and Energy Committee Chair Cottie Petrie-Norris, and Assemblymembers Chris Rogers and Buffy Wicks; and Senator Steven Bradford, Chair of the Senate Energy, Utilities and Communications Committee to support its passage.

Date: September 15, 2026

The Honorable Gavin Newsom
Governor of California
The Honorable Monique Limón
California Senate President pro Tempore
The Honorable Benjamin Allen
Chair, California State Senate Utilities, Energy, and Communications Committee
The Honorable Jesse Arreguín
California State Senator, District 7
The Honorable Robert Rivas
California State Assembly Speaker
The Honorable Cottie Petrie-Norris
Chair, California State Assembly Utilities and Energy Committee
The Honorable Chris Rogers
California State Assemblymember, District 2
The Honorable Buffy Wicks
California State Assemblymember, District 14

RE: Support for AB 1761 (Rogers) — Electricity: Calculation, Methodology: Data Disclosure

Dear Governor Newsom, Senate President pro Tempore Monique Limón, Assembly Speaker Robert Rivas, Senators Allen and Arreguín, and Assemblymembers Petrie-Norris, Rogers, and Wicks,

On behalf of the City of Berkeley, a member agency of Ava Community Energy, I write to support AB 1761 and ask for your signature. AB 1761 supports energy affordability by improving transparency and certainty in how the Power Charge Indifference Adjustment (PCIA), a charge on nearly all energy bills, is calculated. Ava Community Energy is the Community Choice Aggregator (CCA) for Alameda and San Joaquin Counties, providing clean, affordable power to more than two million Californians.

Electricity bills in California are on the rise, in part due to challenging market conditions and outdated and inefficient regulatory policies. Families and businesses in our community are feeling the impact. Affordability is a key priority for the City of Berkeley, and lawmakers and regulators need practical, consumer-focused solutions that ensure customers do not pay more than their fair share.

The PCIA is a fee designed to ensure customers who leave utility generation service, like customers of a CCA or Energy Service Provider (ESP), pay their portion of legacy power costs. But since the PCIA was implemented, there has been no consistent standard for what data must be made available in any California Public Utilities Commission (CPUC) process or proceeding on the PCIA. Without adequate transparency, CCAs and ESPs are unable to verify the accuracy of the PCIA charges that their customers must pay and cannot confidently forecast rates – both of which are affordability tools needed to protect customers from unexpected rate increases. Additionally, the lack of consistent data creates costly disputes and inefficiencies in CPUC proceedings.

To address these problems, AB 1761 requires the CPUC and investor-owned utilities (IOUs) to disclose all data used to calculate PCIA costs. It will also ensure that when parties or the CPUC make proposals in a proceeding to change the PCIA, they provide all the underlying data informing that proposal. Sensitive information will remain protected through Commission-approved nondisclosure agreements, a practice already used to protect sensitive information in other compliance areas.

Greater transparency allows CCAs and ESPs to better advocate for their customers and assess proposals to change the PCIA. It reduces repeated fights over information, improves regulatory efficiency, and encourages utilities to verify calculations. It can also inform cost forecasts and shield customers from sudden rate swings, an important issue for the residents and local businesses we serve.

The City of Berkeley strongly supports AB 1761 and asks for your signature, an important energy affordability tool which will strengthen confidence that customers pay their fair share.

Sincerely,

Berkeley City Council

cc: Governor Gavin Newsom
Senate President pro Tempore Monique Limón
Assembly Speaker Robert Rivas
Senator Benjamin Allen
Senator Jesse Arreguín
Assemblymember Cottie Petrie-Norris
Assemblymember Chris Rogers
Assemblymember Buffy Wicks

02a.18a

Brent Blackaby
Councilmember District 6

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: **July 14, 2026**

Item Number: **#24a**

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

Submitted by: **Councilmember Blackaby; Co-sponsored by Councilmembers Humbert and O'Keefe**

Added the following clauses to end of existing resolution (Page 11 of 80):

BE IT FURTHER RESOLVED that the Berkeley Police Department may use tear gas, smoke, and OC spray tools only as follows:

Tear gas: for use in critical incidents only (not crowd control), including:
- 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 only, including:
- 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, including:
- A specific individual committing violence against another person; and
- A specific individual committing violence against an officer.

BE IT FURTHER RESOLVED that the Berkeley Police Department is directed to report on the use of tear gas, smoke, and OC spray as defined in Policy 300 and Policy 428.

BE IT FURTHER RESOLVED that the Berkeley Police Department is directed to update Policy 300, Policy 303, Policy 428, and any other relevant policies as necessary to reflect these new requirements for tear gas, smoke, and OC spray.

24a

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.[1] 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.[2] 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.[3] 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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[1] 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.

[2] 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

[3] 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. 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.[4]

[4] 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.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. 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.

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;

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- 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.[5]

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

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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.[6] 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.

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

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:

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

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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

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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.

BE IT FURTHER RESOLVED that the Berkeley Police Department may use tear gas, smoke, and OC spray tools only as follows:

Tear gas: for use in critical incidents only (not crowd control), including:
- 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 only, including:
- 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, including:
- A specific individual committing violence against another person; and
- A specific individual committing violence against an officer.

BE IT FURTHER RESOLVED that the Berkeley Police Department is directed to report on the use of tear gas, smoke, and OC spray as defined in Policy 300 and Policy 428.

BE IT FURTHER RESOLVED that the Berkeley Police Department is directed to update Policy 300, Policy 303, Policy 428, and any other relevant policies as necessary to reflect these new requirements for tear gas, smoke, and OC spray.

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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.

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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:

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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.

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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.

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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.

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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.

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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

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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.

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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;

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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).

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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 themself, 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.

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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

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minimal. VCT shall only to 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.

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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.

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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.

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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.

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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).

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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.

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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

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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.

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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 shallonly 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 objectivelyreasonable to defend against a threat to life or serious bodily injury to any individual, includingany peace officer, or to bring an objectively dangerous and unlawful situation safely andeffectively 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

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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 ofthe 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 theCity 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

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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.

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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

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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

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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:

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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.

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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.

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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.

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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.

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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.

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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

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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.

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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.

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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 ofo 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 ach 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.

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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.

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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

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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 32inch 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.

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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

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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.

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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-

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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

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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.

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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.

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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® InterLock,® SST,® InterBond® and CX™ bullets we load into Hornady® Custom™ rifle ammunition.

Every round of Hornady® Custom™ ammunition is hand inspected before packaging to ensure the highest levels of quality control. At Hornady,® we manufacture Custom™ 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.

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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:

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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

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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

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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.)

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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

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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:

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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

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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.

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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.

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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

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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

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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

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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

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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, 4th 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.

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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

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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:

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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:

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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

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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.

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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. Questions will be answered in a timely manner by a member of the Berkeley Police Department.

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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.

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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

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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 5th, 2020

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SUPPLEMENTAL AGENDA MATERIAL

for Supplemental Packet 2

Meeting Date: **July 14, 2026**

Item Number: **24a**

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

Submitted by: **Katherine Lee, Interim Director of Police Accountability**

The Police Accountability Board hereby submits its position on reinstating the BPD's authority to use chemical agents.

MEMORANDUM

Date: January 26, 2026
To: Honorable Members of the Public Safety Policy Committee (PSPC)
From: Police Accountability Board (PAB)
Subject: Proposed Resolution to Reinstate Berkeley Police Department's Use of Tear Gas and Related Chemical Agents

I. Purpose

This memorandum sets forth the Police Accountability Board's (PAB or Board) position regarding the proposed resolution to reinstate the Berkeley Police Department's (BPD) authority to use tear gas in limited circumstances and to lift the moratorium on smoke and oleoresin capsicum spray (collectively referred to as chemical agents).

II. Threshold Question: Necessity of Reinstatement

Based on the materials presented, the Board finds it unclear why reinstating chemical agent authority is necessary at this time. The sponsoring materials acknowledge that chemical agents have been used by BPD only three times over several decades, all in rare, high-risk scenarios, at least some of which created significant liability for the City of Berkeley[1]. Given this limited historical use, the board questions whether reinstatement meaningfully enhances public safety, or whether it reintroduces a tool associated with significant community concern for marginal operational benefit.

[1] In 2014, for example, the BPD, assisted by multiple mutual aid agencies, responded to a large Black Lives Matter–related protest and ultimately ended up using significant amounts of CS tear gas to disperse crowds. Following an extensive independent investigation, the Berkeley Police Review Commission concluded that BPD's response was inadequately planned and overly focused on crowd control rather than crowd management, resulting in excessive and poorly coordinated uses of force that affected peaceful demonstrators, bystanders, media, and nearby residents; the Commission found that baton strikes and tear gas were at times indiscriminate, dispersal orders were confusing or impossible to comply with, and accountability was undermined by failures to track munitions use and preserve communications. The incident led to multiple federal civil rights lawsuits alleging violations of the First and Fourth Amendments, including claims by protesters and journalists injured by baton strikes and tear gas; in 2017, the City of Berkeley settled the principal consolidated case for **$125,000 paid to seven plaintiffs**, while a related case against the City of Hayward arising from its mutual-aid role was resolved for an undisclosed amount. Police Review Commission Report "Report of Investigation Into the Response to Protest on December 6, 2015:" https://berkeleyca.gov/sites/default/files/2026-01/2015-12-01-Item-32a-Report-of-Investigation.pdf

Government Code sections 7070 through 7073 (AB 481), enacted after the City Council's 2020 action barring the use of chemical agents, classify tear gas as "military equipment." These provisions require governing bodies, prior to approving a military equipment use policy, to determine that such equipment is necessary because no reasonable alternative exists to achieve the same objective. Given the historically limited deployment of chemical agents by BPD and the absence of any documented need since the 2020 ban, the Board questions whether this statutory necessity finding can be met.

III. If Advanced, Authorization Must Be Narrow and Explicitly Anchored in State Law

If the Public Safety Policy Committee, and ultimately the City Council (council) elects to advance the proposal notwithstanding the baseline question of necessity, the PAB recommends that any authorization be narrowly framed and explicitly bounded. It also must be grounded directly in California Penal Code section 13652, which governs the use of chemical agents, and in the processes required by BMC 2.100 and AB 481 which establish requirements for approval of use policies for chemical agents.

As amended and effective January 1, 2026, Penal Code section 13652:

- Prohibits the use of tear gas and other chemical agents to disperse assemblies, protests, or demonstrations, except under strictly limited circumstances.
- Permits use only when it is objectively reasonable to defend against a threat to life or serious bodily injury, or to bring an objectively dangerous and unlawful situation safely under control.
- Requires that de-escalation and alternatives to force be attempted first, when objectively reasonable.
- Mandates repeated audible warnings in appropriate languages, reasonable opportunities to disperse, and targeted use toward individuals engaged in violent acts.
- Requires proportionality, minimization of harm to bystanders and journalists, efforts to extract individuals in distress, and prompt medical assistance.
- Prohibits use targeted to the head, neck or vital organs; to enforce a curfew; or in response to a verbal threat or noncompliance with a law enforcement directive.
- Limits authorization of chemical agents to a commanding officer at the scene.
- Expressly allows local jurisdictions to adopt more stringent limitations than those imposed by state law.

Accordingly, any Berkeley policy reinstating chemical agents should, at a minimum:

- Mirror the statutory standards.

- In contrast to the broad scope of allowable use reflected in Councilmember Kesarwani's proposed resolution, be confined to clearly defined tactical incidents, such as barricaded or hostage situations, and exclude civil unrest or First Amendment–protected activity without exception.
- Affirm Berkeley's authority to impose stricter local limits consistent with community expectations and accountability norms.

In addition, BMC 2.100 and AB 481 establish procedural requirements governing the authorization and use of tear gas and related chemical agents classified as military equipment. Prior to authorizing use, a law enforcement agency must submit a publicly posted military equipment use policy for governing body approval addressing the equipment's authorized purposes and uses, fiscal impacts, applicable legal and procedural rules, training requirements, and oversight mechanisms. If approved, the policing agency must report annually to the City Council and the public on the use of such equipment.

IV. Accountability and Review

Given the sensitivity of chemical agent use and Berkeley's history in this area, the Board further recommends that any reinstatement include a requirement for after-action notice to the Police Accountability Board and City Council. In addition, the Board should be authorized to conduct periodic assessments of BPD's compliance with Penal Code section 13652, BMC 2.100, and AB 481.

V. Conclusion

The PAB questions the need to reinstate BPD's authority to use chemical agents given their historically low deployment rate. If the proposal to reinstate is advanced, the Board urges that authorization be narrow, explicitly tethered to Penal Code section 13652, BMC 2.100, and AB 481, and accompanied by strong accountability mechanisms consistent with Berkeley's commitment to civil liberties, proportionality, and public trust.

Rashi Kesarwani
Councilmember, District 1

ACTION CALENDAR
September 15, 2026
(Continued from 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

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E-Mail: *rkesarwani@berkeleyca.gov*

Berkeley City Council banned the use of tear gas under any circumstances by the Berkeley Police Department (BPD) and outside law enforcement agencies when providing mutual aid support in the City of Berkeley.[1] 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.[2] 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.[3] 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

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[1] 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.

[2] 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

[3] 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. Each is additionally attached.

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used by officers who have received POST-certified crowd control training, and 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.[4]

[4] 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:

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

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https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48)(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=13652. This law embodies many principles currently in BPD's Policies 300 (Use of Force), 303 (Control Devices and Techniques), and 428 (First Amendment Assemblies) and aligns with the community's and the department's values related to the use of force.

faces critical gaps in its ability to safely manage armed standoffs, hostage situations, 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.[5]

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.[6] 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

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

management situations.

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: 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

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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.

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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.

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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:

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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.

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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.

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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.

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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.

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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

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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.

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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;

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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).

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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 themself, 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.

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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

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minimal. VCT shall only to 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.

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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.

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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.

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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.

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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).

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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.

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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

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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.

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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 shallonly 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 objectivelyreasonable to defend against a threat to life or serious bodily injury to any individual, includingany peace officer, or to bring an objectively dangerous and unlawful situation safely andeffectively 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

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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 ofthe 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 theCity 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

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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.

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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

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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

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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:

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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.

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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.

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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.

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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.

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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.

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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

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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.

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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.

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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 ofo 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 ach 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.

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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.

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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

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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 32inch 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.

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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

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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.

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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-

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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

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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.

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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.

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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® InterLock,® SST,® InterBond® and CX™ bullets we load into Hornady® Custom™ rifle ammunition.

Every round of Hornady® Custom™ ammunition is hand inspected before packaging to ensure the highest levels of quality control. At Hornady,® we manufacture Custom™ 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.

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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:

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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

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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

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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.)

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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

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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:

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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

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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.

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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.

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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

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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

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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

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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

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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, 4th 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.

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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

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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:

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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:

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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

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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.

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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. Questions will be answered in a timely manner by a member of the Berkeley Police Department.

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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.

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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

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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 5th, 2020

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02a.18b

Peace and Justice Commission

ACTION CALENDAR
September 15, 2026
(Continued from July 14, 2026)

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

From: Peace and Justice Commission

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

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

RECOMMENDATION

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

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

SUMMARY

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

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

FISCAL IMPACTS OF RECOMMENDATION
No significant fiscal impact on the City.

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

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

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

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

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

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

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

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

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

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

> "The table … shows that the primary changes concern the approval process for requesting helicopter and canine use and the circumstances under which helicopter assistance may be requested through mutual aid agreements.
>
> "The previously permissible uses of helicopter assistance were limited to clearly defined humanitarian and emergency purposes, including disaster response, rescue efforts excluding hostage situations, and locating missing persons….
>
> "The proposal introduces new, explicitly enforcement-oriented justifications, including felony suspect pursuits, vehicle chases, and deployments intended to reduce risk to officers, that go beyond the scope of the earlier permissions. Taken together, the proposed resolution reflects a shift in emphasis from primarily emergency assistance toward authorizing helicopter use as a tactical law enforcement tool, should it be adopted."[6]

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

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

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

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

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

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

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

Noes: Commissioner Fink

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

Absent: Commissioner Cassidy

Excused: None

BACKGROUND

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

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

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

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

1. Pepper Spray (OC) reporting.

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

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

This is a complex proposal covering multiple chemical weapons.

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

A. CS and OC are dangerous weapons that are properly considered "less-lethal," not "non-lethal."

B. CS and OC are particularly dangerous to the health of people with disabilities, especially respiratory or environmental sensitivities, and also those suffering from mental or behavioral disorders.

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

[8] "Pepper Spray Safety Precautions," Sept. 12, 2024, https://www.divasfordefense.com/blogs/self-defense-articles-educational-material/pepper-spray-handling-safety-precautions?srsltid=AfmBOops00prGllerpYmjsPYnV5EIGesRj1WXJWr9Xrs5B8cuD6Hwos6

C. Approval of chemical weapons such as CS for any use opens the door to the possibility of use for other purposes and in other manners.

D. Berkeley's Precautionary Principle ordinance requires showing that actions do no harm to human health or the environment.

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

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

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

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

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

Potential for non-compliant or unauthorized uses of CS

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

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

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[9] Damiati, "Aerosol Pollutants and Health: Role of Size and Chemical Composition," Sept. 26 2025, https://pmc.ncbi.nlm.nih.gov/articles/PMC12466196/#:~:text=In%20densely%20populated%20areas%2C%20aerosols,COPD%20%5B31%2C%2032%5D.
For more on the effect of CS on the lung, particularly on "people with preexisting respiratory conditions, see:
American Lung Association, Jan. 20 2026, https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/toxic-air-pollutants/tear-gas

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

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

> "The crowd complied with officer demands to move south, but the police continued to pursue them, deploying CS gas at six intersections on Telegraph and using raised batons and baton jabs. No evidence of dangerous crowd activity has been provided to the commission to justify these repeated uses of force.
>
> "The combination of repeated CS gas exposure along with the lengthy walk was extremely impactful, and there were reports of protestors suffering physical and emotional injuries as a result. The marchers were driven over the city line into Oakland around 1:30 AM."[10]

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

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

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

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

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

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

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

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

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

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

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

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

[13] *East Bay Express*, Dec. 12, 1997

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

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

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

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

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

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

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

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

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

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

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

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

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

ALTERNATIVE ACTIONS CONSIDERED
None

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

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

02a.19

Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR
September 15, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Referral for an Information Report Assessing all Housing Related Impact, Development and Local Parcel Tax Fees to Provide Guidance and Better Understand the True and Total Costs of Developing Housing of All Types in the City of Berkeley

RECOMMENDATION

Referral to the City Manager to direct Planning staff to prepare a comprehensive housing fee study to be presented to Council as an information report that would:

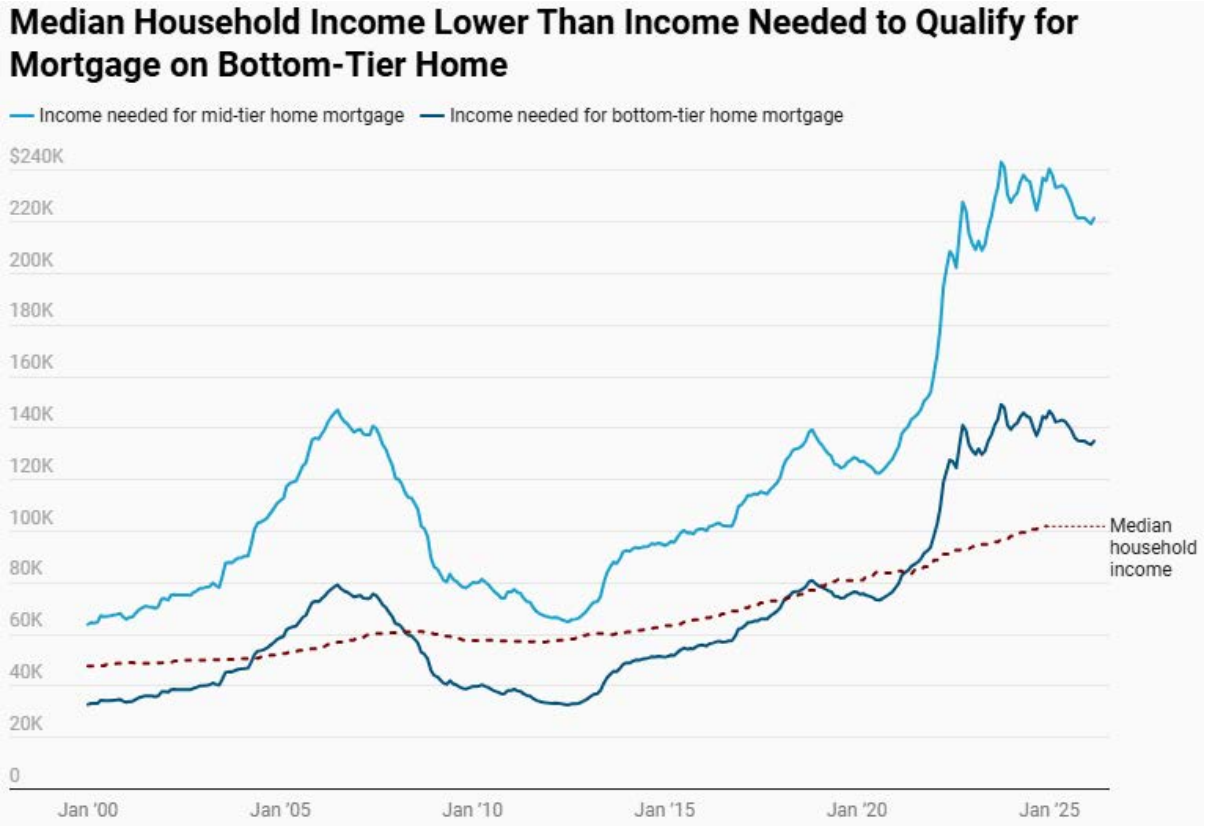
1) Collect Fee and Parcel Tax Data from Berkeley and other cities to create a housing production comparison matrix. Information should include a summary of categories, amounts, and bases for calculating impact fees, other development fees, and parcel taxes in all cities in the matrix; and
2) Calculate local fee and parcel tax costs for housing development prototypes. Information should include the total fee burden applicable to several multifamily housing prototypes (examples could include fourplex/town homes; 10 unit small multifamily; 8-story midrise; 18-story high-rise) and estimate each selected jurisdiction's approximate applicable amount of impact fee, other development fee, and parcel taxes for the respective prototypes.

CURRENT SITUATION AND ITS EFFECTS

California Home Prices Exceed the Rest of the Country and Homeownership Rates are Among the Lowest Nationwide.[1] According to the Legislative Analyst's Office's California Housing Affordability Tracker, home prices in this state continue to

[1] The US Economic Development Administration listed California 49 lowest out of 51 (including District of Columbia) for homeownership rates in 2025: https://www.statsamerica.org/sip/rank_list.aspx?rank_label=hou20

be much higher than in the rest of the US.[2] At the same time, California incomes have not kept pace with the rising costs of home prices despite the somewhat stabilized housing cost over the last few years. The report found that the annual household income needed to purchase a mid and a bottom-tier home was significantly higher than the median household income, as highlighted in the chart below:



Source: LAO's California Housing Affordability Tracker (1st Quarter 2026): https://lao.ca.gov/LAOEconTax/Article/Detail/793

As housing is typically the largest expenditure for most households, reducing the costs of housing production has been a key policy goal of state and local politicians and a key element of making the state a more affordable place to live.

Housing Costs in California are High, In Large Part Due to Production Costs. This is true for multifamily housing and single-family homes, both market rate and affordable. Production costs directly influence the costs of both purchasing and renting homes; the higher the production costs, the higher the break-even costs to reach financial viability. High production costs similarly result in less affordable housing built as the gap between break-even rents and the restricted rents that tenants are required to pay increases, resulting in higher required operating

[2] LAO's California Housing Affordability Tracker, April 20, 2026: https://lao.ca.gov/LAOEconTax/Article/Detail/793

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subsidies. Thus, the public funds for producing affordable housing in California yield fewer units built. A 2025 Rand report analysed multifamily housing production costs in California, Colorado and Texas and found that the average market-rate apartment in California – the most expensive of the states for multifamily housing production in all cost categories – is roughly two and a half times the cost of producing a similar sized unit in Texas. This study found several contributing factors to California's high production costs. Among them are:

- Longer production timelines: in California, the amount of time to bring a project to completion is more than 22 months longer than the average time required in Texas;
- Requirements for affordable housing developers in California to pay large architectural and engineering fees, likely related to prescriptive design requirements, as well as above-market wages; and notably
- Municipal impact and development fees: in Texas they are on average $1,000 per unit; in Colorado they are on average $12,000 per unit; and in California they are on average $29,000 per unit.[3]

While our state and local politicians have valiantly adopted several policy solutions that make it easier to create more infill housing, the financing piece of the equation continues to constrain production. Having a better understanding of the contributing factors to high production costs could help guide Berkeley City Council's policy recommendations for future housing developments.

While Development and Impact Fees Offset Administrative and Public Costs of New Development… Generally speaking, development and impact fees are levied on contractors and developers to offset administrative costs for related applications, permits and reviews, and to mitigate the effects of new growth on public services, amenities and infrastructure. These fees apply to both market-rate and affordable housing and commercial projects. Some cities, like Berkeley, have adopted specific affordable housing mitigation fees that developers are required to pay to help fund the development of affordable housing, either on-site or elsewhere within the City. This is one of the primary ways Berkeley adds to our stock of affordable housing. Developers can choose to either set aside 20 percent of the units to rent or sell at an affordable level or pay an in-lieu fee into our housing trust fund that can only be used for building affordable units elsewhere in the city. Other types of imposed impact fees in Berkeley help fund a range of important infrastructure expansions such as sewer systems, and amenities such as public art. These fees help pay for an array of community benefits such as:

[3] Ward, Jason M and Schlake, Luke, "The High Cost of Producing Multifamily Housing in California," Rand, Research Summary, April 2, 2025: https://www.rand.org/pubs/research_reports/RRA3743-1.html

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- Affordable childcare
- Public Art
- Streets and Open Space Improvement Plans (SOSIP)
- Sewer connection fees
- BUSD School facility fees

…They Can Also Significantly Increase Costs of Housing Production. While development and impact fees can be an extremely useful source of revenue, the numerous types of fees, when added up, can significantly increase production costs. In 2018 The Terner Center published a study entitled: "It All Adds Up: The Cost of Housing Development Fees in Seven California Cities" that chose to look at Berkeley in addition to six other cities and found that "development fees are usually set without oversight or coordination between city departments, and the type and size of impact fees levied **vary widely** from city to city." The study also noted that "Individual fees add up and substantially increase the cost of building housing."[4] Having a clear understanding of the different types of fees as well as the total fee burden on developers will provide both City Council and the general public a clearer understanding of why development in Berkeley remains so costly and provide potential access points to lower those costs.

BACKGROUND

The City of Berkeley updated its list of development fees and affordability requirements for potential projects as recently as June 2025.[5] It also has a webpage solely devoted to Planning and Development Fees that includes a comprehensive list of fees charged by the various different Planning Divisions (Building and Safety, Land Use Planning, Toxics Management, and the Office of Energy and Sustainable Development) as well as other City departments relevant to building projects (Public Works Engineering and Transportation, and Fire Department Plan Check).[6] This webpage and the associated fee schedule was updated and effective as recently as July 2025. However, the fee schedule does not include the full range of impact, mitigation or in-lieu fees that have been enacted by City Council, as noted on the webpage itself. To date, there is no single document that aggregates the range of

[4] Mawhorter, Sarah, Garcia, David and Raetz, Hayley, UC Berkeley Terner Center for Housing Innovation: "It All Adds Up: The Cost of Housing Development Fees in Seven California Cities," March, 2018: https://ternercenter.berkeley.edu/wp-content/uploads/2020/12/Development_Fees_Slide_Deck_Final_1.pdf , p. 3.

[5] For the most up-to-date list of City of Berkeley Development Fees and Affordability Requirements to which Berkeley projects may be subject see this list found on the City's webpage on Understanding Impact Fees: https://berkeleyca.gov/sites/default/files/documents/List%20of%20devt%20fees%2C%20current_0.pdf

[6] City of Berkeley Website, Planning and Development Fees: https://berkeleyca.gov/construction-development/permits-design-parameters/permit-process/planning-and-development-fees

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different types of fees that may be required of different types of development projects and that charts the total fee burden for different types of housing.

More recently, cities throughout the state have begun evaluating and at times waiving or reducing impact and affordable housing fees as a way to close financing gaps, and particularly to incentivize more affordable housing production.[7] Examples of such efforts include:

- Oakland: adopted amendments to the City's Impact Fee Program to promote housing development, eliminating the Affordable Housing Impact Fee in Impact Fee Zone 3 through the end of Fiscal Year 2027-28 (July 2025).[8]
- San Leandro: adopted a resolution to exempt Accessory Dwelling Units (ADUs) from the City's Development Fees for Street Improvements and also waived or reduced Park Land Acquisition and Improvement Fees, also for ADUs (July 2025).[9]
- Sacramento: adopted a new program that provides a zero-dollar impact fee rate for new development of eligible affordable housing units called the "Reduced Residential Development Impact Fees for Affordable Dwelling Units" (May 2019).[10]
- San Francisco: approved the Housing Stimulus and Fee Reform Plan reducing inclusionary housing requirements on new and already approved development projects and deferring development impact fees (July 2023).[11]
- San Jose: adopted a resolution reducing the Inclusionary Housing Ordinance in-lieu fees to $0 for eligible projects for the temporary Multifamily Housing Incentive Program that include at least 5% of units onsite at up to 100% area median income; and realigned parkland in-lieu fees (December 2024).[12]

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[7] See, for instance, Generation Housing's Action Plan: Incentivize Affordability Policy Brief, 2024: https://generationhousing.org/wp-content/uploads/2024/10/HousingActionPlan_IncentivizeAffordability.pdf

[8] CIty of Oakland, Impact Fees Update: City Council Adopts Impact Fee Amendments, July 16, 2025: https://www.oaklandca.gov/News-Releases/Planning-Building/Impact-Fees-Update-City-Council-Adopts-Impact-Fee-Amendments

[9] City of San Leandro Development Impact Fee Update, July 21, 2025: https://www.sanleandro.org/1475/Development-Impact-Fee-Update

[10] City of Sacramento Staff Report: Evaluation of Reduced Residential Development Impact Fees for Affordable Dwelling Units; August 9, 2022 City Council Meeting, Discussion Item 31: https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=5335&meta_id=693032

[11] SF.gov News: "Mayor Breed & President Peskin's Housing Stimulus and Fee Reform Plan Approved by Board of Supervisors, July 25, 2023: https://www.sf.gov/news--mayor-breed-president-peskins-housing-stimulus-and-fee-reform-plan-approved-board-supervisors

[12] December 10, 2024 Minutes, City of San Jose City Council Meeting, item 8.2: Multifamily Housing Incentive Program and North San Jose Parks Fee Realignment: https://www.sanjoseca.gov/home/showpublisheddocument/120944/638815425510830000

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- El Cerrito: adopted a resolution modifying the Inclusionary Housing Requirements, Transportation Impact Fee, and Open Space In-Lieu Fee for housing projects with active building permit applications (September 2025).[13]

FISCAL IMPACT

Staff time to draft the information report.

RATIONALE FOR RECOMMENDATION

Berkeley, like neighbouring cities and cities throughout the state, imposes fees as a way to offset administrative costs and fund key priorities such as improvements to schools, parks and other infrastructure projects, as well as to build affordable housing. While these fees may be necessary, they also add to the cost burden on housing production, making many projects significantly less financially feasible. This item is requesting an information report that the City Council can use to guide future policy decisions to make informed decisions when incentivizing more housing production of all kinds.

ENVIRONMENTAL SUSTAINABILITY

Incentivizing particularly infill housing close to transit aligns with the City's Climate Action Plan to reduce greenhouse gas emissions.

CONTACT

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

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[13] El Cerrito City Council meeting September 16, 2025, agenda item number 9 E: Modifications to the applicable Inclusionary Housing Requirements, Transportation Impact Fee and Open Space In-Lieu Fee for Housing Projects with Complete Building Permit Applications: https://elcerritoca.portal.civicclerk.com/event/584/files/report/2043

02a.20

Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR
September 15, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Zoning Ordinance Modification for Manufacturing Research and Development (M-RD) District

RECOMMENDATION

Referral to the City Manager and Planning Commission to amend Berkeley Municipal Code (BMC) Chapter 23.206.020 to allow for a reduced level of discretion for Vehicle Repair and Service in the Manufacturing Research and Development (M-RD) District.

CURRENT SITUATION AND ITS EFFECTS

Currently, vehicle repair is permitted in the M-RD zone with a Use Permit Public Hearing (UP-PH) which is time consuming and extends the length of the permitting process. As a result, many potential vehicle repair operators who would otherwise consider starting new businesses or expanding their existing businesses into new, larger spaces do not consider West Berkeley and the M-RD District as a viable location for doing so. This is true for businesses that the City has an interest in attracting, such as repair operations for an emerging class of electric vehicles that provide cleaner alternatives to internal combustion engine vehicles that emit harmful pollutants. Lowering the level of discretion for these types of uses to a zoning certificate (ZC) from a UP(PH) would streamline the review process and encourage these revenue-producing uses to locate in the M-RD district.

BACKGROUND

The M-RD zone was first established in March, 2025[1] in response to Councilmember Kesarwani's April, 2021 "Referral to the Planning Commission to Establish a Zoning Overlay at the Pacific Steel Casting Property."[2] The former ten acre Pacific Steel

[1] Berkeley City Council Meeting on March 25, 2025, Public Hearing: Establishment of M-RD Zoning District, Associated General Plan and West Berkeley Plan Amendments, and Environmental Impact Report, item #8: https://berkeleyca.gov/sites/default/files/documents/2025-03-25%20Item%2008%20Establishment%20of%20M-RD%20Zoning%20District.pdf

[2] Berkeley City Council Meeting, April 20, 2021: Referral to the Planning Commission to Establish a Zoning Overlay at the Pacific Steel Casting Property, item #35:

Casting (PSC) property had been vacant, contaminated and blighted since the company's bankruptcy in 2018. The referral requested allowances to enable all Mixed Use Light Industrial (MU-LI) uses and override any existing constraints on MU-LI uses for the rezoned site. The intent was to support redevelopment of the property which would contribute to the City's tax base and be consistent with the overall goals of the General and West Berkeley Plans for manufacturing areas.

More specifically, and as stated in the 2025 staff report for the M-RD public hearing, the goal of the new zoning designation is to:

- Support a mix of industrial and heavy commercial uses, such as light manufacturing and R&D, particularly those which can provide high-quality employment for people at all educational levels and add significantly to the tax base;
- Allow office and laboratory uses that support light industrial and research and development uses;
- Provide flexibility to facilitate the development and reuse of large sites with an urban campus-like environment, demonstrating high-quality design and site planning that includes amenities for employees and customers; and
- Support the development of industrial uses which would satisfy performance standards that protect the environment.

While the zoning referrals had the desired effect and the site was purchased later in 2025, the parcel has seen little development activity as it winds its way through the city's permitting process. Currently ground conditions remain challenging.

RATIONALE FOR RECOMMENDATION

This referral aligns with Councilmember Kesarwani's September 2023 "Referral to Rezone Gilman Street to Maximize Revenue Productivity Per Acre,"[3] with a goal to maximize revenue productivity and job creation per acre in the Gilman District by encouraging modernized, higher-yield uses and reducing regulatory barriers that slow parcel redevelopment. It similarly aligns with former Councilmember Rigel Robinson's September 2022 referral: "Keep Innovation in Berkeley,"[4] that recommended enhancing development standards to increase the likelihood of redevelopment and the growth and retention of Research and Development (R&D) in Berkeley.

Significantly, the City will soon implement the San Pablo Area Specific Plan that will focus land use policies and economic development programs to support diverse housing options, commercial activities and public amenities which could result in San Pablo Avenue, heavily populated by automotive services and repair operations, less

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https://berkeleyca.gov/sites/default/files/documents/2024-11-06_PC_Item%2010_ATT%202_2021-04-20_PSC%20Zoning%20Overlay.pdf

[3] Berkeley City Council Meeting, September 19, 2023: Referral to Rezone Gilman Street to Maximize Revenue Productivity Per Acre, item #19: https://berkeleyca.gov/sites/default/files/documents/2023-09-19%20Item%2019%20Gilman%20Rezone%20Kesarwani%20Supp%201.pdf

[4] Berkeley City Council Meeting September 13, 2022: Keep Innovation in Berkeley, item #30: https://berkeleyca.gov/sites/default/files/documents/2022-09-13%20Item%2030%20Referral%20Keep%20Innovation%20in%20Berkeley.pdf

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inviting to emerging technologies for electric vehicles and other innovations requiring large spaces. Modifying the M-RD zoning to allow a lower level of discretion for uses such as vehicle repair and services will provide alternate landing spaces for these types of businesses in an area of Berkeley that would benefit from their existence.

FISCAL IMPACTS

Staff time to amend BMC Chapter 23.206.020. Lowering the level of discretion for vehicle repair and services to a ZC from a UP(PH) would streamline the review process and encourage revenue producing industries to locate in the M-RD zoning district. The city would potentially benefit from the additional tax revenue and expanding business.

ENVIRONMENTAL SUSTAINABILLITY

The impacts of amending BMC 23.206.020 to allow for more uses like vehicle repairs at a lower level of discretion, especially for the emerging class of electric vehicles, could boost the city's EV economy and potentially incentivize more residents to purchase these vehicles, reducing greenhouse gas emissions in Berkeley.

CONTACT PERSON

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

ATTACHMENTS

1. Amended BMC Chapter 23.206.020

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23.206.020 Allowed Land Uses and Permit Requirements.

A. *Allowed Land Uses.* Table 23.206-1 identifies allowed land uses and required permits in the Manufacturing Districts. All land uses are defined in Chapter 23.502--Glossary. Permit requirements are described in Chapter 23.406--Specific Permit Requirements. Permits required for land uses shown in Table 23.206-1 apply to both:

1. The initial establishment of a land use in a new building; and

2. The change of use in an existing building or portion of a building.

Table 23.206-1. Allowed Uses in Manufacturing Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
Residential Uses						
Accessory Dwelling Unit	NP	NP	NP	See 23.306	NP	
Dwellings						
Single-Family Residential	NP	NP	NP	AUP	NP	
Multi-Unit Residential	NP	NP	NP	ZC*	NP	23.206.090(B)(8)
Group Living Accommodation	NP	NP	NP	UP(PH)*	NP	23.206.090(B)(8)
Hotel, Residential	NP	NP	NP	NP	NP	
Mixed-Use Residential	NP	NP	NP	UP(PH)*	NP	23.206.090(B)(7)

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
Senior Congregate Housing	NP	NP	NP	See 23.302.070(I)	NP	
Public and Quasi-Public Uses						
Child Care Center	NP	NP	AUP*	UP(PH)*	AUP*	23.206.040(C) & (D)
Cemetery/Crematory/Mausoleum	NP	NP	NP	NP	NP	
Club/Lodge	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)	UP(PH)*	23.206.040(F)
Columbaria	NP	NP	NP	--	NP	
Community Care Facility	NP	NP	NP	ZC*	NP	23.206.090(B)(3)
Community Center	NP	NP	NP	UP(PH)	NP	
Emergency Shelter	NP	NP	NP	--	NP	
Hospital	NP	NP	NP	NP	NP	
Library	NP	NP	NP	UP(PH)	NP	
Low Barrier Navigation Center	NP	NP	NP	ZC	NP	
Mortuaries and Crematories	NP	NP	NP	UP(PH)*	NP	23.206.090(B)(6)

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
Municipal Animal Shelter	UP(PH)	UP(PH)	UP(PH)	--	UP(PH)*	
Nursing Home	NP	NP	NP	UP(PH)	NP	
Park/Playground	NP	NP	NP	UP(PH)*	NP	23.206.040(D)
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Religious Assembly	NP	NP	NP	UP(PH)	NP	
School	NP	NP	NP	UP(PH)*	NP	23.206.040(D)
School, Vocational	NP	NP	ZC* [1]	UP(PH)	ZC* [1]	23.206.040(R)
Supportive Housing	NP	NP	NP	ZC*	NP	23.302.070(J)--Supportive Housing
Retail Uses						
Alcoholic Beverage Retail Sale	NP	NP	UP(PH)* [2]	NP *	NP	23.206.080(B)(3); 23.206.090(B)(2); 23.310

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
Firearm/Munitions Business	NP	NP	NP	NP	NP	
Industrial and Mining Products	AUP [2]	AUP [2]	AUP [4]	NP	NP	
Pawn Shop/Auction House	NP	NP	NP	NP	NP	
Pet Store	NP	NP	NP	NP	NP	
Retail, General	NP	NP	AUP*	AUP* [3]	AUP*	23.206.040(G); 23.206.090(B)(4)
Smoke Shop	NP	NP	NP	NP	NP	
Personal and Household Service Uses						
Personal and Household Services, General	NP	NP	NP	AUP	NP	
Kennels and Pet Boarding	NP	NP	NP	UP(PH)	NP	
Laundromats and Cleaners	NP	NP	NP	AUP	NP	
Veterinary Clinic	NP	NP	NP	UP(PH)	NP	
Video Tape/Disk Rental	NP	NP	NP	NP	NP	
Office Uses						
Business Support Services	NP	NP	AUP	AUP	AUP	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
			[6]	[3]	[6]	
Banks and Financial Services, Retail	NP	NP	--	NP	NP	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	NP	NP	--	--	NP	
Medical Practitioners	NP	NP	NP	AUP [3]	NP	
Non-Chartered Financial Institutions	NP	NP	--	--	NP	
Office, Business and Professional	NP	ZC* [4]	AUP [4]	AUP [3]	AUP [4]	23.206.070(B)(2)
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses						
Adult-oriented Business	--	--	NP	NP	NP	
Amusement Device Arcade	NP	NP	ZC	ZC	NP	See 23.302.070(B)
Bar/Cocktail Lounge/Tavern/Tap Room/ Wine Tasting	NP	NP	NP	See 23.310	NP	
Commercial Recreation Center	NP	NP	--	NP	NP	
Entertainment Establishment	NP	NP	--	UP(PH)	NP	
Food Service Establishment, Under	--	--	AUP*	AUP*	AUP*	23.302.070(E)

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
5,000 sq. ft.						
Food Service Establishment, 5,000 sq. ft. larger	--	--	UP(PH)*	UP(PH)*	UP(PH)*	23.302.070(E)
Group Instruction	ZC	ZC	--	ZC	ZC	
Health and Fitness Facility	NP	NP	--	NP	NP	
Hotel, Tourist	NP	NP	NP	NP	NP	
Motel, Tourist	NP	NP	NP	NP	NP	
Theater	NP	NP	UP(PH)*	NP	NP	23.206.080(B)(4)
Vehicle Service and Sale Uses						
Alternative Fuel Station	AUP [4]	AUP [4]	AUP [4]	AUP	AUP [4]	
Gasoline/Vehicle Fuel Station	NP	NP	NP	NP	NP	
Large Vehicle Sales and Rental	--	NP	AUP [4]	NP	AUP [4]	
Small Vehicle Sales and Rental	--	NP	NP	NP	NP	
Tire Sales and Service	--	--	--	NP	NP	
Vehicle Parts Store	NP	NP	NP	UP(PH)	NP	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
Vehicle Repair and Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Vehicle Rentals	NP	--	--	NP	NP	
Vehicle Sales, New	AUP* [7]	NP	NP	NP	NP	23.206.060(B)(3)
Vehicle Sales, Used	AUP* [7]	NP	NP	NP	NP	23.206.060(B)(3)
Vehicle Wash	NP	NP	NP	NP	NP	
Vehicle Wrecking	AUP [7]	AUP [4]	AUP* [4]	NP	NP	23.206.080(B)(5)
Industrial and Heavy Commercial Uses						
Bus/Cab/Truck/Public Utility Depot	AUP [8]	AUP [8]	AUP* [4]	UP(PH)	AUP* [4]	23.206.040(B)
Commercial Excavation	UP(PH)	UP(PH)	UP(PH)	NP	NP	
Contractors Yard	AUP [7]	AUP [7]	AUP [4]	UP(PH)	AUP [4]	
Dry Cleaning and Laundry Plant	ZC* [9]	ZC [9]	ZC [1]	UP(PH)	NP	23.206.060(B)(2)
Laboratory						

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
Commercial Physical or Biological	NP	AUP [4]	UP(PH)*	NP	AUP [4]	23.206.040(P)
Cannabis Testing	NP	AUP [4]	UP(PH)	NP	AUP [4]	
Manufacturing						
Construction Products	ZC [9]	ZC [9]	UP(PH)	NP	UP(PH)	
Light Manufacturing	ZC [7]	ZC [7]	ZC [1]	AUP* [3]	ZC [1]	23.206.040(H); 23.206.090(B)(5)
Pesticides/Herbicides/Fertilizers	NP	NP	NP	--	NP	
Petroleum Refining and Products	NP	NP	NP	--	NP	
Pharmaceuticals	AUP [4]	AUP [4]	AUP* [4]	--	AUP* [4]	23.206.040(J)
Primary Production Manufacturing	AUP [4]	AUP [4]	NP	NP	NP	
Semiconductors	UP(PH)	UP(PH)	NP	--	UP(PH)	
Material Recovery Enterprise	--	--	UP(PH)	--	UP(PH)	
Media Production	ZC [10]	ZC [10]	ZC [10]	AUP [11]	ZC [10]	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
Mini-storage	NP	NP	NP	NP	NP	
Recycled Materials Processing	ZC* [9]	ZC* [9]	UP(PH)*	--	UP(PH)*	23.206.040(L); 23.206.040(M)
Recycling Redemption Center	AUP [7]	ZC [9]	UP(PH)*	AUP	UP(PH)*	23.206.040(M)
Repair Service, Non-Vehicle	ZC* [9]	ZC* [9]	ZC* [1]	AUP	ZC* [1]	23.206.040(I)
Research and Development	--	ZC [12]	ZC [12]	--	ZC [13]	
Services to Buildings and Dwellings	AUP	AUP	AUP	AUP	AUP	
Warehouse	ZC [9]	ZC [9]	ZC [1]	UP(PH)	ZC [1]	
Warehouse-Based Non-Store Retailer	ZC [9]	ZC [9]	ZC [1]	--	ZC [1]	
Wholesale Trade	ZC [9]	ZC [9]	ZC* [1]	AUP [3]	ZC* [1]	23.206.040(S)
Incidental Uses						
Amusement Devices	NP	NP	AUP	AUP	AUP	
Alcoholic Beverage Service	See 23.310					
Cafeteria, On-Site	ZC [2]	AUP [2]	ZC [2]	AUP	ZC [2]	
Child Care Center	NP	NP	See 23.206.040(C)			

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
Columbaria	--	--	--	--	--	
Food Service Establishment, Under 20,000 sq. ft.	AUP*	AUP*	AUP*	AUP*	AUP*	23.302.070(E)
Food Service Establishment, 20,000 sq. ft. larger	NP	AUP*	NP	AUP*	NP	23.302.070(E)
Home Occupations	NP	NP	NP	See 23.206.040(D)	NP	
Live Entertainment, Unamplified	NP	NP	ZC	ZC	ZC	
Live Entertainment, Amplified	NP	NP	AUP	AUP	AUP	
Retail Sales of Goods Manufactured On-Site	AUP* [14]	AUP* [15]	AUP* [15]	AUP*	AUP* [15]	23.206.040(N)
Storage of Goods Manufactured On-Site (>25% gross floor area)	ZC	ZC	ZC	AUP	ZC	
Wholesale Activities	ZC	ZC	ZC	AUP	ZC	
Other Miscellaneous Uses						
Art/Craft Studio	ZC* [10]	ZC [10]	ZC* [10]	AUP [11]	ZC* [10]	23.206.040(A)
ATM, Exterior and Attached to Bank	AUP	AUP	--	AUP	NP	
ATM, Interior or Exterior and Not	AUP	AUP	AUP	AUP	AUP	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**Manufacturing Districts**					**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	**M-RD**	
With Bank						
Circus/Carnival	NP	NP	UP(PH)*	UP(PH)	UP(PH)*	23.206.040(E)
Drive-in Uses	NP	NP	NP	NP	NP	
Live/Work	NP	NP	See 23.312		NP	NP
Parking Lot/Structure	See 23.302.070(G)					
Public Market, Open Air	--	--	UP(PH)* [16]	--	UP(PH)* [16]	23.206.040(K)
Public Market, Enclosed	--	--	AUP [5]	--	AUP [5]	
Short-Term Rental	--	--	--	ZC*	NP	23.314
Urban Agriculture, Low-Impact	ZC	ZC	ZC	ZC	ZC	
Urban Agriculture, High-Impact	AUP	AUP	AUP	AUP	AUP	

Notes:

[1] Requires an AUP for uses 20,000 sq. ft. to 30,000 square feet. Requires a Use Permit for uses more than 30,000 sq. ft.

[2] Not permitted 20,000 sq. ft. or more.

[3] Requires a Use Permit if 5,000 sq. ft. or more.

[4] Requires a Use Permit for uses more than 20,000 sq. ft.

[5] Requires a Use Permit for more than 5,000 sq. ft. of floor area.

[6] Not permitted over 3,000 sq. ft.

[7] Requires a Use Permit for uses more than 40,000 sq. ft.

[8] Requires a Use Permit for uses 20,000 sq. ft. to 40,000 square feet.

[9] Requires an AUP for uses 20,000 sq. ft. to 40,000 square feet. Requires a Use Permit for uses more than 40,000 sq. ft.

[10] Requires an AUP for uses 10,000 sq. ft. to 20,000 square feet. Requires a Use Permit for uses more than 20,000 sq. ft.

[11] Allowed with Zoning Certificate if under 1,000 sq. ft. Requires Use Permit if over 20,000 sq. ft.

[12] Requires an AUP for uses more than 20,000 sq. ft.

[13] Requires an AUP for uses 60,000 sq. ft. to 100,000 sq. ft. Requires a Use Permit for uses 100,000 sq. ft. or more.

[14] Not permitted 1,500 sq. ft. or more.

[15] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft.

[16] Requires Use Permit for markets over 5,000 sq. ft.

B. *Unlisted Land Uses.* Any use not listed in Table 23.206-1 is permitted with an AUP. To approve the AUP, the Zoning Officer must find that the use is compatible with the purposes of the district where it is located. Any use found to be incompatible with the purposes of the district is not permitted.

C. *Use-Specific Regulations.* Uses subject to supplemental regulations are shown in Table 23.206-1 with an asterisk (*) following the permit requirement (e.g., ZC*). The Use-Specific Standards column in Table 23.206-1 identifies the location of these standards in the Zoning Ordinance. (Ord. 7978-NS § 36, 2025; Ord. 7957-NS § 2, 2025; Ord. 7955-NS § 14, 2025; Ord. 7945-NS § 3, 2024; Ord. 7898-NS § 13, 2024; Ord. 7882-NS §§5--7, 2023; Ord. 7838-NS § 3, 2022; Ord. 7810-NS § 9, 2022; Ord. 7787-NS § 2 (Exh. A), 2021)

The Berkeley Municipal Code is current through Ordinance 8008-NS, passed May 12, 2026.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.berkeleyca.gov

Hosted by ICC Code Solutions.

02a.21

Igor Tregub, Councilmember District 4

Rashi Kesarwani, Councilmember District 1

Terry Taplin, Councilmember District 2

CONSENT CALENDAR

SEPTEMBER 15, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmembers Igor Tregub (Author), Councilmember Rashi Kesarwani (Co-sponsor), Councilmember Terry Taplin (Co-sponsor).

Subject: Resolution in opposition to the handling, storage, and transport of coal and petroleum coke in the San Francisco Bay Region, urging stringent regulation of such facilities by the Bay Area Air District, and in support of Assembly Bill (AB) 40

RECOMMENDATION

Adopt a resolution opposing the handling, storage, and transport of coal and petroleum coke in the San Francisco Bay Region, urging stringent regulation of such facilities by the Bay Area Air District, and in support of Assembly Bill (AB) 40.

BACKGROUND

The community's opposition to the transport and handling of coal through the East Bay is longstanding and well-documented. On November 17, 2015, the Berkeley City Council unanimously adopted Resolution No. 67,280–N.S. opposing coal shipment through a proposed multi-commodity terminal in West Oakland. Regional opposition was formalized again in 2016 via a joint letter from the mayors of Berkeley and ten other East Bay cities, and through separate resolutions passed by the councils of Berkeley, Emeryville, El Cerrito, Oakland, and Richmond.[1]

[1] Zoe Chafe Ph.D., "Analysis of Health Impacts and Safety Risks and Other Issues/Concerns Related to the Transport, Handling, Transloading, and Storage of Coal and/or Petroleum Coke (Petcoke) in Oakland and at the Proposed Oakland Bulk and Oversized Terminal," June 2016, p. 100 https://nocoalinoakland.info/wp-content/uploads/2026/05/Zoe-Chafe-Analysis-of-health-Impacts-and-Safety-Risks-etc-oak059408-6-22-2016.pdf

The current controversy arises from a June 4, 2026, announcement by President Donald J. Trump of a $75 million Defense Production Act grant to assist private developers in constructing the Oakland Bulk and Oversized Terminal (OBOT), a "massive"[2] rail-to-ship coal-export facility at the former Oakland Army Base in West Oakland. Proponents envision the terminal receiving coal by rail, storing it on site, and transferring it to ships for export, with operations potentially starting as early as 2028. The facility would operate under a 66-year lease with the City of Oakland.

A primary rail route for delivering coal to OBOT would be the Union Pacific line that runs directly through West Berkeley. The terminal's initial capacity would be 9 to 10 million tons of coal per year,[3] which would require multiple mile-long "unit" trains to pass daily in each direction through numerous East Bay communities, including Berkeley.

CURRENT SITUATION AND ITS EFFECTS

Public Health Exposure

Emissions of coal dust, a well-established by-product of coal handling, storage, and transport, significantly increase ambient levels of fine particulate matter (PM 2.5)[4] and coarse particulate matter (PM 10).[5] According to the U.S. Environmental Protection Agency, particle pollution is linked to premature deaths, nonfatal heart attacks, irregular heartbeats, aggravated asthma, decreased lung function, and respiratory symptoms such as coughing, respiratory irritation, and difficulty breathing. Inhaling fine coal dust is directly associated with increased rates of asthma, chronic bronchitis, emphysema, and reduced lung capacity. Dust from coal and petroleum coke (petcoke) also carries toxic heavy metals, including arsenic, lead and chromium, which carry their own serious health risks.[6]

Coal trains would transit only 50 to 100 feet from Aquatic Park and the Fourth Street shopping district, as well as Harrison House Shelter, a transitional housing facility catering to families with young children[7], and about a quarter-mile from Rosa Parks

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[2] https://nocoalinoakland.info/gamechanger-ab40/
[3] U.S. Department of Energy, "Energy Department to Use Defense Production Act Funding to Expand Coal Capacity at 13 Plants and Build Export Infrastructure," June 2026, https://www.energy.gov/articles/energy-department-use-defense-production-act-funding-expand-coal-capacity-13-plants-and
[4] U.S. Environmental Protection Agency, 'Health and Environmental Effects of Particulate Matter," May 2026 https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm
[5] U.S. Environmental Protection Agency, "Health Effects of Petroleum Coke," January 2017, https://19january2017snapshot.epa.gov/petroleum-coke-chicago/health-effects-petroleum-coke_.html
[6] Michael Hendryx, Keith J. Zullig and Juhua Luo "Impacts of coal use on health," Annual Review of Public Health, 41(1), 397–415, January 2020, https://doi.org/10.1146/annurev-publhealth-040119-094104
[7] https://www.self-sufficiency.org/ursulashermanvillage

Elementary School, Aquatic Park School, and the Urban Adamah outdoor education center. Similar exposure would affect other communities along the rail corridor.

Regulatory and Review Gaps

No agency has conducted a targeted environmental review of the health and environmental impacts of coal and petcoke handling and storage at the proposed OBOT terminal. The last environmental review of the site occurred in 2012, before developers acknowledged that coal would be a primary commodity. The Bay Area Air Quality Management District (Air District), which will act as a Responsible Agency under CEQA when considering permits for OBOT, has stated it intends to strengthen its regulatory controls on fugitive coal and petcoke dust, but no new rules have yet been adopted.

Proponents of the project assert that the terminal will operate with “unparalleled environmental responsibility” and that fugitive dust will be mitigated to such a degree that local air quality will improve. These claims remain untested and unverified as of the publication of this report.

Assembly Bill (AB) 40 (Bonta), currently on the California Senate floor, would require that new projects for the handling, storage, or export of more than 5,000,000 tons per year of coal of be reviewed in an environmental impact report (EIR) under the CEQA and that certain conditions, including changing the type of coal or increasing the quantity of coal handled, stored, or exported, triggers a subsequent EIR, among other provisions.[8]

ENVIRONMENTAL SUSTAINABILITY

Local and Regional Water Quality

The rail corridor runs immediately alongside the San Francisco Bay, its estuary system, and key tributaries. Fugitive dust containing heavy metals and other contaminants from uncovered coal trains presents a direct, ongoing threat of toxic deposition into these public trust waters, undermining decades of regional investment in water-quality improvement and habitat restoration.

Climate and Greenhouse-Gas Considerations

Facilitating the export of up to 10 million tons of coal per year would enable substantial greenhouse-gas emissions when that coal is burned overseas. This directly conflicts with Berkeley’s climate mitigation commitments. Promoting fossil-fuel infrastructure with

[8] https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202520260AB40

a planned 66-year lifespan locks in carbon-intensive energy pathways long into the future, at a time when rapid decarbonization is urgently needed.

Regulatory Framework and Precedent

The Air District's upcoming rulemaking on fugitive coal and petcoke dust represents a critical opportunity to set protective, science-based standards that prioritize community health over fossil-fuel export interests. Berkeley's support for stringent, enforceable regulations would reinforce the principle that projects with significant public-health and environmental impacts must undergo a complete, up to date environmental review under CEQA before permits are issued.

FINANCIAL IMPLICATIONS

Limited staff time is required to communicate the city's position to designated recipients.

CONTACT

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Olga Bolotina, Chief of Staff, Council District 4, obolotina@berkeleyca.gov

Amy Rodas, Legislative Aide, Council District 4, amrodas@berkeleyca.gov

ATTACHMENTS

1. Resolution

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

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BERKELEY IN OPPOSITION TO HANDLING, STORAGE, AND TRANSPORT OF COAL AND PETROLEUM COKE IN THE SAN FRANCISCO BAY REGION, URGING STRINGENT REGULATION OF SUCH FACILITIES BY THE BAY AREA AIR DISTRICT, AND IN SUPPORT OF ASSEMBLY BILL (AB) 40

WHEREAS, on June 4, 2026, President Donald J. Trump announced a $75 million Defense Production Act grant to aid private developers in construction of the Oakland Bulk and Oversized Terminal (OBOT), a massive rail-to-ship coal export facility in West Oakland that could start shipping coal as soon as 2028; and

WHEREAS, proponents have proposed the approval of the OBOT facility at a location on the former Oakland Army Base. The terminal would receive shipments of coal on rail lines, store the coal, and then transfer the coal onto ships for transport. Coal would be transported along a Class 1 rail line, and the most direct and most likely route is the Union Pacific rail line running through West Berkeley; and

WHEREAS, OBOT would operate for decades under a 66-year lease. Decisions made now will have local, regional, and global impacts for generations to come; and

WHEREAS, the U.S. Department of Energy states that the initial capacity of the proposed terminal will be 9 to 10 million tons of coal per year, passing daily through much of California's East Bay, including Albany, Berkeley, Crockett, El Cerrito, Emeryville, Martinez, Pinole, Richmond, Rodeo, and San Pablo; and

WHEREAS, coal trains traveling through West Berkeley would increase the risk of coal dust escaping into neighborhoods where thousands of people live, work, shop, and recreate each day, passing only 50 to 100 feet away from Aquatic Park and the Fourth Street shopping district, as well as Harrison House Shelter, a transitional housing facility catering to families with young children, and approximately a quarter mile from Rosa Parks Elementary School, Aquatic Park School, and Urban Adamah (an outdoor education center); and

WHEREAS, the residents of Berkeley stand in solidarity with the residents of Oakland in their opposition to the handling, transport and storage of coal and petroleum coke (petcoke), given the well-documented adverse health effects from these activities; and

WHEREAS, the Bay Area Air District (the Air District) has indicated that it will consider additional controls on sources of fugitive coal and petcoke dust as part of its commitment to strengthen regulatory controls on fugitive dust; and

WHEREAS, no agency has yet undertaken a review that examined the environmental impacts associated with the handling and storage of coal and petcoke at the proposed OBOT terminal, and the most recent environmental review in 2012, before the OBOT developers acknowledged that coal would be transported through the site; and

WHEREAS, the Air District is a Responsible Agency under the California Environmental Quality Act (CEQA) that will rely on existing environmental impact reviews in making a permitting decision with respect to OBOT; and

WHEREAS, on November 17, 2015, the Berkeley City Council unanimously adopted Resolution No. 67,280–N.S. opposing the shipment of coal through the proposed multi-commodity terminal in West Oakland; and

WHEREAS, the communities of the Bay Area have been historically united in opposition to the transport of coal through the East Bay and the storage and handling of coal in West Oakland and, in 2016, expressed their opposition in a letter from the mayors of Albany, Berkeley, El Cerrito, Emeryville, Dublin, Fremont, Hayward, Livermore, Richmond, San Leandro, and Union City and in resolutions passed by the city councils of Berkeley, Emeryville, El Cerrito, Oakland, and Richmond.

NOW, THEREFORE, BE IT RESOLVED that the City of Berkeley opposes the transport of coal and petcoke through the city and through nearby cities. The City also opposes the handling and storage of coal at the proposed OBOT facility in Oakland.

BE IT FURTHER RESOLVED that the City urges the Air District to adopt measures that would strengthen regulation of coal and petcoke as components of fugitive dust.

BE IT FURTHER RESOLVED that the City urges the Air District to ensure that any air permit it issues to the OBOT facility fully protect Oakland and other Bay Area workers and residents from exposure to dangerous coal and petcoke emissions.

BE IT FURTHER RESOLVED that the City urges the Air District, in evaluating any application for an air permit for the OBOT terminal, to first perform a comprehensive review of all potentially significant environmental impacts of the projected coal handling described by President Trump, as part of a full, up-to-date Environmental Impact Report under the CEQA.

BE IT FURTHER RESOLVED that the City supports Assembly Bill (AB) 40 (Bonta), which would require that new projects for the handling, storage, or export of more than 5,000,000 tons per year of coal be reviewed in an environmental impact report (EIR) under the CEQA and that certain conditions, including changing the type of coal or

increasing the quantity of coal handled, stored, or exported, trigger a subsequent EIR, among other provisions.

BE IT FURTHER RESOLVED that the City will transmit copies of this Resolution to Oakland Mayor Barbare Lee and the Oakland City Council, the Bay Area Air District Executive Officer and Board of Directors, California Governor Gavin Newsom, California State Senator Jesse Arreguín, California State Assemblymembers Mia Bonta and Buffy Wicks, and the California Environmental Protection Agency to ensure that our community's opposition is officially recorded and recognized in all pending permit evaluations and legal proceedings.

02a.22

Berkeley City Councilmember
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ACTION CALENDAR

September 15, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Igor Tregub (Author)

Subject: Referral to the City Manager: RENAISSANCE (Revitalizing Enterprise and Neighborhoods through Activation, Investment, Safety, Streamlining, Accessibility, Networking, Collaboration, and Equity) – Part 2: Commercial Vacancy Blight Prevention and Mitigation

RECOMMENDATION

Commercial Vacancy Blight Prevention and Mitigation

Refer to the City Manager and City Attorney the development of an integrated strategy to prevent and reduce unmitigated ground-floor retail vacancies and blight, increase activation, and support the vitality and resilience of local businesses and other community-serving uses in Berkeley's Commercial Districts.

Recommendations include but are not limited to developing regulations around the following solutions:

1. **Subdivision of Larger Storefronts.**
   Develop policies that encourage the conversion or subdivision of larger storefront commercial spaces to allow for more diverse business and community uses.
2. **Flexible Mixed-Use Occupancy.**
   a. Review Berkeley's existing zoning regulations for live/work, maker, creative, and related uses to identify regulatory barriers to the flexible use of underutilized commercial storefronts and modify the Zoning Ordinance and establish or update performance standards where necessary to address such barriers.

b. Explore performance standards to ensure that live/work, maker, and other creative uses help activate and enhance the vibrancy of the adjacent neighborhood.

3. **Financial Assurances Tied to Property Maintenance and Site Conditions.**
   To the extent permissible under state law, develop regulations requiring, as a condition of applicable development permits, performance bonds or other financial assurances sufficient to ensure appropriate property maintenance and site conditions if an approved development project is substantially delayed, suspended, or abandoned.
4. **Cold Shell Prevention.**
   a. Explore a regulatory framework to prevent premature deactivation of tenant-ready commercial spaces (commonly referred to as “cold shelling”) in buildings planned for demolition by considering indicators of project readiness, which could include demonstrated financial capacity, evidence that a portion of project funding is secured, and other relevant factors are considered.
   b. Require a permit for the removal or decommissioning of utility hook-ups as part of building safety and habitability standards, to prevent practices that create and perpetuate prolonged vacancy and disinvestment.
5. **Warm Shell Development.**
   Establish requirements and/or incentives to ensure that ground floor retail spaces in new developments are delivered with basic utility connections (commonly referred to as “warm shells”), including utility and electricity hookups, when those services are available and have been connected to the rest of the building.
6. **Shared Commercial Facilities.**
   Explore and, where feasible, facilitate the creation of customer-accessible shared restroom facilities serving multiple ground-floor commercial spaces or buildings, including through zoning allowances, coordinated development standards, and incentives. These should emphasize cost-neutral or revenue-supporting implementation approaches, such as integration into private development projects, public-private partnerships, or maintenance models funded by participating property owners, while ensuring compliance with applicable building, accessibility, and public health requirements.
7. **Demonstration of Utility-Related Delays.**
   Where delays in utility approvals or service connections are cited, require developers to provide reasonable documentation from utility providers demonstrating that such delays are outside of the developer’s direct control. Explore opportunities for improved coordination with utility providers and City

processes to help mitigate such delays and support the timely delivery of usable ground floor commercial space.

8. **Utility Equipment Undergrounding.**
   Develop regulations requiring large new residential and commercial mixed-use developments to locate transformers and other large utility equipment below grade, to the extent feasible and consistent with applicable utility requirements.

FINANCIAL IMPLICATIONS

The recommendations primarily direct staff to evaluate and develop potential regulatory and incentive-based approaches. Implementation may require staff time for policy development, legal review, coordination with utility providers, and potential amendments to the Zoning Ordinance and other City regulations. Specific fiscal impacts will depend on the measures ultimately developed and brought forward for Council consideration. Where feasible, recommendations should prioritize cost-neutral and/or revenue-supporting approaches and avoid creating significant ongoing General Fund obligations.

Long-term fiscal benefits of these recommendations could include stronger commercial activity, higher and more predictable business tax revenues, stabilized property values, and increased attractiveness of our commercial spaces for tourism purposes.

CURRENT SITUATION AND ITS EFFECTS

Despite several successful programs,[1] encouraging trends,[2] and improved safety outcomes,[3] the prevalence of long-term commercial storefront vacancies continues to create a sense of an unwelcoming environment, which can discourage residents and visitors from spending time in our most active commercial districts.

Example Business District Profiles[4]

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[1] Berkeley Relief Fund, https://berkeleyrelieffund.org/; City Loan Fund for Small Businesses, https://www.dailycal.org/archives/city-of-berkeley-announces-loan-fund-to-support-small-businesses/article_d3dc322c-9aa7-5f74-b030-cd56920ef263.html#:~:text=To%20prevent%20Berkeley's%20entrepreneurial%20landscape,default%20rate%20of%20about%2020%25.

[2] Office of Economic Development, *"Berkeley Economic Dashboards Update,"* February 2025, https://berkeleyca.gov/sites/default/files/documents/2025-02-25%20Special%20Item%2001%20Berkeley%20Economic%20Dashboards.pdf

[3] City of Berkeley. *Reimagining Public Safety Status Report*. October 29, 2024, https://berkeleyca.gov/sites/default/files/documents/2024-10-29%20Special%20Item%2001%20Reimagining%20Public%20Safety%20Status.pdf

[4] Commercial District Dashboards 2024, https://berkeleyca.gov/sites/default/files/documents/Attachment2_Commercial%20District%20Dashboard

Downtown Berkeley Commercial District
The Downtown serves as the civic, cultural, and transit center of the city. It benefits from high foot traffic potential and strong arts anchors, including live performance venues and the Berkeley Public Library. Persistent vacancies, safety concerns, and construction disruption have weakened continuity along key pedestrian corridors. Strategic activation and a consistent safety presence are particularly impactful and important here.

Telegraph Avenue Commercial District
The Telegraph Avenue Commercial District is shaped by its proximity to UC Berkeley, student life, and a historic independent cultural identity. Vacancies, turnover, and ongoing public safety concerns create instability for local businesses. Activation strategies that align with student schedules, youth creative culture, and evening activity can significantly support corridor vibrancy.

Adeline Corridor Commercial District
The Adeline Corridor has significant cultural, historic, and community importance. Long-term disinvestment and vacancy patterns have created challenges but also provided opportunities for community-driven activation, local entrepreneurship, cultural programming, and Black-centered economic development strategies.

San Pablo Avenue Corridor Commercial District
The San Pablo Avenue Corridor spans several neighborhoods and serves both regional and local retail. Vacancies vary block by block, but multiple cold-shelled and fenced-off properties create interruptions in walkability and visibility for active businesses. Activation strategies here should support continuity and encourage small business incubation.

Solano Avenue Commercial District
Solano Avenue features a strong neighborhood commercial character with steady pedestrian activity, especially around dining and community-serving retail. While this district faces fewer prolonged vacancies than other corridors, simplified permitting, small business support, and cultural activation will help maintain its vibrancy and resilience.

Over the last four years, the City of Berkeley has taken a series of legislative and administrative steps to stabilize Commercial Districts, streamline permitting, improve safety, and support activation. This referral aims to address the underlying factors contributing to long-term vacancies and perceived decline, while advancing strategies

s_2024_Q4.pdf . These are illustrative examples provided not to the exclusion of other commercial districts that would be scoped-in to this referral.

that promote business stability, cultural activation, and neighborhood vitality across the city's commercial districts, as specified below.

The recommendations contained in this report comprise a continuation of Part 1 of the RENAISSANCE package. Future elements of the package contemplate proposals to enhance public safety in Berkeley's commercial districts, streamline event permitting, and further strengthen small business assistance.

Subdivision of Larger Storefronts.

Larger commercial spaces can accommodate a narrower range of potential tenants than smaller spaces because of their size and associated occupancy costs. In Downtown Berkeley, larger vacant commercial spaces can also result in substantial stretches of inactive ground floor frontage when they remain unoccupied.

Other jurisdictions have begun using zoning incentives to encourage smaller commercial spaces. For instance, San Francisco Planning Code § 206.10(e)(1)[5], effective January 12, 2026, establishes an incentive for "Micro-Retail" spaces between 100 and 1,000 gross square feet in qualifying Housing Choice San Francisco projects. For every 1.5 square feet of qualifying Micro-Retail space, a project may receive up to two additional square feet for other project uses, subject to the limitations of the program. The qualifying Micro-Retail space generally must be maintained for at least 30 years or the life of the project, whichever is shorter.

Flexible Mixed-Use Occupancy.

Berkeley already regulates live/work as a distinct use under BMC Chapter 23.312[6], with permit requirements and standards governing the amount and use of workspace. The City's zoning regulations also provide for Art/Craft Studios and other creative and commercial uses, with requirements varying by use and zoning district.

Berkeley's recent planning work has identified opportunities for greater flexibility for maker spaces and other creative uses. For example, the San Pablo Avenue Specific Plan[7] process has considered allowing maker spaces, art studios, galleries, live/work, and other community oriented commercial and light industrial activities with streamlined zoning approval. Proposed design standards also address how live/work and maker uses interact with ground floor commercial areas and the public realm. These proposals

[5] San Francisco Planning Code § 206.10(e)(1) https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_planning/0-0-0-72137
[6] Chapter 23.312 LIVE/WORK, https://berkeley.municipal.codes/BMC/23.312
[7] San Pablo Avenue Specific Plan Update, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2024-12-04_PC_Agenda%20-%20Packet.pdf

are specific to the San Pablo Avenue planning process and do not constitute citywide standards.

These efforts provide a basis for examining whether similar regulatory barriers exist in other commercial areas and whether existing or updated performance standards could provide greater flexibility for live/work, maker, and other creative uses while supporting active storefronts and the vitality of surrounding commercial areas.

Financial Assurances Tied to Property Maintenance and Site Conditions

Several development projects in Downtown Berkeley have remained stalled for years, creating blocks of “dead space” and unwelcoming conditions for nearby businesses, residents, and visitors. Whether it is the demolished development site at Harold Way, the cold-shelled and deactivated property on Center Street, or vacant storefronts near the Downtown Berkeley BART Plaza, prolonged inactivity at prominent properties can create unsightly and uninviting conditions in the heart of Downtown.

Organizations such as the Downtown Berkeley Association are frequently left working with property owners to address maintenance and appearance at stalled development sites. These conditions affect not only the individual property but also neighboring businesses and the surrounding public realm. The broader community should not bear the impacts or costs associated with projects that remain stalled for extended periods. Requiring appropriate financial assurances can help ensure that property owners retain responsibility and sufficient resources to maintain their properties and address site conditions when development is substantially delayed, suspended, or abandoned.

California cities have used financial assurances to address similar concerns. Colton[8], Azusa[9], and Santa Ana[10] require bonds or similar financial security for certain properties that remain vacant for 90 days, with the amount tied to estimated blight prevention, maintenance, or security costs. Oakdale[11] also authorizes a bond before issuance of certain demolition permits to ensure required work is completed. These and other approaches provide relevant precedents for Berkeley to evaluate financial safeguards

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[8] Chapter 8.16 - REGISTRATION AND MAINTENANCE OF VACANT AND ABANDONED COMMERCIAL AND INDUSTRIAL PROPERTY, https://library.municode.com/ca/colton/codes/code_of_ordinances?nodeId=TIT8PRMAENPR_CH8.16REMAVAABCOINPR

[9] ARTICLE XVII. - REGISTRATION AND MAINTENANCE OF VACANT AND ABANDONED COMMERCIAL, INDUSTRIAL AND RESIDENTIAL PROPERTIES, DIVISION 3. - REGISTRATION AND MAINTENANCE OF ABANDONED, VACANT AND/OR DEFAULTED MORTGAGE PROPERTIES, https://library.municode.com/ca/Azusa/codes/code_of_ordinances?nodeId=MUCO_CH14BUBURE_ARTXVIIREMAVAABCOINREPR

[10] https://library.municode.com/ca/santa_ana/codes/code_of_ordinances?nodeId=PTIITHCO_CH8BUST_ARTXPRMA_DIV3REMAABVADEMOPR

[11] https://ecode360.com/OA4108/laws/LF2604259.pdf

both for prolonged vacancies and, where legally permissible, as a condition of applicable development permits.

Cold Shell Prevention

Berkeley's existing regulations do not appear to specifically address the practice sometimes referred to as “cold shelling,” in which otherwise usable commercial space is intentionally made untenantable or significantly less tenant-ready in anticipation of future redevelopment, including through removal or decommissioning of utilities or other building systems. This can contribute to prolonged vacancies when tenants are displaced, or spaces are deactivated substantially before a redevelopment project is ready to proceed.

The Center Street redevelopment site provides a visible example of the broader problem. Numerous restaurants and other active businesses closed or relocated in anticipation of redevelopment, while the buildings subsequently remained vacant for an extended period before construction. The Downtown Berkeley Association worked with the property owner and project architect to secure murals for the boarded storefronts to reduce the visual impact of the vacancy.[12] While such efforts benefit the public realm, responsibility for maintaining vacant properties and mitigating blight should rest primarily with property owners rather than community or business organizations.

The experience highlights a potential regulatory gap between commercial occupancy and actual construction readiness. Berkeley could evaluate whether additional safeguards are warranted to discourage premature cold shelling and prolonged deactivation of otherwise usable commercial space when redevelopment is not yet positioned to proceed.

Warm Shell Development

Ground floor commercial spaces in new mixed-use developments are sometimes delivered without basic infrastructure, leaving prospective tenants responsible for substantial upfront investments before they can open for business. This can create a particular barrier for small and locally owned businesses and contribute to prolonged storefront vacancies. San Francisco has addressed this issue through its Family Zoning Plan[13] and related Planning Code[14] provisions, which establish standards for warm retail spaces that include basic improvements such as finished floors and walls, Americans with Disabilities Act (ADA)-accessible restrooms, essential utilities, and additional infrastructure for food service uses. Berkeley could explore similar baseline

[12] https://www.berkeleyside.org/2025/08/15/new-downtown-berkeley-mural-tackles-blight
[13] Family Zoning Plan, https://sfplanning.org/sf-family-zoning-plan
[14] San Francisco Planning Code provisions, https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_planning/0-0-0-19952

standards to reduce the cost and time required for tenant improvements, make new commercial spaces more accessible to independent and neighborhood serving businesses, and support more timely activation of ground floor storefronts.

Shared Commercial Facilities

Requiring each individual storefront to accommodate all necessary customer facilities can increase tenant improvement costs and reduce usable commercial space, particularly for smaller businesses. Berkeley could explore promoting shared, customer-accessible restroom facilities serving multiple commercial spaces where consistent with building, accessibility, employment, and public health requirements. California law already provides a framework for shared and multiuser restroom configurations, including all-gender facilities, and the 2025 California Building Code[15] expressly addresses clusters of single user restrooms and multiuser all gender facilities. This could provide a foundation for Berkeley to explore shared facilities within new mixed-use developments or groups of commercial spaces, with costs incorporated into private development or shared among participating property owners rather than creating an ongoing City obligation.

Demonstration of Utility Related Delays

Utility connection delays can significantly affect the completion and occupancy of new commercial spaces, but distinguishing delays outside a developer's control from other project delays is important when exemptions or extensions are being considered. Berkeley could require reasonable documentation from the relevant utility when utility delays are cited as the reason a commercial space cannot be completed or occupied.

Utility Equipment Undergrounding

Large above-ground utility equipment, particularly pad-mounted electrical transformers, can occupy substantial space along the frontage of new development and affect sidewalks, reduce the clear path of travel for pedestrians and people using mobility devices, landscaping, and the overall streetscape. Berkeley already regulates transformer placement through BMC Section 23.304.100, including a requirement that transformers serving certain residential and mixed-use developments be installed below grade. City regulations also address the placement and screening of above-ground transformers where they are permitted.

However, Berkeley's existing undergrounding requirement is not based on the size of the development. It applies to residential and mixed-use developments containing five or more dwelling units on lots of 6,000 square feet or smaller. As a result, larger

15 https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?article=1.&chapter=2.&division=104.&lawCode=HSC&part=15.&title&utm.com

development sites are not covered by this undergrounding requirement solely because the projects themselves are large.

The City could evaluate expanding its existing standards to require transformers and other large above ground utility equipment associated with large new residential and mixed-use developments to be located below grade or otherwise incorporated into the building, where technically feasible and consistent with utility provider requirements.

RATIONALE FOR RECOMMENDATION

Berkeley's commercial corridors are central to the City's economic vitality, neighborhood character, and public life, yet prolonged storefront vacancies can weaken otherwise active commercial areas and create significant gaps in pedestrian activity. The recommendations above address several practical factors that can contribute to prolonged vacancy, including large or inflexible commercial spaces, substantial tenant improvement costs, premature deactivation or demolition of usable storefronts, property maintenance challenges, and delays in delivering utility-ready commercial space.

The proposed measures are intended to help commercial spaces remain usable, adaptable, and easier to occupy while avoiding unnecessary barriers to viable development. They build on existing Berkeley regulations while drawing from approaches used in other California jurisdictions, including stronger project readiness standards, warm shell requirements and incentives, financial assurances for vacant properties, and utility undergrounding. Together, these measures would provide the City with additional tools to encourage timely commercial occupancy, support small and locally serving businesses, and maintain active and welcoming commercial corridors.

BACKGROUND

Regular economic dashboards and reports from the Office of Economic Development continue to track corridor performance and guide interventions to reduce vacancies and support business stability.[16] Berkeley has taken steps to simplify business approvals, support merchants after damage, maintain basic activation standards at the frontage, clarify demolition rules, recognize sidewalk vending, and modernize event permitting.

ALTERNATIVE ACTIONS CONSIDERED

As a referral, this item provides a menu of options for further evaluation by the City Manager and City Attorney. Consequently, no alternatives were considered, but elements of this referral can be amended, added to, or combined as this item moves forward through the evaluation process.

[16] https://berkeleyca.gov/doing-business/economic-development/economic-dashboards

COMMUNITY IMPACT

These recommendations are intended to strengthen Berkeley's commercial corridors by reducing prolonged storefront vacancies and supporting the timely activation of commercial spaces. Vibrant and well-maintained storefronts can contribute to pedestrian activity, neighborhood vitality, and a stronger environment for existing businesses. Reducing the upfront costs and regulatory barriers associated with occupying commercial spaces may also expand opportunities for small, local, and emerging businesses, artist and maker spaces, and other community-serving uses. At the same time, appropriate performance standards and feasibility considerations can help ensure that increased flexibility is compatible with surrounding residents, businesses, accessibility needs, and the character of Berkeley's commercial districts.

CONSULTATION CONDUCTED

All RENAISSANCE reports are prepared with input from the City Manager's Office, the Office of Economic Development, the Department of Planning and Zoning, and the City Attorney's Office. The Berkeley Chamber, Downtown Berkeley Association, small business owners, cultural space operators, Downtown Berkeley constituents, and other stakeholders were also consulted, and their feedback has been incorporated to the extent possible.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Vibrant local commercial districts reduce driving distances, encourage walking and transit use, and support localized economic systems which reduce emissions associated with regional retail travel.

CONTACT PERSON

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Olga Bolotina, Chief of Staff, Council District 4
OBolotina@berkeleyca.gov

Upcoming Worksessions and Special Meetings	
Scheduled Dates	
1. None	

Unscheduled Presentations and Special Meetings
1. None

Future Information Reports
1. Affordable Housing Fee Feasibility Study 2. Berkeley Fire Department Annual Report

	City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling
	None

CITY CLERK DEPARTMENT
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL

Address	Board/ Commission	Appeal Period Ends	Public Hearing
NOD – Notices of Decision			
3101 Sacramento Street (convert commercial building to mixed-use)	ZAB	8/31/2026	
2298 Durant Avenue (construct multifamily building)	ZAB	8/31/2026	
2974 Sacramento Street (Sacramento Market)	ZAB	8/31/2026	
Public Hearings Scheduled			
Elmwood Commercial Historic District	LPC		TBD
2700 Shattuck Avenue (construct mixed-use residential development)	ZAB		TBD
Remanded to ZAB or LPC			
Notes			
ZAB: Zoning Adjustments Board			
LPC: Landmarks Preservation Commission			

8/27/2026

2027 - Draft

JANUARY						
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Agenda Committee

City Council Meeting

VTO

Holiday

City Holidays					
Jan 1	New Year's Day	**May 19**	Malcolm X's Birthday -Obs 5/17	**Oct 11**	Indigenous Peoples' Day
Jan 18	Martin Luther King Jr.'s Birthday	**May 31**	Memorial Day	**Nov 11**	Veterans Day
Feb 12	Lincoln's Birthday	**June 19**	Juneteenth - Obs 6/18	**Nov 25**	Thanksgiving Day
Feb 15	Washington's Birthday	**July 4**	Independence Day - Obs 7/5	**Nov 26**	Day after Thanksgiving Day
Mar 31	Farm Workers Day - Obs 3/29	**Sept 6**	Labor Day	**Dec 25**	Christmas Day

City Policy Regarding the Scheduling of City Meetings on All Significant Religious Holidays

Pursuant to Resolution No. 70,066-N.S., it is the policy of the City to avoid scheduling meetings of City Legislative Bodies (City Council, Policy Committees, Commissions, Task Forces) on religious holidays that incorporate significant work restrictions for common observance in the United States. City legislative bodies must avoid scheduling meetings on the religious holidays listed below.

Religion	Holiday	2027 Date(s)
Shinto	New Year	1/1/2027 thru 1/3/2027
Hindu	Makara Sankranti	1/14/2027
Cultural	Chinese New Year (Eve, Day, Lantern Festival)	2/5, 2/6, 2/20
Islam	Ramadan (Eve & First Night)	2/7/2027 thru 2/8/2027
Islam	Eid al-Fitr	3/9/2027 thru 3/10/2027
Cultural	Nowruz*	3/21/2027
Hindu	Holi	3/22/2027
Christian	Good Friday	3/26/2027
Christian	Easter Sunday	3/28/2027
Jewish	Passover Nights 1 & 2 (7*, 8*)	4/21 - 4/22 (4/28, 4/29)
Islam	Eid al-Adha	5/16/2027 thru 5/17/2027
Buddhist	Vesak	5/20/2027
Jewish	Shavuot*	6/10/2027 thru 6/12/2027
Shinto	Obon Ceremony*	8/13/2027 thru 8/15/2027
Jewish	Rosh Hashanah	10/1/2027 thru 10/3/2027
Hindu	Dussehra	10/9/2027
Jewish	Yom Kippur	10/10/2027 thru 10/11/2027
Jewish	Sukkot (1st Day)*	10/15/2027 thru 10/16/2027
Jewish	Shmini Atzeret/ Simchat Torah*	10/22/2027 thru 10/24/2027
Hindu	Diwali	10/29/2027
Baha'i Faith	Birth of Bab	10/30/2027
Baha'i Faith	Birth of Baha'u'llah	10/31/2027
Jewish	Chanukah (1st night)	12/24/2027
Christian	Christmas	12/25/2027
Cultural	Kwanzaa	12/26/2027 thru 1/1/2027
Jewish	Shabbat (Friday sunset to Saturday sunset)*	Weekly

** Meetings not prohibited, but avoid scheduling meetings if possible*

There is no material for this item.

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There is no material for this item.

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