



**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
Wednesday, December 6, 2023
6:30 P.M.**

Board Members

John Moore III (Chair)
Kitty Calavita
Leah Wilson
Joshua Cayetano

Regina Harris (Vice-Chair)
Julie Leftwich
Brent Blackaby
Alexander Mozes

MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709
([Click here for Directions](#))

Item Number	Description	Page
-	Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions	1
2	December 6, 2023 Regular Meeting Agenda	4
4.a	November 8, 2023 Regular Meeting Draft Minutes	10
5	Biography of Keegan Horton, New ODPa Investigator	16
8	List of current PAB Subcommittees	18
9.a.	Material regarding the 2024 PAB Meeting Schedule	21
9.b.	Materials regarding the Agenda and Rules Council Committee's Referral of Councilmember Harrison's Draft Resolution "Opposition to Police Brutality and Use of Force on Nonviolent Protesters" for Review by the PAB	31

**HEALTH AND SAFETY PROTOCOLS
FOR IN-PERSON MEETINGS OF
BERKELEY BOARDS AND
COMMISSIONS**

Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

The policy below applies to in-person meetings of Berkeley Boards and Commissioners held in accordance with the Government Code (Brown Act) after the end of the State-declared emergency on February 28, 2023.

Issued By: City Manager's Office

Date: February 14, 2023

I. Vaccination Status

All attendees are encouraged to be fully up to date on their vaccinations, including any boosters for which they are eligible.

II. Health Status Precautions

For members of the public who are feeling sick, including but not limited to cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, it is recommended that they do not attend the meeting in-person as a public health precaution. In these cases, the public may submit comments in writing in lieu of attending in-person.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they are advised to wear a well-fitting mask (N95s, KN95s, KF94s are best), test for COVID-19 3-5 days from last exposure, and consider submitting comments in writing in lieu of attending in-person.

Close contact is defined as someone sharing the same indoor airspace, e.g., home, clinic waiting room, airplane, etc., for a cumulative total of 15 minutes or more over a 24-hour period within 2 days before symptoms of the infected person appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign-in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

Members of City Commissions are encouraged to take a rapid COVID-19 test on the day of the meeting.

Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

III. Face Coverings/Mask

Face coverings or masks that cover both the nose and mouth are encouraged for all commissioners, staff, and attendees at an in-person City Commission meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of Commissions, city staff, and the public are encouraged to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium, although masking is encouraged even when speaking.

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. Capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons that need to distance for personal health reasons.

Distancing will be implemented for the dais as space allows.

V. Protocols for Teleconference Participation by Commissioners

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for Commissioners participating remotely due to an approved ADA accommodation. For Commissioners participating remotely, the agenda must be posted at the remote location, the remote location must be accessible to the public, and the public must be able to participate and give public comment from the remote location.

- A Commissioner at a remote location will follow the same health and safety protocols as in-person meetings.
- A Commissioner at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

Hand sanitizing stations are available at the meeting locations. The bathrooms have soap and water for handwashing.

VII. Air Flow/Circulation/Sanitizing

Air filtration devices are used at all meeting locations. Window ventilation may be used if weather conditions allow.

**DECEMBER 6, 2023
REGULAR MEETING AGENDA**



**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
Wednesday, December 6, 2023
6:30 P.M.**

Board Members

John Moore III (Chair)
Kitty Calavita
Leah Wilson
Joshua Cayetano

Regina Harris (Vice-Chair)
Julie Leftwich
Brent Blackaby
Alexander Mozes

MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709
([Click here for Directions](#))

PUBLIC NOTICE

The PAB has resumed in-person meetings and encourages community members to attend in person. Community members attending in person should observe the “Health and Safety Protocols for In-person Meetings of Berkeley Boards and Commissions” as outlined by the City of Berkeley.

***The PAB acknowledges that physical attendance may not be feasible for all community members. To this end, the Office of the Director of Police Accountability (ODPA) has been exploring the option of allowing for remote participation at the PAB meetings. Please note that the ODPA and PAB are in the early stages of implementing this hybrid meeting format so there is a possibility for technical glitches and errors. Your patience and understanding are greatly appreciated. ***

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82653396072>. 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 **826 5339 6072**. If you wish

to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

LAND ACKNOWLEDGMENT

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 (Chochen-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.

AGENDA

- 1. CALL TO ORDER AND ROLL CALL (2 MINUTES)**
- 2. APPROVAL OF AGENDA (2 MINUTES)**
- 3. PUBLIC COMMENT (TBD)**

Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.

- 4. APPROVAL OF MINUTES (5 MINUTES)**
 - a. Minutes for the Regular Meeting of November 8, 2023
- 5. ODPa STAFF REPORT (10 MINUTES)**

Announcements, updates, and other items.

- Introduction to Keegan Horton, ODPa Investigator.

- 6. CHAIR AND BOARD MEMBERS' REPORTS (10 MINUTES)**

Announcements, updates, and other items.

7. CHIEF OF POLICE'S REPORT (10 MINUTES)

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

8. SUBCOMMITTEE REPORTS (10 MINUTES)

Report of activities and meeting schedule for all subcommittees, possible appointment or reassignment of members to subcommittees, and additional discussion and action as warranted for the subcommittees listed on the PAB's Subcommittee List included in the agenda packet.

9. NEW BUSINESS (50 MINUTES)

- a. Discussion and action regarding the 2024 PAB Meeting Schedule. (15 MINUTES)
- b. Discussion and action regarding the 2024 PAB Strategic Planning Session. (15 MINUTES)
 - i. Assign Board members to work with ODPa staff to coordinate the session.
 - ii. Discuss potential dates for holding the session
 - iii. Tentative topics to address in the strategic planning session:
 1. Calendar Year 2024 Workplan based on Charter authority
 2. Discussion on potential metrics for evaluating and assessing the impact of:
 - a. PAB
 - b. ODPa
 - c. DPA
 3. Discussion on PAB report drafting procedures and anticipated deliverables.
- c. Discussion and action regarding the Agenda & Rules Council Committee's referral of Councilmember Harrison's draft resolution "Opposition to Police Brutality and Use of Force on Nonviolent Protesters" for review to the PAB (Calavita) – (20 MINUTES)

10. PUBLIC COMMENT (TBD)

Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.

11. CLOSED SESSION

CLOSED SESSION ITEMS

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002-057569, the Board will recess into closed session to discuss and act on the following matter(s):

Case Updates Regarding Complaints Received by the ODPa:

- a. 2023-CI-0003
- b. 2023-CI-0004
- c. 2023-CI-0007
- d. 2023-CI-0008
- e. 2023-CI-0009
- f. 2023-CI-0010
- g. 2023-CI-0011
- h. 2023-CI-0012
- i. 2023-CI-0013
- j. 2023-CI- 0014

END OF CLOSED SESSION

12. ANNOUNCEMENT OF CLOSED SESSION ACTIONS (1 MINUTE)

13. ADJOURNMENT (1 MINUTE)

Communications Disclaimer

Communications to the Police Accountability Board, like all communications to Berkeley boards, commissions, or committees, are public records and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the Board Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the Board Secretary for further information.

Communication Access Information (A.R. 1.12)

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

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, 5th Floor, Berkeley, CA.

Contact the Director of Police Accountability (Board Secretary) at:

1947 Center Street, 5th Floor, Berkeley, CA 94704

TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955

Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

MINUTES FOR APPROVAL



**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING MINUTES
Wednesday, November 8, 2023
6:30 P.M.**

Board Members

John Moore III. (Chair)
Kitty Calavita
Brent Blackaby

Julie Leftwich
Joshua Cayetano

Regina Harris (Vice-Chair)
Leah Wilson
Alexander Mozes

MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709
([Click here for Directions](#))

Meeting Recording: <https://youtu.be/maRIJyogJQY?si=OpjsRz6jVm2vzvcP>

Minutes

1. CALL TO ORDER AND ROLL CALL AT 6:30 PM

- Present:** Board Member John Moore (Chair)
Board Member Regina Harris (Vice-Chair)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Leah Wilson
Board Member Brent Blackaby
Board Member Joshua Cayetano
Board Member Alexander Mozes
- Absent:** None.
- ODPA Staff:** Hansel Aguilar, Director of Police Accountability
Jayson Wechter, Investigator
Jose Murillo, Program Analyst
- BPD Staff:** Chief Jen Louis

Lt. Reece

CAO Staff: James Chang, Deputy City Attorney

CMO Staff: Anne Cardwell, Deputy City Manager

2. APPROVAL OF AGENDA

Motion to modify the agenda to include the swearing-in of new Board Member Mozes.

Moved/Second (Moore/Calavita) Approved by unanimous consent.

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, and Wilson.

Noes: None.

Abstain: None.

Motion to approve the agenda.

Moved/Second (Calavita/Mozes) Approved by unanimous consent.

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, and Wilson.

Noes: None.

Abstain: None.

3. ADMINISTERING OATH OF OFFICE & CONFIDENTIALITY TO NEWLY APPOINTED BOARD MEMBER

Director Aguilar administers the Oath of Office & Confidentiality to Newly Appointed Board Member Mozes.

4. PUBLIC COMMENT

2 Physically Present

1 Virtually Present

5. APPROVAL OF MINUTES

Motion to approve the meeting minutes for the special meeting of October 25, 2023.

Moved/Second (Wilson/Blackaby)

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, Mozes, and Wilson.

Noes: None.

6. ODPa STAFF REPORT

Director Aguilar provides updates on training opportunities for Board members and introduces new staff. He includes an explanation of powers of the Board under the

charter, an update on the 50th anniversary of civilian oversight in Berkeley celebration, and updates regarding the NACOLE¹ conference.

Motion to allow Director Aguilar to proxy vote in NACOLE elections on behalf of the PAB and ODPa jurisdiction.

Move/Second (Moore/Blackaby)

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, Mozes and Wilson.

Noes: None.

7. CHAIR AND BOARD MEMBERS' REPORTS

Board Member Calavita is concerned that PAB does not have access to confidential information. Board Member Cayetano is also concerned with lack of oversight powers and lack of access to information.

8. CHIEF OF POLICE'S REPORT

Chief Louis reports on community-relevant cases, provides staffing updates and recruitment/retention, and addresses updates related to PAB requests. She fields questions from Board Members.

9. SUBCOMMITTEE REPORTS

- Conflict of Interest Subcommittee (Chair: Leftwich)
 - o Board member Wilson is appointed to the Conflict of Interest Subcommittee
- Body Worn Cameras Subcommittee (Chair: Harris)
 - o Board member Harris provides an update on the subcommittee's work.

Motion to Create Lexipol Policy Review Committee

Move/Second (Leftwich/Calavita)

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, Mozes, and Wilson.

Noes: None.

Volunteering members: Leftwich, Cayetano, Mozes

10. NEW BUSINESS

- a. Discussion regarding the budget overview by Deputy City Manager Cardwell
 - i. City of Berkeley Budget Overview by Deputy City Manager Cardwell

Deputy City Manager Cardwell provides a budget overview for the PAB.

¹ National Association of Civilian Oversight of Law Enforcement <https://www.nacole.org/>

- ii. Staff recommendations for ODPB Budget
- iii. Staff recommendations for PAB Budget
- iv. Staff observations and considerations for PAB review of the BPD Budget

Items ii. – iv.: Director Aguilar presents the Budget Frameworks presentation. In addition, Director Aguilar discusses budgeting and resourcing for DPA, and the relationship between DPA and the PAB is explained by the charter. Finally, comments are given by Board members on the budget process.

Motion to Create Budget Subcommittee

Move/Second (Wilson/Moore)

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, Mozes, and Wilson.

Noes: None.

Volunteering Members: Wilson, Blackaby

- b. Discussion and action on Policy Complaint No. 2023-PR-0008

Motion to Create an Off-Duty Conduct Committee

Move/Second: Wilson/Moore

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, Mozes, and Wilson.

Noes: None.

Volunteering Members: Harris, Cayetano

- c. Discussion on PAB member policy review procedures.

The Board discusses potential procedures for policy reviews led by PAB members.

- d. BPD Commendations

Board Member Blackaby proposes a process for the review of BPD commendations submitted to the PAB.

Motion to Adopt Board Member Blackaby's proposed commendation review process.

Move/Second (Wilson/Moore)

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, Mozes, and Wilson.

Noes: None.

Volunteering Members: Wilson, Blackaby, Harris

11. PUBLIC COMMENT

2 Physically present speakers.

1 Virtually present speakers.

12. CLOSED SESSION at 9:10 PM

CLOSED SESSION ITEMS

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002-057569, the Board will recess into closed session to discuss and act on the following matter(s):

Case Updates Regarding Complaints Received by the ODPa

Regarding Items 12.a. – 12.k.:

Director Aguilar provides case updates to the Board including the presentation of findings and newly accepted complaints.

Motion to hold a hearing for ODPa Complaint No. 2023-CI-0006

Moved/Second (Calavita/Leftwich)

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, Mozes, and Wilson.

Noes: None.

Chair Moore, Board Member Wilson, and Board Member Blackaby volunteer to be on the hearing panel.

END OF CLOSED SESSION

13. ANNOUNCEMENT OF CLOSED SESSION ACTIONS

Chair Moore announces the closed-session actions.

14. ADJOURNMENT

Motion to adjourn.

(Leftwich/Harris) The meeting was adjourned at 9:42 P.M by unanimous consent.

Minutes Approved on: _____

Hansel Aguilar, Commission Secretary: _____

Introduction to Keegan Horton, New ODPA Investigator

Introducing Keegan Horton, ODPa Investigator



Keegan Horton possesses Bachelor degrees in Psychology and Social Work and a Master of Social Work from Loyola University Chicago. He specialized in leadership development in the social services for his MSW and worked several internships in counseling, nonprofit management, and fundraising. The University of Denver Sturm College of Law awarded him a Juris Doctor with a distinction in public good in 2021. At law school, he worked within the DU Veterans Legal Clinic and then U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity. Keegan now works for the City of Berkeley in the Department of Police Accountability as an investigator. Keegan is an avid rugby player and lives in Fairfax, CA with his wife and three cats.

LIST OF CURRENT PAB SUBCOMMITTEES



SUBCOMMITTEES LIST
As of 11-08-2023

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21 Renewed 6-7-2023	Calavita Leftwich <u>Public members:</u> Kitt Saginor		Lt. Dan Montgomery
Fair & Impartial Policing Implementation Formed 8-4-21 Renewed 6-7-2023	Calavita Wilson <u>Public members:</u> George Lippman	Calavita	Sgt. Peter Lee
Surveillance Technology Policy Formed 6-7-2023	Calavita Moore		
Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations Formed 11-15-22	Calavita Moore	Calavita	
Body-Worn Camera Policy Formed 03-15-23	Harris Leftwich	Harris	

Conflict of Interest Formed 03-29-23	Leftwich Harris Wilson	Leftwich	
Lexipol Subcommittee Formed 11-08-2023	Leftwich Cayetano Mozes	Leftwich	
Budget Review Subcommittee Formed 11-08-2023	Wilson Blackaby		
Commendation Subcommittee Formed 11-08-2023	Moore Blackaby Harris		

**ITEM 9.A.
MATERIALS REGARDING THE 2024
PAB MEETING SCHEDULE**



MEMORANDUM

Date: December 1, 2023
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel A. Aguilar, Director of Police Accountability
Jose D. Murillo, Program Analyst
Re: Proposed Regular Meeting Calendar for the PAB in 2024

This memorandum aims to present the PAB with an overview of the factors considered during the formulation of the proposed meeting schedule. This includes compliance with charter requirements, alignment with Berkeley City Council Meeting Dates, and accommodation of city and religious holidays.

Background

In accordance with Section 125(13)(a) of the Berkeley City Charter, the Board is mandated to create a regular meeting schedule comprising a minimum of eighteen (18) meetings at the beginning of each calendar year¹. Regular Meetings are scheduled on dates, times, and locations determined by the Board's formal decision at the beginning of each year, spanning the following 12 months. Ensuring compliance with the Brown Act, proposed meeting dates must be spaced out to allow for a 72-hour advance notice². Berkeley Boards and Commissions are recommended to refrain from scheduling meetings on religious holidays (refer to Attachment 1) or on dates conflicting with City Council meetings (refer to Attachment 2).

The City Council designates the PAB as a Category A commission, granting the PAB the flexibility to convene according to its own schedule without any set limits on the frequency of meetings³. The regular meeting schedules for 2024 are due to the City Clerk as soon as possible but no later than Friday, January 12, 2024.

¹ [Berkeley City Charter Section 125\(13\)\(a\)](#)

² [City of Berkeley Commissioner's Manual Chapter IV Section B\(1\)](#)

³ [Berkeley City Council Resolution No. 69,331-N.S.](#)

Proposed Meeting Schedules

The ODPa staff has created two prospective regular meeting calendars for the PAB's consideration (See Attachment 3). These proposed dates consider the observance of religious holidays (Attachment 1), Berkeley City Council Meetings (Attachment 2), and the noticing requirements of the Brown Act⁴. Historically, the PAB met on Wednesdays with a start time of 7:00 P.M. when meetings were hosted remotely but was later moved to 6:30 P.M. with the adoption of the 2023 regular meeting schedule⁵. Both proposals each include a total of nineteen (19) meetings which have been screened for conflicts with any religious holidays and City Council meetings. The PAB may decide to increase or reduce the number of meetings so long as it remains compliant with the City Charter's minimum meeting requirement⁶. Dates may also be modified, provided there is no conflict with a religious holiday, a regular meeting of the City Council, or if the change poses logistical challenges in compliance with the noticing requirements of the Brown Act⁷.

⁴ Refer to [City of Berkeley Commissioner's Manual Chapter IV Section B\(1\)](#)

⁵ [Approved Regular Meeting Minutes for 12-07-2022](#)

⁶ [Berkeley City Charter Section 125\(13\)\(a\)](#)

⁷ Refer to [City of Berkeley Commissioner's Manual Chapter IV Section B\(1\)](#)

Attachment 1

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. City legislative bodies must avoid scheduling meetings on the religious holidays listed below.

Religion	Holiday	2024 Date(s)
Shinto	New Year	1/1/2024 thru 1/3/2024
Hindu	Makar Sankranti	1/14/2024
Cultural	Chinese New Year (Eve, Day, Lantern Festival)	2/9, 2/10, 2/24
Islam	Ramadan (Eve & First Night)	3/10/2024 thru 3/11/2024
Jewish*	Purim	3/23/2024 thru 3/24/2024
Hindu	Holi	3/25/2024
Christian	Good Friday	3/29/2024
Christian	Easter Sunday	3/31/2024
Islam	Eid al-Fitr	4/9/2024 thru 4/12/2024
Jewish	Passover (Nights 1, 2, 7, 8)	4/22 - 4/24 & 4/29 - 4/30
Jewish*	Yom HaShoah	5/5/2024 thru 5/6/2024
Buddhist	Vesak	5/23/2024
Jewish	Shavuot	6/11/2024 thru 6/13/2024
Islam	Eid al-Adha	6/15/2024 thru 6/19/2024
Jewish*	Tish'a B'Av	8/12/2024 thru 8/13/2024
Shinto	Obon Ceremony	8/13/2024 thru 8/15/2024
Jewish	Rosh Hashanah	10/2/2024 thru 10/4/2024
Jewish	Yom Kippur	10/11/2024 thru 10/12/2024
Hindu	Dussehra	10/12/2024
Jewish	Sukkot (1st Day)	10/16 - 10/18 & 10/23
Jewish	Shmini Atzeret/ Simchat Torah	10/23/2024 thru 10/25/2024
Hindu	Diwali	10/31/2024
Baha'i Faith	Birth of Bab	11/1/2024 thru 11/2/2024
Baha'i Faith	Birth of Baja'u'llah	11/2/2024 thru 11/3/2024
Christian	Christmas	12/25/2024
Jewish	Chanukah (1st night)	12/25/2024
Cultural	Kwanzaa	12/26/2024 thru 1/1/2025
Jewish	Shabbat (Friday sunset to Saturday sunset)	Weekly

* No work restriction, but avoid scheduling meetings if possible

Attachment 2

City Clerk Department 2024 Council Calendar

(Subject to change. For the latest information, please contact the City Clerk Department, 510-981-6900.)

Date	Time
January	
Winter Recess (Dec. 13, 2023 – Jan. 15, 2024)	
Jan 16	6:00 p.m.
Jan 30	6:00 p.m.
February	
Feb 13	6:00 p.m.
Feb 27	6:00 p.m.
March	
Mar 5	6:00 p.m.
Mar 19	6:00 p.m.
April	
Spring Recess (March 20 – April 15, 2024)	
April 16	6:00 p.m.
May	
May 7	6:00 p.m.
May 14	6:00 p.m.
May 21	6:00 p.m.
June	
June 4	6:00 p.m.
June 25	6:00 p.m.
July	
July 9	6:00 p.m.
July 23	6:00 p.m.
July 30	6:00 p.m.
Summer Recess (July 31 – Sept. 9, 2024)	
September	
Sept 10	6:00 p.m.
Sept 24	6:00 p.m.
October	
Oct 1	6:00 p.m.
Oct 15	6:00 p.m.
Oct 29	6:00 p.m.
November	
Nov 12	6:00 p.m.
Nov 19	6:00 p.m.
December	
Dec 3	6:00 p.m.
Dec 10	6:00 p.m.
Winter Recess (Dec. 11, 2024 – Jan. 14, 2025)	

Attachment 3

2024

PAB REGULAR MEETING SCHEDULE

JANUARY							FEBRUARY							MARCH							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
	1	2	3	4	5	6				1	2	3						1	2		
7	8	9	10	11	12	13	4	5	6	7	8	9	10	3	4	5	6	7	8	9	
14	15	16	17	18	19	20	11	12	13	14	15	16	17	10	11	12	13	14	15	16	
21	22	23	24	25	26	27	18	19	20	21	22	23	24	17	18	19	20	21	22	23	
28	29	30	31	25	26	27	28	29	24	25	26	27	28	29	30						
													31								
APRIL							MAY							JUNE							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
	1	2	3	4	5	6				1	2	3	4							1	
7	8	9	10	11	12	13	5	6	7	8	9	10	11	2	3	4	5	6	7	8	
14	15	16	17	18	19	20	12	13	14	15	16	17	18	9	10	11	12	13	14	15	
21	22	23	24	25	26	27	19	20	21	22	23	24	25	16	17	18	19	20	21	22	
28	29	30	26	27	28	29	30	31	23	24	25	26	27	28	29						
													30								
JULY							AUGUST							SEPTEMBER							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
	1	2	3	4	5	6				1	2	3	1	2	3	4	5	6	7		
7	8	9	10	11	12	13	4	5	6	7	8	9	10	8	9	10	11	12	13	14	
14	15	16	17	18	19	20	11	12	13	14	15	16	17	15	16	17	18	19	20	21	
21	22	23	24	25	26	27	18	19	20	21	22	23	24	22	23	24	25	26	27	28	
28	29	30	31	25	26	27	28	29	30	31	29	30									
OCTOBER							NOVEMBER							DECEMBER							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
			1	2	3	4	5						1	2	1	2	3	4	5	6	7
6	7	8	9	10	11	12	3	4	5	6	7	8	9	8	9	10	11	12	13	14	
13	14	15	16	17	18	19	10	11	12	13	14	15	16	15	16	17	18	19	20	21	
20	21	22	23	24	25	26	17	18	19	20	21	22	23	22	23	24	25	26	27	28	
27	28	29	30	31	24	25	26	27	28	29	30	29	30	31							

KEY

■ PAB REGULAR MEETING

2024

PAB REGULAR MEETING SCHEDULE

JANUARY							FEBRUARY							MARCH							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
	1	2	3	4	5	6					1	2	3							1	2
7	8	9	10	11	12	13	4	5	6	7	8	9	10	3	4	5	6	7	8	9	
14	15	16	17	18	19	20	11	12	13	14	15	16	17	10	11	12	13	14	15	16	
21	22	23	24	25	26	27	18	19	20	21	22	23	24	17	18	19	20	21	22	23	
28	29	30	31				25	26	27	28	29			24	25	26	27	28	29	30	
														31							
APRIL							MAY							JUNE							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
	1	2	3	4	5	6			1	2	3	4							1		
7	8	9	10	11	12	13	5	6	7	8	9	10	11	2	3	4	5	6	7	8	
14	15	16	17	18	19	20	12	13	14	15	16	17	18	9	10	11	12	13	14	15	
21	22	23	24	25	26	27	19	20	21	22	23	24	25	16	17	18	19	20	21	22	
28	29	30					26	27	28	29	30	31		23	24	25	26	27	28	29	
														30							
JULY							AUGUST							SEPTEMBER							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
	1	2	3	4	5	6					1	2	3	1	2	3	4	5	6	7	
7	8	9	10	11	12	13	4	5	6	7	8	9	10	8	9	10	11	12	13	14	
14	15	16	17	18	19	20	11	12	13	14	15	16	17	15	16	17	18	19	20	21	
21	22	23	24	25	26	27	18	19	20	21	22	23	24	22	23	24	25	26	27	28	
28	29	30	31				25	26	27	28	29	30	31	29	30						
OCTOBER							NOVEMBER							DECEMBER							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
		1	2	3	4	5						1	2	1	2	3	4	5	6	7	
6	7	8	9	10	11	12	3	4	5	6	7	8	9	8	9	10	11	12	13	14	
13	14	15	16	17	18	19	10	11	12	13	14	15	16	15	16	17	18	19	20	21	
20	21	22	23	24	25	26	17	18	19	20	21	22	23	22	23	24	25	26	27	28	
27	28	29	30	31			24	25	26	27	28	29	30	29	30	31					

KEY

■ PAB REGULAR MEETING

**ITEM 9.C.
MATERIALS REGARDING THE
AGENDA & RULES COUNCIL
COMMITTEE'S REFERRAL OF
COUNCILMEMBER HARRISON'S
DRAFT RESOLUTION "OPPOSITION
TO POLICE BRUTALITY AND USE
OF FORCE ON NONVIOLENT
PROTESTERS" FOR REVIEW TO
THE PAB**



John "Chip" Moore III,
Police Accountability Board Chair
j.edwardmoore@gmail.com

December 6, 2023

Via Electronic Mail [council@berkeleyca.gov]

Honorable Mayor and Members of the City Council
2180 Milvia Street,
Berkeley, CA 94704

Re: PAB Review of Draft Item #10 "Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters"

The Police Accountability Board (PAB) has carefully read City Council Draft Item #10, "Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters," which was referred to us by the Agenda and Rules Committee.

According to our reading, the resolution is a statement reaffirming Berkeley's opposition to police brutality, underscoring the Berkeley policies already in place, and strongly urging outside departments coming into Berkeley for mutual aid not to engage in any tactics or utilize any weapons not authorized for the Berkeley Police Department (BPD).

The PAB does not see anything in this statement that requires or suggests BPD policy changes. Rather, it reaffirms the stance, outlined throughout the Background section, that Berkeley has taken on police brutality and less-lethal force.

Because no Berkeley policy changes are implied by this resolution, the PAB does not believe it is within our sphere of operation. If policy changes are subsequently proposed, as always, we stand ready to collaborate in their consideration.


Sincerely,

John "Chip" Moore III,
Police Accountability Board Chair

Cc: **Via Email Only**
Honorable Mayor and Members of the City Council
Mark Numainville, City Clerk



Memorandum

Date: November 22, 2023
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability (DPA) 
Jose Murillo, Program Analyst
Subject: Council Item Referral for Expedited Review by the PAB

The purpose of this memorandum is to notify the PAB of a referral made by the Agenda and Rules Committee of the City Council for an expedited review of Draft Item 10 “Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters.”

BACKGROUND

On November 20, 2023, the Agenda and Rules Committee of the City Council convened to review and approve the draft agenda for their December 5th, 2023 meeting¹. On November 21, 2023 ODPa Staff was informed by the City Clerk of the referral via email. Within the draft agenda, item 10 of the draft agenda included the presentation of 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.”² Councilmember Harrison introduced Draft Item 10 (See Attachment 1). The Agenda and Rules Committee voted to accept the agenda with certain changes being

¹ [Agenda Committee 03/05/12 \(berkeleyca.gov\)](https://www.berkeleyca.gov/Agenda/Agenda-Committee-03-05-12)

² [2023-11-20 Agenda Packet - Agenda Committee.pdf \(berkeleyca.gov\)](https://www.berkeleyca.gov/Agenda/2023-11-20-Agenda-Packet-Agenda-Committee.pdf)

noted. Among those changes there was a referral to the Public Safety Committee (PSC) and the PAB with a request for a time sensitive policy review of the revised item.

On June 9, 2020, the Berkeley City Council established an official policy, that prohibits the use of tear gas by the Berkeley Police Department or any outside department or agency called to respond to mutual aid in Berkeley³. Additionally, the policy prohibits 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. The Agenda and Rules Committee expressed concerns about the resolution having broader policy implications that may be more appropriate via a policy review⁴.

POTENTIAL POLICIES FOR REVIEW

Should the PAB, after examining the presented materials, concur that a policy review is needed, some of the potentially reviewed policies may include:

- Policy 300 “Use of Force”
- Policy 303 “Control Devices and Techniques”
- Policy 428 “First Amendment Assemblies”
- Policy 429 “Intelligence Procedures for First Amendment Activities”

The aforementioned is not an exhaustive list of the relevant policies that may require revisions (see Attachment 2 for a copy of the relevant policies).

TIMELINE

The PAB's next regular meeting is scheduled for December 6th, 2023⁵. The Council will convene on December 5th and December 12th, 2023⁶. The directive from the Agenda and Rules Committee was for the PSC to initiate the review as soon as possible, preferably in December. The initial two City Council meetings of the year are set for

³ [06-09 Annotated Agenda 4pm.pdf \(berkeleyca.gov\)](#)

⁴ Access the entire discussion from the 11/20/2023 Agenda & Rules Committee meeting recording, spanning from 01:03:20 to 01:27:45. The recording can be found here: [2023-11-20 Agenda and Rules Committee Meeting Video.mp4 \(dropbox.com\)](#)

⁵ [Police Accountability Board | City of Berkeley \(berkeleyca.gov\)](#)

⁶ [City Council Agendas | City of Berkeley \(berkeleyca.gov\)](#)

January 16th and January 30th, 2024. At this time, the PSC does not have a scheduled meeting for December⁷.

Given the Clerk's filing timelines, materials for the December 12th meeting were due on November 9th, 2023. Materials may still be brought to the Agenda & Rules Committee up until November 27th for inclusion in a supplemental packet released before the meeting. Materials submitted on November 29th will be included in a supplemental packet released after the Council meeting.

For a presentation to the City Council in January, department reports are due to the Clerk by December 14th, 2023, with supplemental submissions being accepted up until January 4th, 2024, at the discretion of the Agenda and Rules Committee (See Attachment 3). These dates are impacted by holidays.

POSSIBLE ACTIONS FOR THE BOARD

- Accept the referral and conduct a policy review within the constrained timeframes and timelines provided by the Council through the various mechanisms established under the Standing Rules⁸:
 - considering the issue as a whole Board,
 - assigning a Board member to research the issue,
 - asking staff to investigate or research the issue, or
 - establishing a subcommittee. (If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full Board)
- Accept the referral and ask Council for additional time to conduct a more thorough policy review.
- Reject the referral with an explanation to Council.
- Reject the referral with no explanation to Council.

RECOMMENDATIONS

⁷ [Policy Committee: Public Safety | City of Berkeley \(berkeleyca.gov\)](https://www.berkeleyca.gov/policy-committee-public-safety)

⁸ See Section G. 3.a) of the Standing Rules of the Police Accountability Board:
https://berkeleyca.gov/sites/default/files/2022-02/PoliceAccountabilityBoard_StandingRules.pdf

This item was referred to the PAB and PSC with a request for expedited policy review for Council's recommendation and review. Considering the aforementioned timelines, a special meeting could be held. Special meetings may be called by the chairperson of the Board or by a majority of the Board⁹. The potential special meeting could take place before the regular scheduled December 6th meeting (with a minimum of 24 hours' notice).

Alternative Recommendations

Alternatively, the item can be added to the agenda for the December 6th Regular meeting with the aim of completing the review before the Christmas break on December 22, 2023.

⁹ See Section 125(13)(a) of the City Charter: [https://berkeley.municipal.codes/Charter/125\(13\)\(a\)](https://berkeley.municipal.codes/Charter/125(13)(a))

Attachment 1

- Draft Item 10 “Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters”
- Revised Material - Draft Item 10 “Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters”



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 gas on thousands of protesters shortly following the founding of People's Park.

While tear gas and pepper spray are both banned in warfare by international law, 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 gas by the Berkeley Police Departments or by any agency called for mutual aid in Berkeley.¹ 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.² 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.

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

² <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 dangerous, and the City of Berkeley strongly 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, exponentially higher than jet engines at 130 dB SPL, as decibel levels increase exponentially.³

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."⁴ 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 gas, blast rounds, and harmed protesters with batons to force crowds to disperse—which led to a civil rights lawsuit against the city.

Rubber bullets 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 trauma."⁵ Rubber bullets are a type of "kinetic impact projectile" or "KIP," a category of crowd control device that includes rubber bullets, rubberized buckshot, and tear 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 can be lethal, and should not be used for crowd control in Berkeley.

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

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

⁵ <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>

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 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 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.

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 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 would 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

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 gas on thousands of protesters shortly following the founding of People’s Park; and

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

WHEREAS, the State of California recently enacted AB 481⁶ and AB 48,⁷ 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 27th, 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 9th, 2020,⁸ the Berkeley City Council unanimously voted to prohibit 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 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 Universitywide Police Policies and Procedures⁹ allow the University of California Police Department to apply intermediate force, including batons, tasers, pepper spray, chemical agents (such as tear gas), and

⁶ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481.

⁷ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48.

⁸ <https://berkeleyca.gov/sites/default/files/city-council-meetings/06-09%20Annotated%20Agenda%204pm.pdf>.

⁹ <https://ucnet.universityofcalifornia.edu/tools-and-services/administrators/policies/proposed/police-procedures-manual.pdf>.

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 3rd, 2022, UC Berkeley police forces in riot gear confronted protesters,¹⁰ arrested students and community members participating in civil disobedience, and allegedly forcibly shoved nonviolent defenders of the park, resulting in severe injuries;¹¹ and

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

WHEREAS, on August 3rd, 2022, the Berkeley City Council called for a special meeting on August 4th, 2022 to discuss and consider the temporary suspension of the June 9, 2020 policy prohibiting the use of tear 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 4th, 2022 following immense public outrage; and

WHEREAS, in 2020, 84% of Berkeley voters¹² 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; an

WHEREAS, violent, less-lethal forms of crowd control, include but are not limited to Long Range Acoustic Devices, plastic and rubber bullets, batons, corralling, launch projectiles, and Active Denial Systems.¹³

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—including but not limited to tear 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.

¹⁰ <https://www.berkeleyside.org/2022/08/03/uc-berkeley-fences-off-peoples-park-begins-construction-process>.

¹¹ https://www.instagram.com/p/ChYn3ZYrU9j/?img_index=2.

¹² [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)).

¹³ <https://news.berkeley.edu/2020/06/05/are-crowd-control-weapons-dangerous-very-says-uc-berkeley-expert>.



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 tearCS (tear gas) on thousands of protesters shortly following the founding of People's Park and deputies shot birdshot and buckshot at demonstrators.

While tearCS 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 tearCS gas by the Berkeley Police Departments or by any agency called for mutual aid in Berkeley.¹ 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.² 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.

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

² <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.³

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."⁴ 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.⁵

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

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

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

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

trauma.” by less-lethal munitions.⁶ ~~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.”⁷

⁶ <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>

⁷ <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 outcome would 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 protesters. 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 481⁸ and AB 48,⁹ 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 27th, 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 9th, 2020,¹⁰ 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 Procedures¹¹ allow the University of California Police Department to apply intermediate force, including batons, tasers, pepper spray, chemical agents (such as ~~tear~~CS gas),

⁸ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481.

⁹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48.

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

¹¹ <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,¹² arrested students and community members participating in civil disobedience, and allegedly forcibly shoved nonviolent defenders of the park, resulting in severe injuries;¹³ 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 4th, 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 4th, 2022 following ~~immense~~ public outrage; and

WHEREAS, in 2020, 84% of Berkeley voters¹⁴ 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.¹⁵

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

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

¹³ https://www.instagram.com/p/ChYn3ZYrU9j/?img_index=2.

¹⁴ [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)).

¹⁵ <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.

Attachment 2

- Policy 300 "Use of Force"
- Policy 303 "Control Devices and Techniques"
- Policy 428 "First Amendment Assemblies"
- Policy 429 "Intelligence Procedures for First Amendment Activities"

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.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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:

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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.

300.3 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.
- (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.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

- (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.

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

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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 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

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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.
- (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.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

- (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:

- (a) Make a tactical approach to the scene.
- (b) Maintain a safe distance.
- (c) Use available cover or concealment and identify escape routes.
- (d) Stage Berkeley Fire Department.
- (e) Control vehicle and pedestrian traffic.
- (f) Establish communication, preferably with one officer.
- (g) Create an emergency plan and a deliberate plan with contingencies.
- (h) 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;
- (b) To restrain or subdue a resistant individual; or
- (c) To bring an unlawful situation safely and effectively under control.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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.

300.4 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 it is objectively reasonable that the person is aware of those facts.

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.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to 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.

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.

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

Absent exigent circumstances, officers shall not discharge firearms from a moving vehicle.

Firearms shall not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person present with deadly force. The moving vehicle alone does not presumptively constitute a threat that justifies the use of deadly force.

Officers shall not move into, remain, or otherwise position themselves in the path of a vehicle in an effort to detain or apprehend the occupants. Any officer in the path of a moving vehicle shall immediately attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation.

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.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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.

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:

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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.
- (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

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.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 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.
- (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 Department Policy R-23.

300.7 MEDICAL CONSIDERATION

When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall promptly provide, if trained, or otherwise promptly procure medical assistance when reasonable and safe to do so in order to ensure that the subject receives appropriate medical care.

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.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), 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.

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.

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,

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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 periodic training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, the Personnel and Training Sergeant should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include:

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- (b) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

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)
- (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 Review Commission; and
- (c) On a yearly basis as part of the Police Department's Annual Crime Report to Council

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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 Review Commission (PRC). Complaints will be investigated in compliance with the respective applicable procedures of the IAB and the PRC.

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 Police Review Commission shall convene to review and update the Use of Force Policy to reflect developing practices and procedures per SB 230.

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.

Berkeley Police Department

Law Enforcement Services Manual

Control Devices and Techniques

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

Berkeley Police Department

Law Enforcement Services Manual

Control Devices and Techniques

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.

Berkeley Police Department

Law Enforcement Services Manual

Control Devices and Techniques

303.8.2 DEPLOYMENT CONSIDERATIONS

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

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

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

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

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

303.8.3 SAFETY PROCEDURES

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

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

303.9 CROWD CONTROL REQUIREMENTS

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

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

Berkeley Police Department

Law Enforcement Services Manual

Control Devices and Techniques

reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

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

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

303.10 TRAINING FOR CONTROL DEVICES

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

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

Berkeley Police Department

Law Enforcement Services Manual

Control Devices and Techniques

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

303.11 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

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

First Amendment Assemblies

428.1 PURPOSE

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

428.2 MISSION STATEMENT

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

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

428.3 POLICY

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

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

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

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

428.4 USE OF FORCE

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

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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:

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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.

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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.

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

- 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.

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

- (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.

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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.

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

- (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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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.

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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.

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

428.13 MEDIA ACCESS

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

428.14 POST-EVENT

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

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

428.15 TRAINING

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

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

Intelligence Procedures for First Amendment Activities

429.1 PURPOSE

The purpose of this policy is to provide guidance regarding intelligence gathering procedures and maintenance of intelligence files. Additionally this policy addresses the investigation of individuals and groups involved in First Amendment protected activities, and expressly limits such investigations to situations where a criminal predicate exists.

429.2 CONSTITUTIONAL RESTRICTION TO CRIMINAL ACTIVITY

The United States and California Constitutions provide people with the right of privacy, free expression and free association for any lawful purpose.

The California Constitution expressly provides that “privacy” is an inalienable right. The First Amendment of the US constitution prohibits the government from making a law establishing a religion or prohibiting the free exercise of religion, abridging freedom of speech or of the press, or preventing people from peaceable assembly (e.g., marches and picketing).

While there are certain categories of speech that are not protected (i.e., fighting words, defamation, etc.), these exceptions are limited and have been narrowly construed.

Under these constitutional restrictions, intelligence gathering by the Police Department is only permitted to investigate criminal activity. Intelligence gathering should not include political, religious, or social views or activities of individuals or groups, unless such views or activities directly relate to criminal conduct.

429.3 POLICY

It is the policy of the Berkeley Police Department to ensure that the First Amendment rights guaranteed by the United States Constitution are protected for all individuals and groups, including the press, and to permit police involvement in the exercise of those rights only to the extent necessary to provide for the legitimate needs of law enforcement in investigating criminal activity.

The Berkeley Police Department will obtain, maintain and use information from legal, reliable sources to meet the needs of the Department and the City of Berkeley in carrying out its efforts to protect the public and suppress criminal activity. When the group or individual being investigated is involved in constitutionally protected First Amendment activity, the Department will ensure that there is reasonable suspicion that a criminal predicate exists.

Officers involved in planning for or responding to any protest or event may utilize open source material and are encouraged to contact the individuals or groups organizing the public event in order to facilitate traffic control, crowd management, or other safety measures concerning the event. These measures would not be considered an investigation as defined by this policy.

Berkeley Police Department

Law Enforcement Services Manual

Intelligence Procedures for First Amendment Activities

The Berkeley Police Department recognizes its critical task in balancing the need for law enforcement in its efforts to protect the broader society, versus the need to safeguard individual rights guaranteed by a democratic process. At times, law enforcement may need to resort to the use of undercover operations, surveillance, and the use of informants to protect the public from groups espousing violence and/or wanton destruction of property.

429.4 FEDERAL AND STATE GUIDELINES

The guidelines of this policy are based largely on the Californian Attorney General's Criminal Intelligence Guidelines and Title 28 Code of Federal Regulations, Part 23 (28 CFR 23). To the extent of this policy is more restrictive than the Attorney General's guidelines or 28 CFR 23, this policy must be adhered to.

429.5 DEFINITIONS

Criminal Predicate: The standard by which the determination as to whether information may be used to create an intelligence file is made. It means that there exists a "reasonable suspicion" based on the analysis of legally obtained information that the subject of the information is or may be involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct. For the purposes of this policy, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount to a misdemeanor or felony.

Reasonable Suspicion: Information which, when viewed in its totality, leads a person with appropriate training, specialized knowledge, and/or experience to conclude that a person, association of persons, or organization may be involved in definable criminal conduct and/or activity that supports, encourages or otherwise aids definable criminal conduct.

Open Source: Any source of news or information that could normally be accessed by any member of the public. Examples include the television news, newspapers, speeches at any public gathering or event, the Internet, the public in the form of casual conversations and information brought forward during routine contacts, the radio, billboards, and flyers. Open source information does not include meetings, such as planning meetings or closed-door meetings, where First Amendment protected activities are involved, unless the officers are in uniform and have been invited or are otherwise in a place they have a lawful right to be.

Informant: Non-law enforcement, non-City employees who are specifically gathering information on behalf, and at the request of the Berkeley Police Department.

Videotaping: For the purposes of this policy, the videotaping (whether surreptitious or in plain sight) of individuals or groups involved in First Amendment related activities.

429.6 INTELLIGENCE GATHERING

Berkeley Police Department

Law Enforcement Services Manual

Intelligence Procedures for First Amendment Activities

429.6.1 OPEN SOURCES

Open source information can be accessed at any time by any member of the Department without reporting requirements, unless otherwise required outside of this policy. Accessing open source information does not constitute an investigation as defined by this policy. However, files on groups or organizations containing open source material shall not be created and maintained, absent a criminal predicate.

Open source information should be validated in compliance with the California Attorney General's Criminal Intelligence Guidelines and 28 CFR 23.

429.6.2 PLAINCLOTHES OFFICERS

Where the activity is First Amendment related, plainclothes officers may only be used where there is a reasonable suspicion of criminal activity arising to acts of violence, destruction of property, or a threat to public safety. Plainclothes officers may be utilized within crowds in public places involved in First Amendment related activities, but only in order to determine the best response for Police to safely address traffic-related issues because they would potentially be in danger even in uniform. In this situation, the plainclothes officers would not be gathering any specific information about the group or individuals, unless criminal activity occurred, just general information such as direction of travel, crowd size estimates and destination.

- (a) Plainclothes officers shall not be utilized at meetings, such as planning meetings or closed-door meetings where First Amendment related activities are involved, except as noted above.
- (b) The use of plainclothes officers at planning-meetings, or closed-door meetings where First Amendment related activities are involved shall require prior approval of the Chief of Police.
- (c) Plainclothes officers shall not, in any circumstance:
 1. Attend meetings or engage in other activities for the purpose of obtaining legally-privileged information, such as confidential sources of reporters, attorney-client communications, or physician-patient communications;
 2. Assume a leadership position or intentionally cause dissension within an organization;
 3. Initiate, propose or suggest, encourage, or incite criminal acts or plans to commit criminal acts;
 4. Use unlawful techniques to obtain information; or
 5. Participate in acts of violence or unlawful acts.

429.6.3 INFORMANTS

Informants may be utilized in First Amendment related activities where there is reasonable suspicion of criminal activity arising to acts of violence, destruction of property, or a threat to public safety.

Berkeley Police Department

Law Enforcement Services Manual

Intelligence Procedures for First Amendment Activities

- (a) Informants shall not be utilized at meetings, such as planning meetings or closed-door meetings where First Amendment related activities are involved, except as noted above.
- (b) Use of informants where First Amendment related activities are involved would require prior approval of the Chief of Police and reasonable suspicion of a criminal predicate.
- (c) Information from informants should be validated in compliance with the California Attorney General's Criminal Intelligence Guidelines and Title 28 Code of Federal Regulations, Part 23 (28 CFR 23).
- (d) Informants shall be directed not to:
 - 1. Assume a leadership position or intentionally cause dissension within an organization;
 - 2. Initiate, propose or suggest, encourage, or incite criminal acts or plans to commit criminal acts;
 - 3. Use unlawful techniques-to obtain information;
 - 4. Participate in acts of violence or unlawful acts; or
 - 5. Attend meetings or engage in other activities for the purpose of obtaining legally-privileged information, such as confidential sources of reporters, attorney-client communications or physician-patient communications.

429.6.4 VIDEOTAPING

Videotaping is a useful tool with which to gather evidence in criminal cases and non-criminal civil complaints against the City. It is often difficult to ascertain whether criminal activity is going to break out during a protest, march, or during other protected First Amendment related activities. Additionally, due to the contentious nature of many of these events, there is often City liability involved, or the potential for allegations of police misconduct. Videotaping these events serves to protect both the City and the various constituents involved in these events. As such the Berkeley Police Department will routinely videotape protests, marches and other acts of protected First Amendment related activities that occur in public places.

- (a) In the event that no criminal predicate exists, no discernable civil liability can be discovered, and no personnel complaint is received, the tapes, if they are maintained, will only be maintained as a training tool. Tape that is not used for training shall be destroyed within 90 days of the incident, unless such tape is requested to be preserved as part of a personnel complaint, civil or criminal investigation or case.
- (b) Whenever possible, the videotaping will occur in a manner-that minimizes interference with people lawfully participating in First Amendment activity. Individuals shall not be singled out for videotaping or photographing because of their religious or political views.

Berkeley Police Department

Law Enforcement Services Manual

Intelligence Procedures for First Amendment Activities

429.7 DEMONSTRATIONS

The Police Department will not investigate or gather intelligence of a planned demonstration from non-open sources, unless there is reasonable suspicion that the demonstration will result in criminal activity rising to acts of violence, destruction of property or a threat to public safety. The anticipation of acts of non-violent civil disobedience alone, without an accompanying threat to public safety, shall not be a basis to investigate or gather intelligence of a planned demonstration, other than from open sources for purposes such as estimating the time, size and route of the demonstration.

429.8 INTELLIGENCE FILES

The creation of intelligence files when investigating individuals and groups involved in First Amendment protected activities where a criminal predicate, exists shall meet the below criteria.

- (a) An intelligence file will consist of analyzed data from sources ranging from "open source" to "confidential" (such as informants and classified reports). The only limits Title 28 CFR 23 places on data that may be analyzed are:
 - 1. It must be legally obtained
 - 2. It may not include information about political, religious or social views, associations or activities unless such information is related to definable criminal conduct or activity and the subject of the information is reasonably suspected of involvement in that conduct or activity.
 - 3. It is within the California Attorney General Guidelines.
- (b) Once data has been lawfully collected, it goes through several steps that will terminate in one of three results:
 - 1. Destruction of the data because there is no criminal predicate and no reasonable likelihood of developing a criminal predicate;
 - 2. Determination that, although no criminal predicate then exists or no person or group has yet been linked to the predicate, there is a reasonable likelihood that – within a reasonable time (the Department of Justice uses one year) evidence of the predicate or identity of the person or group will be available; or
 - 3. Retention of the data based on a criminal predicate.
- (c) An intelligence file shall not be opened for reasonable suspicion of non-violent civil disobedience that is only a misdemeanor and does not pose a threat to public safety.

429.8.1 INFORMATION ACCESS AND DISSEMINATION

Information Access and Dissemination: Those personnel authorized to access and disseminate criminal intelligence file information shall ensure that prior to disseminating or allowing access to criminal intelligence file information that the requestor has:

- (a) The Right to Know: Requester has the right to obtain intelligence information because of his or her status (e.g., a sworn member of a law enforcement agency) or pursuant to a court order, statute or case law, and

Berkeley Police Department

Law Enforcement Services Manual

Intelligence Procedures for First Amendment Activities

- (b) The Need to Know: Requester has an articulated need to obtain specific intelligence information in order to execute official law enforcement responsibilities or because the court order, statute or case law establishes such a need to know.

Access should never be granted when a requester has satisfied only one of these criteria.

429.9 AUTHORIZATION

When possible, in all cases involving an investigation into individuals or groups exercising Constitutionally protected First Amendment activities, approval will be obtained from the Chief of Police, or in his/her absence a division captain, prior to the initiation of an investigation. An approval period will last for 90 days. Any investigation that continues for more than 90 days must receive approvals from the Chief of Police at every 90-day interval.

- (a) If it is impractical to obtain prior approval, the Chief of Police shall be notified in a timely manner. Investigations shall only be initiated, where there is reasonable suspicion of planned, on-going, or prior criminal activity.
- (b) The Chief of Police will notify the City Manager of all investigations that are covered by this policy.

429.9 AUDIT AND REPORTING

On an annual basis, the Chief of Police, or his/her designee, shall review the Department's files, records and documents to determine whether the Department is in compliance with these regulations. The Chief of Police shall prepare a confidential summary report to the City Manager regarding all investigations conducted by the Police Department pursuant to this policy.

The Chief of Police, or his/her designee, shall prepare a statistical report annually for the Police Review Commission that will include the following information:

- (a) The number of investigations authorized during the prior year;
- (b) The number of authorizations sought but denied;
- (c) The number of times that undercover officers were used;
- (d) The number of unlawful activities investigated;
- (e) Arrest and violation information for completed investigations; and
- (f) The number of requests for information from outside agencies for information relating to investigations conducted pursuant to this policy.

429.10 OUTSIDE AGENCIES

The Berkeley Police Department will only cooperate with outside agencies consistent with this policy, the California Attorney General's Criminal Intelligence Guidelines and Title 28 Code of Federal Regulations, Part 23. Officers will follow this policy at all times when engaged in cooperative efforts with another agency.

Attachment 3

- City Clerk Department 2024 Council Meeting Timeline

CITY CLERK DEPARTMENT 2024 COUNCIL MEETING TIMELINE

COUNCIL MEETING	THURSDAY 12:00 PM - Day 33 - DEPT. REPORTS DUE TO CLERK	MONDAY 5:00 PM - Day 22 - COUNCIL MEMBER REPORTS DUE TO CLERK	THURSDAY 12:00 PM - Day 19 - AGENDA COMMITTEE PACKET TO PRINT	MONDAY 2:30 PM - Day 15 - AGENDA COMMITTEE MEETING	WEDNESDAY 11:00 AM - Day 13 - FINAL AGENDA MEETING (PRINT AGENDA ON WED.)	THURSDAY By 5:00 PM - Day 12 - COUNCIL AGENDA DELIVERY
Winter Recess [December 13, 2023 through January 15, 2024]						
Jan 16	12/14	12/26 (Tue)	1/2 (Tue)	1/4 (Thur)	1/4 (Thur)	1/5 (Fri)
Jan 30	12/28	1/8	1/11	1/16 (Tue)	1/17	1/18
Feb 13	1/11	1/22	1/25	1/29	1/31	2/1
Feb 27	1/25	2/5	2/8	2/13 (Tue)	2/14	2/15
Mar 12	2/8	2/20 (Tue)	2/22	2/26	2/28	2/29
Mar 19	2/15	2/26	2/29	3/4	3/6	3/7
Spring Recess [March 20 through April 15, 2024]						
Apr 16	3/14	3/25	3/28	4/1	4/3	4/4
May 7	4/4	4/15	4/18	4/25 (Thur)	4/25 (Thur)	4/26 (Fri)
May 14	4/11	4/22	4/25	5/1 (Wed)	5/1	5/2
May 21	4/18	4/29	5/2	5/7 (Tue)	5/8	5/9
Jun 4	5/2	5/13	5/16	5/21 (Tue)	5/22	5/23
Jun 25	5/23	6/3	6/6	6/10	6/12	6/13
Jul 9	6/6	6/17	6/20	6/24	6/26	6/27
Jul 23	6/20	7/1	7/3 (Wed)	7/8	7/10	7/11
Jul 30	6/27	7/8	7/11	7/15	7/17	7/18
Summer Recess [July 31 through September 9, 2024]						
Sep 10	8/8	8/19	8/22	8/26	8/28	8/29
Sep 24	8/22	9/3 (Tue)	9/5	9/9	9/11	9/12
Oct 1	8/29	9/9	9/12	9/16	9/18	9/19
Oct 15	9/12	9/23	9/26	9/30	10/2	10/3
Oct 29	9/26	10/7	10/10	10/15 (Tue)	10/16	10/17
Nov 12	10/10	10/21	10/24	10/28	10/30	10/31
Nov 19	10/17	10/28	10/31	11/4	11/6	11/7
Dec 3	10/31	11/12 (Tue)	11/14	11/18	11/20	11/21
Dec 10	11/7	11/18	11/21	11/25	11/27	11/27 (Wed)
Winter Recess [December 11, 2024 through January 14, 2025]						

VTO Affected Dates	Holiday Affected Dates	Religious Holiday Affected Date
-----------------------	---------------------------	------------------------------------

Reports not submitted by the deadlines listed will not be included on the agenda.

Updated 11/03/23

Worksession	Thursday 12:00 PM	Thursday 5:00 PM
	Day 26	Day 5
	Dept. Reports Due to Clerk	Council Agenda Delivery
Jan 23	12/28	1/18
Feb 6	1/11	2/1
Sep 17	8/22	9/12
Oct 8	9/12	10/3