



OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

## **POLICE ACCOUNTABILITY BOARD CONTROLLED EQUIPMENT REPORTING SUBCOMMITTEE**

Board Members: Moore (Chair), Ramsey

**Tuesday, July 5, 2022  
11:00 a.m.**

### **PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/83842714327>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on “rename” to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **838 4271 4327**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized.

### **AGENDA**

- 1. CALL TO ORDER**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)*

- 4. OLD BUSINESS (discussion and action)**

The Police Accountability Board and Office of the Director of Police Accountability (ODPA) were created to provide independent civilian oversight of the Berkeley Police Department. They review and make recommendations on police department policies, and investigate complaints made by members of the public against police officers. For more information, contact the ODPA.

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Website: [www.cityofberkeley.info/dpa/](http://www.cityofberkeley.info/dpa/) Email: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)

Continue review of internal policies relevant to Controlled Equipment and conform to the approved Controlled Equipment Impact Statements and local and state laws. (Those internal policies include Policies 709, 300, 311, 349, 353, 354, 428, 707, 708, and 811.)

**5. SCHEDULE NEXT MEETING DATE**

**6. PUBLIC COMMENT**

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)*

**7. ADJOURNMENT**

**Communications Disclaimer**

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**Communication Access Information (A.R. 1.12)**

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**SB 343 Disclaimer**

Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA.

Contact the Director of Police Accountability (Board Secretary) at [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info) or (510) 981-4950.



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## Police Accountability Board Subcommittee on Controlled Equipment Use & Reporting – June 28, 2022 meeting: Table of contents and links

1.	Annotated Agenda of City Council Special Meeting of June 21, 2022	<a href="https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-06-21%20Special%20Annotated%20Agenda%204pm%20-%20Council.pdf">https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-06-21%20Special%20Annotated%20Agenda%204pm%20-%20Council.pdf</a>
2.	Policy 709, Military Equipment (06-07-2022) (Supplemental Material for Supp. 1 from BPD for June 14, 2022 Council meeting; Policy 709 starts at <b>p. 67</b> of the pdf)	<a href="https://berkeleyca.gov/sites/default/files/documents/2022-06-14%20Item%2032%20Supp1%20Police.pdf">https://berkeleyca.gov/sites/default/files/documents/2022-06-14%20Item%2032%20Supp1%20Police.pdf</a>
3.	<p>Policy 300, Use of Force</p> <p>Policy 349, Tactical Rifle Operator Program</p> <p>Policy 353, Diversionary Device</p> <p>Policy 354, Precision Rifle</p> <p>Policy 428, First Amendment Assemblies</p> <p>Policy 707, Long Range Acoustical Device</p> <p>Policy 708, Robot Cameras</p> <p>Policy 811, Mobile Command Vehicle (MCV)</p>	<p>All Lexipol policies available on BPD website:</p> <p><a href="https://berkeleyca.gov/sites/default/files/2022-05/RELEASE_20220411_T083431_Berkeley_PD_Policy_Manual.pdf">https://berkeleyca.gov/sites/default/files/2022-05/RELEASE_20220411_T083431_Berkeley_PD_Policy_Manual.pdf</a></p>
4.	Assembly Bill 481 ( <b>p. 191</b> of PAB Agenda Packet for June 8, 2021)	<a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2022.06.08.PAB_.Pkt_.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2022.06.08.PAB_.Pkt_.pdf</a>
5.	<p><i>Not for review – included as an FYI:</i></p> <p>Police Equipment and Community Safety Ordinance Impact Statements &amp; Policy 303, Control Devices and Techniques, as revised and approved by Council. (Revised material for Supp. 2 from Vice-Mayor Harrison and Councilmember Hahn, for June 21, 2022 Council meeting)</p>	<a href="https://berkeleyca.gov/sites/default/files/documents/2022-06-21%20-4PM%20%20Item%202%20Rev%20Harrison.pdf">https://berkeleyca.gov/sites/default/files/documents/2022-06-21%20-4PM%20%20Item%202%20Rev%20Harrison.pdf</a>

June 28, 2022

**To: Berkeley Police Accountability Board Subcommittee on Controlled Equipment Reporting**

From: John Lindsay-Poland and Jennifer Tu (American Friends Service Committee)  
Barb Atwell and Wendy Alfsen (Berkeley Friends Meeting Racial Justice Action Team)  
George Lippman (Racism and Criminal Justice Reform Group, for identification only)  
Gala King II (Interfaith Movement for Human Integrity); Donna Mandel (Berkeley resident)

Dear members of the Berkeley Police Accountability Board Subcommittee on Controlled Equipment Reporting,

We are Berkeley residents and county neighbors who have been closely following the recent proceedings on implementing both Berkeley's local police controlled equipment reporting ordinance, and the new state law (AB481). We offer six recommendations to strengthen the current proposed policy's accountability measures and to responsibly address unused and banned equipment. We include specific language change recommendations to the proposed policy. We know the July 20 deadline (to meet the Council's July 26 deadline) is coming up fast; please let us know if we can support the Subcommittee further as you work on this issue in the coming weeks. This is not an exhaustive list of use policy recommendations regarding BPD 709, 428, and specific equipment policies, but critical to community safety.

**Contents**

- 1. Identify PAB as independent oversight entity**
- 2. Consideration by PAB of equipment policies after approval of Policy 709**
- 3. Deployments of assault rifles and sniper rifles**
- 4. Use and disposition of .50 Caliber Barrett rifle**
- 5. Disposition of teargas in BPD inventory**
- 6. Amend use policies for impact projectiles to conform with AB 48**

**1. Identify PAB as independent oversight entity**

The use policies for military equipment required by AB 481 must include several components, including "The mechanisms to ensure compliance with the military equipment use policy, including which *independent persons or entities have oversight authority*, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy." Italics added (Section 7070(d)(6))

Berkeley's Controlled Equipment ordinance also requires independent oversight, and specifically names the Police Accountability Board to serve this role to review controlled

equipment policies and recommend that the City Council “adopt, amend or reject” the policies. (Berkeley Municipal Code 2.100.040)

Policy 709 does not identify an independent oversight entity, but proposes that:

“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 Processional 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.”

We propose that the Subcommittee recommend to amend Policy 709 to identify the PAB as the independent oversight entity for the policy, consistent with the City's police equipment and community safety ordinance, by the amending the last sentence of 709.11 Compliance:

All instances of non-compliance will be reported to the [Police Accountability Board](#) and City Council via the annual military equipment report.

And by adding the following to the same section:

709.11 The Berkeley Police Accountability Board shall be the independent oversight entity required for this policy, and 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 2.100.040.

## **2. Consideration of equipment policies subsequent to approval of Policy 709**

The Controlled Equipment ordinance foresaw that the Police Accountability Board would not be able to review all equipment policies in a short period of time, stating that:

“To ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of such Controlled Equipment, and the Police Accountability Board shall consider this ranking in determining the order in which to perform its review.”

Because AB 481 provides 180 days for governing bodies to review proposed military equipment policies, PAB members reasonably expected to have more time to review Policy 709, submitted in April. Just as the Police Review Commission reviewed BPD’s Lexipol policies, and because

this subcommittee has limited time to review nine policies for military equipment, we suggest that the subcommittee recommend that:

“The City Council requests that the Police Accountability Board continue to review use policies for types of equipment under the purview of AB 481 and make appropriate recommendations to the City Council regarding those use policies.”

### **3. Policy for deployment of assault rifles (patrol and sniper rifles)**

References:

Colt M4 (patrol rifle): Policy 709, pp. 3-4

Remington 700 (sniper rifle): Policy 709, pp. 4-6

We recognize that Department officers view rifles as a means to protect life. At the same time, the display of assault rifles has a chilling and fear-inducing effect on community members. That is why authorized uses – deployments or displays – of rifles should be clearly and carefully defined.

Current policy for deployment of assault rifles is contained in Policies 349 (patrol rifles) and 354 (sniper rifles), as well as in Policy 300 on Use of Force. Existing and proposed BPD policies for *deploying* assault rifles are general and as a whole, have much more specificity and clarity on the authorization to *fire* the weapon than for authorization to *deploy* or *display* the weapon. Guidelines for *firing* the weapon are extensively detailed in Policy 300. However, AB 481 requires policies for *use* of equipment - that is *deployment* - a standard that is clearly broader than for *use of force*.

Policy 349 focuses most attention on selection of rifle operators and the rifles themselves. Policy is that assault rifles are to “exercise expeditious control over critical incidents or potentially violent situations.” (Section 349.2, Policy Manual p. 235) The guidance on authorized use is: “In light of known or potential risks, a TRO should deploy the firearm which best meets the needs of the police response, and in which he/she has the greatest accuracy and operational confidence.” (Section 349.6, Policy Manual p. 236).

We propose that this policy describe prohibited uses that are not appropriate, as well as considerations to take into account for pre-planned operations (typically by the SRT). For this, we reference the Oakland PD [patrol rifle policy](#) and [armored vehicles policy](#).

#### **Proposed language on uses of patrol rifles:**

In Policy 709, p. 3, add the following paragraphs to the “Authorized Uses” section:

“Commanders shall only authorize the deployment of patrol rifles or sniper rifles when the specific capabilities of the rifles are necessary to bring an incident to a safe conclusion. Any authorized departure of a rifle from its place of storage, excluding movement of the rifles at the start or end of a shift, shall be considered a deployment.

All uses that are not authorized by this policy are prohibited. For purposes of clarity, the following are specifically noted as prohibited uses:

- Recruitment, public relations, or promotional activities
- Crowd control
- Display during routine patrol operations

### **Pre-planned deployments of patrol rifles and sniper rifles**

Commanders shall determine whether to deploy patrol rifles based on credible intelligence, and consider the following variables when determining whether to deploy patrol rifle and sniper rifles:

- Whether the use of an alternative operation location would diminish the need to use a patrol rifle or sniper rifle.
- Whether the subject is beyond the effective range of Departmental pistols or shotguns.
- Whether the subject is known to wear or is suspected of wearing body armor.
- Potential presence of minors, elderly, medically compromised, people with physical, mental or intellectual disabilities, people with limited English proficiency, or other vulnerable people. (Note: This variable should be given special consideration due to the potential for trauma.)
- Potential presence of uninvolved persons. (Note: This variable should be given special consideration due to the potential for trauma.)
- Potential traumatic effect of the presence of assault rifles on neighbors and other bystanders.
- Lack of knowledge on relevant characteristics of the operation location and persons present.
- Reliability of intelligence source for information on the operation location and persons present.
- For night-time operations, potential effects on sleeping or just-awakened persons.
- Whether the subject is known to possess or is suspected of possessing a deadly weapon or firearm (including caliber and type)
- Potential skills of persons present to use firearms or other weapons, including experience in law enforcement, military, or other armed groups.
- Whether the targeted person(s) have a history (within a time period relevant to the suspected crime) involving the criminal use of firearms or other weapons.”

#### **4. .50 Caliber Barrett rifle**

(pp. 6-7 of Policy 709): BPD should eliminate this weapon from its inventory, as it is not appropriate for civilian law enforcement. Barrett .50 caliber rifles are very large sniper rifles that typically require a tripod or other mounting device. BPD recognizes that it is “infrequently” used. BPD says it is for “disabling an engine block.” BPD acquired this weapon from Dept of Justice 15 years ago, and many other departments of BPD’s size and larger do not have this weapon. Last month Alameda County Supervisor Nate Miley spoke out against the Alameda County Sheriff’s Office possession of this type of weapon. The Berkeley use report says this weapon was not deployed at all in the last year. The staff time required to train on this weapon is not a good use of City resources.

#### **Proposal on .50 caliber Barrett rifle**

Policy 709, Barrett rifle, p. 6: Replace the section on “Authorized Uses” with the statement:

“The Barrett rifle is not authorized for use by the Berkeley Police Department or by any outside department or agency called to respond to mutual aid in Berkeley. Berkeley Police Department will dispose of its Barrett rifle within three months.”

#### **5. Disposition of CS and OC canisters (tear gas)**

Reference: Policy 709, pp. 25-28

Berkeley’s prohibition on the use of tear gas and other chemical agents is a City Council action of June 9, 2020.<sup>1</sup> It is also reflected in BPD’s Policy 300 on Use of Force, and was ratified by the City Council’s approval on June 21, 2022 of amended Policy 303 and Impact Statement. According to BPD’s controlled equipment use report, within the last year the Department did not deploy either OC canisters or CS gas at all. In addition, AB 48 significantly limits the use of such chemical agents.

However:

- Policy 709 would authorize the use of CS gas and OC canisters (pp. 25-28) for “crowd control” and “crowd dispersal”. The proposal refers to OC canisters (not the handheld pepper spray carried on individual officers’ belts) as “tear gas” (p. 26).

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<sup>1</sup> Action: M/S/Carried (Davila/Harrison) to establish 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. Vote: All Ayes.



- Policy 709 sections on chemical agents do not reference the language of AB 48 ([Penal Code § 13652](#)).
- Policy 709 does not reference Berkeley’s prohibition on the use of “tear gas” by BPD or any “outside department or agency called to respond to mutual aid in Berkeley”, enacted in June 2020 by the City Council.

### **Proposal on Tear Gas**

Policy 709, CS gas, p. 26: Replace the section on “Purpose and Authorized Uses” for CS gas, with the statement:

“CS gas is not authorized for use by the Berkeley Police Department or by any outside department or agency called to respond to mutual aid in Berkeley. Berkeley Police Department will phase out its possession of CS gas within three months.”

Policy 709, OC canisters, p. 27: Replace the section on “Purpose and Authorized Uses” for OC canisters, with the statement:

“OC canisters are not authorized for use by the Berkeley Police Department or by any outside department or agency called to respond to mutual aid in Berkeley. Berkeley Police Department will phase out its possession of OC canisters within three months.”

### **6. Amend use policies for impact projectiles to conform with AB 48**

Reference: Policy 709, pp. 15-20

On June 21, the City Council amended the Impact Statement for the BPD’s less lethal impact projectiles and launchers (Penn Arms 40MM Single Launcher; Milkor Multiple Launcher; and FN 303 Launcher and FN Pava Impact Projectile) to conform with state law on use of force, AB 48. However, Policy 709 describes authorized uses for these weapons without reference to the limitations of AB 48 or even the Penal Code (Section 13652).

Policy 709 sections on these weapons should be amended in the same manner as City Council amended the Impact Statement, by incorporating the language of Section 13652.