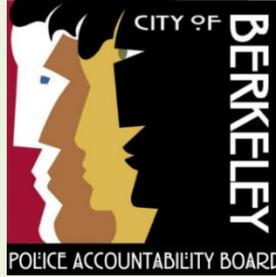


Page numbers for this agenda packet are marked in **blue** to distinguish them from the numbering within individual documents.



**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING SUPPLEMENTAL AGENDA PACKET #1
July 9, 2025
6:30 PM**

Board Members

Joshua Cayetano (Chair)	Leah Wilson (Vice-Chair)
Kitty Calavita	Juliet Leftwich
David Williams	Randy Wells
Macharia Edmonds	Joshua Buswell-Charkow

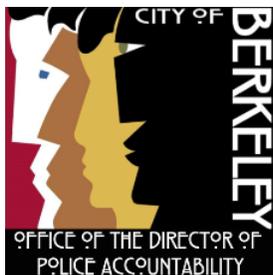
MEETING LOCATION

Office of the Director of Police Accountability
1900 Addison Street, Floor 3
Berkeley, CA 94704

Item	Description	Page
9.d.	Materials regarding the proposed rescission of the Police Equipment and Community Safety Ordinance	1
9.e.	Draft Letter to City Council Titled “PAB Response to BPD’s Surveillance Acquisition Report and proposed Use Policies for External Fixed Surveillance Cameras – Flock Safety Condor Video Cameras”	21
9.g.	List of Relevant Budget Process Materials	28

Item 9.d.

Materials regarding the proposed rescission of the Police Equipment and
Community Safety Ordinance



MEMORANDUM

Date: July 8, 2025

To: Honorable Members of the Police Accountability Board (PAB)

From: Hansel A. Aguilar, Director of Police Accountability (DPA) *HAA*
 Jose D. Murillo, ODPa Policy Analyst *JM*

Subject: Overview of Materials for July 9, 2025 PAB Regular Meeting Agenda Item 9.d. "Discussion and action on the proposed rescission of the Police Equipment and Community Safety Ordinance (Continued)"

The purpose of this memorandum is to provide the PAB with an overview of the introduced materials for Agenda Item 9.d.

Background:

On June 11, 2025, the PAB began their discussion on the proposed rescission¹ of BMC 2.100 "Police Equipment and Community Safety Ordinance."² As part of their discussion, the PAB moved to:

*"Motion to request that the Director, with support from the Chair and Vice Chair, collaborate with the Berkeley Police Department to develop a joint recommendation for presentation to the Public Safety Policy Committee. The recommendation will seek to reduce or eliminate duplicative reporting requirements already covered by state law while preserving the unique and important elements of the ordinance that require local review. The Director, Chair, and Vice Chair will present the recommendation to the full Board for a vote prior to the Public Safety Policy Committee's July meeting."*³

¹ Draft Item 47 "Rescission of the Police Equipment and Community Safety Ordinance": <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2025-06-02%20Agenda%20Packet%20-%20Agenda%20Committee.pdf#Page=547>

² BMC 2.100 "Police Equipment and Community Safety Ordinance": <https://berkeley.municipal.codes/BMC/2.100>

³ June 11, 2025 PAB Regular Meeting Minutes: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT%20June%2011%202025%20PAB%20Reg%20Meeting%20Minutes.pdf>

As part of this PAB request, the DPA met with Arlo Malmberg, BPD's Strategic Planning and Accountability Manager, to discuss the administrative demands involved in preparing both the BMC 2.100 report and the reporting requirements under AB 481⁴ as well as potential next steps.

Overview of Materials

These discussions highlighted key differences regarding the content of required reporting and whether BMC 2.100 should be rescinded or revised. In response, the following materials were prepared:

1. A draft letter from Chair Cayetano supporting revisions to, rather than rescission of, BMC 2.100 (*Note: The referenced redline of BMC 2.100 is not yet complete at the time of this memo. If the PAB chooses to pursue this approach, it would need to authorize the Chair and/or relevant subcommittee to finalize a proposal for submission to the Public Safety Policy Committee.*)
2. BPD's proposed letter advocating for rescission of BMC 2.100
3. ODPa's revised analysis and recommendation concerning the proposal to rescind BMC Chapter 2.100 – Controlled Equipment Ordinance

Together, these memorandums provide the PAB with a range of information and options for consideration.

⁴ AB 481: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481

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Joshua Cayetano, Chair
 Police Accountability Board
JCayetano@berkeleyca.gov

July 8, 2025

VIA ELECTRONIC MAIL

Honorable Members of the Public Safety Policy Committee

PolicyCommittee@berkeleyca.gov

2180 Milvia Street, 1st Floor

Berkeley, CA 94704

Re: Recommendation to Revise, Not Rescind, Berkeley Municipal Code Chapter 2.100 et seq.

Dear Members of the Public Safety Policy Committee,

The Police Accountability Board (PAB) submits this recommendation to eliminate any duplicative reporting on the City’s military equipment without discarding the substantive requirements in Berkeley Municipal Code Chapter 2.100 et seq., the Police Equipment and Community Safety Ordinance (BMC 2.100 or the Ordinance). BMC 2.100 provides important oversight on militarized equipment in Berkeley that is absent from California’s AB 481.¹ We urge the Committee to reject the proposal to rescind BMC 2.100 and instead recommend that the Council revise BMC 2.100. Attached to this letter is a red-line of the PAB’s recommended revision for the Committee’s convenience.

Background:

On April 27, 2021, Berkeley unanimously passed Ordinance No. 7,760-N.S.,² an ordinance that enables transparency and public oversight of the funding, acquisition, and use of military equipment. Its passage reflected years of advocacy by community groups working to end the militarization of our neighborhoods and was extensively vetted by all stakeholders, including

¹ We refer to “military equipment” throughout this letter to refer to both military equipment regulated by AB 481 and controlled equipment regulated by BMC 2.100. We recommend revising the references throughout BMC 2.100 from “controlled equipment” to “military equipment” to align with AB 481 and eliminate any confusion.

² Ordinance No. 7,760-N.S.:

<https://records.cityofberkeley.info/PublicAccess/api/Document/ARx07EYZ3rKchpLXojF0CLCOr2BAiAR70sLPBQqimXd%C3%89yrsN0Tmlaltscp0EdFiMOnzRBo6sfffUTqR%C3%893MbCjpo%3D/>

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Berkeley City Council, the City Manager’s office, the City Attorney’s office, the Police Review Commission (PRC), and Berkeley Police Department.

When Berkeley’s Ordinance passed, California’s AB 481³—a state law authored by some of the same community groups who authored BMC 2.100⁴—was working through committee at the California State Assembly, then the California Senate. AB 481 was enacted on September 30, 2021. AB 481 explicitly declared that “adequate oversight of the acquisition and use of military equipment is a matter of statewide concern rather than a municipal affair,” such that AB 481 supersedes any conflicting or inconsistent municipal ordinance. However, AB 481 expressly contemplates—even encourages—local governments to implement additional requirements and standards that furthers its purposes.⁵

As described below, BMC 2.100 undoubtedly strengthens the reporting and oversight requirements that are set forth in AB 481. One way BMC 2.100 strengthens AB 481, and demonstrates Berkeley’s commitment to police transparency and accountability, is by requiring BPD to report on deployments of military equipment, not just “uses,” a term that is not defined by AB 481. The definition of “deploy” was subject to extensive discussion by the Council, the PRC, BPD, and community groups.⁶ Those in favor of including a deployment reporting requirement made clear that the public has a right to know when law enforcement deliberately brandishes police equipment like less-lethal or pepper spray in order to provoke some response, as opposed to simply when they are discharged. BPD raised concerns about administrative and operational burdens and, as a compromise, the Council made clear that merely wearing a piece of military equipment does not amount to a “deployment” and specifically exempted the deployment of batons, with a limited carveout for crowd control situations.

Another way BMC 2.100 strengthens AB 481 is by delegating oversight of BPD’s use of military equipment to the PAB. AB 481 sets forth certain standards governing the use of military equipment and authorizes local governments to modify or rescind a military equipment use policy if the governing body identifies any non-compliance⁷; BMC 2.100 asks the PAB determine if any

³ Assembly Bill 481 (2021-2022):

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

⁴ Berkeley Municipal Code 2.100 “Police Equipment and Community Safety Ordinance”:

<https://berkeley.municipal.codes/BMC/2.100>

⁵ Government Code Section 7075 (“Nothing in this chapter shall preclude a county or local municipality from implementing additional requirements and standards related to the purpose, use, and reporting of military equipment by local law enforcement agencies.”); Government Code Section 7070(c)(15) (defining military equipment as “[a]ny other equipment as determined by a governing body or a state agency to require additional oversight”).

⁶ BMC 2.100.020(D).: <https://berkeley.municipal.codes/BMC/2.100.020>

“Except as provided below, ‘Deployed’ means to utilize or employ Controlled Equipment for a deliberate purpose in the presence of members of the public during management or control of crowds, during any Special Response Team deployment or to affect some response from members of the public during any other operation or critical response.

‘Deployed’ shall not mean an officer merely wearing a piece of Controlled Equipment on their belt or elsewhere on their person. (1) Batons 30 inches or longer in length shall only be deemed ‘deployed’ when used for management or control of crowds.”

⁷ Government Code Section 7071(e)(2) (“The governing body shall determine, based on the annual military equipment report submitted pursuant to Section 7072, whether each type of military equipment identified in that report has complied with the standards for approval set forth in subdivision (d). If the governing body determines

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military equipment has not complied with those standards and then directs the PAB to recommend either modification of the use policy to ensure compliance or revocation of the authorization for that piece of military equipment.⁸ Rescinding the Ordinance would strip the PAB of this role, deprive the Council of the PAB's subject-matter expertise, and leave a gap in City processes governing this important oversight function.

We understand that BPD currently submits two reports on military equipment that are nearly identical. The Council can easily modify BMC 2.100 to eliminate any duplicative reporting without discarding the Ordinance entirely, as the City of Oakland did. If BPD believes that a particular reporting requirement is overly burdensome, and Council is interested in reconsidering the additional substantive reporting requirements, then the PAB is ready and willing to review those proposals on the merits and make a recommendation. But rescinding the Ordinance entirely would reduce public trust in law enforcement, erode safeguards designed to protect the public's welfare and civil liberties, and undermine the City's commitment to civilian oversight of law enforcement.

Recommendation and Rationale:

1. Eliminate duplicative reporting.

We agree that BPD should not be subject to duplicative reporting. Currently, BPD submits two annual reports on military equipment, the first in March and the second in the summer. All administrative duplication can be eliminated by combining these two reports. Nothing in BMC 2.100 or AB 481 prevents BPD from doing so. BMC 2.100 only says that the report "shall be provided no later than March 15th of each year, unless the Police Accountability Board advises the Department that an alternate date is preferred."⁹ We highly recommend that BPD consolidate these reports into a single report that satisfies both AB 481 and BMC 2.100.¹⁰

Even though BPD could submit a single annual report that satisfies both AB 481 and BMC 2.100 as codified, we suggest some revisions to BMC 2.100 that would make clear BPD can and should do so, and that BMC 2.100 is intended to harmonize with AB 481.

that a type of military equipment identified in that annual military equipment report has not complied with the standards for approval set forth in subdivision (d), the governing body shall either disapprove a renewal of the authorization for that type of military equipment or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance.")

⁸ BMC 2.100.050(B)(1): [https://berkeley.municipal.codes/BMC/2.100.050\(B\)\(1\)](https://berkeley.municipal.codes/BMC/2.100.050(B)(1))

⁹ BMC 2.100.050: <https://berkeley.municipal.codes/BMC/2.100.050>

¹⁰ Oakland Police Department issues a single annual report that complies with both state law reporting requirements and Oakland's local requirements. In fact, the language in BMC 2.100.050—the section governing the submission of BPD's report—is nearly identical to the language in Oakland Municipal Code 9.65.030, Oakland's local military equipment reporting ordinance, which was also passed before AB 481.

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2. Retain BMC 2.100’s additional substantive reporting requirements and oversight mechanisms that promote transparency and accountability.

Over the course of three public meetings, we heard from many community members who expressed support for retaining the Ordinance. At the June 11, 2025 meeting, former Councilmember Kate Harrison, who co-authored the Ordinance, provided a presentation that detailed the substantive differences between AB 481 and BMC 2.100. We also heard from John Lindsay-Poland, another co-author of the Ordinance, and Brian Hofer, the Executive Director of Secure Justice—both of whom warned that rescinding BMC 2.100 would eliminate substantive reporting requirements and oversight mechanisms that promote transparency and accountability and are not mandated under AB 481. Many other community members either spoke in person or wrote separately in support of BMC 2.100.

After conducting its own review of BMC 2.100, the PAB concluded that BMC 2.100 contains the following additional substantive reporting requirements and oversight mechanisms:

Category	Brief Description of Substantive Difference
Definition of Military Equipment	BMC requires BPD to report on CS gas, pepper spray, and batons while AB 481 does not. AB 481 specifically allows local governments to determine that other police equipment requires additional oversight. ¹¹
Differences in Components of the Annual Report	Elements in the annual report that are required by BMC 2.100 but not in AB 481: (a) Reporting on deployments of military equipment. BMC 2.100 requires reporting on “deployments,” ¹² while AB 481 requires reporting only on “use,” which is not defined in the legislation. (b) Geographic impact. A breakdown of where the military equipment was used in Berkeley. (c) Other requirements. The number of days equipment was used and the percentage of these uses that were authorized by warrant or a court.

¹¹Government Code Chapter 12.8 Section 7070(c)(15) (defining military equipment as “[a]ny other equipment as determined by a governing body or a state agency to require additional oversight”):

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

¹² The definition of “deploy” was subject to extensive consideration by Council, BPD, and the then-existing Police Review Commission. See the April 27, 2021 Supplemental Material for Item 32 “Police Equipment and Community Safety Ordinance”: https://berkeleyca.gov/sites/default/files/documents/2021-04-27%20Item%2032%20Adopt%20an%20Ordinance%20Adding%20Chapter%202.100%20to%20the%20Berkeley%20Municipal%20Code%20Regulating%20Police%20Acquisition%20and%20Use%20of%20Controlled%20Equipment%20-%20Rev%20Harrison_0.pdf

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Category	Brief Description of Substantive Difference
Use Policies	With respect to military equipment use policies, BMC 2.100 requires defining authorized <i>and</i> prohibited uses; AB 481 requires defining only authorized uses.
Impact Statements	<p>BMC 2.100 (like Oakland’s militarized equipment ordinance) requires the Department to elaborate an impact statement when it proposes to acquire new types of controlled equipment.</p> <p>The provisions of an impact statement not included in AB 481 are: statement of potential impact; mitigations to safeguard against such impacts; rationale for not selecting alternative methods to achieve the same purpose as the equipment; and whether the equipment requires third party services.</p>
Review by Oversight Entity	<p>BMC 2.100 requires that proposed use policies receive the recommendation of PAB; AB 481 requires identification of an independent oversight entity, but does not define such entity’s authority.</p> <p>BMC 2.100 requires the PAB to determine that each piece of military equipment complies with the standards set forth in the Ordinance, which are substantially similar to the standards set forth in AB 481; if the PAB identifies any noncompliance it shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance.¹³</p> <p>BMC 2.100 provides that if the PAB does not act within 90 days (30 days in time-sensitive circumstances), BPD may proceed to City Council for approval.</p>
Exigent Circumstances	Unlike AB 481, BMC 2.100 includes provisions governing the use of controlled equipment that has not been approved in exigent circumstances.
Private Right of Action and Protections for Whistleblowers	BMC 2.100 provides for a private right of action and protection for whistleblowers, while AB 481 does not.

¹³ We recommend modifying the language in BMC 2.100.050(B)(1) and (2) establishing this compliance review function from mandatory to permissive language in order to reduce the administrative burden on the PAB while still retaining the PAB’s authority to conduct a compliance review of military equipment.

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We discussed with BPD how to operationalize consolidating the reports without discarding these substantive differences. During those conversations, it became clear that BPD's central concern is not with duplicative reporting requirements, but with the substantive requirements that Berkeley's local ordinance imposes. For example, BPD suggested that reporting on "deployments" is too resource-intensive because it requires manual review of body worn camera to determine if a deployment occurred. And BPD suggested that BMC 2.100's definition of military equipment includes regular tools of law enforcement (like batons) that should not be subject to additional reporting. We remain open to discussing modifications to substantive requirements within a joint PAB-BPD committee. But, even if we agreed with BPD's perspective, addressing those concerns could be accomplished by revising the Ordinance, not a wholesale rescission.

3. Issue a negative recommendation to the proposal to rescind BMC 2.100 and a positive recommendation to the PAB's proposed revision instead.

For the foregoing reasons, we respectfully request that the Committee issue a negative recommendation to the proposal to rescind BMC 2.100 and a positive recommendation to the PAB's proposed revision instead. We remain committed to working in partnership with the Committee, the Council, BPD, and the broader community to strengthen democratic accountability, transparency, and safety.

Sincerely,

Joshua Cayetano

Joshua Cayetano, Chair
Police Accountability Board

Cc: Paul Buddenhagen, City Manager
David White, Deputy City Manager
Jennifer Louis, Chief of Police
Jen Tate, Deputy Chief of Police
Farimah Brown, City Attorney
Mark Numainville, City Clerk
Hansel Aguilar, Director of Police Accountability

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MEMORANDUM

Date: July 8, 2025

To: Honorable Members of the Police Accountability Board (PAB)
Jennifer Louis, Berkeley Chief of Police

From: Hansel A. Aguilar, Director of Police Accountability 
Jose D. Murillo, ODPA Policy Analyst 

Subject: Revised Analysis and Recommendation Regarding Proposal to Rescind
BMC Chapter 2.100 – Controlled Equipment Ordinance

This memorandum provides a revised analysis and set of recommendations for the PAB’s consideration regarding the proposal to rescind Berkeley Municipal Code (BMC) Chapter 2.100, known as the *Police Equipment and Community Safety Ordinance*.¹ The proposal suggests that BMC 2.100 is redundant in light of California Government Code § 7070 et seq. (AB 481).²

Upon further review, including the analysis of both the 2023 AB 481 Report and the Controlled Equipment Ordinance Report, and clarification provided by the Office of Strategic Planning and Accountability (OSPA), this memo recommends retaining BMC 2.100 and updating it through streamlining mechanisms and technological enhancements.

Background:

The Controlled Equipment Ordinance was passed unanimously by the City Council in April 2021 following extensive community input. It was created to address concerns about militarization and disproportionate impacts on marginalized communities and to ensure robust transparency and civilian oversight.

¹ Berkeley Municipal Code Chapter 2.100 “Police Equipment and Community Safety Ordinance”:

<https://berkeley.municipal.codes/BMC/2.100>

² AB-481 Law enforcement and state agencies: military equipment: funding, acquisition, and use. (2021-2022):

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

Five months after its adoption, AB 481 was signed into law, requiring cities to adopt use policies and conduct annual reviews for military equipment. However, AB 481 does not include several of the key protections and oversight mechanisms embedded in BMC 2.100, such as real-time deployment tracking, public mapping, civil liberties impact statements, and formal oversight by the Police Accountability Board (PAB).

Clarified Understanding of Administrative Burden:

In a meeting between the Office of the Director of Police Accountability (ODPA) and OSPA held on June 24, 2025, OSPA Manager Arlo Malmberg clarified that a key administrative burden stem from:

- Meticulous field data entry by officers via the Survey123³ mobile tool;
- Multi-tier review by line supervisors, unit supervisors, command staff, and finally OSPA;
- Redundant reporting structures for state and local compliance.

This clarification offers a more precise understanding of the resource costs and provides a basis for proposing targeted efficiency strategies.

Empirical Comparison - AB 481 vs. BMC 2.100 Reports:

Review of the BPD's previous years' AB 481 Annual Military Equipment Report and the Controlled Equipment Ordinance Annual Report confirms that:

- AB 481 reports focus on broad inventory, policy, and general use rationales.
- BMC 2.100 reports provide specific, granular deployment data (e.g., incident date, location, rationale, warrant status) and accountability components such as PAB review.

This comparative analysis reinforces the view that BMC 2.100 is not redundant, but complementary and essential for local democratic oversight.

Legal Context and Policy Alignment:

The constitutional standard governing use of force under *Graham v. Connor*, 490 U.S. 386 (1989),⁴ requires that all force be objectively reasonable under the totality of the circumstances. This principle has been affirmed and applied in a variety of contexts,

³ For an overview on ArcGIS Survey123:

<https://www.esri.com/en-us/arcgis/products/arcgis-survey123/overview?rsource=%2Fen-us%2Farcgis%2Fproducts%2Fsurvey123%2Foverview>

⁴ *Graham v. Connor*, 490 U.S. 386 (1989): <https://supreme.justia.com/cases/federal/us/490/386/>

including in the U.S. Supreme Court's decision in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015).⁵

In *Kingsley*, the Court held that when evaluating the use of force against pretrial detainees, the correct standard is objective—not subjective—reasonableness, considering the perspective of a reasonable officer on the scene. The Court emphasized factors including the relationship between the need for force and the amount used, the extent of injury, and any effort made to temper the severity of the force. (Id. at 397)

These principles are reflected in Berkeley Police Department Policy 300 (Use of Force)⁶, which mandates that officers only use force that is objectively reasonable in light of the facts and circumstances confronting them. The policy also requires detailed documentation, supervisor review, and, where applicable, command-level or external review.

Similarly, the California POST Use of Force Standards and Guidelines (2021)⁷ reinforce the importance of considering the totality of circumstances, the sanctity of life, proportionality, and de-escalation. These guidelines explicitly state that documentation, review, and policy compliance are essential to maintaining public trust and ensuring accountability.

Together, these legal and policy frameworks support the continued need for detailed, context-sensitive documentation of force and equipment deployments. Berkeley's BMC 2.100 ordinance, with its emphasis on deployment rationale, geographic location, and warrant linkage, helps to meet this threshold.

This legal and policy framework not only supports but arguably necessitates innovative methods for managing deployment data. It provides the conceptual foundation for integrating AI-powered tools and restructuring administrative workflows, as outlined in the next section.

Recommendations – Retain and Harmonize:

Streamline Administrative Burden

1. Adopt Audit-Based Oversight

⁵ *Kingsley v. Hendrickson*, 576 U.S. 389 (2015): <https://supreme.justia.com/cases/federal/us/576/389/>

⁶ Berkeley Police Department Policy 300 “Use of Force”:

https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=57

⁷ Commission on Peace Officer Standards and Training (POST) 2021 Use of Force Standards and Guidelines:

https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf

- Replace exhaustive report-by-report reviews with quarterly, randomized or risk-based audits.
 - Consider utilizing the expertise of the City Auditor's team to put forth a transparent, methodical and actionable audit plan.
2. **Integrate AI-Enhanced Body-Worn Camera (BWC) Tools:** AI-enhanced tools such as body-worn camera (BWC) analysis powered by natural language processing (NLP)⁸ can assist in efficiently capturing indicators relevant to these factors, including verbal escalation, officer commands, subject compliance, and incident sequence.
- Pilot BWC systems equipped with NLP tools that can auto-detect deployment-related events, extract officer language (e.g., "OC deployed"), flag verbal escalation cues, and assist with populating report fields.
 - NLP-powered BWC analysis can assist in efficiently capturing indicators relevant to force analysis, including verbal escalation, officer instructions, subject compliance or resistance, disputed statements, and temporal sequencing of events.
 - ODPa recommends a methodological triangulation approach: combining BPD narrative reports, BWC footage, and complaint data into a unified analytic stream. This would optimize deployment review and improve detection of incidents requiring oversight, while minimizing redundant labor.⁹

⁸ Natural language processing (NLP) is a field of study that includes computer science, linguistics, and applied statistics. NLP uses statistical classifiers and machine-learning algorithms to allow a machine to "learn" about a selection of language, typically a section of narrative text.

Source: <https://portal.cops.usdoj.gov/resourcecenter/Home.aspx?item=cops-r1135>

⁹ A 2023 study funded by the COPS Office (Martin et al., 2023) noted the analytical power of NLP in parsing officer narratives but acknowledged the limitation of excluding other data sources. The authors highlighted that BWC footage represents a "natural extension" of NLP applications.

Martin, Adrian, Ernest Fokoue, Hongyuan Fu, and Hugo Tessier. 2023. *Learning from Inaccessible Data: Natural Language Processing on Police Use of Force Reports*. Washington, DC: Office of Community Oriented Policing Services. <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-r1135-pub.pdf>

- These tools should complement—not replace—supervisory and civilian oversight. Integration should be pilot-tested in consultation with community and civil liberties stakeholders to ensure transparency and trust.

3. Simplify Supervisory Review Tiers

- Consolidate multi-tier review structure; implement checklist-based validations for low-risk deployments.

4. Establish Automatic Review Triggers for Critical Incidents

- While routine deployments may be subject to randomized or risk-based audits, the following events should automatically trigger full supervisory and civilian oversight review under BMC 2.100:
 - Any deployment resulting in serious bodily injury or death;
 - Any use of controlled equipment during a crowd management event or protest;
 - Any use of equipment inside a residence or on private property without a warrant;
 - Any equipment use that triggers an Internal Affairs investigation or IAB/ODPA complaint;
 - Any deployment that is escalated by on-scene command or flagged by NLP-enhanced BWC analytics as involving indicators of high-risk or atypical force usage.

These automatic triggers ensure that serious or constitutionally sensitive deployments receive thorough review, preserving the ordinance’s public safety and accountability objectives.

B. Harmonize Reporting with AB 481

- Align timelines and data structures for annual reporting under BMC 2.100 and AB 481.
- Use consolidated templates modeled after jurisdictions like Oakland.

C. Convene Interdepartmental Working Group

- A working group of ODPA, PAB, BPD, OSPA, and the City Manager’s Office should:
 - Develop amendment language within 90 days;
 - Host a community listening session;
 - Report back to Council with recommendations.

Conclusion

BMC 2.100 is not redundant but rather provides a vital framework for democratic accountability, civil liberties protection, and public trust. Administrative challenges can be resolved without repealing the ordinance. Integrating audit systems, streamlining workflow, and adopting AI tools can modernize compliance and strengthen oversight. The City should continue its leadership in progressive, community-informed public safety policy.

Sources Relied Upon

- BPD Reports
 - AB 481 Annual Military Equipment Report
 - BMC 2.100 Equipment Ordinance Report
- BPD Policy 300 – Use of Force
- POST Use of Force Standards and Guidelines (2021)
- *Kingsley v. Hendrickson*, 576 U.S. 389 (2015)
- *Graham v. Connor*, 490 U.S. 386 (1989)
- Summary Table of CEO vs AB 481
- Memo: Summary of the Proposal to Rescind
- CM Kate Harrison Presentation to PAB (June 11, 2025)
- Community Comments (Hofer, Lindsay-Poland)
- Original Ordinance No. 7760
- AB 481 (California Government Code § 7070 et seq.)

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Internal

From: Chief Jen Louis, Berkeley Police Department

Co-signed by:

Date:

To: Berkeley City Council Public Safety Policy Committee

Subject: BMC 2.100 Rescission Recommendation

Dear Members of the Public Safety Policy Committee,

The Berkeley Police Department (BPD), the Office of the Director of Police Accountability (ODPA) and the Police Accountability Board (PAB) jointly submit this recommendation to improve the efficiency and effectiveness of the City's military equipment reporting. We believe our shared goal of meaningful transparency can be strengthened by evolving our local approach to align with the statewide framework of Assembly Bill 481.

Berkeley's current ordinance was a pioneering effort in transparency that rightly predated state law. As we have implemented the reporting requirements of both the city and the state, we have identified an opportunity for refinement. The requirement to report on equipment "deployments"- not just actual uses- has involved a resource-intensive process for both BPD and the ODPA. The current definition necessitates a complex and intensive manual review of Body-Worn Camera footage to determine if a deployment occurred. In 2024, this meant analyzing upwards of six times more incidents than if we were to focus on uses alone. Shifting our focus would allow us to dedicate time to more substantive oversight activities.

Focusing on a clear standard of "use"- the actual activation or application of equipment- is a more effective and efficient path to accountability. This standard aligns with state law, which provides clearer data for analysis and allows our staff to focus on substantive oversight. Furthermore, because other local agencies only report on uses, this standard provides comparative value that is absent from our current deployment reporting.

We want to be clear: this recommendation is made with a steadfast commitment to preserving and strengthening civilian oversight. All existing channels for transparency and review will remain. Crucially, this evolution in reporting does not alter the PAB's fundamental powers; under the City Charter, the Board retains its full authority to initiate a review of any BPD policy at any time. Every use of military equipment will still be documented and subject to review by the PAB, the Council, and the public. In fact, Berkeley already provides an additional layer of transparency not mandated by law or ordinance by reporting uses of force on a daily basis via the Transparency Hub.

Therefore, we jointly recommend that the Public Safety Policy Committee rescind the city ordinance and uphold AB 481 and its requirement to report solely on military equipment use. With the passage of AB 481, the City Ordinance became challenging legislation in that it complicates reporting timelines and processes. This is due to the fact that it diverges from AB 481 both by adding several pieces of equipment that are regular tools of law enforcement and not traditional "military equipment" and builds in a prolonged review period on a summary report with different reporting timelines from AB 481.

We further agree that there are elements of the Berkeley report, that was prepared pursuant to the local ordinance, that provide unique value and should be incorporated into the City's annual AB 481

Internal

report to City Council. These include a summary of use statistics, a breakdown of uses related to search and arrest warrants, and a map of uses. BPD has prepared the most recent AB 481 report in this manner which has been submitted for Council approval on July 22.

We are confident that this approach will strengthen our shared commitment to transparency by focusing our collective resources where they matter most.

Sincerely,

Chair, Police Accountability Board

Chief of Police

BPD DRAFT

Item 9.e.

Draft Letter to City Council Titled “PAB Response to BPD’s Surveillance Acquisition Report and proposed Use Policies for External Fixed Surveillance Cameras – Flock Safety Condor Video Cameras”

DRAFT



Joshua Cayetano, Chair
 Police Accountability Board
JCayetano@berkeleyca.gov

July 8, 2025

VIA ELECTRONIC MAIL [Email]

Honorable Mayor Ishii and Members of the Berkeley City Council
council@berkeleyca.gov
 2180 Milvia Street
 Berkeley, CA 94704

Re: PAB Response to BPD’s Surveillance Acquisition Report and proposed Use Policies for External Fixed Surveillance Cameras – Flock Safety Condor Video Cameras

Dear Honorable Mayor Ishii and Members of the Berkeley City Council,

Pursuant to the Surveillance Technology Ordinance (BMC Chapter 2.99) and in response to the June 18, 2025, transmission by the Chief of Police requesting Board review of the proposed acquisition of Flock Safety PTZ (pan-tilt-zoom) cameras, the Police Accountability Board (PAB) respectfully submits the following recommendations and concerns for your consideration.

The PAB recognizes the public safety goals outlined in the proposal and appreciates the Department’s efforts to maintain and modernize fixed surveillance capabilities in high-crime areas. However, after reviewing the submitted Acquisition and Use Policy, the vendor history, and community feedback, the Board identifies several unresolved concerns that warrant caution and further analysis prior to Council approval.

Summary of Concerns

1. Vendor Practices & Risk to Sanctuary Commitments

Flock Safety has been the subject of national scrutiny for its data-sharing practices, including instances where access was granted—intentionally or unintentionally—to agencies engaged in immigration enforcement. Despite changes in their data-sharing model, the vendor’s prior lack of restrictions around sharing with non-local, federal, or immigration-related agencies raises serious concerns in a sanctuary city like Berkeley. The current draft Acquisition and Use Policy does not

provide explicit contractual or technical safeguards to prevent such data access, and vendor limitations on data transfer appear insufficient to protect vulnerable populations.

Safeguards Against Immigration Enforcement Misuse

Protecting the privacy of Berkeley residents, particularly from potential misuse by federal immigration enforcement, is a critical component of the City's sanctuary commitments. California's SB 54 prohibits local law enforcement from sharing nonpublic information—including that maintained by third-party vendors—for immigration enforcement purposes and encourages agencies to implement governance policies to prevent such misuse. The current draft policy affirms compliance with SB 54, and Flock's Terms of Service state that data will not be shared with immigration enforcement agencies. To ensure these protections are durable and enforceable, the City should confirm that contractual terms explicitly prohibit such data sharing, require alignment with SB 54, and mandate prompt City notification of any federal data requests. Public transparency measures—such as notification to the PAB or City Council—should also be considered to reinforce community oversight.

2. Insufficient Vendor Comparison and Competitive Procurement

The switch to Flock Safety as a replacement for Edgeworth Integration, LLC is presented as a necessary vendor change. However, the documentation does not clarify whether a competitive procurement process was conducted or whether alternatives were considered.

3. Policy Gaps and Data Access Controls

While the draft Acquisition and Use Policy outlines general guidelines for use, it does not include the following critical provisions:

- Explicit prohibition of data sharing with federal immigration authorities.
- Required language mandating contractual adherence to Berkeley's sanctuary policies.
- Technical access control mechanisms to prevent remote or third-party retrieval of footage without local authorization.
- Public audit logs and retention review protocols to ensure transparency and accountability.

4. Lack of Public Process Prior to Vendor Change

Community members have not had an opportunity to weigh in on the potential implications of changing surveillance vendors outside of the original Council meeting where this item was heard. In light of Berkeley's strong history of community-driven oversight and the Surveillance Technology Ordinance's emphasis on public trust, the shift to Flock Safety should not proceed without robust and transparent public engagement.

Recommendations

1. Do Not Approve Acquisition at This Time

The City Council should defer approval of the Flock PTZ camera acquisition until the concerns above are adequately addressed, and meaningful public engagement has occurred.

2. Issue a Competitive RFP Process

Given the sensitive nature of surveillance technology, the PAB recommends issuing a formal Request for Proposals (RFP) to ensure vendor selection is guided by community-aligned criteria, including commitments to data privacy, civil liberties, and sanctuary protections. The technical, legal, and policy requirements should include:

- Data residency and access restrictions;
- Affirmative sanctuary protections;
- Compatibility with existing oversight structures.

3. ALTERNATE RECOMMENDATION: Amend the Acquisition and Use Policy

Should the Council opt to proceed with the vendor, the PAB recommends the following language be incorporated into the final Acquisition and Use Policy:

Model Amendment Language:

“No data or footage obtained by this surveillance technology may be shared with, or accessed by, any federal agency involved in immigration enforcement, including but not limited to ICE or CBP. The City shall include contract language ensuring vendor compliance with this restriction and shall implement technical access controls to enforce this provision.”

This placement ensures:

- It follows the logical flow of recommendations.
- It is explicitly tied to the acquisition and use policy (rather than, say, the RFP or vendor selection).
- It keeps the format consistent with other model language used in similar memos and letters, like in your Controlled Equipment memo.

4. Clarify Interoperability Limitations

The City should confirm whether Flock's system can be integrated or siloed to prevent its data from being pooled into broader law enforcement databases, particularly those accessible outside the City's jurisdiction.

5. Hold a Public Hearing

The City should convene a public hearing or community forum prior to proceeding with any vendor contract or final STO determination.

Conclusion

The Police Accountability Board remains committed to supporting efforts that enhance public safety while safeguarding civil liberties and community trust. Based on our review, the current Flock PTZ camera acquisition proposal does not yet meet the standards required under Berkeley's Surveillance Technology Ordinance or its sanctuary city commitments.

We look forward to continuing to work with the Council, ODPA, and BPD to improve public safety in a manner consistent with Berkeley's values and legal obligations.

Sincerely,

Joshua Cayetano, Chair
Police Accountability Board

Attachments:

1. Alternative Recommendation – Proposed Amendment to BPD Policy 351.4.2. "Prohibited Activity"
2. Alternative Recommendation – Proposed Amendment to BPD Policy 1304.2 "Authorized Use"

Attachment 1 - Alternative Recommendation – Proposed Amendment to BPD Policy 351.4.2. “Prohibited Activity”

351.4.2 PROHIBITED ACTIVITY

Video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.

Video surveillance systems shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.

Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.

Video surveillance systems and recordings are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials. *No data or footage obtained by this surveillance technology may be shared with, or accessed by, any federal agency involved in immigration enforcement, including but not limited to ICE or CBP. The City shall include contract language ensuring vendor compliance with this restriction and shall implement technical access controls to enforce this provision.*

Alternative Recommendation – Proposed Amendment to BPD Policy 1304.2 “Authorized Use”

1304.2 AUTHORIZED USE

Only BPD members who receive training on this policy, who are then granted access by an administrator may access the data from the video surveillance cameras. This data may only be accessed to further a legitimate law enforcement purpose, as listed in this Policy. Members must follow the necessary logging mechanisms, such as case number and case type when querying the database.

The cameras shall only record video images and not sound. Recorded images pursuant to Section 351.5 may be accessed, reviewed, and used for specific criminal or BPD administrative investigations and video surveillance may be accessed and reviewed by authorized BPD personnel for the following purposes:

- a) To support specific and active criminal investigations.
- b) To support serious traffic-related investigations.
- c) To support police misconduct investigations, and
- d) To respond to and review critical incidents or natural disasters.

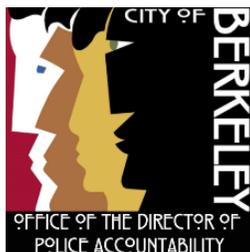
Unauthorized recording, viewing, reproduction, dissemination, or retention of video footage is prohibited.

The following are prohibited uses of the video surveillance system:

- a) Unauthorized recording, viewing, reproduction, dissemination, or retention of video footage is prohibited.
- b) Video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.
- c) Video surveillance systems shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.
- d) Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.
- e) Video surveillance systems and recordings are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials. *No data or footage obtained by this surveillance technology may be shared with, or accessed by, any federal agency involved in immigration enforcement, including but not limited to ICE or CBP. The City shall include contract language ensuring vendor compliance with this restriction and shall implement technical access controls to enforce this provision.*

Item 9.g.

List of Relevant Budget Process Materials



MEMORANDUM

Date: July 8, 2025

To: Honorable Members of the Police Accountability Board (PAB)

From: Hansel A. Aguilar, Director of Police Accountability (DPA) 
 Jose D. Murillo, ODPA Policy Analyst 
 Syed Mehdi, ODPA Data Analyst

Subject: Berkeley Biennial Budget Overview

This memorandum is submitted to inform the PAB of the City's fiscal year 2025–2026 budget actions and provide a consolidated summary of relevant documents and Council decisions shaping ODPA's operational landscape.

Background:

The City of Berkeley adopts its biennial budget through a public legislative process led by the City Council. This two-year financial plan, which includes the operating budget and a five-year Capital Improvement Program, is shaped through a series of public meetings held by the Budget and Finance Policy Committee¹ and the full City Council.²

The Fiscal Years 2025 and 2026 Biennial Budget was approved on June 25, 2024 (Council Report - see Item 11), establishing funding priorities and projected allocations for both fiscal years. Although the City uses a biennial budgeting approach, the Berkeley City Charter requires that expenditures for each fiscal year be legally authorized through an Annual Appropriations Ordinance (AAO).

As outlined in Charter Section 54,³ *"The Council shall adopt an ordinance making appropriations by department, office, agency or program."* The Charter further requires, *"The final budget shall be prepared in such detail as to the aggregate sum and the items*

¹ Budget and Finance Policy Committee: <https://berkeleyca.gov/your-government/city-council/council-committees/policy-committee-budget-finance>

² Berkeley City Council: <https://berkeleyca.gov/your-government/city-council>

³ Berkeley City Charter Section 54: <https://berkeley.municipal.codes/Charter/54>

thereof allowed to each department, office, board or commission, as the Council may deem advisable.”

To comply with these requirements, the FY 2026 AAO was formally adopted on July 8, 2025 (AAO – see Item 1). The ordinance provides the legal authority to expend funds in FY 2026, ensuring alignment with both Council priorities and Charter mandates.

Budget: Fiscal Year 2025-2026 Document List

The following table compiles key budget documents, reports, and related transmissions pertaining to the Fiscal Year 2025-2026 planning and adoption process.

#	Title	Adoption Date	Link
1	FY 2026 Annual Appropriations Ordinance (AAO)	July 08, 2025; <i>Second Reading</i>	https://berkeleyca.gov/sites/default/files/documents/2025-07-08_Item_04_FY_2026_Annual_Appropriations_Ordinance.pdf
2	FY 2026 Proposed Mid-Biennial Budget Update Adoption	June 24, 2025; <i>First Reading</i>	Report: https://berkeleyca.gov/sites/default/files/documents/2025-06-24_Item_24_FY_2026_Proposed_Budget_Update_Adoption.pdf PPT: https://berkeleyca.gov/sites/default/files/documents/2025-06-24_Item_24_FY_2026_Proposed_Budget_Update_Adoption_-_Pres.pdf
3	FY 2026 Proposed Budget Update Adoption Supplemental Material	June 24, 2025	Submitted By Mayor Ishii: https://berkeleyca.gov/sites/default/files/documents/Mayor_Ishii%27s_FY26_Budget_Recommendations.pdf Submitted by CM Kesarwani and CM Humbert: https://berkeleyca.gov/sites/default/files/documents/Budget_Refinements_Supplemental_-_6-23-25.pdf Submitted by CMO: https://berkeleyca.gov/sites/default/files/documents/Supp_2_Packet_-_62425_Council-FY_24_Proposed_Budget-Rev_Agenda_Material_Cover.pdf
4	Mayor Ishii FY26 Budget Recommendation's	June 17, 2025	https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-06-17_Item_01_Presentation_-_Mayor_Ishii_FY26_Budget_Recommendations.pdf
5	ODPA Memo to Council Budget Finance	June 12, 2025	https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-06-12_Item_02_Supplemental_Material_-_2025-06-10_ODPA_Memo_to_CouncilBudgetFinance.FinalSigned.pdf

6	ODPA Hiring Freeze: Timeline and Implications	May 21, 2025	https://berkeleyca.gov/sites/default/files/documents/ODPA_Hiring_Freeze_Timeline_and_DocumentsFinal.pdf%23page=26
7	FY 2026 Proposed Mid-Biennial Budget Update and Public Hearing #1	May 20, 2025	https://berkeleyca.gov/sites/default/files/documents/2025-05-20_Item_30_FY_2026_Proposed_Mid-Biennial_Budget_Update_and_Public_Hearing_1.pdf?ref=berkeleyscanner.com
8	FY26 Mid-Biennial Update	May 15, 2025	<p>Supplemental: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-05-15_Item_03_Supplemental_Material_-_Fiscal_Year_2026_Mid-Biennial_Budget_Update_.pdf</p> <p>PPT: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-05-15_Item_03_Presentation_-_Fiscal_Year_2026_Mid-Biennial_Budget_Update.pdf</p>
9	FY26 Mid-Biennial Update Preliminary Budget Status	April 24, 2025	https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-04-24_Item_02_Presentation_Preliminary_FY26_MB_Update.pdf
10	FY 2025 Mid-Year Budget Update	March 13, 2025	<p>Report: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-03-13_Item_02_FY_2025_Mid-Year_Budget_Update_Report.pdf</p> <p>PPT: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-03-13_Item_02_Presentation_Material_Mid-Year_Budget_update.pdf</p>
11	Adopted Budget Fiscal Year 2025-2026	June 25, 2024	https://berkeleyca.gov/sites/default/files/documents/FY-2025-2026-Proposed-Biennial-Budget.pdf?