

Kate Harrison  
Councilmember District 4

## REVISED AGENDA MATERIAL

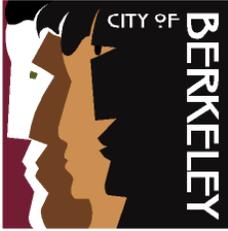
**Meeting Date:** November 20, 2023

**Item Number:** 10

**Item Description:** Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters

**Submitted by:** Councilmember Harrison

Clarified the transmittal and resolution to provide additional context about (1) the City's crowd control policies, (2) the negative impacts of less lethal weapons and tactics, (3) impacts on civil liberties, and (4) their overall indiscriminate nature as applied to crowd control.



Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR  
December 5, 2023

To: Honorable Members of the City Council

From: Councilmember Harrison

Subject: Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters

RECOMMENDATION

Adopt a Resolution reaffirming the City of Berkeley's opposition to and condemning police brutality towards nonviolent protesters and discouraging use of "less-lethal" weapons for crowd control.

BACKGROUND

The City of Berkeley has a long and storied history of nonviolent protest and civil disobedience. Unfortunately, that history is coupled with one of police brutality directed at nonviolent protesters. The most infamous example of police brutality in Berkeley occurred on "Bloody Thursday" in 1969 when James Rector was murdered by the Alameda County Sheriff force and a National Guard helicopter sprayed ~~tear~~CS (tear gas) on thousands of protesters shortly following the founding of People's Park and deputies shot birdshot and buckshot at demonstrators.

While ~~tear~~CS gas and pepper spray are both banned in warfare by international law, police in the United States commonly use them for crowd control purposes. On June 9, 2020, the City Council unanimously passed a motion to prohibit the use of ~~tear~~CS gas by the Berkeley Police Departments or by any agency called for mutual aid in Berkeley.<sup>1</sup> This motion also prohibited the use of pepper spray and smoke by the Berkeley Police Department and by any agency called for mutual aid response in Berkeley, during the COVID-19 pandemic and until such time that the City Council removes this prohibition.<sup>2</sup> The City's recent suspension of the local COVID emergency does not mean that the COVID-19 pandemic is over, nor does it overturn the Council's 2020 pepper spray and smoke prohibition policy.

<sup>1</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/06-09%20Annotated%20Agenda%204pm.pdf>

<sup>2</sup> <https://records.cityofberkeley.info/PublicAccess/api/Document/AfRL%C3%89LmUm28As5bQtd10Au1FOSJlk1QHHaoDvg0JDhYupGbecgfU%C3%89KphfxL4BQWn%C3%81GtBmi8Z0%C3%81w8NXdky5pxceo%3D/>

Other devices can also harm people. LRADs, or Long-Range Acoustic Devices, have dire consequences for the protesters and bystanders who are exposed to them. According to the Berkeley Police Department's 2022 Police Equipment and Community Safety Annual Report, BPD currently has two LRADs in its possession. Use of LRADs in crowd control situations ~~is incredibly can be~~ dangerous according to Physicians for Human Rights, and the City of Berkeley regulates their use. LRADs are "capable of causing not only permanent hearing loss, but also migraine, vestibular, and other auditory symptoms" and emit decibels up to 162 dB SPL (sound pressure level), exponentially higher than jet engines at 130 dB SPL, as decibel levels increase exponentially.<sup>3</sup>

Batons are commonly used by police to brutalize protesters, and recent legislation strongly restricts their use by the Berkeley Police Department. Under international law, "batons must never be used as a means of punishment, to disperse peaceful protests, or against people who are already restrained."<sup>4</sup> Yet batons were used by police forces across the United States to disperse peaceful protests during the Black Lives Matter protests of 2020, for example. During Berkeley Black Lives Matter protests in December of 2014, police forces used ~~tear~~CS gas, blast rounds, and harmed protesters with batons to force crowds to disperse—which led to a successful civil rights lawsuit against the city.<sup>5</sup>

As a result, the City now is required to apply standards when less lethal weapons are used in a crowd using a standard closer to the lethal force standard. In addition, the policy requires BPD personnel to have a clear shot at an allegedly violent target to prevent injury to others, expansive use of force reporting, implementation of body worn cameras, cite and release provisions, crowd liaisons, and prohibitions on skirmish lines advancing rapidly into a crowd. Berkeley has to live up to its commitments, and other jurisdictions must adopt similar policies.

So-called less-lethal or "kinetic impact" projectiles, including rubber bullets~~Rubber bullets, although not used by BPD,~~ are ~~also~~ used by police forces across the country against nonviolent protesters, and their use should be strongly restricted. According to Amnesty International, "there has been an alarming increase in eye injuries, including eyeball ruptures, retinal detachments and the complete loss of sight, as well as bone and skull fractures, brain injuries, the rupture of internal organs and hemorrhaging, punctured hearts and lungs from broken ribs, damage to genitalia, and psychological

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<sup>3</sup> <https://www.asha.org/news/2020/long-range-acoustic-devices-for-crowd-control-can-cause-serious-hearing-loss-and-harm/>

<sup>4</sup> <https://www.amnesty.org/en/latest/news/2022/06/global-20-rules-for-ending-widespread-misuse-of-police-batons/>

<sup>5</sup> <https://www.berkeleyside.org/2015/06/11/police-report-mistakes-challenges-in-berkeley-protests>

trauma.” by less-lethal munitions.<sup>6</sup> ~~Rubber bullets are a type of “kinetic impact projectile” or “KIP,” a category of crowd control device that includes rubber bullets. These weapons also include hard foam,~~ rubberized buckshot, and ~~tear~~CS gas. Amnesty International also states that “at least 53 people died from projectiles fired by security forces, according to a peer-reviewed study based on medical literature worldwide between 1990 and June 2017. It also concluded that 300 of the 1,984 people injured suffered permanent disability.” ~~Rubber bullets~~All less-lethal munitions can still be lethal, and should not be used for crowd control in Berkeley by UCPD or mutual aid agencies.

Finally, the practice of corralling, or “kettling,” can pose severe dangers to nonviolent and peaceful protesters. When police corral protesters in a confined space, there is nowhere to go if police begin to use force against protesters. As nonviolent and peaceful protesters are corralled into the same confined and potentially dangerous space, protesters may become victims of excessive police ~~use of~~ force more easily. Beyond the inability to escape police use of force, corralled protesters are put in a plainly frightening situation that may cause immense indescribable psychological distress. Importantly, even if police are focused on certain protesters, kettling places all protesters, including nonviolent and peaceful protesters, into the same confined and dangerous space. The City of Berkeley should strongly discourage any police departments responding to civil disobedience and protest in Berkeley from utilizing this strategy for crowd control.

“Less-lethal,” which is often erroneously described as “less-than-lethal,” is only relatively so. It can maim and even kill. It is known to have a disproportionate impact on persons with both physical disabilities and mental challenges. CS can be very detrimental to persons with asthma, COVID-19 or other respiratory diseases. Crowd control is a dynamic setting, and officers’ ability for precise shots is greatly impaired. The chances of hitting the intended individual with a projectile are low, and of hitting uninvolved protesters is high. Chemical munitions by their nature affect large numbers of people and even spread far beyond the immediate area. BPD Chief Meehan confirmed this in a *Berkeleyside* account from June 11, 2015:

“Chief Meehan noted that, even when an officer is focused on an individual, the projectile does not always find its mark due to the unpredictable movements of a crowd. A similar explanation was provided regarding baton strikes. Police said they are trained to avoid areas such as the head and neck, but that blows don’t always land in the right place because subjects move.”<sup>7</sup>

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<sup>6</sup> <https://www.amnesty.org/en/latest/news/2023/03/global-dozens-killed-and-thousands-maimed-by-police-misuse-of-rubber-bullets/#:~:text=There%20has%20been%20an%20alarming,damage%20to%20genitalia%2C%20and%20psychological>

<sup>7</sup> <https://www.berkeleyside.org/2015/06/11/police-report-mistakes-challenges-in-berkeley-protests>

Use of less-lethal weapons in an indiscriminate manner against a demonstration that is non-violent, or even mixed, is a denial of First Amendment rights to free speech and assembly. In fact, it is tantamount to collective punishment, a denial of due process.

In September of 2021, Governor Gavin Newsom signed AB 48, which restricts police departments use of kinetic energy projectiles and chemical agents to disperse any assembly, protest, or demonstration, and AB 481, which requires law enforcement agencies to obtain approval of military equipment. While these ~~bills-laws~~ restrict the use of “less-lethal” munitions California law enforcement agencies, they also do not preclude municipalities from adopting more stringent policies or reaffirming their opposition to their use on nonviolent protesters.

This subject is of particular concern because the University of California is currently awaiting a decision by the Supreme Court in *Make UC a Good Neighbor v. The Regents of University of California* that could allow the University to begin building housing there, with resulting protests a likely outcomewould uphold the University’s argument that AB 1309, signed by Governor Newsom, allows the University’s People’s Park housing development to move forward. On September 19, 2023, the City of Berkeley adopted a resolution authorizing the City Attorney to submit an amicus brief in support of the University of California Regents, defending the University’s proposed development of People’s Park. It is important that the Berkeley City Council immediately adopt a resolution denouncing the use of “less-lethal” devices and any police brutality against nonviolent protesters in Berkeley from any agencies and police departments, whether or not our police department participates in enforcement actions.

#### FISCAL IMPACTS OF RECOMMENDATION

Following Berkeley’s policies on crowd control will reduce the need for~~It is in the public interest to avoid possible litigation alleging police brutality or misconduct. In addition, it is important to avoid~~ resource-intensive and expensive paramedic and medical care for ~~treating~~ injured protestors. ~~Less lethal weapons are expensive and their use would likely require the City to resupply.~~

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

#### ATTACHMENTS

1: Resolution

RESOLUTION NO. XXXX-N.S.

REAFFIRMING OPPOSITION TO AND CONDEMNING POLICE BRUTALITY  
TOWARDS NONVIOLENT PROTESTERS AND DISCOURAGING USE OF “LESS-  
LETHAL” WEAPONS FOR CROWD CONTROL

WHEREAS, Berkeley’s Southside neighborhood has historically been the site of violent police use of force and brutality towards protesting students and community members, most famously during “Bloody Thursday” in 1969 where the Alameda County Sheriff force murdered James Rector and a National Guard helicopter sprayed ~~tear~~CS (tear gas) on thousands of protesters shortly following the founding of People’s Park; and

WHEREAS, the Chemical Weapons Convention and Geneva Convention prohibit ~~tear~~CS gas and, pepper spray, ~~and CS gas~~ in warfare; and

WHEREAS, the State of California recently enacted AB 481<sup>8</sup> and AB 48,<sup>9</sup> which demilitarize and regulate police departments’ acquisition and use of projectiles, chemical weapons, military equipment, and others, and protect protesters’ First and Fourth Amendment rights; and

WHEREAS, on April 27<sup>th</sup>, 2021, the Berkeley City Council unanimously passed an ordinance to oversee and make transparent militarized police equipment used for crowd control and SWAT operations; and

WHEREAS, Berkeley Police Department’s 2022 Police Equipment and Community Safety Annual Report provided an inventory of reportable equipment, including 20 Less Lethal single 40MM launchers, 2 Less Lethal Milkor LTL 40 MM multi-launchers, 724 associated 40mm rounds, 8 Less Lethal FN 303 Launchers, 5,445 associated FN rounds, 190 Oleoresin capsicum (OC spray), 204 Chlorobenzylidene Malononitrile and Oleoresin capsicum, 2 Long Range Acoustic Devices, and 195 36’ batons; and

WHEREAS, on June 9<sup>th</sup>, 2020,<sup>10</sup> the Berkeley City Council unanimously voted to prohibit the use of ~~tear~~CS gas by the Berkeley Police Department or any outside department or agency called to respond to mutual aid in Berkeley and 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 and beyond; and

WHEREAS, the University of California’s University-wide Police Policies and Procedures<sup>11</sup> allow the University of California Police Department to apply intermediate force, including batons, tasers, pepper spray, chemical agents (such as ~~tear~~CS gas),

<sup>8</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB481](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481).

<sup>9</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB48](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48).

<sup>10</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/06-09%20Annotated%20Agenda%204pm.pdf>.

<sup>11</sup> <https://ucnet.universityofcalifornia.edu/tools-and-services/administrators/policies/proposed/police-procedures-manual.pdf>.

and rubber bullets, on nonviolent protesters displaying active resistance, which is defined as intentionally and unlawfully opposing the lawful order of a peace officer in a physical manner; and

WHEREAS, on August 3~~rd~~, 2022, UC Berkeley police forces in riot gear confronted protesters,<sup>12</sup> arrested students and community members participating in civil disobedience, and allegedly forcibly shoved nonviolent defenders of the park, resulting in severe injuries;<sup>13</sup> and

WHEREAS, following the conflict on August 3~~rd~~, 2022, police forces ~~retracted~~ retreated and UC Berkeley declared construction paused indefinitely; and

WHEREAS, on August 3~~rd~~, 2022, the Berkeley City Council called for a special meeting on August 4~~th~~, 2022 to discuss and consider the temporary suspension of the June 9, 2020 policy prohibiting the use of ~~tear~~CS gas, smoke, and pepper spray for the duration of the City Council recess following pressure from the Alameda County Sheriff, and then canceled it on August 4~~th~~, 2022 following ~~immense~~ public outrage; and

WHEREAS, in 2020, 84% of Berkeley voters<sup>14</sup> approved amending the city charter to establish an independent police accountability board and director to provide oversight of local law enforcement, pointing to the public's desire for police reform; and d

WHEREAS, violent, less-lethal forms of crowd control used by BPD, UCPD or mutual aid agencies, include but are not limited to Long Range Acoustic Devices, plastic and rubber bullets, hard foam, batons, corralling, launch projectiles, and Active Denial Systems; and.<sup>15</sup>

WHEREAS, less-lethal weapons and tactics deployed in crowd control have disproportionate impacts on persons with both physical disabilities and mental challenges, can have detrimental impacts to persons with asthma, COVID-19 or other respiratory diseases; and

WHEREAS, less-lethal crowd control is a dynamic operation in which officers' ability for precise shots is greatly impaired and the chances of hitting the intended individual with a projectile are low, and of hitting uninvolved protesters is high; and

WHEREAS, chemical munitions by their nature affect large numbers of people and even spread far beyond the immediate area; and

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<sup>12</sup> <https://www.berkeleyside.org/2022/08/03/uc-berkeley-fences-off-peoples-park-begins-construction-process>.

<sup>13</sup> [https://www.instagram.com/p/ChYn3ZYrU9j/?img\\_index=2](https://www.instagram.com/p/ChYn3ZYrU9j/?img_index=2).

<sup>14</sup> [https://ballotpedia.org/Berkeley,\\_California,\\_Measure\\_II,\\_Police\\_Accountability\\_Charter\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/Berkeley,_California,_Measure_II,_Police_Accountability_Charter_Amendment_(November_2020)).

<sup>15</sup> <https://news.berkeley.edu/2020/06/05/are-crowd-control-weapons-dangerous-very-says-uc-berkeley-expert>.

WHEREAS, use of less-lethal weapons or tactics in an indiscriminate manner against a demonstration that is non-violent, or even mixed, is a denial of First Amendment rights to free speech and assembly, and is tantamount to collective punishment, and a denial of due process.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley reaffirms its objection to and denounces any and all police brutality and use of force against nonviolent protesters, including those participating in nonviolent civil disobedience.

BE IT FURTHER AND FINALLY RESOLVED that the Council of the City of Berkeley strongly urges the University of California Police Department and any outside departments or agencies called to respond to mutual aid in Berkeley against using “less-lethal” weapons and tactics—including but not limited to ~~tear~~CS gas, pepper spray, smoke, Long-Range Acoustic Devices, batons, rubber bullets, launched projectiles, and corralling—against nonviolent protesters, including those participating in nonviolent civil disobedience.