

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



**POLICE ACCOUNTABILITY BOARD  
REGULAR MEETING AGENDA PACKET  
WEDNESDAY, JANUARY 7, 2026  
6:30 PM**

**Board Members**

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

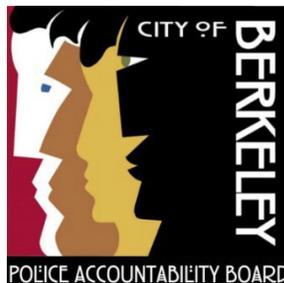
**MEETING LOCATION**

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

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Item 2

January 7, 2025 PAB Regular Meeting Agenda



**POLICE ACCOUNTABILITY BOARD  
REGULAR MEETING AGENDA  
WEDNESDAY, JANUARY 7, 2026  
6:30 P.M.**

**Board Members**

Joshua Cayetano (Chair)  
Kitty Calavita  
Randy Wells

Leah Wilson (Vice-Chair)  
Juliet Leftwich  
Joshua Buswell-Charkow

**MEETING LOCATION**

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

**PUBLIC NOTICE**

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/89007838093>. 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 **890 0783 8093**. 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, except confidential personnel matters.*

### 4. APPROVAL OF MINUTES (5 MINUTES)

- a. Minutes for the Special Meeting of December 17, 2025

### 5. ODPa STAFF REPORT (10 MINUTES)

Announcements, updates, and other items.

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

The Chair and Board Members report on their activities.

### 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. DISCUSSION AND ACTION ITEMS (1 HOUR)**

- a. Nomination of candidates for the positions of Chair and Vice-Chair for the 2026 Calendar Year as outlined in Section 1(a) to Section 1(c) of the Standing Rules of the Police Accountability Board (ODPA) – (15 Minutes)
- b. Discussion and action on the annual review of the Use of Force Policy to reflect developing practices and procedures per SB 230 and BPD Policy 300.13 “Policy Review and Updates” (Cayetano) – (20 Minutes)
- c. Discussion and Action on the Preparation of the 2025 PAB and ODPA Annual Report (ODPA) - (15 Minutes)
  - i. Review and Approval of the Proposed Outline
  - ii. Selection of PAB Liaisons for Report Preparation
- d. Discussion and action on the proposed resolution to amend Berkeley City Council's 2020 direction to reinstate BPD's Use of Tear Gas in limited situations and lift the COVID-19 moratorium on the use of smoke and oleoresin capsicum (OC) spray (ODPA) - (10 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, except confidential personnel matters.*

**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):

- a. Conference With Labor Negotiators; Government Code § 54957.6  
 Designated representatives: Hansel Aguilar, Director of Police Accountability; Kitty Calavita and Julie Leftwich, Members, Police Accountability Board Regulations Subcommittee  
 Employee organization: Berkeley Police Association
- b. Case Updates and Recommendations Regarding Complaints Received by the ODPA:
 

i. 2023-CI-0016	xiii. 2025-CI-0031
ii. 2024-CI-0004	xiv. 2025-CI-0032
iii. 2025-CI-0015	xv. 2025-CI-0033
iv. 2025-CI-0018	xvi. 2025-CI-0034
v. 2025-CI-0020	xvii. 2025-CI-0035
vi. 2025-CI-0021	xviii. 2025-CI-0036
vii. 2025-CI-0025	xix. 2025-CI-0037
viii. 2025-CI-0026	xx. 2025-CI-0038

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ix.	2025-CI-0027	xxi.	2025-CI-0039
x.	2025-CI-0028	xxii.	2025-CI-0040
xi.	2025-CI-0029	xxiii.	2025-CI-0041
xii.	2025-CI-0030	xxiv.	2025-CI-0042

**END OF CLOSED SESSION**

**12. ANNOUNCEMENT OF CLOSED SESSION ACTIONS (1 MINUTE)**

**13. ADJOURNMENT (1 MINUTE)**

**Off Agenda Reports**

1. Policy, Practice, and Procedure Review Status Report
2. Legislative Updates Relevant to the PAB's Work
3. List of Pending PAB Requests
4. 2026 PAB Meeting Calendar

**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 1900 Addison Street, Floor 3, Berkeley, CA 94704

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

1900 Addison Street, Floor 3, Berkeley, CA 94704

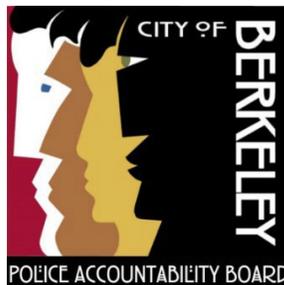
TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955

Website: <https://berkeleyca.gov/dpa>

Email: [dpa@berkeleyca.gov](mailto:dpa@berkeleyca.gov)

Item 4

Minutes for the Special Meeting of December 17, 2025



**POLICE ACCOUNTABILITY BOARD  
SPECIAL MEETING MINUTES  
WEDNESDAY, DECEMBER 17, 2025  
6:30 P.M.**

**Board Members**

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

**MEETING LOCATION**

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

**Minutes**

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

**Present:** Board Member Joshua Cayetano (Chair)  
Board Member Kitty Calavita  
Board Member Juliet Leftwich  
Board Member Randy Wells  
Board Member Buswell-Charkow<sup>1</sup>

**Absent:** Board Member Leah Wilson (Vice Chair)<sup>2</sup>

**ODPA Staff:** Hansel Aguilar, Director of Police Accountability  
Syed Mehdi, Data Analyst  
Jose Murillo, Policy Analyst  
Daniel Weinberg, Investigative Clerk

**BPD Staff:** Deputy Chief Tate  
Lt. Coats

<sup>1</sup> Board Member Buswell-Charkow arrived late and joined the meeting at 6:35 PM.

<sup>2</sup> Vice Chair Wilson was granted a Leave of Absence for the December 17<sup>th</sup>, 2025 PAB Special Meeting.

## 2. APPROVAL OF AGENDA

**Motion to Approve the Agenda with an amendment removing Item 9D and postponing it to a later meeting date.**

Moved/Second (Cayetano/Wells) Motion carried.

Ayes: Cayetano, Calavita, Leftwich, Wells.

Noes: None. Abstain: None. Absent: Wilson, Buswell-Charkow.

## 3. PUBLIC COMMENT

*0 Physically Present Speakers*

*1 Virtually Present Speakers*

## 4. APPROVAL OF MINUTES

- a. Minutes for the Special Meeting of December 3, 2025

**Motion to approve the minutes for the Special Meeting of December 3, 2025**

Moved/Second (Leftwich/Calavita) Motion carried.

Ayes: Cayetano, Calavita, Leftwich, Wells, and Buswell-Charkow.

Noes: None. Abstain: None. Absent: Wilson.

## 5. ODPA STAFF REPORT

Director Aguilar gave an update on the City's ongoing budget development process, noting that for the current budget cycle, the Mayor has directed Councilmember offices and Charter Officers to review their budgets and identify potential reductions of up to ten percent.

## 6. CHAIR AND BOARD MEMBERS' REPORTS

No activities have been reported since the last PAB meeting on December 3, 2025.

## 7. CHIEF OF POLICE'S REPORT

Deputy Chief Tate updates the PAB on recent incidents, community engagement activities, and staffing. DC Tate reported on a recent fatal traffic collision and an assault incident, noted the department's participation in Heroes and Helpers and upcoming holiday events, and shared that two police sergeants would be retiring. DC Tate also responded to Board Member questions.

## 8. SUBCOMMITTEE REPORTS

Subcommittees report on their activities since the last PAB Special Meeting on December 3, 2025.

## 9. DISCUSSION AND ACTION ITEMS

- a. Presentation by Hans Johnson, Chair of the Los Angeles County Civilian Oversight Commission, on California Assembly Bill 847. (ODPA)

The PAB received a presentation by Hans Johnson, Chair of the Los Angeles County Civilian Oversight Commission, on California Assembly Bill 847, and the PAB engaged in a discussion. No formal action was taken.

- b. Discussion and action on the annual review of the Use of Force Policy to reflect developing practices and procedures per SB 230 and BPD Policy 300.13 “Policy Review and Updates” (ODPA)

BPD presented a working draft of proposed updates to Policy 300 on use of force,<sup>3</sup> intended to reflect SB 230, Government Code § 7286,<sup>4</sup> and evolving practices. BPD indicated that further substantive review would occur through a Policy Subcommittee. Board Members discussed the proposed revisions, noted limited subcommittee capacity, and agreed that no action would be taken at this time.

- c. Discussion and action on the proposed 2026 Police Accountability Board Regular Meeting schedule (ODPA)

**Motion to approve the 2026 Police Accountability Board regular meeting calendar, with amendments rescheduling the January meetings to January 7 and January 21, the July meetings to July 8 and July 22, and the December meeting from December 2 to December 9.**

Moved/Second (Cayetano/Leftwich) Motion carried.

Ayes: Cayetano, Calavita, Leftwich, Wells, Buswell-Charkow.

Noes: None. Abstain: None. Absent: Wilson.

## 10. PUBLIC COMMENT

*0 Physically Present Speakers*

*0 Virtually Present Speakers*

## 11. CLOSED SESSION (1 HOUR)

<b>CLOSED SESSION ITEMS</b>
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<sup>3</sup> BPD Policy 300 – Use of Force Presentation: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/BPD%20Policy%20300%20Use%20of%20Force%20Revision%20Slides.pdf>

<sup>4</sup> GC §7286:

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=7286&lawCode=GOV](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=7286&lawCode=GOV)

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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):

- a. Conference With Labor Negotiators; Government Code § 54957.6

Designated representatives: Hansel Aguilar, Director of Police Accountability; Kitty Calavita and Julie Leftwich, Members, Police Accountability Board Regulations Subcommittee

Employee organization: Berkeley Police Association

The PAB received updates on the status of their permanent regulations for investigating complaints.

- b. Case Updates and Recommendations Regarding Complaints Received by the ODPa:

**Motion to accept the ODPa's recommendations in ODPa Complaint 2025-CI-0019.**

Moved/Second (Cayetano/Leftwich) Motion carried.

Ayes: Cayetano, Calavita, Leftwich, Wells, Buswell-Charkow

Noes: None. Abstain: None. Absent: Wilson.

**Motion to authorize the PAB to join as a party of interest and to seek enforcement of the Director of Police Accountability's subpoena in order to provide the PAB with the information necessary to affirm, modify, or reject the Director's findings in ODPa 2025-CI-0020.**

Moved/Second (Cayetano/Wells) Motion carried.

Ayes: Cayetano, Calavita, Leftwich, Wells, Buswell-Charkow

Noes: None. Abstain: None. Absent: Wilson.

**END OF CLOSED SESSION**

**12. ANNOUNCEMENT OF CLOSED SESSION ACTIONS**

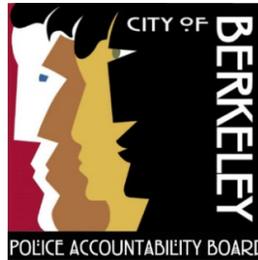
Chair Cayetano announced the closed session actions.

**13. ADJOURNMENT**

Motion to adjourn. Moved/Second (Leftwich/Cayetano). The meeting was adjourned at 8:57 PM by unanimous consent.

Item 8  
Subcommittee List

Updated on 1/2/2026



**SUBCOMMITTEES LIST**

<b>Subcommittee</b>	<b>Board Members</b>	<b>Chair</b>	<b>BPD Reps</b>
<p><b>Regulations</b>                      Formed 7-7-21                      Renewed 6-7-2023</p>	<p>Calavita                      Leftwich</p> <p><u>Public members:</u>                      Kitt Saginor</p>	N/A	N/A
<p><b>Policy Reviews</b>                      Formed 11-08-2023                      Scope Expanded 12-11-2024 to include BWC Policy Review</p>	<p>Leftwich                      Cayetano</p> <p><u>Public members:</u>                      Kitt Saginor</p>	Leftwich	Deputy Chief Tate Sgt. Rafferty
<p><b>Metrics &amp; Operations</b>                      Formed 02-05-2025 after the Budget &amp; Metrics and Operations &amp; Processes Subcommittees were consolidated into one</p>	<p>Wilson                      Wells</p>	N/A	N/A
<p><b>Outreach &amp; Engagement</b>                      Formed 11-08-2023                      Scope Expanded 03-02-2024                      Formally "Commendations"</p>	<p>Cayetano                      Wells</p>	N/A	N/A
<p><b>Arrest Quota Prohibition</b>                      Formed 5-21-2025</p>	<p>Edmonds                      Wells</p>	TBD	TBD

Updated on 1/2/2026

<p><b>Policies and Practices on Encampment Clearances</b> Former 6-25-2025</p>	<p>Cayetano Wells Wilson</p>	<p>TBD</p>	<p>TBD</p>
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**LIAISON LIST<sup>1</sup>**

<b>Liaison Name</b>	<b>Assignment</b>
Cayetano	Represent the PAB in the EIS Update Process
Wilson	Represent the PAB in FIP-related matters

**POLICY COMPLAINTS ASSIGNED TO INDIVIDUAL BOARD MEMBERS<sup>2</sup>**

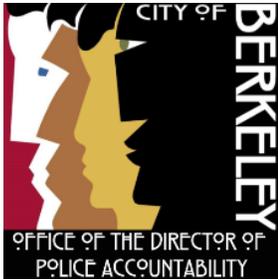
<b>Policy Review #</b>	<b>Assigned Board Member</b>	<b>Description</b>
2025-PR-0001	<b>Calavita</b>	BPD Policy 1004 “Anti-Retaliation” & BPD Policy 1010 “Personnel Complaints”
2025-PR-0004	<b>Calavita</b>	BPD Policy 426 “Public Recording of Police Activity”

<sup>1</sup> Liaison list does not include topics that were originally assigned to a Board Member but later assigned to a subcommittee.

<sup>2</sup> This list does not include policy complaints that were originally assigned to an individual Board Member but later assigned to a subcommittee.

Item 9.a.

ODPA Memorandum Titled "2026 PAB Elections for Chair and Vice-Chair"



## MEMORANDUM

**Date:** January 2, 2026  
**To:** Honorable Members of the Police Accountability Board (PAB)  
**From:** Hansel Aguilar, Director of Police Accountability (DPA) *Ha*  
Jose Murillo, Policy Analyst *JM*  
**Subject:** 2026 PAB Elections for Chair and Vice-Chair

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This memorandum provides an overview of the PAB election process for the 2026 Chair and Vice-Chair positions.

### Background:

Per Chapter II, Section F, Commission Organization, 1) "Election of Officers and Terms of Office" of the Berkeley Commissioner's Manual, the chair and vice-chair are elected by a majority of the commission for a one-year term. The chair may serve no more than two consecutive years, while the vice-chair has no term limit. Elections are held annually and must be listed on the agenda. Prior to the election, commissioners are encouraged to discuss the process and timing of nominations.

The nomination process requires a motion and second, and the election must be public, with a roll call vote recommended. Results must be announced and recorded in the minutes. The election process for the PAB is outlined in Section I, "Elections," of the PAB's standing rules, attached as Attachment 1.

According to Section I of the PAB's standing rules, during the first meeting of January, the PAB will nominate candidates for Chair and Vice-Chair, beginning with the Chair nomination. Nominations require a second; if no second is made, the nomination will not proceed. At the second meeting in January, additional nominations may be made, with each nominee given two minutes to explain their interest in the position. Board

members will have the opportunity to ask questions. Following the nominations, a roll call vote will take place, and the winner will be announced. If only one nominee is presented, a vote by acclamation may occur. In case of a tie, a second round of voting will take place, and a coin toss will resolve the tie, if needed. The Board secretary will document the nominations, votes, and results. Outgoing officers will have two minutes for departing remarks before the newly elected officers assume their positions.

The presiding officer, either the chair or vice-chair in their absence, is responsible for the following duties:

- Presiding over commission meetings, ensuring productive discussions and that all viewpoints are heard.
- Ensuring commission bylaws and procedures are followed, with meeting conduct rules made by the full commission.
- Appointing commissioners to temporary subcommittees, subject to commission approval.
- Approving the meeting agenda, limited to structure and order, without the authority to remove items submitted by the established deadline.
- Signing correspondence on behalf of the commission.
- Representing the commission before the City Council, with other commissioners acting as representatives upon commission approval.
- Approving commission reports to the Council but cannot alter content already approved by the full commission.
- Calling special meetings, either by the chair or a quorum of commissioners.
- Having voting rights and the ability to make or second motions.

### **Election Process: Nominations**

During the first meeting in January, Board members are expected to follow the nomination process for chair and vice-chair as outlined below:

1. Nomination for Chair:
  - The process begins with the nomination for chair. Any Board member may nominate another member or themselves for the role of chair. All

nominations will be documented by the PAB Secretary in the table provided in Attachment 2.

- A second to the nomination is required for it to proceed. If no second is made, the nomination will not move forward.

2. Nomination for Vice-Chair:

- After the chair nomination is complete, the nomination process for vice-chair will take place. As with the chair, any Board member may nominate someone for vice-chair, including themselves. All nominations will be documented by the PAB Secretary in the table provided in Attachment 2.
- A second to the nomination is required for it to proceed.

3. Discussion of Nominees:

- Following the completion of nominations, each nominee will be given up to two minutes to speak about their candidacy, explaining their qualifications and interest in the role.

4. Opportunity for Questions:

- Board members will have the opportunity to ask questions of the nominees to clarify their qualifications and positions.

5. Next Steps:

- Once the nominations and discussions are concluded, the election will take place during the second meeting of the month.

Attachments:

1. Section I “Elections” of the PAB’s Standing Rules
2. 2026 Nomination Tracking Table for PAB Chair and Vice-Chair

**1. Section I “Elections” of the PAB’s Standing Rules**

### SECTION I. ELECTIONS

1. Elections shall be held during the second January meeting of each year. During the Board meeting preceding the election meeting, the nomination of the Chair will precede the nomination of the Vice-Chair, and the following nomination process will be followed for each office:
  - a) The presiding Chair declares the nomination process open.
  - b) A Board member nominates another Board member or themselves. A Board member must be present in order to be nominated and may decline the nomination.
  - c) The nomination is seconded (the nomination fails if there is no second).
2. At the second January meeting of the year, the following election process will be followed for each office:
  - a) Additional nominations shall occur in accordance with section I.1.
  - b) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
  - c) Board members pose questions to each candidate.
  - d) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
    - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
    - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.
    - iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The Board secretary will assign "heads" and "tails."
3. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

**2. 2026 Nomination Tracking Table for PAB Chair and Vice-Chair**

**CHAIR NOMINEES OF THE POLICE ACCOUNTABILITY BOARD**

NOMINEE	NOMINATED BY	NOMINATION SECONDED BY

**VICE-CHAIR NOMINEES OF THE POLICE ACCOUNTABILITY BOARD**

NOMINEE	NOMINATED BY	NOMINATION SECONDED BY

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These nominations are certified by:

-----  
 Hansel A. Aguilar  
 Director of Police Accountability  
 Secretary, Police Accountability Board

Date: \_\_\_\_\_

Item 9.b.

ODPA Memorandum Titled "Overview of Development and Council  
Approval of BPD Policy 300 Use of Force"



## MEMORANDUM

**Date:** December 30, 2025  
**To:** Honorable Members of the Police Accountability Board (PAB)  
**From:** Hansel A. Aguilar, Director of Police Accountability (DPA) *Ha*  
 Jose D. Murillo, ODPa Policy Analyst *JM*  
**Subject:** Overview of Development and Council Approval of BPD Policy 300 "Use of Force"

This memorandum provides the PAB with a brief overview of the historical development of BPD Policy 300, "Use of Force" to aid their annual review of the BPD's policy.<sup>1</sup>

### Background

On July 23, 2020, the Berkeley City Council reviewed a recommendation from the Police Review Commission (PRC), following a directive issued by the City Council on June 9, 2020.<sup>2</sup> This directive instructed the PRC and the City Manager's Office (CMO) to finalize a Use of Force policy for the Berkeley Police Department (BPD) for the Council's review and approval prior to its 2020 recess.<sup>3</sup> The recommendation was a continuation of the Council's original referral on October 31, 2017,<sup>4</sup> which directed the CMO to amend the use-of-force policy, previously General Order (GO) U-2.<sup>5</sup> The initial referral required that the BPD's draft revised policy be submitted to the PRC for review before its implementation.

The revised policy was submitted to the PRC by former Chief of Police Andy Greenwood on January 2, 2020. This was followed by a memo clarifying that GO U-2

<sup>1</sup> See Attached BPD Policy 300, "Use of Force."

<sup>2</sup> July 23, 2020 PRC Staff Report Titled "Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force":  
<https://records.cityofberkeley.info/PublicAccess/api/Document/ATnfpk4tGBNI%3%81nKqp8eFHYGogupNd1lcs25rJqp1WMCwEkxwK6bKv5Lmkve6lF%3%894NQ%3%89SQumTlAnT33XE9bmCJ24%3D/>

<sup>3</sup> Berkeley City Council Resolution 69,438-N.S.:  
<https://records.cityofberkeley.info/PublicAccess/api/Document/Ae2SKTCnGOMlvKBoXVhr1rE40osCeV81hcK0I08e%3%89gyndcoE0mblfrTTv21CRQWZBh2tPkWWMUcNKICHz3Yi6Zc%3D/>

<sup>4</sup> October 31, 2017 Regular Meeting Minutes of the Berkeley City Council:  
<https://records.cityofberkeley.info/PublicAccess/api/Document/AXO%3%89Ct86ANdVEGN67LGd6JC4ZQlknQDrMuOa2sIZFnYXRggFxoKpANuRQnqFBnhy0C68JdcG5xRgwfGcOVM0BHM%3D/>

<sup>5</sup> General Order U-2 "Use of Force" (See Page 55):  
<https://records.cityofberkeley.info/PublicAccess/api/Document/ATnfpk4tGBNI%3%81nKqp8eFHYGogupNd1lcs25rJqp1WMCwEkxwK6bKv5Lmkve6lF%3%894NQ%3%89SQumTlAnT33XE9bmCJ24%3D/#Page=55>

would remain in effect until the PRC’s review, with a Special Order supplementing it to meet the deadly force standards set forth by Assembly Bill 392,<sup>6</sup> which became available in January 2020. After several months of collaboration between the PRC's subcommittee and the BPD, the PRC approved its final recommendation on July 8, 2020. During the City Council meeting on July 23, 2020, both this version of the recommended policy and a version proposed by then-Councilmember Harrison were presented. Council voted to approve the revised Use of Force policy proposed by Councilmember Harrison with various amendments made by Council.<sup>7</sup>

**Overview of July 23, 2020 Adopted Use of Force Policy**

Former Councilmember Harrison’s proposed use of force policy<sup>8</sup> was accepted at the meeting, subject to the following amendments and conditions:<sup>9</sup>

Council Amendments	
Section	Amended to read:
300.1.3	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 or 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.
300.4	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 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

<sup>6</sup> Assembly Bill No. 392 (Weber):

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB392](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB392)

<sup>7</sup> July 23, 2020 Special Meeting Minutes of the Berkeley City Council:

<https://records.cityofberkeley.info/PublicAccess/api/Document/AXjjUxOBBAogruxeA7MQWPky8wBLcczSZppEtiZT8g2LpLcaHBPWrpSBY8l%C3%89fBx8GXSbceJXhoQL4RNLZMvtdc0%3D/>

<sup>8</sup> July 23, 2020 Revised Agenda Material for Supplemental 3 (Harrison):

<https://records.cityofberkeley.info/PublicAccess/api/Document/AcsHyeWyT%C3%89KdM6m1P%C3%81IH3RpUbrqZusDiekW1E7LWtXMgRetbCpfAtcG5PePwQ10qTFA4Di3nJly%C3%81XGB1OYlrqIY%3D/>

<sup>9</sup> See July 23, 2020 Special Meeting Minutes of the Berkeley City Council

	<p>deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.</p> <p>An officer shall not use deadly force against another person unless it is objectively reasonable that using deadly force would not unnecessarily endanger innocent people.</p> <p>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.</p> <p>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.</p>
<p>300.6</p>	<p>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.</p> <p>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.</p>

As part of the Council’s action on the Use of Force Policy, the following actions were also directed:

1. The adopted Use of Force Policy 300 will be effective October 1, 2020.
2. The adopted policy does not make any changes to the previously adopted ban on teargas.

3. The Council refers to the City Manager a request for an analysis by the City Attorney of the recent court decision in Oakland regarding the use of tear gas and mutual aid.
4. The Council refers to the PRC and the Public Safety Committee (PSPC) the issue of providing an allowance for the Special Response Team to use tear gas in certain circumstances.

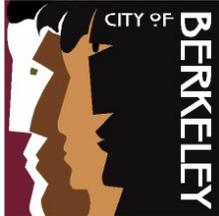
The action was passed with the following votes:

- Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin;
- Noes – None;
- Abstain – Kesarwani, Droste.

**Attachments:**

1. Revised Agenda Material for July 23, 2020 Supplement Packet 3 Submitted by Councilmember Harrison (Proposed Policy 300)
2. BPD Policy 300 (Updated: December 12, 2024)

# Attachment 1



Kate Harrison  
Councilmember District 4

## **REVISED AGENDA MATERIAL for Supplemental Packet 3**

**Meeting Date:** July 23, 2020

**Item Number:** 3

**Item Description:** Referral Response: Police Review Commission  
Recommendation on a Revised Berkeley Police Department  
Policy 300, Use of Force

**Submitted by:** Councilmember Harrison

### **Good of the City Analysis:**

The additional changes herein to Councilmember Harrison's initial Supplemental material are not substantive; they merely fix section numbering errors and replace pronouns that do not conform to the Council's gender-neutral language policy. It is in the public interest to consider these additional clarifying changes.

### **Revisions**

1. Replaced an additional instance of "he or she" with "they" in section 300.6 pursuant to Council policy on gender-neutral language. Also replaced two instances of "himself/herself" with "themselves."
2. Fixed section numbering errors beginning on page 13.

Style Definition: Heading 2: Left



**Berkeley Police Department**  
Policy Manual

## 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 strive to use alternatives to physical force whenever reasonably possible. In all cases where physical force is used, officers shall use the 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 the 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.

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 strive to use the 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 the officer reasonably believes 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 the officer reasonably believes 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:

**Minimal amount necessary** – The least amount of force 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).

**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.

Deleted: him/herself

**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.

**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.”

### 300.2.1 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.

### 300.3.1 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 purposes of this policy, “retreat” does not mean tactical repositioning or other de-escalation tactics...

### 300.3.2 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use objectively reasonable, objectively necessary, and proportional force to lawfully seize evidence and to prevent the destruction of evidence. In the instance when force is

used an officer shall not 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 department for the specific purpose of collecting evidence.

### **300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY, AND PROPORTIONALITY OF FORCE**

When determining whether to apply force and evaluating whether an officer has used objectively 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).
- (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, 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.

#### 300.3.4 USE OF FORCE CONTINUUM

The Department uses a “use of force continuum” that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject’s actions.

##### Continuum of Force

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
  - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
  - Officers’ attitudes are professional and nonthreatening.
- **Verbalization — Force is not physical.**
  - Officers issue calm, nonthreatening commands, such as “Let me see your identification and registration.”
  - Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include “Stop,” or “Don’t move.”
- **Weaponless defense — Officers use bodily force to gain control of a situation.**
  - *Pain compliance and control holds.* Officers use grabs, holds and joint locks to restrain an individual.

- *Personal body weapons.* Officers may use punches and kicks to restrain an individual.
- **Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**
  - *Blunt impact.* Officers may use a baton or projectile to immobilize a combative person.
  - *Chemical.* Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
- **Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**

### 300.3.5 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and shall be used when it is safe to do so. De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member shall be called upon as a resource.

Officers shall gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to any levels of force. Officers shall 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.
- 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.

### 300.3.6 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 and threat posed by the person.
- (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.

### 300.3.7 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.

#### 300.3.7.1 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 *any* 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 the officer holds an objectively reasonable belief, 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 the officer has a objectively reasonable belief that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

An officer shall not use deadly force against another person unless the officer objectively and reasonably believes that using deadly force would not 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.

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

#### **300.4.1 DRAWING AND POINTING FIREARMS**

##### **300.4.1 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.

##### **300.4.2 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.

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.

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Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation, documentation and review requirements.

**300.6.1 SUPERVISOR RESPONSIBILITY**

When a supervisor is able to respond to an incident in which there has been a reported application of force as defined in 300.6.2 and the scene is secure, the supervisor should:

- (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

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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

(a) Subject allowed themselves to be searched, escorted, and/or handcuffed. The officer did not use force to overcome resistance, nor did the officer use force in the absence of resistance.

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(b) 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

Officers shall document Level 1 actions in a police report, citation, Field Interview, and / or CAD entry. Supervisors will review police report narratives for approval.

#### Level 2

(a) No suspect injury or complaint of continuing pain due to interaction with officer.

(b) Officer's use of force was limited to the following:

1. Firearm drawn in an interaction with an individual and/or pointed at an individual.
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 Blue Team and attach a completed Use of Force Investigation Checklist with a brief summary.

#### Level 3

(a) Would have otherwise been classified as a Level 2, except one or more of the following apply:

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- 1. Suspect injury or complaint of injury or continuing pain due to interaction with the officer.
- 2. Officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.

(b) 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 Blue Team and attach a completed Use of Force Investigation Checklist.

The supervisor will also complete a Use of Force Investigation Report narrative 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**

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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.

**300.6.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

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Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Management policy.

**300.6.5 PUBLIC RECORDS**

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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 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 properly 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 evaluation as soon as practicable and have medical personnel stage away if appropriate.

### **300.8 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 and to address any training issues.

### **300.9 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, 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

### **300.10 TRAINING**

Officers shall receive periodic training on this policy and demonstrate their knowledge and understanding as per SB 230

#### **300.11.1 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.

**300.11.2 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

**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 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.

# Attachment 2

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### 300.1 SANCTITY OF LIFE

The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force. Officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

#### 300.1.1 PURPOSE AND SCOPE

This policy sets forth criteria governing the use of force. All officers are responsible for knowing and complying with this policy and conducting themselves in a manner that reflects the Berkeley Police Department's Use of Force Core Principles. Violations of this policy may result in disciplinary action, including and up to termination, and may subject the officer to criminal prosecution. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it.

#### 300.1.2 USE OF FORCE STANDARD

In dealing with suspects, officers shall use alternatives to physical force whenever reasonably possible. In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.

The United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), held that, in order to comply with the U.S. Constitution, an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force. But these standards merely set the minimum standard for police conduct, below which an officer's conduct would be regarded as unlawful.

In fulfilling this Department's mission to safeguard the life, dignity, and liberty of officers themselves and all members of the community they are sworn to protect and serve, this policy requires more of our officers than simply not violating the law. As a result, this policy is more restrictive than the minimum constitutional standard and state law in two important respects.

First, it imposes a higher duty upon officers to use a minimal amount of force objectively necessary to safely achieve their legitimate law enforcement objective. And, second, this policy imposes a stricter obligation on officers to exert only such force that is objectively proportionate to the circumstances, requiring a consideration of the seriousness of the suspected offense, the availability of de-escalation and other less aggressive techniques, and the risks of harm presented to members of the public and to the officers involved.

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Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force.

#### 300.1.3 CORE PRINCIPLES

**A. DE-ESCALATION AND FORCE MINIMIZATION.** Every officer's goal, throughout an encounter with a member of the public, shall be to de-escalate wherever possible and resolve the encounter without resorting to the use of force. Wherever possible, officers shall employ de-escalation techniques to increase the likelihood of voluntary compliance with law enforcement requests or directives and, thereby, decrease the likelihood that a use of force will become necessary during an incident. Further, in any encounters that do call for applying force, officers must always use a minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.

**B. PROPORTIONALITY.** When determining the appropriate level of force, at all times officers shall balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is unarmed or armed with a weapon other than a firearm.

**C. MINIMIZING THE USE OF DEADLY FORCE.** Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

**D. DUTY TO INTERCEDE.** Whenever possible, officers shall intervene when they know or have reason to know that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

**E. VULNERABLE POPULATIONS.** Officers should be particularly sensitive when considering the use of force against vulnerable populations, including children, elderly persons, pregnant women, people with physical and mental disabilities, and people with limited English proficiency.

**F. FOSTER STRONG COMMUNITY RELATIONSHIPS.** The Berkeley Police Department understands that uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. The Department is committed to fostering strong community relations by building on its historic tradition of progressive policing, ensuring accountability and transparency, and striving to increase trust with our community.

**G. FAIR AND UNBIASED POLICING.** Members of the Berkeley Police Department shall carry out their duties, including the use of force, in a manner that is fair and unbiased, in accordance with Policy 401, Fair and Impartial Policing.

#### 300.1.4 DEFINITIONS

Definitions related to this policy include:

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**Minimal amount necessary** – The least amount of force within a range that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.

**Deadly force** - Any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

**Force** - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained.

**Less-Than-Lethal Force** – Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options. Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

**Non-Lethal Force** – Any use of force other than lethal force or less-than lethal force.

**Compliant Suspect** – Cooperative and/or responsive to lawful commands.

**Passive Resistance** - When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way.

Examples: A person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.

**Active Resistance** - An individual who is uncooperative and fails to comply with the lawful verbal commands of a police officer, and attempts to avoid physical control and/or arrest by physically struggling to free oneself from being restrained. The individual may also use verbal non-compliance (refusing a lawful order or direction).

Examples: A person who attempts to avoid physical control and/or arrest by pulling or pushing away from the officer, tensing arm or muscles, hiding from the officer, and/or fleeing.

**Combative Resistance** - An individual not only resists the officer, but poses a threat of harm to the officer or others, in an aggressive manner that may cause physical injury.

Examples: A person who violently attempts to or attacks an officer. This action is sometimes preceded by “pre-assault” cues such as taking a threatening stance (clenching fists, facial expressions, threats, etc.) and verbal non-compliance.

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**Control Hold** - Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.). A control hold can be applied without implementing pain.

**Pain Compliance Technique** - Involves either the manipulation of a person's joints or activating certain pressure points intended to create sufficient pain for the purpose of motivating a person to comply with verbal commands (examples of pressure points include buccal nerve, gum nerve, sternum rub).

**Control Techniques** – Personal Impact Weapons and Take Downs.

**Personal Body Weapons** - An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of kinetic energy transfer (impact) to gain control of a subject.

**Blue Team (BT)** – Computer software that allows officers to enter use of force and other incidents from a Department computer.

**Concealment** - Anything which conceals a person from view.

**Cover** - Anything which provides protection from bullets or other projectiles fired or thrown. Cover is subjective and its effectiveness depends upon the threat's ballistic capability (handgun, rifle, etc.).

**Blocking** - The positioning of a police vehicle in the path of an occupied subject vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal.

**Ramming** - The use of a vehicle to intentionally hit another vehicle

**Serious bodily injury** - A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement or results in a prolonged loss or impairment of the functioning of any bodily member or organ

**Officer (or) Police Officer** - Any sworn peace officer.

**Authorized Employee** - Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.

**Employee** – Any non-sworn employee of the Berkeley Police Department, including those deemed “authorized employees.”

**Objectively Reasonable** – “Objectively reasonable” means an officer's conduct will be evaluated through the eyes of the hypothetically reasonable officer standing in the shoes of the involved officer.

**Totality of the circumstances** – All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force.

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### **300.2 DUTY TO INTERCEDE AND DUTY TO REPORT**

Any officer who observes another officer or member of the Berkeley Police Department using force that is clearly in violation of this policy shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, when in a position to do so, physical intervention. Further, any officer who learns of a potentially unauthorized use of force, even if the officer did not witness it personally, shall promptly report this information to an on-duty sergeant or a command officer at the first opportunity.

Any officer who observes an employee or member of a different law enforcement agency use force that exceeds the degree of force permitted by law shall promptly report these observations to an on-duty sergeant or a command officer at the first opportunity.

#### **300.2.1 FAILURE TO INTERCEDE**

An officer who has received the required training on the duty to intercede and then fails to act to intercede when required by law, may be disciplined in the same manner as the officer who used force beyond that which is necessary (Government Code § 7286(b)).

### **300.3 USE OF FORCE TO EFFECT AN ARREST**

Any peace officer may use objectively reasonable, objectively necessary, and proportional force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. For the purpose of this policy, "retreat" does not mean tactical repositioning or other de-escalation tactics.

#### **300.3.1 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY, AND PROPORTIONALITY OF FORCE**

When determining whether to apply force and evaluating whether an officer has used reasonable, objectively necessary, and proportional force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer.
- (e) The effects of drugs or alcohol.
- (f) The individual's apparent mental state or capacity.
- (g) The individual's apparent ability to understand and comply with officer commands.
- (h) Proximity of weapons or dangerous improvised devices.

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- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness.
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force. It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is objectively reasonable, objectively necessary, and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant. Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:

- Compliant – In general, when dealing with a compliant person, officers may rely on police presence and/or verbal control techniques, but should not use greater force.
- Passive resistance – In general, when dealing with a suspect involved in passive resistance, officers may rely on police presence, verbal control techniques, or control holds, but should not use greater force.
- Active resistance – In general, in dealing with a suspect involved in active resistance, in addition to the options available for passive resistance, officers may rely on pain compliance techniques or takedowns, but should not use greater force.
- Combative resistance – In general, in dealing with a suspect involved in combative resistance, officers have all use-of-force options available to them, but deadly force shall only be used in compliance with this policy as described in Section 300.4.

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#### 300.3.2 USE OF FORCE CONTINUUM

The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions.

#### **Continuum of Force**

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
  - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
  - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not physical.**
  - Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
  - Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Weaponless defense — Officers use bodily force to gain control of a situation.**
  - Pain Compliance and control holds. Officers use grabs, holds and joint locks to restrain an individual.
  - Personal body weapons. Officers may use punches and kicks to restrain an individual.
- **Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**
  - Blunt impact. Officers may use a baton or projectile to immobilize a combative person.
  - Chemical. Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
- **Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**

#### 300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be

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restricted. Officers are encouraged to use techniques and methods taught by the Berkeley Police Department for this specific purpose.

#### 300.3.4 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and shall be used when it is safe to do so, De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member shall be called upon as a resource.

Officers shall gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to any levels of force. Officers should move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

- (a) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; "waiting out" subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
- (b) Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
- (c) Officers should consider a variety of options, including lesser force or no force options.
- (d) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.
- (e) A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
- (f) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use of force.

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- (g) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.
- (h) Establishing communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.
- (i) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

When time and circumstances allow, officers shall consider the following tactical principles:

1. Make a tactical approach to the scene.
2. Maintain a safe distance.
3. Use available cover or concealment and identify escape routes.
4. Stage Berkeley Fire Department.
5. Control vehicle and pedestrian traffic.
6. Establish communication, preferably with one officer.
7. Create an emergency plan and a deliberate plan with contingencies.
8. The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

#### 300.3.5 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.

The purpose of pain compliance is to direct a person's actions. The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

#### 300.3.6 USE OF NON-LETHAL FORCE

When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use objectively reasonable, objectively necessary, and proportional approved non-lethal force techniques and weapons in the following circumstances:

- (a) To protect themselves or another person from physical injury;

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- (b) To restrain or subdue a resistant individual; or
- (c) To bring an unlawful situation safely and effectively under control.

#### 300.3.7 RESTRAINT AND CONTROL DEVICES

Restraint and control devices shall not be used to punish, to display authority or as a show of force. Handcuffs, body wraps and spit hoods shall only be used consistent with Policy 302. Batons, approved less-lethal projectiles, and approved chemical agents shall only be used consistent with Policy 303. As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

#### 300.3.8 CHOKEHOLD PROHIBITION

The use of a Carotid Restraint Hold is prohibited. Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."

The term bar-arm refers to a variety of techniques. The use of any chokehold is strictly prohibited. A chokehold is any hold or contact with the neck – including a carotid restraint -- that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck. As defined in the City Council Resolution, "bar-arm hold" refers to use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.

#### 300.3.9 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once the individual is safely secured, officers should promptly check and continuously monitor the individual's condition for signs of medical distress (Government Code § 7286.5).

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#### **300.4 USE OF DEADLY FORCE**

An officer's use of deadly force is justified only when it is objectively reasonable, based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided that it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Penal Code § 835a).

An officer shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily endanger innocent people.

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

Officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

##### **300.4.1 DRAWING AND POINTING FIREARMS**

Given that individuals may perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines:

- (a) If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- (b) If it is objectively reasonable that a significant threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward said threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

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##### 300.4.2 DIRECTED FIRE

Officers may use controlled gunfire that is directed at the suspect, reducing the suspect's ability to return fire while a group or individual movement is conducted, such as in a rescue operation.

Officers may only employ this tactic when dealing with a suspect who poses an immediate and ongoing lethal threat and only under circumstances where the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Officers remain accountable for every round fired under these circumstances. Officers must consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

##### 300.4.3 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force. When feasible, officers shall take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

Because this policy may not cover every situation that may arise, a deviation from this policy may be objectively reasonable and objectively necessary depending on the totality of the circumstances. A deviation from this policy would, for instance, be justified if the officer used a firearm in an attempt to stop an imminent vehicle attack on a crowd or a mass casualty terrorist event.

Factors that may be used to evaluate the reasonableness of the use of a firearm against a vehicle include:

- (a) The availability and use of cover, distance and/or tactical relocation
- (b) Incident command and personnel placement
- (c) Tactical approach
- (d) Regard for viable target acquisition and background including location, other traffic, the presence of innocent persons, and police officers.

#### **300.5 USE OF VEHICLES**

Officers shall not use police vehicles to ram other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in section 300.4 and in Policy V-6 that covers vehicle operations.

The Vehicle Containment Technique (VCT) is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be

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

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation. See the VCT policy for more details on this tactic.

#### 300.5.1 REPORT RESTRICTIONS

Officers shall not use the term "excited delirium" to describe an individual in an incident report. Officers may describe the characteristics of an individual's conduct, but shall not generally describe the individual's demeanor, conduct, or physical and mental condition at issue as "excited delirium" (Health and Safety Code § 24402).

#### 300.6 REPORTING REQUIREMENTS

All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a "Use of Pepper Spray Report." Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a "Use of Restraint Device Report" and document, review and report such uses in accordance with section 300.11.

Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation, documentation and review requirements.

##### 300.6.1 SUPERVISOR RESPONSIBILITY

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports.
- (f) Review body worn camera footage related to the incident.

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In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

#### 300.6.2 USE OF FORCE REPORTING LEVELS

##### **Level 1**

The officer used any of the following, and the circumstances of the application would lead an objectively reasonable officer to conclude that the subject did not experience more than momentary discomfort:

1. Control holds/ pain compliance techniques
2. Leverage
3. Grab
4. Bodyweight
5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.
6. Takedown

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

##### **Level 2**

- (a) No suspect injury or complaint of continuing pain due to interaction with officer.
- (b) Officer's use of force was limited to the following:
  1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual, and/or pointed at an individual. For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.
  2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor, when feasible, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of all involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

##### **Level 3**

- (a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.

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- (b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.
- (c) The officer used any of the following force options:
  - 1. Chemical Agents/Munitions
  - 2. Impact Weapon Strikes
  - 3. Personal Body Weapons
- (d) The officer used any of the following pursuit intervention tactics:
  - 1. Vehicle Containment Tactic (VCT), if vehicle contact is made
  - 2. Ramming
  - 3. Pursuit Immobilization Technique (PIT)
  - 4. Roadblocks, if vehicle contact is made

An uninvolved supervisor, when practical, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into the Blue Team template.

The supervisor will also complete a Use of Force Investigation Report narrative in Blue Team for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation.

#### **Level 4**

Any incident involving deadly force or any force likely to cause death or serious bodily injury will be investigated under the protocols outlined in Policy P-12.

#### **300.6.3 EMPLOYEE USE OF FORCE**

When any Berkeley Police Department employee has engaged in a use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy.

- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence, such as a widespread disaster or civil disturbance, the officer shall prepare a supplemental report as soon as practical following the incident.
- (b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

#### **300.6.4 PUBLIC RECORDS**

Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and the Records Management and Release policy.

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#### **300.7 MEDICAL CONSIDERATIONS**

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain, or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

See the Medical Aid and Response Policy for additional guidelines.

#### **300.8 USE OF FORCE ADMINISTRATIVE REVIEW**

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in Policy 301 instead of utilizing Division Captain Review.

The Chief of Police shall make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

Any determination concerning the propriety of force used shall be based on the facts and information available to the officer at the time the force was employed, and not upon information gained after the fact.

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All Use of Force Reports shall be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; 3) require further investigation; and/or, 4) require revision or additional training.

Use of Force Reports shall be held in file for at least five (5) years

#### **300.9 WATCH COMMANDER RESPONSIBILITY**

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy.

#### **300.10 TRAINING**

Officers, investigators, and supervisors will receive annual training on this policy and demonstrate their knowledge and understanding (Government Code § 7286(b)).

##### **300.10.1 TRAINING REQUIREMENTS**

Required annual training shall include:

- (a) Legal updates.
- (b) De-escalation tactics, including alternatives to force.
- (c) The duty to intercede.
- (d) The duty to request and/or render medical aid.
- (e) All other subjects covered in this policy (e.g., use of deadly force, chokehold and carotid hold prohibition, discharge of a firearm at or from a moving vehicle, verbal warnings).
- (f) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

See the Training Policy for restrictions relating to officers who are the subject of a sustained use of force complaint.

##### **300.10.2 STATE-SPECIFIC TRAINING REQUIREMENTS**

Required state-specific training shall include guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities (Government Code § 7286(b)).

#### **300.11 USE OF FORCE ANALYSIS**

The Professional Standards Division Captain or his or her designee shall prepare a comprehensive analysis report on use of force incidents. The report shall not contain the names of officers, suspects or case numbers, and should include but not be limited to:

- (a) An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.
- (b) All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2).

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- (c) The identification of any trends in the use of force by members.
- (d) Training needs recommendations.
- (e) Equipment needs recommendations.
- (f) Policy revisions recommendations.

#### 300.11.1 REPORTING FREQUENCY

- (a) On a quarterly basis via the City's Open Data Portal website;
- (b) On a quarterly basis to the Police Accountability Board; and
- (c) On a yearly basis as part of the Police Department's Annual Report to City Council

#### **300.12 CIVILIAN COMPLAINTS**

Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police Accountability Board (PAB). Complaints will be investigated in compliance with the respective applicable procedures of the IAB and the PAB.

#### **300.13 POLICY REVIEW AND UPDATES**

This policy shall be regularly reviewed and updated to reflect developing practices and procedures.

At least annually, the Berkeley Police Department and the PAB shall convene to review and update the Use of Force Policy to reflect developing practices and procedures per SB 230.

Item 9.c.

ODPA Memorandum Titled "Presentation of Proposed Outline for 2025  
PAB-ODPA Annual Report"



## MEMORANDUM

**Date:** January 2, 2026

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

**From:** Hansel A. Aguilar, Director of Police Accountability (DPA) *HA*  
 Jose D. Murillo, ODPa Policy Analyst *JM*  
 Syed Mehdi, ODPa Data Analyst *SM*

**Subject:** Presentation of Proposed Outline for 2025 PAB-ODPA Annual Report

The purpose of this memorandum is to present the Police Accountability Board (PAB) with a proposed outline for the 2025 PAB-ODPA Annual Report. The proposed outline is intended to guide development of the Annual Report and to support early alignment with feedback discussed by the Board at its December 3, 2025, Special Meeting, including City Council feedback previously summarized for the Board at that meeting.<sup>1</sup>

The outline is further intended to ensure that the 2025 PAB-ODPA Annual Report satisfies the reporting requirements set forth in Berkeley City Charter Section 125(16)(b).<sup>2</sup>

### Background:

Berkeley City Charter Section 125(16)(b) requires the Office of the Director of Police Accountability (ODPA) to prepare an annual public report describing the PAB's oversight activities during the calendar year, including complaint activity, investigative processes, training and early warning systems, and trends and patterns in stops, arrests, and use of force, and, where appropriate, recommendations related to the processes and procedures reviewed.

<sup>1</sup> November 18, 2025 City Council Special Meeting Item:  
[https://berkeleyca.gov/sites/default/files/documents/2025-11-18 Special Item 01 2024 Police Accountability Board.pdf](https://berkeleyca.gov/sites/default/files/documents/2025-11-18%20Special%20Item%2001%202024%20Police%20Accountability%20Board.pdf)

<sup>2</sup> Berkeley City Charter Section 125(16)(b): [https://berkeley.municipal.codes/Charter/125\(16\)\(b\)](https://berkeley.municipal.codes/Charter/125(16)(b))

At the December 3, 2025, PAB Special Meeting, ODPa presented a memorandum<sup>3</sup> summarizing City Council feedback received during the November 18, 2025 Special City Council Meeting on the 2024 ODPa-PAB Annual Report. During discussion of that item, the Board identified several high-level themes to inform planning for the 2025 Annual Report.

The PAB emphasized the importance of clearer alignment between ODPa and Berkeley Police Department (BPD) analytical frameworks, particularly with respect to the measurement and interpretation of racial disparities; improved clarity in data presentation and narrative explanation; and the development of measurable approaches to documenting community engagement outcomes. The PAB also discussed opportunities to more clearly communicate the Board's oversight work and impact to the public.<sup>4</sup>

The proposed outline reflects this feedback and is intended to serve as a foundational framework for development of the 2025 PAB-ODPa Annual Report.

### **Proposed Outline for the 2025 PAB-ODPa Annual Report**

#### **Executive Summary**

- Overview of key findings, trends and recommendations
- Summary of major oversight activities and policy developments

#### **Introduction and Legal Framework**

- Purpose and scope of the Annual Report
- Overview of the roles of the PAB and ODPa
- Charter-mandated reporting requirements under Section 125(16)(b)

#### **PAB and ODPa Recommendations**

- Summary of recommendations issued during the reporting period
- Status of prior-year recommendations and follow-up actions

#### **Oversight Operations and Complaint Analysis**

- Complaint intake trends and dispositions
- Allegation types and investigative outcomes
- Discussion of complaint volume and operational capacity

#### **Benchmarking, Metrics, and Disparity Analysis**

- Explanation of ODPa and BPD analytical approaches

<sup>3</sup> ODPa Memorandum from 12/03/25 PAB Special Meeting titled "2024 Annual Report Takeaways and Next Steps for the PAB and ODPa." [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-12-03%20PAB%20Regular%20Meeting%20Agenda%20Packet\\_FINALv3.pdf#Page=23](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-12-03%20PAB%20Regular%20Meeting%20Agenda%20Packet_FINALv3.pdf#Page=23)

<sup>4</sup> December 3, 2025 PAB Special Meeting Video Recording (44:09-50:11): <https://www.youtube.com/watch?v=gW6Y51rLwRA&t=4507s>

- Analysis of stops, citations, arrests, searches, and use of force
- Narrative discussion of racial disparity findings and limitations

### **Community Engagement and Outreach**

- Overview of outreach activities conducted
- Metrics for evaluating engagement effectiveness
- Summary of community feedback and outcomes

### **Training and Early Warning System**

- Overview of BPD training initiatives
- Discussion of early intervention or early warning systems
- Observed trends and areas for improvement

### **Policy Reviews and Reform Initiatives**

- Summary of policies reviewed during the reporting period
- Outcomes of policy reviews and Board actions

### **Emerging Technologies and Surveillance Oversight**

- Oversight of drones, surveillance tools, and related technologies
- Privacy and accountability considerations

### **Access, Transparency, and Operational Challenges**

- Data access and records issues
- Technology and administrative barriers impacting oversight

### **Conclusion and Forward-Looking Priorities**

- Summary of key findings
- Priority areas for the upcoming reporting cycle

### **Appendices**

- Supporting data tables and charts
- Methodology explanations and definitions
- List of policies reviewed

## **Proposed Timeline for Development and Review of the 2025 PAB-ODPA Annual Report**

To support implementation of the proposed outline, the timeline below reflects the preliminary development schedule previously presented to the Board at its December 3, 2025, Special Meeting.<sup>5</sup>

<sup>5</sup> Timeline Presented to PAB within ODPa Memorandum from 12/03/25 PAB Special Meeting titled “2024 Annual Report Takeaways and Next Steps for the PAB and ODPa.” [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-12-03\\_PAB\\_Regular\\_Meeting\\_Agenda\\_Packet\\_FINALv3.pdf%23page=28](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-12-03_PAB_Regular_Meeting_Agenda_Packet_FINALv3.pdf%23page=28)

Phase	Timeframe	Primary Deliverables	Review Milestones
Initial Preparation	December 2025	Year-end complaints, stop, and use of force data. Annual Report outline.	Timeline discussed with the Board at the December 3, 2025 PAB Special Meeting.
Draft Development	January 2026	Completed data analysis. Draft narrative sections. Defined community engagement metrics and deliverables.	Data mapping and ODPA coordination
Board Review	February 2026	Full draft Annual Report. Revisions incorporating Board feedback. Submission for City Attorney review.	Anticipated Board review during February 25, 2026 PAB meeting.
Finalization and Approval	Early March 2026	Final revised Annual Report. Board approval. Public release aligned with BPD reporting timelines.	Coordination with Board anticipated for March 11, 2026 PAB Meeting.
Council Presentation	Late March 2026	Presentation to City Council. Documentation of Council feedback and direction.	Anticipated presentation during Council meeting on March 24, 2026 upon approval from PAB.

**Recommendation:**

It is recommended that the PAB review and provide feedback on the proposed outline for the 2025 PAB-ODPA Annual Report and, upon concurrence, direct staff to proceed with development of the report using this framework.

Item 9.d.

Proposed Resolution to Amend Berkeley City Council's 2020 Direction to Reinststate BPD's Use of Tear Gas in Limited Situations and Lift the COVID-19 Moratorium on the Use of Smoke and Oleoresin Capsicum (OC) Spray

02a.25



Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR  
January 20, 2026

TO: Honorable Mayor and Members of the City Council  
FROM: Councilmember Rashi Kesarwani (Author)  
SUBJECT: Resolution to Amend Berkeley City Council's 2020 Direction to Reinstatement Berkeley Police Department's Use of Tear Gas in Limited Situations and Lift the COVID-19 Moratorium on the Use of Smoke and Oleoresin Capsicum (OC) Spray

**RECOMMENDATION**

Adopt a resolution amending the Berkeley City Council's June 9, 2020 direction regarding smoke, OC spray, and tear gas to allow the Berkeley Police Department's Special Response Team (SRT) to use tear gas under circumstances in which there is a significant risk of injury or death, maintain the prohibition on the use of tear gas for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.

**CURRENT SITUATION AND ITS EFFECTS**

Tear gas has rarely been used by the Berkeley Police Department (BPD), having only been used three times over the last several decades. One of these incidents included responding to a barricaded subject. Making tear gas available to the Special Response Team will enable BPD's preparedness for these types of extreme situations.

On June 9, 2020, the Berkeley City Council banned the use of tear gas under any circumstances by the Berkeley Police Department and outside law enforcement agencies when providing mutual aid support in the City of Berkeley.<sup>1</sup> This action also placed a temporary moratorium on the use of smoke and OC spray. This was in part due to respiratory-related concerns heightened during the COVID-19 pandemic. BPD's Policies 300 (Use of Force), 303 (Control Devices and Techniques), and 428 (First Amendment Assemblies)<sup>2</sup> governed the use of tear gas before the Council's June

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<sup>1</sup> June 9, 2020 4:00pm Special Meeting Annotate Agenda:  
<https://berkeleyca.gov/sites/default/files/city-council-meetings/06-09%20Annotated%20Agenda%204pm.pdf> p. 5 of 13.

<sup>2</sup> See Berkeley Police Department Law Enforcement Manual for details of each policy:  
[https://berkeleyca.gov/sites/default/files/documents/RELEASE\\_20240301\\_T161429\\_Berkeley%20PD%20Policy%20Manual.pdf](https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf)

2020 action, and they would resume that role if the Council approves this item under consideration.

While tear gas has seldom been deployed, it remains a vital option specifically for resolving high-risk incidents involving armed individuals. Without it, the Special Response Team cannot safely extract suspects from barricaded locations, creating a significant gap in its ability to manage several types of critical scenarios that include: armed standoffs, hostage situations, and encounters where shots have been fired. The use of tear gas can prompt a suspect's compliance and can also restrict their movement or capacity to inflict harm on officers or other members of the public.

### **BACKGROUND**

Tear gas has been a law enforcement tool since the 1920s and has been available for use by the Berkeley police department for decades. Officers tasked with using this equipment are members of the department's Special Response Team (Special Weapons and Tactics/SWAT). Team members train annually using this equipment with certified department instructors and have received specific training on the safe and proper use of this equipment. Although this is an essential law enforcement tool, its use is limited to high-risk low-frequency events.

The Department reserves tear gas for limited, high-risk situations where it is necessary to safely resolve dangerous incidents and protect the public, officers, and property. Because use of this tool is reserved for these types of situations, the department has deployed this tool on only three occasions over the last 40-plus years: once in response to a barricaded subject and twice in response to crowd violence. In all instances, the objective was to compel movement out of a building or away from officers. Additionally, the department has deployed smoke once. A brief summary of each incident follows:

In the early 2000s, the Special Response Team used tear gas during a warrant service involving an armed individual who refused to surrender. The deployment created the conditions needed for officers to take the suspect into custody without injury.

In December 2014, the Department used tear gas during a large-scale riot in Berkeley. Officers were assaulted with rocks and bottles, and despite repeated warnings and lawful orders to disperse, the violence escalated. Tear gas, smoke, and OC spray were deployed to stop the assaults and ongoing property destruction. Multiple officers were injured during the incident.

In 2017, a series of politically motivated demonstrations brought opposing groups into Berkeley. Several of these events devolved into large, chaotic fights. At one spring event, an officer deployed a smoke canister into a crowd actively engaged in violent confrontations to interrupt the violence and compel the group to disperse.

In May 2020, Berkeley officers responded to an Oakland Police Department (OPD) mutual-aid request during the civil unrest following the murder of George Floyd. Officers were assigned to protect OPD's main station when several thousand individuals attempted to force their way to the station with the intention of destroying

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it. Officers came under attack from rocks, bottles, Molotov cocktails, and commercial-grade fireworks. Tear gas and less-lethal munitions were deployed to protect officers from the life-threatening assaults they were facing while protecting critical infrastructure.

In the wake of the murder of George Floyd and the beginning months of the COVID-19 pandemic, the Berkeley City Council adopted a motion that prohibited BPD and mutual aid agencies from using tear gas as well as a temporary ban on smoke and pepper spray out of concern the substances would exacerbate respiratory infections. Since then, public health responses to the virus have changed dramatically and most of the local population is inoculated against this disease.<sup>3</sup> As a result, serious infection and hospitalization rates have dropped, and the state of emergency has long since ended. Therefore, the specific health concerns that necessitated the temporary moratorium on smoke and OC spray are no longer present. The combination of the reduced risk and the rare use of these tools make it appropriate to now reevaluate this decision.

There have been several significant policy and law-related developments regarding the use of tear gas that warrant a re-evaluation of our policies. Since 2020, the California legislature has added new language that clearly articulates the circumstances under which tear gas can be used that includes a focus on limiting this tool to responding to violence, an emphasis on proportional responses, and protection of free speech. These legislative updates are already reflected in the department's broader use-of-force framework.<sup>4</sup>

### **ENVIRONMENTAL SUSTAINABILITY**

There are no significant or lasting environmental concerns regarding the use of these agents. Specifically, tear gas disperses quickly once air circulation improves, and the compounds break down without leaving persistent residue in soil or water.

### **RATIONALE FOR RECOMMENDATION**

Tear gas offers law enforcement a crucial option for stopping violent behavior or prompting an armed, barricaded individual to leave a building. Because of its value in safely resolving these situations, both the California Commission on Peace Officer Standards and Training and the National Tactical Officers Association expect SWAT teams to have it available.

Key reasons it would be advantageous for BPD to have renewed access to this tool:

<sup>3</sup> According to the Vaccine Dashboard on the Alameda County website, 89.4% of the county has been fully vaccinated as of March, 2023: <https://www.alamedaca.gov/RESIDENTS/ALERTS-COVID-19/Vaccine/Vaccine-Dashboard>

<sup>4</sup> On September 20, 2021, Governor Newsom signed Assembly Bill 48 into law which was later incorporated into California Penal Code Section 13652 Section 2 in January of 2022. See: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB48](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48)([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=13652](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=13652)). This law embodies many principles currently in BPD's Policies 300 (Use of Force), 303 (Control Devices and Techniques), and 428 (First Amendment Assemblies) and aligns with the community's and the department's values related to the use of force.

- Tear gas is a time-and-distance de-escalation tool providing officers with a less-lethal option to gain compliance or disperse barricaded or violent suspects without having to resort to close-quarters force.
- By allowing officers to maintain distance and slow down an encounter, tear gas can reduce the likelihood of physical confrontations, serious injuries, or fatalities for both officers and community members.
- In situations where armed or dangerous suspects refuse to surrender, tear gas can compel compliance without direct physical engagement, thereby preserving life.
- Authorizing tear gas for tactical incidents is consistent with the City's and Department's commitment to de-escalation, as it provides a non-lethal alternative to firearms or physical force.
- Tear gas allows officers to influence behavior and end violence or the threat of violence without increasing the level of force.
- In prolonged, high-risk incidents, alternatives to tear gas (such as physical entry or prolonged standoffs) carry higher risks to officers, suspects, and bystanders.
- The use of tear gas offers a stand-off capability: gas can permeate rooms and reach behind barricades or enter through small openings.
- Controlled chemical deployment can resolve incidents faster and more safely, reducing neighborhood disruption and minimizing the community's prolonged exposure to danger.
- This agent can facilitate safe extractions and rescues, making it possible to remove hostages or wounded people while suspects are suppressed.
- If an incident escalates beyond BPD's control and they lack industry-standard tools, the city assumes unnecessary risk.

### **FISCAL IMPACTS**

The fiscal impacts of adopting this resolution are minimal; equipment costs associated with this recommendation pertain to inventory replacement depleted during trainings or through use or due to expiration. Replacement costs are approximately \$2,000 annually. Training costs will be nominal as associated fees will be reincorporated into existing budgeted training sessions.

### **CONTACT PERSON**

Rashi Kesarwani, Councilmember District 1

(510) 981-7110

Attachment:

1. Resolution

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

RESOLUTION REINSTATING THE BERKELEY POLICE DEPARTMENT'S ABILITY  
TO USE TEAR GAS UNDER LIMITED CIRCUMSTANCES AND LIFTING THE  
MORATORIUM ON SMOKE AND OLEORESIN CAPSICUM SPRAY

WHEREAS, on June 9, 2020, the Berkeley City Council placed a temporary ban on the use of smoke and pepper spray, and a permanent ban on the law enforcement use of tear gas; and

WHEREAS, the temporary ban on smoke and OC spray was enacted due to respiratory concerns associated with the COVID-19 pandemic, and the state of emergency for the pandemic has since ended; and

WHEREAS, the access to tear gas enables the police department to resolve dangerous and high-risk situations with less force, in a manner that supports safer outcomes for all; and

WHEREAS, the Berkeley Police Department seeks a limited, narrow use of tear gas by members of the Special Response team when responding to critical incidents that pose a significant threat to the safety of the public or officers, and that don't involve civil unrest; and

WHEREAS, the Berkeley Police Department Policies 303 (Control Devices), and Policy 300 (Use of Force) ensure proper use and oversight; and align with California Penal Code Section 13652 Section 2;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the June 9, 2020, ban on the use of tear gas is hereby modified to authorize the Berkeley Police Department's Special Response Team to use tear gas when responding to a critical incident that poses a significant threat to public or officer safety, and excluding its use for crowd control or in connection with civil unrest, in accordance with Policies 303 and 300, and that the temporary moratorium on the use of smoke and OC spray is hereby lifted.

Off-Agenda Item 1

Policy, Practice, and Procedure Review Status Report

Updated December 30, 2025



# POLICY REVIEW STATUS REPORT

## Guiding Authority

*Section 125(3)(a)(1) and Section 125(17)(a) of the Berkeley City Charter<sup>1</sup>*

## Case Load Overview

As of December 30, 2025, the Police Accountability Board (PAB) has six (6) open policy reviews. There has been one (1) new potential policy review submitted to the ODPa since the regular meeting on November 5, 2025, that is undergoing review before presentation to the PAB.

<b>Policy Review Number</b>	2023-PR-0007 <sup>2</sup>
<b>Policy Topic</b>	Restraining Orders & Interactions with the Elderly
<b>Relevant Policy</b>	BPD Policy 313 "Senior and Disability Victimization" BPD Policy 430 "Civil Disputes"
<b>Status</b>	Review In Progress; Records Obtained
<b>Date Presented to the PAB</b>	7/24/2024
<b>Anticipated Completion</b>	January 2026
<b>Assigned To</b>	ODPA
<b>Summary</b>	
The complainant reports ongoing disturbances, harassment, and restraining order violations by a neighbor's caretaker, raising concerns about enforcement by the Berkeley Police Department. This policy review will examine BPD's handling of interactions with elder adults and its practices regarding restraining orders, as the	

<sup>1</sup> Berkeley City Charter: <https://berkeley.municipal.codes/Charter/125>

<sup>2</sup> On December 11, 2024, the PAB voted to divide this review in two parts. The first looking at the issue of restraining orders and the second into BPD's interactions with the elderly. The PAB was presented with part one on January 8, 2025.

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complainant indicates possible misunderstandings of order terms. Despite multiple encounters and existing orders, the complainant reports continued issues with enforcement.

**Activity Report**

The ODPA staff is finalizing the report and is slated for presentation at the PAB’s January 14, 2026 Regular Meeting.

<b>Policy Review Number</b>	2023-PR-0008
<b>Policy Topic</b>	Off-Duty Conduct
<b>Relevant Policy</b>	BPD Policy 321 “Standard of Conduct” BPD Policy 401 “Fair and Impartial Policing” BPD Policy 344 “Off-Duty Law Enforcement Actions”
<b>Status</b>	Review in Progress; Assigned to Policy Review Subcommittee
<b>Date Presented to the PAB</b>	10/11/2023
<b>Anticipated Completion</b>	The review is currently being evaluated to determine the appropriate next steps and timeline for completion.
<b>Assigned To</b>	PAB – Assigned to Policy Review Subcommittee

**Summary**

The complainant expresses concerns about off-duty police officers exhibiting harmful behavior and recommends improving the Police Accountability Board’s oversight of off-duty conduct, including anti-racist hiring practices, stronger discipline measures, and increased transparency on racial profiling. They highlighted relevant policies and noted that the PAB is considering a subcommittee dedicated to off-duty law enforcement actions.

**Activity Report**

Evaluating for potential referrals to subcommittee or PAB members.

<b>Policy Review Number</b>	2024-PR-0008
<b>Policy Topic</b>	Records Retention
<b>Relevant Policy</b>	BPD Policy 804 “Record Maintenance and Release”
<b>Status</b>	Open
<b>Date Presented to the PAB</b>	1/8/2025
<b>Anticipated Completion</b>	The review is currently being evaluated to determine the appropriate next steps and timeline for completion.
<b>Assigned To</b>	ODPA

**Summary**

The ODPA received a complaint regarding BPD’s inability to provide past officer rosters in response to a PRA request, as the records are no longer maintained. The

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complainant recommended that BPD adopt a policy to retain and provide such rosters upon request.

**Activity Report**

ODPA staff are currently reviewing relevant materials in preparation for a future presentation to the PAB.

<b>Policy Review Number</b>	2025-PR-0001
<b>Policy Topic</b>	Contact Between Complaint Subject Officer and Complainant During Calls for Service
<b>Relevant Policy</b>	BPD Policy 1004 "Anti-Retaliation" BPD Policy 1010 "Personnel Complaints"
<b>Status</b>	Open
<b>Date Presented to the PAB</b>	02/19/2025
<b>Anticipated Completion</b>	The review is currently being evaluated to determine the appropriate next steps and timeline for completion.
<b>Assigned To</b>	PAB Member w/ Support of ODPA

**Summary**

The Complainant reported two interactions with BPD in January 2025, involving officers who were either subjects of their prior complaints to the PAB or involved in other litigation. They expressed concerns about potential retaliation or bias, believing they should not interact with officers they had previously filed complaints against.

**Activity Report**

Board Member Calavita updated the PAB during its regular meeting on April 23, 2025. Policy Analyst Murillo and Board Member Calavita will collaborate to draft potential language and consult with BPD about feasibility and any potential concerns. ODPA Staff drafted and forwarded that request on May 12, 2025 and is awaiting a response.

<b>Policy Review Number</b>	2025-PR-0004
<b>Policy Topic</b>	Public Recording of Police Activity
<b>Relevant Policy</b>	BPD Policy 426 "Public Recording of Police Activity"
<b>Status</b>	Open
<b>Date Presented to the PAB</b>	6/25/2025
<b>Anticipated Completion</b>	The review is currently being evaluated to determine the appropriate next steps and timeline for completion.
<b>Assigned To</b>	PAB Member w/ Support of ODPA

**Summary**

The Complainant expressed concerns with the Berkeley Police Department's General Order D-2, "Public Recording of Police Activity," (now BPD Policy 426) following an

*Updated December 30, 2025*

incident on June 4, 2025, in which they allege they were physically prevented by three officers from observing and documenting police activity at 8th and Harrison Street. The Complainant argues that the policy fails to clearly affirm the First Amendment rights of onlookers and does not adequately direct officers to limit the use of “police lines” to situations where such restrictions are necessary for officer safety or to protect the integrity of an investigation.

**Activity Report**

Board Member Calavita reviewed BPD Policy 426 and identified sections that may merit closer examination. ODPa staff is providing support by comparing policies from other jurisdictions and researching best practices.

<b>Policy Review Number</b>	2025-PR-0005
<b>Policy Topic</b>	Encampment Clearing Operations
<b>Relevant Policy</b>	Practice and procedure review
<b>Status</b>	Open
<b>Date Presented to the PAB</b>	6/25/2025
<b>Anticipated Completion</b>	The review is currently being evaluated to determine the appropriate next steps and timeline for completion.
<b>Assigned To</b>	PAB Subcommittee

**Summary**

The Complainant raised concerns about a June 4, 2025, multi-department operation at an encampment on 8th and Harrison Streets, alleging excessive force, improper use of less-lethal weapons, suppression of public observation, and lack of notice to residents in violation of due process. They further argued that accountability should extend beyond individual officers to command staff who design and authorize operational plans, and recommended the PAB adopt policies creating a new category of misconduct for such leadership decisions.

**Activity Report**

The subcommittee has met and identified preliminary data and information needs. ODPa staff collected the requested materials and provided them to the subcommittee.

*Updated December 30, 2025*

The following policy reviews have been temporarily suspended and will be reconsidered at the 2026 PAB Planning Session

<b>Policy Review No.</b>	<b>Topic</b>
2487	Involuntary Injections / Medical Care
2488	Use of Force During Arrest
17	Mental Health Response Use of Force
2023-PR-0006	Parking Enforcement Practices
2023-PR-0009	Use of Force – Handcuffing
2024-PR-0005	Downtown Ambassador Program
2024-PR-0006	Specialized Care Unit

Off-Agenda Item 2

Legislative Updates Relevant to the PAB's Work



**MEMORANDUM**

**Date:** January 2, 2026  
**To:** Honorable Members of the Police Accountability Board  
**From:** Hansel Aguilar, Director of Police Accountability *HA*  
 Jose Murillo, ODPa Policy Analyst *JM*  
**Subject:** Legislative Updates

The purpose of this memorandum is to provide a legislative update to the PAB, enabling them to stay informed about changes in local, state, and federal law.

**State Legislative Updates**<sup>1</sup>

The following bills passed in 2025 and will take effect on January 1, 2026, or have already taken effect:

NAME OF LEGISLATION	STATUS	SUMMARY/PURPOSE
<a href="#"><u>SB 385 “Peace Officers”</u></a>	<i>(Passed) 2025-10-01 - Chaptered by Secretary of State. Chapter 218, Statutes of 2025.</i>	This bill, SB 385, requires peace officers hired on or after January 1, 2029, to obtain a modern policing degree or a bachelor's or advanced degree from an accredited institution within 36 months of employment. It builds on existing certification and education requirements and takes effect immediately as an urgency statute.
<a href="#"><u>AB1178 “Peace Officers: Confidentiality of Records”</u></a>	<i>(Passed) 2025-10-11 - Chaptered by Secretary of State - Chapter 635, Statutes of 2025.</i>	This bill expands redaction requirements under the California Public Records Act, requiring law enforcement agencies to remove identifying details of undercover officers, task force members, and those with verified death threats. It imposes a state-

<sup>1</sup> <https://post.ca.gov/Status-of-Current-Legislation>

		mandated local program and includes legislative findings justifying access limitations.
<a href="#"><u>AB1388 “Law enforcement: settlement agreements.”</u></a>	<i>(Passed) 2025-10-13 - Chaptered by Secretary of State - Chapter 729, Statutes of 2025.</i>	AB 1388 aims to enhance transparency in law enforcement by prohibiting agencies from entering into nondisclosure agreements regarding police misconduct.
<a href="#"><u>SB707 “Open Meetings: Meeting and teleconference requirements”</u></a>	<i>(Passed) 2025-10-03 - Chaptered by Secretary of State. Chapter 327, Statutes of 2025.</i>	SB 707 expands public meeting access by requiring remote participation, interpretation services, and multilingual agendas for local government bodies until 2030. It revises teleconferencing rules and extends provisions for emergencies and just cause absences.
<a href="#"><u>SB-627 “Law enforcement: masks.”</u></a>	<i>(Passed) 2025-09-20 - Chaptered by Secretary of State. Chapter 125, Statutes of 2025.</i>	SB 627 would make it a misdemeanor for law enforcement officers to wear masks or personal disguises while interacting with the public, with certain exceptions, and expresses intent to allow protective gear for SWAT officers and require visible identification on uniforms.
<a href="#"><u>SB524 “Law Enforcement Agencies: Artificial Intelligence”</u></a>	<i>(Passed) 2025-10-10 - Chaptered by Secretary of State. Chapter 587, Statutes of 2025.</i>	This bill requires law enforcement agencies to adopt policies on the use of AI in preparing official reports, including disclosure statements, officer signatures, retention of AI-generated drafts, and audit trails. It also restricts vendors from using agency data and provides for state reimbursement of mandated local costs.
<a href="#"><u>AB487 “Peace officers: confidentiality of records.”</u></a>	<i>(Passed) 2025-10-06 - Chaptered by Secretary of State - Chapter 383, Statutes of 2025.</i>	This bill would extend access to otherwise confidential peace officer personnel records to civilian law-enforcement oversight boards and county inspectors general for use in their investigations, while requiring these entities to maintain confidentiality and allowing them to meet in closed session to review the records. It would also incorporate additional changes to Penal Code Section 832.7 if AB 1178 or AB 1388 are enacted and this bill is enacted last.

Additional legislation pertaining to public safety in the state of California may be monitored here: <https://legiscan.com/CA/legislation>. ODPa staff will continuously monitor new legislation and update the PAB throughout the year.

The BPD’s Policy and Training Bureau issues an annual legislative update that summarizes legal changes impacting law enforcement. Unless stated otherwise, the changes outlined in the updates took effect in January of the corresponding year. The following BPD Policies include the legislative updates for 2024 and 2025. The 2026 update has not yet been released at the time of writing this memorandum:

SOURCE	LINK
<b>BPD Policy 1505 “2024 Legislative Update”</b>	<a href="https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=1037">https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=1037</a>
<b>BPD Policy 1506 “2025 Legislative Update”</b>	<a href="https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=1041">https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=1041</a>
<b>The California Peace Officers Association also provides a yearly California Legislative and Legal Digest.</b>	<a href="https://cpoa.org/wp-content/uploads/2024/11/2025-Legislative-Legal-Digest.pdf">https://cpoa.org/wp-content/uploads/2024/11/2025-Legislative-Legal-Digest.pdf</a>

**Lexipol Policy Updates**

There have been no Lexipol policy updates since the PAB’s last meeting on December 17, 2025.

**City of Berkeley Council Meeting Updates**

The City Council is currently on Winter Recess from December 3, 2025, through January 19, 2026. The Council’s first meeting of the new year will be held on January 20, 2026, with the first Agenda & Rules Committee meeting taking place on January 5, 2026.

[January 5, 2026, Berkeley City Council Agenda & Rules Committee Special Meeting](#)

The following items will be considered by the Agenda & Rules Committee for inclusion in the City Council's Regular Meeting on January 20, 2026:

Item	Description	Link
25	<p><b>Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate BPD's Use of Tear Gas in Limited Situations and Lift the COVID-19 Moratorium on the Use of Smole and Oleoresin Capsicum (OC) Spray</b></p> <p>Introduced by Councilmember Kesarwani</p>	<p><a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-05%20Agenda%20Packet%20-%20Agenda%20Committee.pdf#Page=41">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-05%20Agenda%20Packet%20-%20Agenda%20Committee.pdf#Page=41</a></p>
27	<p><b>Citywide Guidelines on Artificial Intelligence</b></p> <p>Introduced by Councilmembers O'Keefe and Blackaby</p>	<p><a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-05%20Agenda%20Packet%20-%20Agenda%20Committee.pdf#Page=93">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-05%20Agenda%20Packet%20-%20Agenda%20Committee.pdf#Page=93</a></p>
31	<p><b>Surveillance Technology Ordinance Report Update</b></p> <p>Introduced by City Manager &amp; BPD</p>	<p>TBD</p>

Off-Agenda Item 3  
List of Pending PAB Request



**MEMORANDUM**

**Date:** January 2, 2026  
**To:** Honorable Members Police Accountability Board (PAB)  
**From:** Hansel Aguilar, Director of Police Accountability (DPA) *HA*  
 Jose Murillo, ODPA Policy Analyst *JM*  
 Syed Mehdi, ODPA Data Analyst *SM*  
**Subject:** Summary of PAB Requests (January 2025 - Dec 2025)

This memorandum summarizes ten requests that remain active made by the Police Accountability Board (PAB) during eight meetings held between January 8, 2025, and December 17, 2025. Seven of which were PAB Regular Meetings and one was a PAB Special Meeting. The distribution of requests by stakeholders is as follows: Eight requests were directed to the Office of the Director of Police Accountability (ODPA), three to the Berkeley Police Department (BPD), one to the Mayor’s Office, one to the City Clerk’s Office, and one to the City Attorney’s Office. This consolidated log supports clearer tracking, coordination, and follow-up by all relevant parties.

**PAB Requests (Jan 2025 – Dec 2025)**

No.	Meeting Date/Link	Request to	Request (Time Stamp)	Status/Note
1	1/8/2025 PAB Regular Meeting Recording: <a href="https://youtu.be/56WiTDQB_jo?si=Go90zuEmVqEhNRiH">https://youtu.be/56WiTDQB_jo?si=Go90zuEmVqEhNRiH</a>  1/8/2025 PAB Regular Meeting Minutes: <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/Final%202025-01-08%20Regular%20MeetingMinutes.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/Final%202025-01-08%20Regular%20MeetingMinutes.pdf</a>	ODPA, BPD	The PAB requested that staff collaborate with the Berkeley Police Department prior to establishing a public-facing webpage containing information on Restraining Orders and related resources. (1:20:33 - 1:21:30)	Open - This request is still active.

<p><b>2</b></p>	<p>2/19/2025 PAB Regular Meeting Recording:  <a href="https://youtu.be/9jOYSyLtZc0?si=JtMEtoSvHbkYpDWL">https://youtu.be/9jOYSyLtZc0?si=JtMEtoSvHbkYpDWL</a></p> <p>2/19/2025 PAB Regular Meeting Minutes:  <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-02-19%20Regular%20Meeting%20Minutes.v2.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-02-19%20Regular%20Meeting%20Minutes.v2.pdf</a></p>	<p>ODPA</p>	<p>The PAB requested that staff explore whether other agencies have comparable policies on conflicts of interest when officers are responding to calls made by a party who has filed a complaint against them.                  (1:11:30 - 1:12:08)</p>	<p>Open – In relation to 2025-PR-0001</p> <p>This request is still active because the Board requested this as part of the policy review.</p>
<p><b>3</b></p>	<p>2/19/2025 PAB Regular Meeting Recording:  <a href="https://youtu.be/9jOYSyLtZc0?si=JtMEtoSvHbkYpDWL">https://youtu.be/9jOYSyLtZc0?si=JtMEtoSvHbkYpDWL</a></p> <p>2/19/2025 PAB Regular Meeting Minutes:  <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-02-19%20Regular%20Meeting%20Minutes.v2.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-02-19%20Regular%20Meeting%20Minutes.v2.pdf</a></p>	<p>Mayor's Office</p>	<p>The PAB requested that staff coordinate with the Mayor's Office to obtain advance notice of meeting agendas.                  (43:20 - 44:30)</p>	<p>Open - This request is still active.</p>
<p><b>4</b></p>	<p>5/07/2025 PAB Regular Meeting Recording:  <a href="https://www.youtube.com/watch?v=pL5VhNQDU60">https://www.youtube.com/watch?v=pL5VhNQDU60</a></p> <p>5/07/2025 PAB Regular Meeting Draft Minutes:  <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-05-07%20PAB%20Regular%20Meeting%20Draft%20Minutes.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-05-07%20PAB%20Regular%20Meeting%20Draft%20Minutes.pdf</a></p>	<p>City Clerk's Office</p>	<p>The PAB requests the opportunity to provide input on the records retention schedule. The ODPA is asked to contact the City Clerk's Office to determine the status, scope, and timeline of the project, including whether any consultants or departments will be involved, in order to</p>	<p>Open – This request is still active</p> <p>Link to Memorandum Titled "Records Retention Schedule of the BPD,</p>

	<p><a href="#">ative-body-meeting-minutes/DRAFT%202025-05-07%20Regular%20Meeting%20Minutes.v2.pdf</a></p>		<p>identify opportunities for engagement.</p> <p>(22:19 – 24:41)</p>	<p>PAB and ODPAs’:  <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-05-07%20PAB%20Regular%20Meeting%20Packet%20-%20SUPP%201.pdf#page=3">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-05-07%20PAB%20Regular%20Meeting%20Packet%20-%20SUPP%201.pdf#page=3</a></p>
5	<p>5/21/2025 PAB Regular Meeting Recording:  <a href="https://www.youtube.com/watch?v=mFBeoH6IXWI">https://www.youtube.com/watch?v=mFBeoH6IXWI</a></p> <p>5/21/2025 PAB Regular Meeting Draft Minutes:  <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT%2025-05-21%20Regular%20Meeting%20Minutes%20Updated.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-05-21 Regular Meeting Minutes Updated.pdf</a></p>	ODPA	<p>The PAB requests that ODPAs staff look into department retention schedules of nearby jurisdictions, what NACOLE recommendations constitute.</p> <p>(1:37:21-1:37:54)</p>	Open – This request is still active.
6	<p>9/03/2025 PAB Regular Meeting Recording:  <a href="https://www.youtube.com/watch?v=0xsKsHlnr7c&amp;t=1824s">https://www.youtube.com/watch?v=0xsKsHlnr7c&amp;t=1824s</a></p> <p>9/03/2025 PAB Regular Meeting Draft Minutes:  <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT%2025-09-03%20Regular%20Meeting%20Minutes%20Updated.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-09-03 Regular Meeting Minutes Updated.pdf</a></p>	ODPA, BPD, CAO	<p>The PAB requests that ODPAs staff refer to the Berkeley Police Department and City Attorney’s Office for further inquiry with a response in 30 days regarding 2025-PR-0006 (LED Flashing Lights)</p> <p>(44:14 – 45:35)</p>	Open – ODPAs Staff will work with other stakeholders once all materials have been finalized.

	<a href="#">ative-body-meeting-minutes/DRAFT 2025-09-03 Regular Meeting Minutes.pdf</a>			
7	<p>9/17/2025 PAB Regular Meeting Recording: <a href="https://youtu.be/foxCSOZ-qX0?si=nluyj5bY1giNBdsD">https://youtu.be/foxCSOZ-qX0?si=nluyj5bY1giNBdsD</a></p> <p>9/17/2025 PAB Regular Meeting Draft Minutes: <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-09-17 Regular Meeting Minutes.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-09-17 Regular Meeting Minutes.pdf</a></p>	ODPA	<p>The PAB requests that ODPA staff coordinate with community member to place a future agenda item on the Specialized Care Unit (SCU) transition to County oversight and invite a County representative to participate via phone or Zoom.</p> <p>(16:15-17:58)</p>	Open – This request is still active.
8	<p>11/05/2025 PAB Regular Meeting Recording: <a href="https://www.youtube.com/watch?v=IPytFxB6jyw&amp;t=25s">https://www.youtube.com/watch?v=IPytFxB6jyw&amp;t=25s</a></p> <p>11/05/2025 PAB Regular Meeting Draft Minutes: <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-11-05 Regular Meeting Minutes .pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-11-05 Regular Meeting Minutes .pdf</a></p>	ODPA	<p>The PAB requested that ODPA staff place a six-month follow-up item on the agenda to evaluate the transparency impacts of radio encryption by BPD.</p> <p>(1:43:00-1:43:17)</p>	Open – This request is still active.
9	<p>11/05/2025 PAB Regular Meeting Recording: <a href="https://www.youtube.com/watch?v=IPytFxB6jyw&amp;t=25s">https://www.youtube.com/watch?v=IPytFxB6jyw&amp;t=25s</a></p> <p>11/05/2025 PAB Regular Meeting Draft</p>	ODPA	<p>The PAB requested that ODPA staff start identifying alternative fixed-camera vendors so the PAB can make an informed recommendation to Council.</p>	Open – This request is still active.

	<p>Minutes:  <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT%2025-11-05%20Regular%20Meeting%20Minutes.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-11-05 Regular Meeting Minutes .pdf</a></p>		(1:51:53-1:52:24)	
10	<p>12/17/2025 PAB Special Meeting Recording:  <a href="https://youtu.be/k6mhDQWO9H0?si=GUoTPZb0nrQABeiL">https://youtu.be/k6mhDQWO9H0?si=GUoTPZb0nrQABeiL</a></p> <p>12/17/2025 PAB Regular Meeting Draft Minutes:  <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT%2025-12-17%20Special%20Meeting%20Minutes.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-12-17 Special Meeting Minutes.pdf</a></p>	ODPA, BPD	<p>The PAB requested that the BPD Provide the PowerPoint slide deck used to present the Policy 300 working draft revisions</p> <p>(1:16:06-59:15)</p>	<p>Completed – BPD UOF Policy Revision PowerPoint and it can be accessed here - <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/BPD%20Policy%20300%20Use%20of%20Force%20Revision%20Slides.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/BPD Policy 300 Use of Force Revision Slides.pdf</a></p>

Off-Agenda Item 4  
2026 PAB Meeting Calendar

# 2026 PAB MEETING CLENDAR

## JAN

S	M	T	W	T	F	S
				1	2	3
4	5	6	7*	8	9	10
11	12	13	14	15	16	17
18	19	20	21*	22	23	24
25	26	27	28	29	30	31

\*PAB Nominations and Election of Chair and Vice Chair

## FEB

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
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## MAR\*

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\*Annual Report to be presented in March

## APR

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## MAY

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31						

## JUN

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## JUL

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## AUG

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## SEP

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## OCT

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## NOV

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## DEC

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20	21	22	23	24	25	26
27	28	29	30	31		

NACOLE from 11/8-11/12

City Council Meeting    BMC 2.100.050 Due Date    \*City Holiday    \*PAB Meeting    \*Reduced Service Day

<https://berkeleyca.gov/sites/default/files/work-plans/PAB%20Meeting%20Calendar%202026.pdf>