

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
JANUARY 21, 2026
6:30 PM**

Board Members

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

MEETING LOCATION

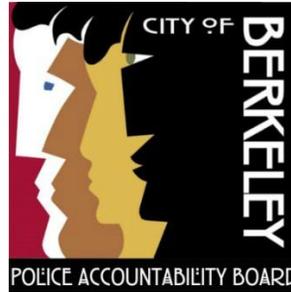
Office of the Director of Police Accountability
1900 Addison Street, Floor 3
Berkeley, CA 94704

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Item 2

January 21, 2026 PAB Regular Meeting Agenda



**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
WEDNESDAY, JANUARY 21, 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 Regular Meeting of January 7, 2026.

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 40 MINUTES)

- a. Election 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) – (10 Minutes)
- b. Continued 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) - (15 Minutes)
- c. Presentation of the ODPA 2026 Workplan and Preliminary Calendar of Events (ODPA) – (10 Minutes)
- d. Discussion and action on the FY 2027 and 2028 Budget Process (ODPA) – (15 Minutes)
- e. Discussion and action on the adoption of the updated draft of the PAB Policy Manual, reflecting PAB feedback from and after the December 3, 2025 PAB meeting, and on granting authority to the Vice-Chair to collaborate with ODPA staff to finalize the document, including making any necessary edits for accuracy and clarity. (Wilson) – (15 Minutes)
- f. Continued 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) – (10 Minutes)
 - i. Update on the Review Timeline
 - ii. Appointment of the Reviewing Subcommittee or PAB Member
- g. Discussion and action on the updated proposal for the rescission and replacement of the Police Equipment and Community Safety Ordinance being considered by City Council on January 27, 2026 (Cayetano) – (15 Minutes)
- h. Recap of the PAB's 2026 Strategic Planning Session (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-0018 | xv. | 2025-CI-0033 |
| iv. | 2025-CI-0019 | 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 |
| 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-0043 |

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

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

1900 Addison Street, Floor 3, Berkeley, CA 94704

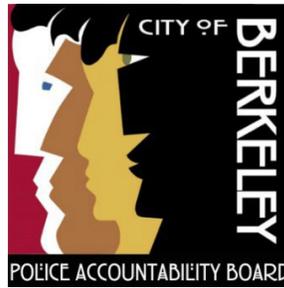
TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955

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

Email: dpa@berkeleyca.gov

Item 4

Minutes for the Regular Meeting of January 7, 2026



**POLICE ACCOUNTABILITY BOARD
 REGULAR MEETING MINUTES
 WEDNESDAY, JANUARY 7, 2026
 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

Present: Board Member Joshua Cayetano (Chair)
 Board Member Leah Wilson (Vice Chair)¹
 Board Member Kitty Calavita
 Board Member Juliet Leftwich
 Board Member Buswell-Charkow

Absent: Board Member Randy Wells²

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

BPD Staff: Lt. Coats

¹ Vice Chair Wilson was absent at roll call and arrived later in the meeting.
² Board Member Wells was granted a Leave of Absence for the January 7, 2026.

2. APPROVAL OF AGENDA

Motion to Approve the Agenda.

Moved/Second (Leftwich/Calavita) Motion carried.
Ayes: Buswell-Charkow, Cayetano, Calavita, Leftwich.
Noes: None. Abstain: None. Absent: Wells, Wilson.

3. PUBLIC COMMENT

1 Physically Present Speakers

8 Virtually Present Speakers

4. APPROVAL OF MINUTES

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

Motion to Approve the Minutes for the Special Meeting of December 17, 2025.

Moved/Second (Buswell-Charkow/Leftwich) Motion carried.
Ayes: Buswell-Charkow, Cayetano, Calavita, Leftwich, Wilson.
Noes: None. Abstain: None. Absent: Wells.

5. ODPa STAFF REPORT

Director Aguilar gave a brief status update on the ODPa's ongoing budget work, including the Budget and Finance Committee of the Berkeley City Council's request for a 10% budget reduction. He also noted that the budget freeze remains in effect.³

6. CHAIR AND BOARD MEMBERS' REPORTS

No activities have been reported since the last PAB meeting on December 17, 2025. Board Member Calavita encouraged community members to attend the January 15, 2026, community conversation on surveillance technology that will be hosted by the BPD.⁴

7. CHIEF OF POLICE'S REPORT

Lt. Coats, on behalf of Chief Louis, informed the PAB of the upcoming community conversation on surveillance technology scheduled for January 15, 2026. She further noted that BPD Policy "Fair and Impartial Policing" has been updated to specifically ban arrest quotas.

8. SUBCOMMITTEE REPORTS

Subcommittees report on their activities since the last PAB meeting on December 17, 2025.

³ Berkeley Scanner "City Considers 10% Budget Cuts, with \$29M Deficit Possible.": <https://www.berkeleyscanner.com/2026/01/01/community/berkeley-budget-cuts-deficit-expected/>

⁴ BPD Community Conversation on Public Safety Technology: <https://berkeleyca.gov/community-recreation/events/community-conversation-public-safety-technology>

9. DISCUSSION AND ACTION ITEMS

- 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)

The following nominations were made:

Nominee	Role	Nominated by	Nomination Seconded By
Cayetano	Chair	Calavita	Leftwich
Wilson	Vice-Chair	Cayetano	Leftwich

- 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)

The PAB took no formal action. The Board asked Director Aguilar to contact the BPD to request the current status of the policy, their anticipated timeline for the new policy, and to obtain the complete version for the PAB’s review.

- c. Discussion and Action on the Preparation of the 2025 PAB and ODPA Annual Report (ODPA)
 - i. Review and Approval of the Proposed Outline
 - ii. Selection of PAB Liaisons for Report Preparation

The PAB took no formal action. The PAB will continue their discussion at their 2026 strategic planning session.

- 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)

The PAB took no formal action. Chair Cayetano and Vice-Chair Wilson will draft two different positions for the PAB to consider at the PAB’s January 21, 2026 Regular Meeting.

10. PUBLIC COMMENT

0 Physically Present Speakers

1 Virtually Present Speakers

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

The PAB took no formal action.

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

Motion to administratively close ODPa Complaint Number 2025-CI-0042.

Moved/Second (Leftwich/Calavita) Motion carried.

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

Noes: None. Abstain: None. Absent: Wells.

Motion to authorize the Director to enter into a contract with a law firm to represent the Police Accountability Board with respect to Investigation 2025-CI-0020 and matters related to that investigation, including but not limited to, potential litigation associated with the investigation.

Moved/Second (Leftwich/Calavita) Motion carried.

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

Noes: None. Abstain: None. Absent: Wells.

Additional action was taken in closed session; however, no further information is reported pursuant to Government Code section 54957.1(a)(2).⁵

END OF CLOSED SESSION

12. ANNOUNCEMENT OF CLOSED SESSION ACTIONS

Chair Cayetano announced the closed session actions.

13. ADJOURNMENT

Motion to adjourn. Moved/Second (Cayetano/Leftwich). The meeting was adjourned at 9:27 PM by unanimous consent.

⁵ California Government Code section 54957.1(a)(2): https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=54957.1.

Item 8
Subcommittee List

Updated on 1/16/2026



SUBCOMMITTEES LIST

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

Updated on 1/16/2026

<p>Policies and Practices on Encampment Clearances Former 6-25-2025</p>	<p>Cayetano Wells Wilson</p>	<p>TBD</p>	<p>TBD</p>
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LIAISON LIST¹

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

POLICY COMPLAINTS ASSIGNED TO INDIVIDUAL BOARD MEMBERS²

Policy Review #	Assigned Board Member	Description
2025-PR-0001	Calavita	BPD Policy 1004 "Anti-Retaliation" & BPD Policy 1010 "Personnel Complaints"
2025-PR-0004	Calavita	BPD Policy 426 "Public Recording of Police Activity"

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

² 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” (Updated with Nominations from January 7,2026)



Updated materials from the January 7, 2026 PAB Regular Meeting. Revisions have been made to Attachment 2 to reflect the Chair and Vice Chair nominations as of January 7, 2026. All updates are indicated in red.

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

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

Updated materials from the January 7, 2026 PAB Regular Meeting. Revisions have been made to Attachment 2 to reflect the Chair and Vice Chair nominations as of January 7, 2026. All updates are indicated in red.

CHAIR NOMINEES OF THE POLICE ACCOUNTABILITY BOARD

NOMINEE	NOMINATED BY	NOMINATION SECONDED BY
CAYETANO	CALAVITA	LEFTWICH

VICE-CHAIR NOMINEES OF THE POLICE ACCOUNTABILITY BOARD

NOMINEE	NOMINATED BY	NOMINATION SECONDED BY
WILSON	CAYETANO	LEFTWICH

These nominations are certified by:

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

Date: _____

Item 9.b.

Material for the Review of the Proposed Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate 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":

- ODPa Memorandum Titled "Overview of Proposed Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate 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" (Material from January 7, 2026 PAB Regular Meeting)
 - Memorandum from Vice-Chair Wilson Titled "Draft Correspondence to the City of Berkeley's Public Safety Policy Committee in Response to the Proposed Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate 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"

ODPA Memorandum Titled “Overview of Proposed Resultion to Amend Berkeley City Council’s 2020 Direction to Reinstate 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” (Material from January 7, 2026 PAB Regular Meeting)



MEMORANDUM

Date: January 5, 2026
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel A. Aguilar, Director of Police Accountability (DPA)
 Jose D. Murillo, ODPa Policy Analyst
Subject: Overview of Proposed Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate 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

This memorandum provides the PAB with a brief overview of the Berkeley City Council's 2020 moratorium prohibiting the use of tear gas (CS gas), pepper spray, and smoke for crowd control by the Berkeley Police Department, as well as by any outside department or agency providing mutual aid in Berkeley,¹ and summarizes the proposed resolution to reinstate the Berkeley Police Department's use of tear gas and OC spray.²

Background

On June 9, 2020, the Berkeley City Council considered a co-authored proposal by Mayor Arreguín, Councilmember Harrison, and Councilmember Robinson to prohibit the use of chemical agents for crowd control during the COVID-19 pandemic. The proposal sought to establish an official City of Berkeley policy banning the use of tear gas, pepper spray, and smoke for crowd control by the Berkeley Police Department, as well as by any outside agencies providing mutual aid in Berkeley, until lifted by the City Council.

At the time, tear gas and pepper spray were authorized less-than-lethal uses of force for crowd control under then-General Order U-2. The City Council ultimately adopted an official policy that:

¹ June 9, 2020 Memorandum by Mayor Jesse Arreguin, Councilmember Kate Harrison and Councilmember Rigel Robinson titled "Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic": <https://records.cityofberkeley.info/PublicAccess/api/Document/Ad6kDpE5pXIR86LurzMhRe2L2OSx0uTM8gC548AOy2NzvdU1po3Ql4FRQbsADk8Hh%C3%81gYJiCQR41oKA6rIRfDLNq%3D/>

² Proposed Consent Calendar Material for January 20, 2026 Submitted by Councilmember Rashi Kesarwani Titled "Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate Berkeley Police Department's Use of Tear Gas in Limited Situations and Lift the COVID-19 Moratorium on the Use of Smolke and Oleoresin Capsicum (OC) Spray": <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-05%20Agenda%20Packet%20-%20Agenda%20Committee.pdf#Page=41>

1. Prohibited the use of tear gas by the Berkeley Police Department and by any outside department or agency providing mutual aid in Berkeley; and
2. Prohibited the use of pepper spray or smoke for crowd control by the Berkeley Police Department and by any outside department or agency providing mutual aid in Berkeley during the COVID-19 pandemic, until such time as the City Council removes the prohibition.

This vote was passed unanimously by Council.³

The presented proposal by Councilmember Kesarwani's calls for the adoption of a resolution amending the Berkeley City Council's June 9, 2020 direction regarding the use of smoke, OC spray, and tear gas to authorize the Berkeley Police Department's Special Response Team to deploy tear gas in circumstances presenting a significant risk of injury or death, while maintaining the prohibition on the use of tear gas for crowd control and lifting the temporary moratorium on the use of smoke and OC spray.⁴

The rationale for the recommendation notes that law enforcement considers tear gas a less-lethal option for managing certain violent or barricaded situations, including incidents involving armed individuals who refuse to leave a structure. The California Commission on Peace Officer Standards and Training and the National Tactical Officers Association recognize tear gas as a standard tool for tactical teams in high-risk scenarios. Tear gas is described as a "time-and-distance" tool, allowing officers to maintain separation from suspects, potentially reducing the need for close-quarters force and lowering the risk of physical confrontations, serious injuries, or fatalities. In prolonged or high-risk incidents, alternatives such as physical entry or extended standoffs may present greater risks to officers, suspects, and bystanders. Controlled deployment may allow incidents to be resolved more quickly, facilitate extractions or rescues, and limit disruption to surrounding areas. The rationale also notes that access to tear gas is considered an industry-standard capability, and that its absence may increase operational risk in certain situations.

Next Steps

The proposal was introduced at the Agenda and Rules Committee meeting on January 5, 2026. During that meeting, the committee directed that the item be referred to the Public

³ June 9, 2020 Annotated Agenda of the Berkeley City Council: <https://berkeleyca.gov/sites/default/files/city-council-meetings/06-09%20Annotated%20Agenda%204pm.pdf#Page=5>

⁴ Proposed Consent Calendar Material for January 20, 2026 Submitted by Councilmember Rashi Kesarwani Titled "Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate Berkeley Police Department's Use of Tear Gas in Limited Situations and Lift the COVID-19 Moratorium on the Use of Smolke and Oleoresin Capsicum (OC) Spray": <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-05%20Agenda%20Packet%20-%20Agenda%20Committee.pdf#Page=41>

Safety Policy Committee for consideration at a date to be determined. The Public Safety Policy Committee convenes on the third Thursday of each month.⁵

Recommendation

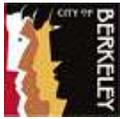
Per Berkeley City Charter Section 125(17)(a), the PAB may review policies, practices, and procedures of the BPD in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against an officer.⁶ Pursuant to this authority, the PAB may exercise its discretion to:

1. Review the presented proposal and provide the Board’s opinion.
2. Establish a subcommittee to examine the proposal and draft a PAB response.
3. Request that the ODPa conduct additional research regarding the proposal.
4. Decline to take action.

⁵ Berkeley Public Safety Meeting Calendar: <https://berkeleyca.gov/your-government/city-council/council-committees/policy-committee-public-safety>

⁶ Berkeley Charter Section 125(17)(a): [https://berkeley.municipal.codes/Charter/125\(17\)\(a\)](https://berkeley.municipal.codes/Charter/125(17)(a))

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 Reinststate 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.¹ 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)² governed the use of tear gas before the Council's June

¹ 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.

² 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

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

2

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.³ 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.⁴

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:

³ 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>

⁴ 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.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48 (https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=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.

Memorandum from Vice-Chair Wilson Titled “Draft Correspondence to the City of Berkeley’s Public Safety Policy Committee in Response to the Proposed Resultion to Amend Berkeley City Council’s 2020 Direction to Reinstate 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”

Item 9.b.

Memorandum from Vice-Chair Wilson Titled “Draft Correspondence to the City of Berkeley’s Public Safety Policy Committee in Response to the Proposed Resultion to Amend Berkeley City Council’s 2020 Direction to Reinstate 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”



MEMORANDUM

Date: January 16, 2026
To: Honorable Members of the Police Accountability Board (PAB)
From: Leah T. Wilson, PAB Vice-Chair
Subject: Draft Correspondence to the City of Berkeley's Public Safety Policy Committee in Response to the Proposed Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate 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

The purpose of this memorandum is to present the attached draft correspondence for the PAB's review and consideration.

Overview

The attached draft correspondence from the PAB to the Public Safety Committee sets forth the PAB's response to Councilmember Kesarwani's proposal to reinstate the Berkeley Police Department's authority to deploy chemical agents under specified circumstances.¹

Requested Action

The PAB is requested to review the draft correspondence and approve it, subject to any revisions deemed necessary or appropriate.

Attachment(s)

1. Draft Correspondence to the City of Berkeley's Public Safety Policy Committee in Response to the Proposed Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate 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

¹ Councilmember Kesarwani's Proposed Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate 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: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-05%20Agenda%20Packet%20-%20Agenda%20Committee.pdf#Page=41>

Attachment 1

Draft Correspondence to the City of Berkeley's Public Safety Policy Committee in Response to the Proposed Resolution to Amend Berkeley City Council's 2020 Direction to Reinstate 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



MEMORANDUM

Date: TBD
To: Honorable Members of the Public Safety Policy Committee (PSPC)
From: Police Accountability Board
Subject: Proposed Resolution to Reinstate Berkeley Police Department's Use of Tear Gas and Related Chemical Agents

I. Purpose

This memorandum sets forth the Police Accountability Board's (board) position regarding the proposed resolution to reinstate the Berkeley Police Department's (BPD) authority to use tear gas in limited circumstances and to lift the moratorium on smoke and oleoresin capsicum spray (collectively referred to as chemical agent/s).

II. Threshold Question: Necessity of Reinstatement

Based on the materials presented, the board finds it unclear why reinstating chemical agent authority is necessary at this time. The sponsoring materials acknowledge that chemical agents have been used by BPD only three times over several decades, all in rare, high-risk scenarios. Given this limited historical use, the board questions whether reinstatement meaningfully enhances public safety, or whether it reintroduces a tool associated with significant community concern for marginal operational benefit.

[Government Code sections 7070 through 7073](#) (AB 481), enacted after the City Council's 2020 action barring the use of chemical agents, classify tear gas as "military equipment." These provisions require governing bodies, prior to approving a military equipment use policy, to determine that such equipment is necessary because no reasonable alternative exists to achieve the same objective. Given the historically limited deployment of chemical agents by BPD and the absence of any documented need since the 2020 ban, the board questions whether this statutory necessity finding can be met.

III. If Advanced, Authorization Must Be Narrow and Explicitly Anchored in State Law

If the Public Safety Committee, and ultimately the City Council (council) elects to advance the proposal notwithstanding the baseline question of necessity, the Police Accountability Board recommends that any authorization be narrowly framed and explicitly bounded. It also must be grounded directly in [California Penal Code section 13652](#), which governs

the use of chemical agents, and in the processes required by AB 481 which establishes requirements for approval of use policies for chemical agents.

As amended and effective January 1, 2026, Penal Code section 13652:

- Prohibits the use of tear gas and other chemical agents to disperse assemblies, protests, or demonstrations, except under strictly limited circumstances.
- Permits use only when it is objectively reasonable to defend against a threat to life or serious bodily injury, or to bring an objectively dangerous and unlawful situation safely under control.
- Requires that de-escalation and alternatives to force be attempted first, when objectively reasonable.
- Mandates repeated audible warnings in appropriate languages, reasonable opportunities to disperse, and targeted use toward individuals engaged in violent acts.
- Requires proportionality, minimization of harm to bystanders and journalists, efforts to extract individuals in distress, and prompt medical assistance.
- Prohibits use targeted to the head, neck or vital organs; to enforce a curfew; or in response to a verbal threat or noncompliance with a law enforcement directive.
- Limits authorization of chemical agents to a commanding officer at the scene.
- Expressly allows local jurisdictions to adopt more stringent limitations than those imposed by state law.

Accordingly, any Berkeley policy reinstating chemical agents should, at a minimum:

- Mirror the statutory standards.
- Be confined to clearly defined tactical incidents, such as barricaded or hostage situations, and exclude civil unrest or First Amendment–protected activity without exception.
- Affirm Berkeley’s authority to impose stricter local limits consistent with community expectations and accountability norms.

In addition, AB 481 establishes procedural requirements governing the authorization and use of tear gas and related chemical agents classified as military equipment. Prior to authorizing use, a law enforcement agency must submit a publicly posted military equipment use policy for governing body approval addressing the equipment’s authorized purposes and uses, fiscal impacts, applicable legal and procedural rules, training requirements, and oversight mechanisms. If approved, the policing agency must report annually to the City Council and the public on the use of such equipment.

IV. Accountability and Review

Given the sensitivity of chemical agent use and Berkeley’s history in this area, the board further recommends that any reinstatement include a requirement for after-action notice

to the Police Accountability Board and City Council. In addition, the board should be authorized to conduct periodic assessments of BPD's compliance with Penal Code section 13652 and AB 481.

V. Conclusion

The Police Accountability Board questions the need to reinstate BPD's authority to use chemical agents given their historically low deployment rate. If the proposal to reinstate is advanced, the board urges that authorization be narrow, explicitly tethered to Penal Code section 13652 and AB 481, and accompanied by strong accountability mechanisms consistent with Berkeley's commitments to civil liberties, proportionality, and public trust.

DRAFT

Item 9.e.

Proposed PAB-ODPA Policy Manual (Updated with Feedback Received at
the December 3, 2025 PAB Special Meeting)



This memorandum was originally presented at the December 3, 2025 PAB Special Meeting and provides the contextual background for the initially proposed PAB-ODPA Policy Manual.

MEMORANDUM

Date: November 25, 2025
To: Honorable Members of the Police Accountability Board (PAB)
From: Metrics and Operations Subcommittee
 Vice-Chair Leah Wilson
 Board Member Randy Wells
Subject: Proposed PAB-ODPA Policy Manual

Please see the attached draft Police Accountability Board Policy Manual (manual). The manual is intended to serve as a single-source resource for current and future Board members. It outlines key responsibilities of individual members and of the Board as a whole, and codifies the Board's operational and procedural rules and processes. Where applicable, the manual references the City of Berkeley Commissioner's Manual, the City Charter, and other relevant governing or enabling authorities.

Several key areas merit attention:

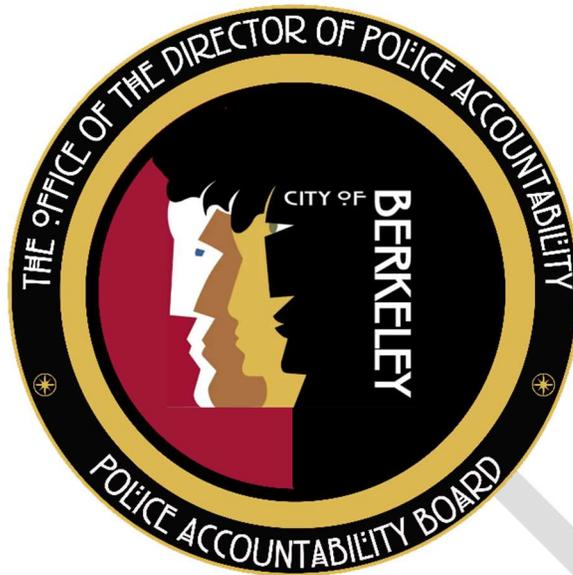
1. **Discretionary Policy Review – Proposed Process:** The process as drafted reflects the most recent Board discussions on this process establishes the codified language as the standard approach to handling discretionary reviews.
2. **Public Comment Policy:** The proposed policy limits public comment to a single period at the beginning of each meeting, with discretion for the Chair to modify this approach under specified circumstances.
3. **Appendix A – Subcommittees:** Appendix A lists standing subcommittees but does not address ad hoc subcommittees. We should discuss how ad hoc bodies ought to be defined, documented, or otherwise incorporated into the manual.

In addition to these items, several other questions and issues have been identified in the comment boxes within the draft; these would benefit from Board review and discussion.

Once finalized, this manual will replace the existing Standing Rules. Feedback received during the December 3, 2025, PAB meeting will be incorporated into a final draft, which will be presented for Board review and adoption at the first PAB meeting in January 2026.

Attachments:

- Proposed Policy Review Manual



Police Accountability Board Policy Manual

UPDATED FOR JANUARY 21, 2026 MEETING

This revised draft of the PAB Policy Manual incorporates PAB feedback received during and subsequent to the December 3, 2025 PAB meeting.

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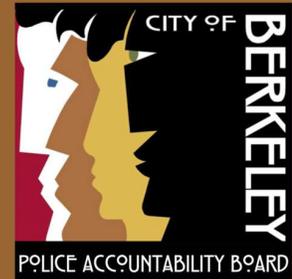


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The Police Accountability Board (PAB) promotes public trust through independent, objective, civilian oversight of the Berkeley Police Department (BPD); provides community participation in setting and reviewing BPD, practices, and procedures; and provides a means for prompt, impartial and fair investigation of complaints brought by members of the public against Berkeley police officers.

1.2 Governing Authority

Authorities governing the PAB in carrying out its work:

- Enabling Legislation [City Charter Section 125, Article XVIII] [\[Charter\]](#)
- Berkeley Municipal Code [\[Berkeley Municipal Code\]](#)
- Interim Regulations [\[Interim Regulations\]](#)
- Standing Rules [Note, this Policy Manual should replace the Standing Rules]
- [Commissioners' & Board Members' Manual](#)

DRAFT

SECTION 2

Police Accountability Board



Section 2. POLICE ACCOUNTABILITY BOARD

2.1 COMPOSITION

The Police Accountability Board (PAB) consists of nine members. Each member is nominated by the Mayor or a City Councilmember and approved by the full City Council. Board members are residents of the City of Berkeley, at least 18 years old, who have pledged to be fair-minded and objective, with a demonstrated commitment to community service. See [here](#) for current Board membership.

(Source: [Charter §125 \(5\)\(a\)](#))

2.2 BOARD MEMBER TERMS

Each member is appointed for a term of four years or upon expiration of the appointing councilmember's term, whichever is earlier. A Board member whose term has expired may continue to serve until a successor Board member is appointed, unless the sitting Board member's term expires due to term limits.

(Source: [Charter §125 and Commissioner's Manual Chapter II.A.6](#))

2.3 RESIGNATION OF BOARD MEMBERS

A Board member, including an officer, may resign at any time by giving written notice to the City Clerk and to the appointing Councilmember or the council, as appropriate.

(Source: [Commissioner's Manual Chapter II.A.13](#))

2.4 RESPONSIBILITIES OF THE BOARD

The following list of PAB responsibilities includes both discretionary and mandatory activities, as reflected in annotations.

MANDATORY RESPONSIBILITIES

- Receiving and considering the findings and recommendations of the Director of Police Accountability regarding complaints filed by members of the public against sworn employees of the Police Department and recommending to the Chief of Police if discipline is warranted when misconduct is found, and pursuant to Section 18, the level of discipline for sustained findings of

misconduct. The process for conducting personnel investigations is detailed in **Appendix B**.
(Source: [Charter §125 \(14\)\(h\)](#) and [3a](#))

- Along with the Director of Police Accountability (DPA), adopting regulations for handling complaints filed with the DPA (Source: [Charter §125 \(18a\)](#))
- Consulting with the City Manager on the job requirements, application process, and evaluation of candidates for the Chief of Police during a vacancy. (Source: [Charter §125 \(22\)](#))
- Recommending candidates for consideration by the City Council for a Director of Police Accountability during a vacancy. (Source: [Charter §125\(14\)\(a\)](#))
- Approving the annual report prepared by the DPA. (Source: [Charter §125 \(16\)\(c\)](#))
- Reviewing and making recommendations on newly adopted policies submitted by the Chief of Police. (Source: [Charter §125 \(\(17\)\(a\)\)¹](#))
- Establishing a regular means of recognizing sworn employees of the BPD for instances of outstanding service. The process for commendations is described in the Outreach & Engagement Subcommittee charge (**Appendix E**). (Source: [Charter §125 \(26\)](#))
- Conducting a review of its internal processes every two years. (Source: [Charter §125 \(28\)](#))
- Receiving Surveillance Use Policies and corresponding Surveillance Acquisition Reports for each new surveillance technology before it goes to the City Council for approval. (Source: [Berkeley Municipal Code §2.99.030\(2\)](#))
 - No later than 30 days after receipt, the PAB must vote to recommend approval of the policy, object to it, suggest modifications, or take no action.
- Reviewing and making recommendations regarding Controlled Equipment Impact Reports and Controlled Equipment Use Policies before the City Council approves the acquisition or use of any Controlled Equipment based on specific criteria as outlined in [Berkeley Municipal Code § 2.100.040 \(C\)\(1\)](#). (Source: [Berkeley Municipal Code §2.100.040 \(C\)\(1\)](#))
- Reviewing the BPD’s annual report on Controlled Equipment and determining whether each piece of controlled equipment reported on has complied with the standards for approval set forth in [Berkeley Municipal Code section 2.100.040 \(C\)\(1\)](#).
 - If the PAB determines that any Controlled Equipment has not complied with the standards for approval set forth it shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. (Source: [Berkeley Municipal Code §2.100.040\(C\)\(1\)](#))
- Reviewing and updating the Use of Force Policy annually. (Source: [Berkeley Police Department Policy Number 300.1.3](#))
- Establishing rules of procedure governing the conduct of its business, which shall be subject to ratification by the City Council. (Source: [Charter §125 \(13\)\(c\)](#))

¹ Section 17(a) of the Charter states that the Chief of Police shall submit all newly adopted Departmental policies and revisions to the Board within thirty (30) days of implementation. Although not explicitly noted, section 17(b), suggests that the Board may make recommendations regarding these policies if desired.

DISCRETIONARY RESPONSIBILITIES

- Advising and making recommendations to the public, City Council, and City Manager regarding the operation of the BPD, including all written policies, practices, and procedures. The PAB may also initiate a review of a BPD policy, practice, or procedure upon a majority vote of its members. The process for conducting policy reviews is outlined in **Appendix C**. (Source: [Charter § 125\(3\)\(a\)](#))
- Reviewing and recommending for City Council approval all agreements, letters, memoranda of understanding, or policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance between the BPD and all other local, state and federal law enforcement, intelligence, and military agencies or private security organizations. (Source: [Charter §125 \(3\)\(a\)](#))
- Recommending the removal for cause of the DPA to the City Council. (Source: [Charter §125 14\(d\)](#))
- In cases where a complaint is filed with the BPD and the Chief of Police’s investigation has resulted in a finding of “not sustained”, “unfounded”, or “exonerated”, reviewing objections to those findings filed with the DPA. Reviewing objections to the closure of complaints filed with BPD. (Source: [Charter §125 \(19e\)](#))
- Accessing records of City Departments, compelling attendance of sworn employees of the Police Department, and exercising the power of subpoena as necessary to carry out its functions. (Source: [Charter §125\(3\)\(a\)](#))
- Attending Selection Board interviews for Special Response Teams. (Source: [Berkeley Police Department Policy 404.8](#))
- Proposing a budget to the City Council for PAB operations. (Source: [Charter §125 \(4\)\(b\)](#))
- Reviewing and making recommendations to the City Council regarding the Police Department budget.
 - The Chief of Police shall submit a final budget proposal to the Board for review and recommendations, but the Board’s failure to complete that review and make recommendations in a timely manner shall not delay the budget process. (Source: [Charter §125 \(21\)](#))

2.5 RESPONSIBILITIES OF BOARD MEMBERS

Each Board member is responsible for:

- Being familiar with the mission and purpose of the PAB.
- Participating in all Board meetings and meetings of assigned Board subcommittees, including preparing for meetings in order to make sound decisions.
- Being familiar with the existing governance structure of the Board and the Office of the Director of Police Accountability (OPDA).
- Being familiar with the PAB Policy Manual.
- Being familiar with the City of Berkeley’s Commissioner’s Manual.
- Being familiar with the requirements of the Brown Act.
- Bringing diverse experience, skills, and expertise to bear when determining policy
- Recognizing the equal role and responsibility of each Board member.
- Ensuring public trust, fairness, and equity, by making decisions based on information presented

at a duly noticed public meeting.

2.51 CONFLICTS OF INTEREST

Board members shall maintain basic standards of fair play and-impartiality, and avoid bias and the appearance of bias.

In instances where the Board acts in a quasi-judicial capacity, as in a confidential personnel hearing, Board members have the responsibility to hear all viewpoints. To ensure that all parties are afforded an opportunity to be heard, Board members shall observe the following:

(1) Board members who recuse themselves for a conflict of interest must do so immediately when an item is taken up.

(2) Board members shall verbally disclose all ex parte contacts concerning the subject of the a hearing. Board members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Ex parte contacts include, but are not limited to, any contact between a Board member and any party involved in the complaint prior to the public hearing.

(3) Board members shall be recused from taking any action on or participating in a matter before the Police Accountability Board if they are related to a party to, advocate for, or represent a member of the public who has a pending or anticipated claim of any kind arising out of alleged misconduct of a sworn employee of the Police Department. For the purpose of this subsection, "related to" shall include a spouse, child, sibling, parent or other person related to the complainant or the complainant's spouse within the third degree of relationship.

(Source: [Charter §125\(8\)](#))

2.52 CALENDAR OF BOARD MEETINGS

The annual meeting calendar for the PAB is determined by the enabling charter which requires 18 meetings per year, as well as the City Council's recess schedule. The Board's standard practice has been to meet on the second and fourth Wednesday of each month, with exceptions as needed for holidays, recesses, or other scheduling conflicts. The multiyear Board schedule can be viewed [here](#).

(Source: [Charter §125\(13\)\(a\)](#))

2.53 OFFICER SELECTION

The officers of the PAB are chair, and vice-chair. Officers are elected each January by the majority of the PAB for a one-year term, or until their successor is elected. No chairperson is eligible to serve more than two consecutive terms, or portions thereof.

(Source: [Commissioner's Manual Section II. F.1. for more information and Charter section 10](#))

2.54 RESPONSIBILITIES OF THE CHAIR

The Board chair is responsible for presiding over all meetings of the Board, other duties~~the duties~~ enumerated in Commissioners Manual Chapter II Section F.3. and the following:

- Facilitating decision-making by the Board.
- Encouraging diverse opinions among Board members.
- Resolving disputes and managing conflict among Board members.

The Board chair ~~may can~~ fully participate in the decision-making of the Board, including participating in debate, discussion, and voting.

2.55 RESPONSIBILITIES OF THE VICE-CHAIR

The vice-chair is responsible for:

- Acting in the absence of the chair.

2.57 BOARD SUBCOMMITTEES

The chair may appoint members of the Board to serve as members of subcommittees subject to the approval of PAB. The chair should solicit interest from Board members when making subcommittee assignments. The PAB has both standing subcommittees and ad hoc subcommittees.

A standing subcommittee is a committee established on an ongoing basis to address a defined area of responsibility within the organization’s regular work. Standing subcommittees have continuing jurisdiction, meet as needed over time, and carry out duties assigned by the PAB.

An ad hoc subcommittee is a committee established for a specific purpose or task, with a limited scope and duration. An ad hoc subcommittee ceases to exist upon completion of its assigned work or upon the occurrence of a specified event.

~~Board subcommittees are responsible for advancing the work of the PAB.~~ At the start of each Board year, the incoming chair facilitates a discussion with the Board regarding the number of and scope of PAB standing and ad hoc ss subcommittees to determine if any changes are needed.

In accordance with the City Charter, the chair may appoint members of the public to standing subcommittees in which they have expressed an interest. Such appointments are subject to approval of the Board. Members of the public seeking to serve on a standing subcommittee must:

- a) be residents of the City of Berkeley; and

- b) present themselves at a Board meeting before or at the time of the appointment and speak on the public record on the intent to serve and what they will bring to the subcommittee work and deliberations.

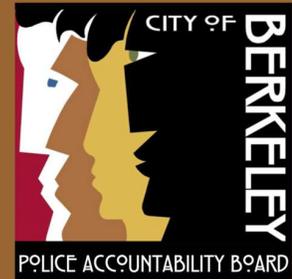
Other provisions governing public member participation include:

- a. Members of the public appointed to subcommittees are non-voting members and may not be selected to be subcommittee chair.
- b. Board members must constitute a majority of membership of any subcommittee. A quorum of voting members is required to convene an official meeting and to take formal action. A smaller group of committee members may convene informally to conduct business even if Board members are not a majority of subcommittee members present.
- c. The term of appointment for members of the public appointed to subcommittees shall not exceed the life of the subcommittee. If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the chair, subject to approval of the Board.
- d. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the chair if good cause for the absences is shown.
- e. The chair, subject to the approval of the Board, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members, unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
- f. All actions by the chair to appoint, reappoint, or remove a member of the public to or from a subcommittee shall occur at a Board meeting.

(Source: [Charter/125\(13\)\(d\)](#))

SECTION 3

Meeting Procedures



Section 3. MEETING PROCEDURES

3.1 APPLICABILITY OF THESE PROCEDURES

These meeting procedures apply to meetings of the Board and its subcommittees.

3.2 BROWN ACT AND OPEN GOVERNANCE ORDINANCE

The Brown Act (Government Code sections 54950 et seq.) is the state's open meeting act. The Brown Act applies to all city boards and commissions. The Brown Act sets forth notice and agenda requirements, provides for public comment, requires that meetings be conducted in open session (except where closed session is expressly authorized), and prohibits discussing or taking action on matters not included on the agenda. The provisions in this policy manual concerning meeting procedures are intended to restate and supplement the Brown Act. To the extent any provision in the Board [Policy Manual Book](#) may be inconsistent with the Brown Act shall prevail.

Berkeley's Open Government Ordinance ensures that community members can access public meetings and documents. This local ordinance provides additional regulations on top of the State of California's Brown Act and Public Records Act. Read the full text of the [Berkeley Open Government Ordinance](#).

For more information see [Commissioners Manual Chapter IV](#).

3.3 MEETING LOCATIONS

Police Accountability Board meetings are ~~generally~~ held in person in public buildings. Members may attend remotely in accordance with [Government Code § 54953\(f\)](#).

(Source: Commissioner's Manual Chapter V.B.1)

3.4 BOARD MEMBER ATTENDANCE AT BOARD MEETINGS

Board members shall, to the extent practicable, attend all Board meetings. Board members unable to attend a meeting should notify the [cChair](#) and the Director of Police Accountability (or their designee) as soon as possible.

Members should notify the chair or Board secretary when they leave a meeting permanently prior to its official adjournment.

3.41 DEFINITION OF A QUORUM

A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. For the PAB and its subcommittees, a quorum is one more than half of the body of the seats filled.

(Source: [Charter §\(13\)\(b\)](#))

3.5 AGENDAS

The Board secretary in consultation with the Board chair prepares agendas for Board meetings. Board members may submit recommended agenda items to the chair for consideration as soon as practicable but at least 7 days prior to the scheduled [meeting. Under the Brown Act, agendas cannot be amended within 72 hours of the meeting absent exceptional circumstances.](#)

3.6 CLOSED SESSION

All matters discussed in closed session are confidential. Members of the public are not allowed in the meeting room during closed session.

The Brown Act (Gov. Code §54956.9–54957.6) sets forth the following nonexhaustive list of examples of matters that can be considered in closed session:

- Certain personnel matters, ~~such as the appointment, evaluation, or dismissal of Board-appointed staff~~ (Gov. Code §54957 (b))
- Anticipated and pending litigation Gov. Code §54956.9)
- Collective bargaining Gov. Code §54957.6)

3.7 RECORD OF MEETINGS

Minutes of topics discussed and decisions made at Board meetings shall be maintained by the Board secretary.

[Minutes of standing subcommittee meetings shall be maintained by subcommittee Chairs and provided to the Board secretary following each meeting.](#)

3.8 VOTING ON MOTIONS

With a quorum of the body present at a duly noticed meeting, approval of a motion requires a majority vote of those members who are present and voting.

To vote at a meeting, Board members must be present in person or [by telephoneremotely](#) at a properly noticed address. Voting by proxy is not allowed. A roll call vote will be taken after each motion.

Members' names will be called and each member will state their vote for the motion as follows:

- Support – Yes
- Oppose – No
- Abstain (not counted as a vote)
- Recused (not counted as a vote)

At in-person meetings substitution of the roll is allowed as long as there has been no change in the composition of the body since the last vote or since the call of roll and no members object. Substitution of the roll allows the Board to take action without a roll call vote but, instead, by affirmation of those present without objection.

Substitution of the roll is not permitted at meetings that are held by video- or telephone- conference.

3.81 ABSTENTIONS

An abstention is an intentional decision by a voting member to not cast a vote on a particular issue or motion. This can occur for various reasons, such as feeling a lack of sufficient information on the issue or believing there is a potential conflict of interest that does not necessarily require formal recusals. Abstentions are not counted towards the total number of votes cast. This means that an issue might pass if more members vote in favor than against, regardless of the number of abstentions.

3.82 RECUSALS

A recusal is a formal process where a Board member removes themselves from participating in a decision-making process due to a potential or perceived conflict of interest or bias.

3.9 MEETING RULES

The Board and its subcommittees will use [Rosenberg's Rules of Order](#), to the extent they do not conflict with state law (e.g., the Brown Act), as a guide when conducting its meetings.

3.10 AUDIO/VISUAL RECORDING OR WEBCAST

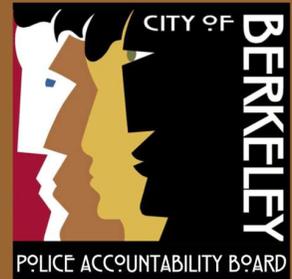
Audio and video of meetings may be recorded and/or broadcast live via Zoom or similar platform.

3.11 PUBLIC COMMENT

The PAB welcomes all public comment at all of its public meetings and appreciates listening to a wide range of viewpoints. The PAB has adopted a public comment policy reflecting these values. The public comment policy applies to all Board and subcommittee meetings. The policy can be found in [Appendix E](#).

SECTION 4

Board Planning and Fiscal Oversight



Section 4. BOARD PLANNING AND FISCAL OVERSIGHT

4.1 STRATEGIC PLANNING

The Board conducts a planning session in the first quarter of its year to review its progress and identify new measures to enhance its efficacy and impact.

4.1.1 POLICE ACCOUNTABILITY BOARD BUDGET OVERSIGHT

The PAB has the power to review and make recommendations to the City Council regarding the Berkeley Police Department budget. Each January the PAB will determine if it will exercise this power with respect to the upcoming budget development cycle.

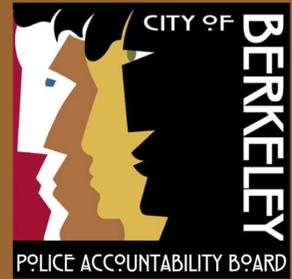
(Source: [Charter §125\(21\)](#))

The PAB also has the power to propose a budget to the City Council for its operations. Each January the PAB will determine if it will exercise this power with respect to the upcoming budget development cycle.

(Source: [Charter §125\(4\)\(b\)](#))

SECTION 5

ADVOCACY; LEGISLATION, and RULEMAKING, ~~AND AMICUS-CURIAE~~



Section 5. ADVOCACY; LEGISLATION, RULEMAKING, ~~AND AMICUS-CURIAE~~

5.1 LEGISLATION

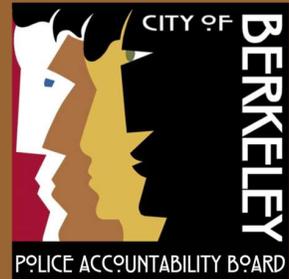
The PAB can make recommendations to the City Council for enacting legislation or regulation that will further the goals and purposes of Article XVIII of the City Charter. The City Council may, based on such recommendations or on its own initiative, enact ordinances that will further the goals and purpose of this Article.

(Source: [Charter §\(29\)](#))

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SECTION 6

COMMUNICATION



Section 6. COMMUNICATION

6.1 CONTACT FOR POLICE ACCOUNTABILITY BOARD INQUIRIES

The only persons with standing authority to respond to inquiries made to the Board, or to make public statements on behalf of the Board are the DPA, the PAB chair, or their designees.

While Board members may not speak on behalf of the PAB unless expressly authorized to do so, Board members may communicate regarding matters related to Board if:

- The communication is clearly designated as the member's individual act, opinion, or position and not that of the Board as a whole; and
- No confidential matter or document is commented upon or published or released without prior Board approval; and
- No ODPa funds are expended to further the communication, unless prior Board approval is obtained.

6.2 USE OF POLICE ACCOUNTABILITY BOARD STATIONERY AND BUSINESS CARDS

PAB official letterhead and business cards are administered by the ODPa and may be used only for official PAB business. All correspondence using PAB letterhead must be transmitted through ODPa staff or a designated Board representative authorized by the Director. Business cards will be made available to Board members upon request.

6.3 ELECTRONIC COMMUNICATIONS (EMAIL)

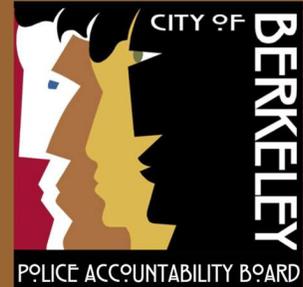
Board members are encouraged to use their official City of Berkeley email addresses when conducting PAB business. This will ensure that the information created, transmitted, and received by Board members is stored on the City of Berkeley's email server and will enable Board members and the ODPa to easily search for records responsive to California Public Record Act requests without having to search through personal or work-related emails. It will also ensure that Board information is securely and confidentially maintained.

6.4 RESPONDING TO INQUIRIES FROM THE PUBLIC OR MEDIA

All inquiries should be forwarded to the DPA or their designee.

SECTION 7

EXPENSE REIMBURSEMENT AND STIPENDS



Section 7. EXPENSE REIMBURSEMENT AND STIPENDS

7.1 BOARD MEMBER TRAVEL

Board members will be reimbursed for expenses incurred while conducting official PAB business, consistent with [Administrative Regulation 3.9](#) (Attendance and Payment of Expenses Associated with Conferences, Meetings, Seminars, Trainings, and Workshops). To seek reimbursement, all members must submit a completed FN-024 Payment Voucher and Statement of Expense form, with required receipts and supporting documentation, to the Board Secretary within 30 days after the event. Members should employ expense discipline to minimize travel costs. ODPa staff will provide Board members with the current forms, guidance on eligible expenses, and any updates to reimbursement procedure.

(Source: Administrative Regulation 3.9)

7.2 TRAVEL ARRANGEMENTS

Board members are responsible for arranging their own travel to and from PAB meetings and events. For conferences that require travel, such as NACOLE, Board members should work with staff to coordinate transportation, lodging, and related expenses. All conference-related expenses must be reviewed and approved by the DPA before attendance or the purchase of any arrangements.

7.3 STIPENDS

Pursuant to Berkeley City Charter section 125(11)(a), Board members are entitled to receive a stipend of \$100 for each regular or special Board meeting attended, and \$20 per hour for each hour of training under section 125(12) or subcommittee meeting attended. Excluding training, the total monthly stipend may not exceed \$300 per Board member. Under section 125(11)(b), stipends and the total monthly amount may be adjusted by the City Council no more than once per fiscal year, with any increase limited to changes in the cost of living for the San Francisco Bay Area as measured by official U.S. economic reports.

The DPA is responsible for submitting quarterly payment forms to the Finance Department and ensuring that each Board member has completed the necessary forms to receive their stipend. Board members are required to complete all onboarding forms, including the vendor registration form, W-9, and ACH Direct

Deposit form, and submit them to ODPA staff. ODPA staff will provide these forms and assist in their completion as part of the onboarding process for new Board members.

Pursuant to section 125(11)(b) of the City Charter, stipends shall be calculated based on the total number of regular and special meetings attended, the number of training hours completed, and hours served on subcommittees. Except for training hours, the total monthly stipend for each Board member shall not exceed \$300, unless the Council authorizes an adjustment to this cap. ODPA staff shall maintain attendance records for all regular, special, and subcommittee meetings at which staff support is provided. For subcommittee meetings that do not require ODPA support, it shall be the responsibility of the subcommittee chair to report to the ODPA the attendance of Board members, the number of hours served, and the subcommittee in which the members participated. At the end of each quarter, ODPA will submit a stipend report to the City's Finance department for processing.

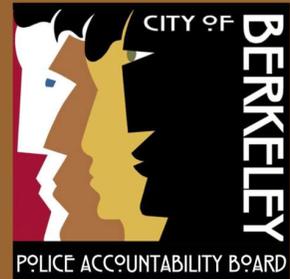
PAB members should record training hours [here](#), and subcommittee meeting time [here](#).

(Source: [City Charter Section 125\(11\)](#) & [Administrative Regulation 3.2](#))

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SECTION 8

BOARD MEMBER TRAINING



Section 8. BOARD MEMBER TRAINING

8.1 BOARD MEMBER ORIENTATION

(a) The DPA shall establish mandatory training requirements for Board members. Within the first six (6) months of appointment, at a minimum, each Board member shall receive forty (40) hours of training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
- (2) Constitutional rights and civil liberties;
- (3) Fundamentals of procedure, evidence and due process;
- (4) The Public Safety Officers Procedural Bill of Rights Act;
- (5) Police Department operations, policies, practices, and procedures; and
- (6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

The DPA shall develop training provided to Board members. The Chief of Police and a representative from the Berkeley Police Association shall have input on training provided to Board members and shall have the opportunity to attend all training provided.

Board members should log training hours completed [here](#).

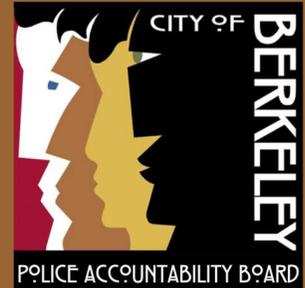
(Source: [Charter §125 \(12\)\(a\)](#))

8.2 ANNUAL BOARD MEMBER TRAINING

As determined by the Chair, in consultation with the Director of Police Accountability, ongoing training of the Board will be provided throughout the year to ensure members remain informed and effective in their oversight duties. As determined by the chair, in consultation with the DPA, ongoing training of the Board will be given as needed throughout the year. Topics may include: use-of-force review and de-escalation practices, complaint investigation procedures, civilian oversight best practices, bias-based policing, civil rights and equity in enforcement, ethics, confidentiality and conflict-of-interest standards, and community engagement, transparency, and public communication.

APPENDIX A

STANDING SUBCOMMITTEES OF THE POLICE ACCOUNTABILITY BOARD



APPENDIX A: STANDING SUBCOMMITTEES OF THE POLICE ACCOUNTABILITY BOARD

The PAB may establish standing and ad hoc subcommittees to carry out its work. Subcommittees operate under the authority of the Board, and their recommendations are subject to approval by the full Board. [Standing subcommittees are not term delimited. Ad hoc committees are established for a specific purpose and are time bound.](#) In addition to subcommittees, the PAB may designate liaisons to serve as primary points of contact and subject-matter experts for various internal, BPD, or city initiatives.

[Here we should note that these are the Standing Subcommittees \(louisa\)](#)

METRICS & OPERATIONS SUBCOMMITTEE

CHARGE

The Metrics and Operations Subcommittee develops and maintains the PAB Policy Manual, oversees the process by which the Board conducts voluntary policy reviews (Appendix C), and monitors the effectiveness of Board operations. Its responsibilities may also include reviewing the BPD budget, tracking Board performance metrics, and assessing the implementation of processes. The subcommittee provides recommendations to promote transparency, accountability, and operational efficiency.

OUTREACH & ENGAGEMENT SUBCOMMITTEE

CHARGE

Leads public engagement, community outreach, and education efforts. Reviews and recommends commendations for BPD personnel. The commendations review and recommendation process is outlined in [Appendix E](#).

POLICY SUBCOMMITTEE

CHARGE

Reviews Berkeley Police Department (BPD) policies, practices, and procedures and develops recommendations for the full Board.

REGULATIONS SUBCOMMITTEE not a standing subcommittee

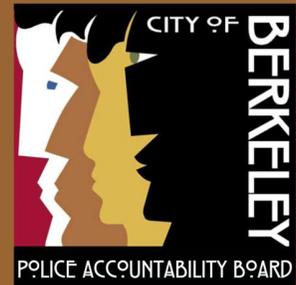
CHARGE

Reviews and recommends revisions to Board regulations, ensuring consistency with the Charter and Municipal Code.

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APPENDIX B

PERSONNEL INVESTIGATIONS



APPENDIX B: PERSONNEL INVESTIGATIONS

The PAB has authority under the City Charter and [Interim Regulations](#) to review and make findings on complaints against sworn employees of the Berkeley Police Department. The process for conducting these investigations is summarized briefly below and can be found in full in the Interim Regulations.

PROCESS

Step 1 - Filing a Complaint

Complaints may be submitted by aggrieved parties, as well as eyewitnesses (percipient witnesses) to alleged police misconduct. Complaints may also be initiated by the Board upon a vote of five Board members to authorize an investigation. individuals directly impacted, eyewitnesses, or their representatives. Complaints They must generally be filed within 180 days of the incident, unless tolling exceptions apply. Complainants may opt for mediation instead of investigation.

Step 2 - Screening and Investigation

Once a complaint is received, the Director screens it for sufficiency. If accepted, a notice of complaint is issued to subject officers within ten days. Investigations must be completed within 120–195 days, depending on the circumstances. Investigations are expected to be thorough, objective, and fair, and may include:

- Interviews with complainants, witnesses, and officers
- Review of relevant documentation (e.g., reports, photographs, video)
- Field visits to incident locations

Step 3 - Findings and Recommendations

At the conclusion of the investigation, the Director issues a report to the PAB with findings and recommendations. The PAB may accept, modify, or reject the recommendations. The PAB may also request that a hearing be held if they can't decide based on the presented findings and recommendations. If accepted, the findings are forwarded to the Chief of Police. The Chief may agree or disagree. If there is disagreement, the matter can be referred to the City Manager for final resolution.

Step 4 - Hearing Procedures

~~Hearings are convened when further fact-finding is necessary. If the PAB is unable to determine whether to affirm the Director's findings, it may convene a hearing.~~ AA three-member panel from the PAB conducts closed hearings, during which both the complainant and the subject officer are required to testify. The panel then deliberates and votes on each allegation, and their findings are forwarded to the Chief of Police.

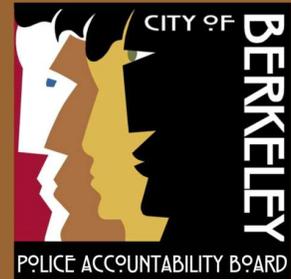
CONFIDENTIALITY

All personnel investigations and related materials are confidential under California Penal Code [§832.7–832.8](#), the Peace Officers' Bill of Rights ([Gov. Code §3300 et seq.](#)), and applicable provisions of the Public Records Act. Investigation files and deliberations are conducted in closed session. Only authorized summaries or statistical data may be released publicly as permitted by law. All Board members and ODP staff are required to sign and adhere to confidentiality agreements and may not disclose case details outside the official review process.

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APPENDIX C

POLICY REVIEWS



APPENDIX C: POLICY REVIEWS

The PAB may initiate a review of a BPD policy, practice, or procedure by a majority vote of its members. Reviews may be initiated sua sponte by any Board member or in response to a filed complaint.

Once the Board votes to initiate a policy review, the following process will generally apply:

REVIEW BY POLICY COMMITTEE

The Policy Committee will make a recommendation to the full Board on how the review should be assigned.

Assignment Options:

- Assigned to a specific Board member.
- Assigned to the Policy Committee.
- Assigned to a specially designated ad hoc subcommittee.
- Assigned to the ODPA.
- Review not recommended.

Factors to be considered in generating the assignment recommendation include: Factors to be considered in generating an assignment recommendation include:

- Scope of review: Broad versus narrow scope. ODPA staff will provide a brief analysis of the policy at issue and any related policies to support the committee's determination.
- Workload: The capacity of Board members, the Policy Committee, and ODPA staff.
- Timeline: The desired timeline for completion.
- Impact and necessity: -. The potential impact of the review, including the significance of the issue addressed and the number of individuals potentially affected by the policy, as well as the necessity of undertaking the review, including legal, regulatory, operational, or policy considerations.

Assignment of Priority:

- Tier 1: 3 months.
- Tier 2: 6 months.
- Tier 3: 12 months.

Priority will be based on impact, urgency, public interest, and Board member interest.

BOARD ACTION ON POLICY COMMITTEE RECOMMENDATION

The Board will take formal action based on the Policy Committee's recommendation for assignment of the review.

SCOPE OF AND PROCESS FOR REVIEW

The scope of the review may include any of the following steps. Not all steps will be required for each review. The entity or Board member conducting the review may determine which steps are appropriate. ODPa will manage the process and documentation.

- A. Participation of BPD: BPD will be encouraged to participate in the review process.
- B. Determination of Policies to be Addressed: Identify the specific policy or policies to be reviewed, including related policies as appropriate.
- C. Assessment of Current Interpretation and Enforcement: Evaluate how the policy is currently interpreted and enforced by BPD.
- D. Analysis of Complaints: Review any complaints received by BPD regarding the policy. This analysis will be coordinated with the BPD SPAM unit.
- E. Identification of Parallel Policies: Research and identify similar policies in comparable jurisdictions.
- F. Research Best Practices: Determine best practices relevant to the policies under review.
- G. Community Input: Seek community input on the existing policy and any proposed modifications.

PREPARATION OF FINAL REPORT

The final report will include:

- A. Summary of Scope and Process: Overview of the scope and process of the review.
- B. Key Findings and Recommendations: Main findings and recommendations.
- C. BPD Feedback:
 - BPD will have the opportunity to review the draft report before it is submitted to the PAB.
 - BPD's feedback, including points of agreement and opposition, will be submitted concurrently with the draft report.
 - BPD's decision not to provide feedback, after being afforded a reasonable opportunity to do so, will not delay or prevent submission of the draft report to the PAB.

BOARD ACTION ON FINAL REPORT

A majority of the Board will approve the final report and close the review. The final report will be transmitted to the complainant (if applicable), BPD, and posted on the ODPa website. As appropriate, reports will also be submitted to the City Council.

ODPA/PAB Annual Reports will include a link to all policy reviews completed during the respective year.

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APPENDIX D

PUBLIC COMMENT POLICY



APPENDIX D: PUBLIC COMMENT POLICY

The PAB is required to take public comment at the beginning and end of each Board meeting. The PAB welcomes public comment at its meetings and values diverse viewpoints. This policy ensures the public's right to be heard while allowing the Board to conduct business efficiently.

Waive Rules in Case of Emergency Situations

The Board may waive or override the above rules in case of an emergency or to maintain the orderly conduct of the meeting, consistent with applicable provisions of the Brown Act.

Please note that comments and materials received will, in full, become part of the public record.

Written Comment

- Members of the public may submit comments in writing before any public meeting by sending them directly to the email address listed on the agenda.
- To allow sufficient time for the Board to review written public comments, members of the public are encouraged to submit written comments at least 24 hours prior to the start of a meeting. Written comments received less than 24 hours before the start of the meeting may not be provided to members prior to the meeting but in any event will be distributed the following business day
- Instructions for submitting comments are posted on meeting webpages and agendas.

Oral Comment

- Public comment may be given in person, by phone, or video. Instructions are online and include sign-up procedures.
- Advance sign-up is encouraged but not required; speakers are called in order of sign-up or appearance.
- The chair sets equal time limits for speakers (at least two minutes). Groups with shared positions are urged to appoint a spokesperson.

~~• Speakers cannot cede their time to another speaker.~~

- The chair has the discretion to allow members of the public who wish to speak following closure of the public comment period to make remarks at any time during the meeting.

- After ~~two~~one hours of public comment or ~~100~~30 speakers, the chair may close the comment period. Organizational entities directly affected by an action may receive additional time if they request it 72 hours in advance.

Requests to Speak

- Requests may be made in advance (deadline: 24 hours before) or at the meeting. Confirmation will be provided for advance requests.
- Speakers must provide their name and the agenda item or topic.
- When a large number of speakers wish to comment on one item on the agenda, the chair may decide to take general public comment at the start of the meeting and take public comment on a specific agenda item when that item is called.

Accommodations

- Requests for interpreters or other accommodations must be made at least three business days in advance.
- Interpreters will be provided free of charge, and speakers using them receive double the time. Other accommodations will be sufficient to ensure equal opportunity to speak.

Decorum

- Meetings are limited public forums: speakers must stay on topic.
- Disorderly conduct, abusive or threatening language, or disruption may result in removal.
- The City of Berkeley and PAB prohibit harassment or discrimination against employees or the public based on any protected characteristic. If discriminatory comments occur, the chair may admonish the speaker, pause the clock, allow them to finish, and, if needed, call a recess.

Signs and Displays

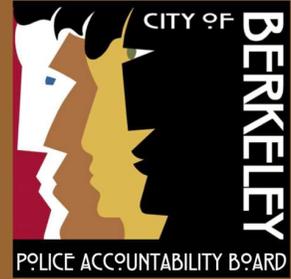
- In-person attendees may not display items that obstruct others' view. Signs or props must be no larger than 8.5 x 11 inches and cannot be attached to poles or sticks.

Emergency Waiver

The PAB may temporarily adjust these rules in emergencies to maintain order or ensure the efficient conduct of meetings, in accordance with the Brown Act and the Berkeley City Charter. All comments and materials become part of the public record.

APPENDIX E

COMMENDATIONS PROCESS



APPENDIX E: COMMENDATIONS PROCESS

Section 125(26) of the Berkeley City Charter requires the Police Accountability Board (PAB) to establish a regular means of recognizing sworn employees of the Police Department for instances of outstanding service.

PURPOSE

This appendix outlines the structure and process for reviewing and recommending commendations for sworn officers or civilian employees of the BPD, based on the memorandum submitted by Board Member Brent Blackaby (November 3, 2023), prior Standing Rules guidance, and subsequent ODPa recommendations.

CRITERIA FOR COMMENDATION

The Board may commend sworn officers or civilian employees of the Berkeley Police Department (BPD), or groups thereof, who perform extraordinary service, including:

1. Exceptional valor, bravery, or heroism
2. Superior handling of a difficult situation
3. Performance above and beyond typical duties
4. Extraordinary compassion, empathy, or kindness

COMMENDATIONS PROCESS

1. Subcommittee Structure

- The Commendations Subcommittee is composed of 2–3 Board members and 2–3 public members.
- The Subcommittee reviews commendation submissions from the public, the Department, and Board members, pre-sorted and categorized by the Board Secretary.

2. Quarterly Review

- The Subcommittee meets quarterly to review submissions.
- It recommends a group of sworn officers or employees for official commendation and identifies additional individuals for inclusion in a “Notable Service” packet.

3. Board Action

- The Subcommittee’s recommendations are agendized for Board consideration.
- Commendations require majority approval of members present to pass.

- Approved commendations are communicated to City Council and the Chief of Police, and added to personnel files as appropriate.

4. Recognition Methods

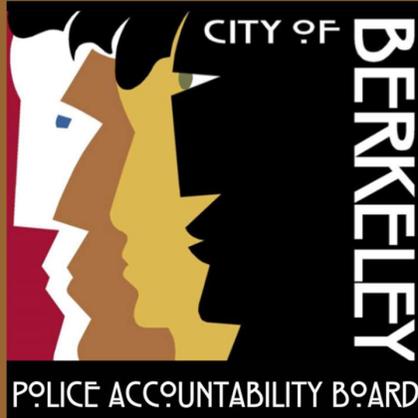
The Board may choose additional recognition methods, including:

- Certificates or plaques
- Public recognition at events (e.g., BPA Annual Dinner)
- Other acknowledgments, subject to budget approval

IMPLEMENTATION NOTES

- The Board Secretary agendizes commendations as they are received.
- A motion to commend must describe the action or incident giving rise to the recognition and explain how it meets the criteria.
- Commendations and Notable Service packets are included in ODPa/PAB annual reporting.

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Item 9.f.

Material for the Review of the BPD's Policy 300 "Use of Force Policy"

- Proposed Redlines to Policy 300
 - Presentation Explaining Proposed Changes
- ODPa Memorandum Titled "Overview of Development and Council Approval of BPD Policy 300 'Use of Force'" (Material from January 7, 2026 PAB Regular Meeting)

Proposed BPD Redlines to Policy 300

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Berkeley Police Department

Use of Force – PAB DRAFT 12-17-25**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.~~

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Government Code § 7286).

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

Retaliation prohibitions for reporting suspected violations are addressed in the Anti-Retaliation Policy.

300.1.1 – 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~~

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~~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.~~

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

~~300.1.2~~ 300.1.1 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.~~

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~~**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.~~

300.1.2 DEFINITIONS

Definitions related to this policy include:

~~**Active Resistance**—Making physically evasive movements to defeat a member of the police service's attempt at control, including bracing, tensing, pushing or verbally signaling an intention to avoid or prevent being taken into or retained in custody~~

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

~~**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~~

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

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.

~~**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.).~~

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 (Penal Code § 835a).

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 (Government Code § 7286(a)).

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 him/herself to be searched, escorted, handcuffed, or restrained.

~~**Less Lethal Munitions** Specialty impact munitions, hand delivered or propelled from launching devices, at an extended range, intended for use based on manufacturer's recommendations in compliance with policy.~~

~~**Less Than Lethal Force**—Any use of force which, due to possible physiological effects of~~

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~~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.~~

~~**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.~~

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

~~**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.~~

~~**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.”~~

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).

~~**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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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.

~~**Ramming**—The use of a vehicle to intentionally hit another vehicle~~

Serious bodily injury - A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement (Penal Code § 243(f)(4)).

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 (Penal Code § 835a).

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

~~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.~~

300.2.2 DUTY TO INTERCEDE

Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, shall, when in a position to do so, intercede (as defined by Government Code § 7286) to prevent the use of unreasonable force.

When observing force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

300.2.3 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)).

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300.2.4 DUTY TO REPORT EXCESSIVE FORCE

Any officer who observes a law enforcement officer or an employee use force that potentially exceeds what the officer reasonably believes to be necessary shall immediately report these observations to a supervisor (Government Code § 7286(b)).

300.2.1 FAIR AND UNBIASED USE OF FORCE

Officers are expected to carry out their duties, including the use of force, in a manner that is fair, unbiased (Government Code § 7286(b)). See the Fair and Impartial Policing Policy for additional guidance.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved or authorized tools, weapons, or methods provided by the Berkeley Police Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical

injury before applying reasonable force.

300.3.1 ALTERNATIVE TACTICS – DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers ~~should~~ shall evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

~~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.~~

300.3.2 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable 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. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).

~~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.~~

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- ~~(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, 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~~

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~~only be used in compliance with this policy as described in Section 300.4.~~

300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Government Code § 7286(b)). These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time (Penal Code § 835a).
- (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 leading up to the use of force (Penal Code § 835a).
- (e) The effects of suspected drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).
- (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 (Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.
- (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.

~~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.~~

300.3.4: 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 application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

~~300.3.3 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.~~

300.3.5 RESTRICTIONS ON THE USE OF CAROTID CONTROL HOLD

Officers of this department are not authorized to use a carotid restraint hold. A carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck that involves a substantial risk of restricting blood flow any may render the person unconscious in order to subdue or control the person (Government Code § 7286.5).

300.3.6 RESTRICTIONS ON THE USE OF A CHOKE HOLD

Officers of this department are not authorized to use a choke hold. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe (Government Code § 7286.5).

300.3.7 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 controlled, the individual is safely secured, the officers should promptly check and continuously monitor the individual’s condition should for signs of medical distress (Government Code § 7286.5).

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 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should

not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Berkeley Police Department for this specific purpose.

~~300.3.4 DE-ESCALATION TACTICS~~

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

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

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

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

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

~~situation using de-escalation and/or crisis Intervention techniques.~~

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

~~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.~~

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~~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 USE OF DEADLY FORCE

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).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect themselves or others from what the officer reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

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

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imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

Additionally, an officer shall not use deadly force against a person whose actions are a threat solely to property unless the person poses an imminent danger of death or serious physical injury to the officer or others in close proximity.

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 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.

300.1—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.~~

300.4.2 DISPLAYING OF FIREARMS

Given that individuals might ~~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 (Government Code § 7286(b)).

- (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 the officer reasonably believes that a 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 such threat until the officer no longer perceives such threat.

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

300.4.3 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.

300.5 REPORTING THE USE OF FORCE

All use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why they believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a "Use of Pepper Spray Report."

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.

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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).

300.1 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.

~~300.1.1 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.~~

300.5.2 NOTIFICATION TO SUPERVISORS

Any use of force by an officer shall be reported immediately to a supervisor, including, but not limited to the following circumstances (Penal Code § 832.13):

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- ~~(b)~~(c) The application of control holds or pain compliance techniques (but not as part of routine handcuffing).
- ~~(e)~~(d) The individual subjected to the force complained of injury or continuing pain.
- ~~(d)~~(e) The individual indicates intent to pursue litigation.
- ~~(e)~~(f) Any application of a conducted energy device or control device.
- ~~(f)~~(g) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- ~~(g)~~(h) The individual subjected to the force was rendered unconscious.
- ~~(h)~~(i) An individual was struck or kicked.
- ~~(i)~~(j) An individual alleges unreasonable force was used or that any of the above has occurred.

As used in this subsection, "immediately" means as soon as it is safe and feasible to do so.

300.5.3 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

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 Maintenance Policy.

300.X.1 SUPERVISOR RESPONSIBILITY (**REARRANGE/MOVE TO 300.7 SECTION**)

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to (Government Code § 7286(b)):

- (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) For Level 3 Uses of Force or when otherwise appropriate, ~~When possible,~~ separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived ~~d~~ their Miranda rights ~~s~~, the following should apply:
 - a.i. The content of the interview should not be summarized or included in any related criminal charges

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~~i~~-ii. The fact that a recorded interview was conducted should be documented in a property or other report.

~~(d)~~iii. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

~~(e)~~(d) 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.

~~(f)~~(e) Identify any witnesses not already included in related reports.

~~(g)~~(f) Review and approve all related reports.

~~(h)~~(g) Review body worn camera footage related to the incident.

~~(i)~~(h) Determine if there is any indication that the subject may pursue civil litigation.

a. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

~~(j)~~(i) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

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.

300.5.4 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:

(a) Control holds/ pain compliance techniques (but not as part of routine handcuffing)

~~(b) Leverage~~

~~(c) Grab~~

~~(d) Bodyweight~~

~~(e)(b) The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.~~

~~(f)(c) 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

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individual, and/or pointed at an individual. For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.

2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

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

Level 3

- (a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.
- (b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.
- (c) The officer used any of the following force options:
 1. Chemical Agents/Munitions
 2. Impact Weapon Strikes
 3. Personal Body Weapons
- (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.

~~300.5.5 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.~~

- ~~(a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence as described in such as 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.~~

~~300.4.1 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.~~

300.6 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.

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See the Medical Aid and Response Policy for additional guidelines.

300.7 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 the Use of Force Review Board Policy 304 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

300.8 WATCH COMMANDER RESPONSIBILITY

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

300.9 TRAINING

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

300.9.1 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.

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

300.9.2 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)).

300.10 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:~~

At least annually, the Office of Strategic Planning and Accountability shall prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police, Police Accountability Board, and as part of the Department's annual report to City Council. The report shall not contain the names of officers, suspects, or case numbers, and should include:

- (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 revision recommendations.

300.10.1 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

300.11 USE OF FORCE 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.~~

The receipt, processing, and investigation of civilian complaints involving use of force incidents should be handled in accordance with the Personnel Complaints Policy (Government Code § 7286(b)).

~~300.12 POLICY REVIEW AND UPDATES-~~

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

The Chief of Police or the authorized designee shall regularly review and update this policy to reflect

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developing practices and procedures. (Government Code § 7286(b)).

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.

300.13300.12 POLICY AVAILABILITY

The Chief of Police or the authorized designee should ensure this policy is accessible to the public (Government Code § 7286(c)).

300.14 PUBLIC RECORDS REQUESTS

Requests for public records involving an officer's personnel records shall be processed in accordance with Penal Code section 832.7, and the PERSONNEL RECORDS AND Records Management and Release policies (Government Code § 7286(b))

~~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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Presentation Explaining Proposed Changes



Policy 300 – Use of Force: Revision

Sgt. Rafferty
Berkeley Police Department
Policy & Training Bureau



Policy 300 Revision

- Product of a working group
 - Defensive Tactics Unit
 - Firearms and Tactics Unit
 - Field Training Officers
 - Management
 - Policy staff



Policy 300 Revision

- Goals of Review/Revision
 - Required under the policy
 - Incorporate GC§7286
- Streamline the policy
 - Training Consideration
 - Ease of Reading and Understanding
- Implement best practices
- Adjust any changes to case law



Policy 300 Revision

- Original Policy was created in 2021
 - BPD, BPA, PRC
- Updated in 2023
- Updated in 2024
- **Substantive Changes ---IN PROGRESS---**
- GC§7286 codified many of the items implemented in the original policy



GC§7286 – LE Use of Force Policies

- Senate Bill 230 (Caballero, 2019)
- Linked to Assembly Bill 392
- Signed 2019 by Gov. Newsom
- Operationally implemented by 2021



GC§7286 – LE Use of Force Policies

- (a) For the purposes of this section:
 - (1) “**Deadly force**” means any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm.
 - (2) “**Excessive force**” means a level of force that is found to have violated Section 835a of the Penal Code, the requirements on the use of force required by this section, or any other law or statute.
 - (3) “**Feasible**” means 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.
 - (4) “**Intercede**” includes, but is not limited to, physically stopping the excessive use of force, recording the excessive force, if equipped with a body-worn camera, and documenting efforts to intervene, efforts to deescalate the offending officer’s excessive use of force, and confronting the offending officer about the excessive force during the use of force and, if the officer continues, reporting to dispatch or the watch commander on duty and stating the offending officer’s name, unit, location, time, and situation, in order to establish a duty for that officer to intervene.
 - (5) “**Law enforcement agency**” means any police department, sheriff’s department, district attorney, county probation department, transit agency police department, school district police department, the police department of any campus of the University of California, the California State University, or community college, the Department of the California Highway Patrol, the Department of Fish and Wildlife, and the Department of Justice.
 - (6) “**Retaliation**” means demotion, failure to promote to a higher position when warranted by merit, denial of access to training and professional development opportunities, denial of access to resources necessary for an officer to properly perform their duties, or intimidation, harassment, or the threat of injury while on duty or off duty.



GC§7286 – LE Use of Force Policies

- (b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a **minimum standard on the use of force**. Each agency's policy shall include all of the following:
 - (1) A requirement that officers utilize **deescalation** techniques, **crisis intervention tactics**, and other **alternatives to force** when feasible.
 - (2) A requirement that an officer may only use a level of force that they reasonably believe is **proportional** to the seriousness of the suspected offense or the **reasonably perceived level of actual or threatened resistance**.
 - (3) A requirement that officers **immediately report potential excessive force** to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.
 - (4) A **prohibition on retaliation** against an officer who reports a suspected violation of a law or regulation by another officer to a supervisor or other person at the law enforcement agency who has the authority to investigate the violation.



GC§7286 – LE Use of Force Policies

- (b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a **minimum standard on the use of force**. Each agency's policy shall include all of the following:
 - (5) Clear and specific guidelines regarding situations in which officers **may or may not draw a firearm or point a firearm** at a person.
 - (6) A requirement that officers **consider their surroundings and potential risks to bystanders**, to the extent reasonable under the circumstances, before discharging a firearm.
 - (7) Procedures for disclosing public records in accordance with Section 832.7.
 - (8) Procedures for the filing, investigation, and reporting of **citizen complaints** regarding use of force incidents.
 - (9) A requirement that an officer **intercede** when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an **objectively reasonable** officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
 - (10) Comprehensive and specific guidelines regarding **approved methods and devices** available for the application of force.



GC§7286 – LE Use of Force Policies

- (b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a minimum standard on the use of force. Each agency's policy shall include all of the following:
- (11) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is **fair and unbiased**.
- (12) Comprehensive and specific guidelines for the **application of deadly force**.
- (13) Comprehensive and detailed requirements for prompt **internal reporting and notification regarding a use of force incident**, including reporting use of force incidents to the Department of Justice in compliance with Section 12525.2.
- (14) The **role of supervisors** in the review of use of force applications.
- (15) A requirement that officers promptly provide, if properly trained, or otherwise promptly procure **medical assistance** for persons injured in a use of force incident, when reasonable and safe to do so.
- (16) **Training standards and requirements** relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors.
- (17) Training and guidelines regarding **vulnerable populations**, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.



GC§7286 – LE Use of Force Policies

- (b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a minimum standard on the use of force. Each agency's policy shall include all of the following:
 - (18) Procedures to prohibit an officer from training other officers for a period of at least three years from the date that an abuse of force complaint against the officer is substantiated.
 - (19) A requirement that an officer that has received all required training on the requirement to intercede and fails to act pursuant to paragraph (9) be disciplined up to and including in the same manner as the officer that committed the excessive force.
 - (20) Comprehensive and specific guidelines under which the **discharge of a firearm** at or from a moving vehicle may or may not be permitted.
 - (21) Factors for **evaluating and reviewing** all use of force incidents.
 - (22) Minimum training and course titles required to meet the objectives in the use of force policy.
 - (23) A requirement for the **regular review and updating of the policy** to reflect developing practices and procedures.
- (c) Each law enforcement agency shall make their use of force policy adopted pursuant to this section **accessible to the public**.
- (d) This section does not supersede the collective bargaining procedures established pursuant to the Myers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4), the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4), or the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4).



GC§7286.5 – LE Use of Force Policies

- (a) (1) A law enforcement agency shall not authorize the use of a **carotid restraint** or **choke hold** by any peace officer employed by that agency.
- (2) A law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of **positional asphyxia**.
- (b) As used in this section, the following terms are defined as follows:
 - (1) “**Carotid restraint**” means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person.
 - (2) “**Choke hold**” means any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.
 - (3) “Law enforcement agency” means any agency, department, or other entity of the state or any political subdivision thereof, that employs any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.
 - (4) “Positional asphyxia” means situating a person in a manner that compresses their airway and reduces the ability to sustain adequate breathing. This includes, without limitation, the use of any physical restraint that causes a person’s respiratory airway to be compressed or impairs the person’s breathing or respiratory capacity, including any action in which pressure or body weight is unreasonably applied against a restrained person’s neck, torso, or back, or positioning a restrained person without reasonable monitoring for signs of asphyxia.



Substantive Changes to Policy 300

- Implement GC87286 mandates
- Adds POLICY section
- Replacing USE OF FORCE STANDARD with USE OF FORCE
- Remove USE OF FORCE CONTINUUM
- Edit DE-ESCALATION TACTICS
- Verbatim USE OF DEADLY FORCE
 - In line with standards
 - Remove ambiguity in training and application
 - Clarity for situations where split seconds matter
- Clearer callouts for OFFICER and SUPERVISOR responsibilities
- Augment LEVEL 1 (remove: leverage, grab, bodyweight, lowering)
 - In line with CityGate report



300.1.2 Use of Force Standard

CURRENT

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.

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

PROPOSED: REMOVE & REPLACE with new **USE OF FORCE** section

300.3 USE OF FORCE

Officers **shall** use only that amount of force that **reasonably appears necessary given the facts and totality of the circumstances** known to or perceived by the officer at the time of the event to accomplish a **legitimate law enforcement purpose** (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a **reasonable officer** on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they **reasonably believe is proportional** to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved or authorized tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be **objectively reasonable** and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.



300.1.3 Core Principles

CURRENT

- A. De Escalation & Force Minimization
- B. Proportionality
- C. Minimizing the Use of Deadly Force
- D. Duty to Intercede
- E. Vulnerable Populations
- F. Foster Strong Community Relationships
- G. Fair and Unbiased Policing

PROPOSED:

Remove/Replace

MANY ITEMS ARE NOW INCORPORATED BY LAW



300.1.3 Definitions

CURRENT

Not alphabetized

Some outdated terms

PROPOSED:

1. Reorder
2. Omit outdated terms
3. Incorporate new terms
4. Keep towards beginning of policy



300.2 Duty to Intercede and Report

CURRENT

DUTY TO INTERCEDE AND DUTY TO REPORT

PROPOSED:

REPLACE with 3 different headings:

DUTY TO INTERCEDE

FAILURE TO INTERCEDE

DUTY TO REPORT EXCESSIVE FORCE



300 Policy

CURRENT

NO CURRENT “**POLICY**” section

PROPOSED: **CREATE NEW SECTION** **POLICY**

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.



300.3.1 Factors to Determine...of Force

CURRENT

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.

PROPOSED: Adjust to the following

FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (**Government Code § 7286(b)**). These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others (**Penal Code § 835a**).
- (b) The conduct of the individual being confronted, as reasonably perceived by the Officer at the time (**Penal Code § 835a**).
- (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 **leading up to the use of force** (**Penal Code §835a**).
- (e) The effects of **suspected** drugs or alcohol.
- (f) The individual's apparent mental state or capacity (**Penal Code § 835a**).
- (g) The individual's apparent ability to understand and comply with officer commands (**Penal Code § 835a**).
- (h) Proximity of weapons or dangerous improvised devices.

(differences in RED)



300.3.1 Factors to Determine..of Force

CURRENT

- (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.

PROPOSED: Adjust to the following

FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

- (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 **(Penal Code § 835a)**.
- (k) Seriousness of the suspected offense or reason for contact with the individual **prior to and at the time force is used**.
- (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.

(differences in RED)



300.3.1 Factors to Determine...of Force

CURRENT

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.

PROPOSED: Adjust to the following

FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

REMOVE THIS SECTION

This is a carryover from General Order U-2

Legally outdated; as objective reasonableness is what is evaluated

Flexible decision making is valued and taught instead of linear thinking

(differences in RED)



300.3.2 Use of Force Continuum

CURRENT

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.**

PROPOSED: Adjust to the following

REMOVE THIS SECTION

This is a carryover from General Order U-2

Legally outdated; as objective reasonableness is what is evaluated

Flexible decision making is valued and taught instead of linear thinking



300.3.4 De-Escalation Tactics

CURRENT

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.

PROPOSED: Replace with the following (removes 1.5 pages of policy)

ALTERNATIVE TACTICS – DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

(differences in RED)



300.3.4

CURRENT

DE-ESCALATION TACTICS

- 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.

ALTERNATIVE TACTICS – DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

(differences in RED)



300.3.4

CURRENT

DE-ESCALATION TACTICS

(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.

ALTERNATIVE TACTICS – DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.



300.3.7 Restraint and Control Devices

CURRENT

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.

This item points to 2 different policies:

1. Policy 302, Handcuffing and Restraints
2. Policy 303, Control Devices and Techniques

The portion on the COUNCIL RESOLUTION is moved to the **ADDITIONAL RESTRICTIONS** section of the policy.



300.3.8 Chokehold Prohibition

CURRENT

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.

- **RESTRICTIONS ON THE USE OF CAROTID CONTROL HOLD**

Officers of this department are not authorized to use a carotid restraint hold. A carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person (Government Code § 7286.5)

- **RESTRICTIONS ON THE USE OF A CHOKE HOLD**

Officers of this department are not authorized to use a choke hold. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe (Government Code § 7286.5).

*GC is now in line with the 1985 Council Resolution.

**"Bar-arm hold" is a challenging term, as it relates to a "bar-arm takedown" that has nothing to do with the neck and cannot be confused with a Choke Hold.

(REVISED TEXT)



300.3.9 Additional Restrictions

CURRENT

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).

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).

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.

*from Restraint and Control Devices section

(REVISED TEXT)



300.4 Use of Deadly Force

CURRENT

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.

DEADLY FORCE APPLICATIONS

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).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect themselves or others from what the officer reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

(REVISED TEXT, and LEXI Verbatim)



300.4 Use of Deadly Force

CURRENT

USE OF DEADLY FORCE - CONTINUED

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).

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).

Additionally, an officer shall not use deadly force against a person whose actions are a threat solely to **property** unless the person poses an imminent danger of death or serious physical injury to the officer or others in close proximity.

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)

(REVISED TEXT)



300.5 Use of Vehicles

CURRENT

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 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.

*This information is covered in POLICY 307, VEHICLE PURSUITS and the VCT POLICY.

*If a vehicle is used when warranted as deadly force, it is covered by that section in this policy.



300.6.3 Employee Use of Force

CURRENT

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 as described in such as 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.

(redundant with REPORTING REQUIREMENTS/REPORTING THE USE OF FORCE)

NOTIFICATION TO SUPERVISORS

Any use of force by an officer shall be reported immediately to a supervisor, including but not limited to the following circumstances (Penal Code § 832.13):

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The application of control holds or pain compliance techniques (but not as part of routine handcuffing)
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a conducted energy device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

As used in this subsection, "immediately" means as soon as it is safe and feasible to do so.

*Gives a clear expectation to officer of what/when they need to report to a Sgt.



300.6.1 Supervisor Responsibility

CURRENT

SUPERVISOR RESPONSIBILITY

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

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

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

PROPOSED: EDITS to Section

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to (Government Code § 7286(b)):

- (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) For Level 3 uses of force or when otherwise appropriate, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:
 - 1. The content of the interview should not be summarized or included in any related criminal charges.
 - 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) 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.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Review body worn camera footage related to the incident.
- (h) Determine if there is any indication that the subject may pursue civil litigation.
 - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

(REVISED TEXT)



300.6.2 Use of Force Reporting Levels

CURRENT

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 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 (but not as a part of routine handcuffing)
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.

(REVISED TEXT)



Sgt. Rafferty
Berkeley Police Department
Policy & Training Bureau

ODPA Memorandum Titled “Overview of Development and Council Approval of BPD Policy 300 ‘Use of Force’”
(Material from January 7, 2026 PAB Regular Meeting)



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
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.¹

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, 2020.² 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.³ The recommendation was a continuation of the Council's original referral on October 31, 2017,⁴ which directed the CMO to amend the use-of-force policy, previously General Order (GO) U-2.⁵ 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

¹ See Attached BPD Policy 300, "Use of Force."

² 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%C3%81nKqp8eFHYGogupNd1lcs25rJqp1WMCwEkxwK6bKv5Lmkve6lF%C3%894NQ%C3%89SQumTlAnT33XE9bmCJ24%3D/>

³ Berkeley City Council Resolution 69,438-N.S.:
<https://records.cityofberkeley.info/PublicAccess/api/Document/Ae2SKTCnGOMlvKBoXVhr1rE40osCeV81hcK0l08el%C3%89gyndcoE0mblfrTTv21CRQWZBh2tPkWMUcNKICHz3Yi6Zc%3D/>

⁴ October 31, 2017 Regular Meeting Minutes of the Berkeley City Council:
<https://records.cityofberkeley.info/PublicAccess/api/Document/AXO%C3%89Ct86ANdVEGN67LGd6JC4ZQlknQDrMuOa2sIZFnYXRggFxoKpANuRQngFBnhy0C68JdcG5xRgwfcgOVM0BHM%3D/>

⁵ General Order U-2 "Use of Force" (See Page 55):
<https://records.cityofberkeley.info/PublicAccess/api/Document/ATnfpk4tGBNI%C3%81nKqp8eFHYGogupNd1lcs25rJqp1WMCwEkxwK6bKv5Lmkve6lF%C3%894NQ%C3%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 392,⁶ 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.⁷

Overview of July 23, 2020 Adopted Use of Force Policy

Former Councilmember Harrison’s proposed use of force policy⁸ was accepted at the meeting, subject to the following amendments and conditions:⁹

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

⁶ Assembly Bill No. 392 (Weber): https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB392

⁷ July 23, 2020 Special Meeting Minutes of the Berkeley City Council: <https://records.cityofberkeley.info/PublicAccess/api/Document/AXjjUxOBBAogruxeA7MQWPky8wBLcczSZppEtiZT8g2LpLCaHBPWrpSBY8l%C3%89fBx8GXSbceJXhoQL4RNLZMvtdc0%3D/>

⁸ July 23, 2020 Revised Agenda Material for Supplemental 3 (Harrison): <https://records.cityofberkeley.info/PublicAccess/api/Document/AcsHyeWyT%C3%89KdM6m1P%C3%81IH3RpUbrqZusDiekW1E7LWtXmgRetbCpfAtcG5PePwQ10qTFA4Di3nJly%C3%81XGB1OYIrqIY%3D/>

⁹ 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

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:

Policy 300

- 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

Use of Force

300.1 SANCTITY OF LIFE

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

300.1.1 PURPOSE AND SCOPE

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

300.1.2 USE OF FORCE STANDARD

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

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

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

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

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Law Enforcement Services Manual

Use of Force

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

300.1.3 CORE PRINCIPLES

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

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

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

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

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

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

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

300.1.4 DEFINITIONS

Definitions related to this policy include:

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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.

Berkeley Police Department

Law Enforcement Services Manual

Use of Force

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).

Berkeley Police Department

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Use of Force

- (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.

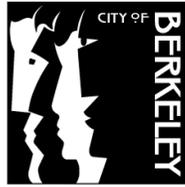
300.13 POLICY REVIEW AND UPDATES

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.g.

Proposal from Councilmember Humbert and Councilmember O'keefe
for the Rescission and Replacement of the Police Equipment and
Community Safety Ordinance (Incorporating Feedback Made by the
Public Safety Policy Committee on July 21, 2025)



**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
REGULAR MEETING MINUTES**

**Monday, July 21, 2025
10:30 AM**

Redwood Room – 2180 Milvia Street, 6th Floor, Berkeley, CA 94704
Teleconference Location – 5617 NW Jetty Ave, Lincoln City, OR 97367

Committee Members:

Councilmembers Rashi Kesarwani, Shoshana O’Keefe, and Brent Blackaby
Alternate: Mayor Adena Ishii

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. All Committee meetings are recorded.

Use this URL <https://cityofberkeley-info.zoomgov.com/j/1612503824> to access the meeting remotely. To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter **Meeting ID: 161 250 3824**. To provide public comment, press *9 and wait to be recognized by the Chair. To submit a written communication for the Committee’s consideration and inclusion in the public record, email policycommittee@berkeleyca.gov.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

California Government Code Section 84308 (Levine Act) Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

MINUTES

Roll Call 10:35 a.m.

Present: O’Keefe, Blackaby

Absent: Kesarwani

Councilmember Kesarwani present at 10:36 a.m.

Public Comment on Non-Agenda Matters – 0 speakers.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - May 8, 2025

Action: M/S/C (Kesarwani/O’Keefe) to approve the May 8, 2025 minutes.

Vote: All Ayes

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Rescission of the Police Equipment and Community Safety Ordinance

From: Councilmember Humbert (Author), Councilmember O’Keefe (Co-Sponsor)

Referred: June 2, 2025

Due: November 10, 2025

Recommendation: Adopt Ordinance No. xxxx-N.S. which rescinds Ordinance 7760-N.S. and adopt a resolution to rescind the Police Equipment and Community Safety Ordinance (enacted May 11, 2021) because the State-level reporting requirements mandated by California AB 481 already provide a comprehensive and sufficient framework for police equipment oversight.

Financial Implications: None

Contact: Mark Humbert, Councilmember, District 8, (510) 981-7180

Action: 3 speakers. M/S/C (Kesarwani/Blackaby) to send the item with a qualified positive recommendation to Council, recognizing the intention for one report, with the following matters noted for further consideration:

- Clarifying the role of public reporting of data through the Transparency Hub.
- Continued consideration of less-lethal deployment policies, including a possible review of Policy 300.
- Consideration of reporting on the acquisition and use of controlled equipment, aligning with AB 481 and allowing for review by the Police Accountability Board.

Vote: All Ayes.

Committee Action Items

- 3. **Discussion Item: Potential funding mechanisms for financing EMBER program implementation**
From: Councilmember Blackaby
 Contact: Brent Blackaby, Councilmember, District 6, (510) 981-7160
Action: 3 speakers. Presentation made and discussion held. The Committee concluded its consideration of this item.

- 4. **Residents Oppose Broadcasting Obnoxious Cacophony Out in Public (ROBOCOP)**
From: Councilmember O'Keefe (Author)
Referred Date: June 9, 2025
Due Date: November 17, 2025
Recommendation: Refer to the City Manager a request that the City Attorney draft amendments to Berkeley Municipal Code Chapter 13.40, Community Noise, to prohibit in certain circumstances the installation and use of motion-activated surveillance devices that emit artificial or pre-recorded sound—including alarms, sirens, or voice recordings—in response to the presence or motion of persons in the public right-of-way or on private property that is open to the public. This prohibition shall apply to such devices when installed in the public right-of-way or on private property when triggered by motion in the public right-of-way, and when the sound emitted is audible in public areas. The prohibition shall not apply to conventional burglar alarms that activate only in response to unauthorized entry or tampering.
Financial Implications: See report
 Contact: Shoshana O'Keefe, Councilmember, District 5, (510) 981-7150
Action: Item continued to a future meeting.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- 5. **Discussion Item: Update on the Five-Year Infrastructure Plan and how it factors in with reduction of traffic violence**
From: Councilmember Tregub
 Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

Items for Future Agendas

- None

Adjournment

Action: M/S/C (O'Keefe/Kesarwani) to adjourn the meeting.
 Vote: All Ayes.

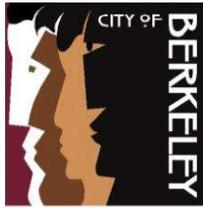
Adjourned at 12:25 p.m.

I hereby certify that the foregoing is a true and correct record of the Public Safety Committee meeting held on July 21, 2025.

Wendy Sorensen, Assistant City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@berkeleyca.gov.



Berkeley City Councilmember
Mark Humbert, District 8
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
mhumbert@cityofberkeley.info
www.MarkHumbert.com

ACTION CALENDAR

~~June 17, 2025~~ January 27, 2026

To: Honorable Mayor and City Councilmembers
From: Councilmember Mark Humbert (Author) and Councilmember Shoshana O’Keefe (Co-sponsor)
Subject: Rescission and replacement of the Police Equipment and Community Safety Ordinance

RECOMMENDATION

~~Adopt Ordinance No. xxx-N.S. which r~~Rescind and replace Ordinance 7760-N.S. and A adopt a resolution to rescind the Police Equipment and Community Safety Ordinance (~~Ord. 7760-NS,~~ enacted May 11, 2021) because the State-level reporting requirements mandated by ~~California AB 481~~Chapter 12.8 (Sections 7070 to 7075) of Division 7 of Title 1 of the California Government Code (hereafter referred to as Chapter 12.8) already provide a comprehensive and sufficient framework for police equipment oversight.

This item would bring Berkeley’s local reporting requirements into alignment with those of AB 481-Chapter 12.8 and allow for one consolidated report, beginning with the 2025 report due in March 2026. The item would also maintain additional targeted reporting requirements for equipment deployment and ongoing use of force reporting under Policy 300.

CURRENT SITUATION AND ITS EFFECTS

The City currently operates under a local ordinance that imposes specific reporting and oversight requirements on police equipment. ~~Five months a~~After the enactment of this ordinance, new state law under ~~California AB 481 Chapter 12.8~~ establishes ~~d~~ a uniform reporting framework that fully meets the oversight objectives originally intended by the local ordinance. This overlap has led to duplicative reporting that unnecessarily burdens City staff, reduces officer availability, and complicates administration.

BACKGROUND

The Police Equipment and Community Safety Ordinance, adopted on May 11, 2021, aimed to strengthen local oversight, transparency, and accountability in the use of police equipment.

However, soon after its adoption, the state enacted AB 481 [Law enforcement and state agencies: military equipment: funding, acquisition, and use \(Chiu, 2021\)](#), which established a standardized statewide reporting framework for police equipment across the state within [Chapter 12.8 \(Sections 7070 to 7075\) of Division 7 of Title 1 of the California Government Code](#). Under Chapter 12.8, BPD must annually report:

1. A summary of how military equipment was used and for what purpose;
2. Any complaints or concerns received about such equipment;
3. Results of internal audits, any violations of the equipment use policy, and corrective actions taken;
4. Total annual costs for each equipment type, including acquisition, maintenance, and funding sources for the following year;
5. The quantity of each type of military equipment currently held; and
6. Any planned acquisitions and their quantities for the upcoming year.

While ~~AB 481~~[Chapter 12.8](#) excludes certain items such as batons and Oleoresin Capsicum (OC) spray, their use is already documented under BPD's Use of Force Policy and made public via the City's Transparency Hub, maintaining public accountability. As a result, the local ordinance has become redundant—duplicating state requirements, consuming staff resources, and complicating administrative processes without adding meaningful oversight.

PROPOSED CHANGES AND REASONING

It is proposed that the Police Equipment and Community Safety Ordinance be rescinded [and replaced](#) in favor of adhering solely to the State-mandated reporting requirements established by ~~AB 481~~[Chapter 12.8](#). Eliminating the local ordinance will streamline reporting and remove redundant administrative requirements. This change will allow City staff to focus on higher-priority operational matters while maintaining robust oversight and transparency. The State law already incorporates the necessary reporting elements and even extends its scope to include additional equipment categories not specifically covered under the local ordinance, making the local requirements duplicative and unnecessary. In essence, the proposed rescission reflects a practical alignment with State law, ensuring that local practices do not impose additional burdens where a comprehensive framework already exists.

[The replacement ordinance would continue to require local reporting of specific instances of deployment and/or use of military equipment, but with more targeted definitions and requirements.](#)

RATIONALE FOR RECOMMENDATION

The recommendation to rescind the Police Equipment and Community Safety Ordinance is based on the recognition that ~~California AB 481~~[Chapter 12.8](#) provides an adequate, statewide reporting framework that meets the intended goals of transparency and accountability.

Rescission and replacement of the Police Equipment and Community Safety Ordinance CONSENT
ACTION CALENDAR: June 17 26, 2025 January 27, 2026

Maintaining both the local ordinance and the state law creates redundancy that diverts valuable City resources from more pressing priorities. Aligning with the State-mandated reporting not only simplifies administrative procedures but also ensures consistency across jurisdictions. This approach supports effective governance by reducing unnecessary duplication, enhancing operational efficiency, and reinforcing the City’s commitment to progressive policy that is both practical and fiscally responsible. Relying on the State-mandated reporting ensures that BPD collects and publishes data that will allow them to compare their work with other agencies, support transparency and balance oversight with fiscal responsibility, administrative burden and best allocation of limited personnel resources. The City will continue to make information about police equipment and use of force publicly available, ensuring that rescinding the ordinance does not reduce public transparency or oversight.

FISCAL IMPACTS

No significant additional expenditures are anticipated as a result of these revisions. The changes are expected to generate significant administrative efficiencies and may yield cost savings that can be redirected to other operational public safety needs.

CONTACT INFORMATION

Councilmember Mark Humbert
mhumbert@berkeleyca.gov

ATTACHMENTS

- ~~1.~~ Resolution
- ~~21.~~ Ordinance

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

Resolution Rescinding the Police Equipment and Community Safety Ordinance

~~WHEREAS, on May 11, 2021, the City Council adopted the Police Equipment and Community Safety Ordinance (Ord. 7760-NS) to enhance local oversight, transparency, and accountability in the management of police equipment; and~~

~~WHEREAS, on October 1, 2021, California AB 481 was enacted, establishing a comprehensive statewide reporting framework for police equipment that fully satisfies the oversight objectives originally intended by the local ordinance; and~~

~~WHEREAS, maintaining both the local ordinance and the State-mandated reporting requirements results in duplicative reporting efforts that unnecessarily burden City staff and complicate administrative processes; and~~

~~WHEREAS, rescinding the Police Equipment and Community Safety Ordinance will streamline reporting processes, eliminate redundant administrative tasks, and allow City staff to focus on higher-priority operational matters while maintaining robust oversight and transparency; and~~

~~WHEREAS, the reporting framework mandated by AB 481 incorporates all necessary oversight elements and extends coverage to additional equipment categories not specifically addressed in the local ordinance, thereby rendering the local requirements superfluous; and~~

~~WHEREAS, rescinding the local ordinance in favor of the State-mandated reporting framework supports effective governance, enhances operational efficiency, and reinforces the City’s commitment to progressive and fiscally responsible policy;~~

~~**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Berkeley that:~~

- ~~1. The Police Equipment and Community Safety Ordinance (Ord. 7760-NS, enacted May 11, 2021) is hereby rescinded in its entirety and replaced by Ordinance NO. X,XXX-N.S. 2026, below.~~
- ~~2. The Police Equipment and Community Safety Ordinance (Ord. 7760-NS, enacted May 11, 2021) is hereby rescinded in its entirety.~~
- ~~3. The City shall adhere solely to the reporting requirements mandated by California AB 481 for police equipment oversight.~~

~~ORDINANCE NO. X,XXX-N.S.~~

~~RESCINDING ORDINANCE 7760-N.S. POLICE EQUIPMENT AND COMMUNITY SAFETY
ORDINANCE~~

~~BE IT ORDAINED by the Council of the City of Berkeley as follows:~~

~~**Section 1. Findings and Purpose**~~

~~A. On May 11, 2021, the City Council adopted Ordinance No. 7760-NS, the Police Equipment and Community Safety Ordinance, to enhance local oversight, transparency, and accountability in the management of police equipment.~~

~~B. On October 1, 2021, the State of California enacted Assembly Bill 481 (AB 481), establishing a comprehensive statewide framework for police equipment reporting and oversight.~~

~~C. The State-mandated requirements of AB 481 satisfies the objectives originally intended by the City's local ordinance, while also extending oversight to additional categories of equipment not addressed by Ordinance No. 7760-NS.~~

~~D. The continued implementation of both the local ordinance and the State-mandated reporting requirements has resulted in duplicative administrative burdens and inefficiencies for City staff.~~

~~E. Rescinding Ordinance No. 7760-NS will streamline the City's reporting processes, eliminate redundant tasks, and enable staff to focus on higher-priority operational responsibilities, while maintaining robust public transparency and accountability under State law.~~

~~F. The City Council finds that rescission of Ordinance No. 7760-NS is consistent with the City's goals of effective governance, operational efficiency, and fiscally responsible policymaking.~~

~~**Section 2. Rescission**~~

~~Ordinance No. 7760-NS, known as the Police Equipment and Community Safety Ordinance, is hereby rescinded in its entirety.~~

~~**Section 3. Compliance with State Law**~~

~~The City of Berkeley shall comply with all applicable provisions of California Assembly Bill 481 and any subsequent amendments thereto governing the acquisition, funding, use, and reporting of police equipment.~~

~~**Section 4. Effective Date**~~

~~This amendment shall become effective 30 days after adoption of this ordinance.~~

~~**Section 5. Posting, Filing, and Publication Requirements**~~

Rescission and replacement of the Police Equipment and Community Safety Ordinance CONSENT
ACTION CALENDAR: June 17 26, 2025 January 27, 2026

~~Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.~~

ORDINANCE NO. X,XXX-N.S.

RESCINDING AND REPLACING ORDINANCE 7760-N.S. POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE WITH THE POLICE EQUIPMENT ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Findings

A. On May 11, 2021, the City Council adopted Ordinance No. 7760-NS, the Police Equipment and Community Safety Ordinance, to enhance local oversight, transparency, and accountability in the management of police equipment.

B. On October 1, 2021, the State of California enacted Assembly Bill 481 ~~(AB 481)~~, establishing a comprehensive statewide framework for police equipment reporting and oversight, codified in Chapter 12.8 (Sections 7070 to 7075) of Division 7 of Title 1 of the California Government Code (hereafter referred to as Chapter 12.8).

C. The State-mandated requirements of ~~AB 481~~Chapter 12.8 satisfy the objectives originally intended by the City’s local ordinance, while also extending oversight to additional categories of equipment not addressed by Ordinance No. 7760-NS.

D. The continued implementation of both the local ordinance and the State-mandated reporting requirements has resulted in duplicative administrative burdens and inefficiencies for City staff.

E. Rescinding Ordinance No. 7760-NS will streamline the City’s reporting processes, eliminate redundant tasks, and enable staff to focus on higher-priority operational responsibilities, while maintaining robust public transparency and accountability under State law.

F. The City Council finds that rescission and replacement of Ordinance No. 7760-NS is consistent with the City’s goals of effective governance, operational efficiency, and fiscally responsible policymaking.

Section 2. Rescission

Ordinance No. 7760-NS, known as the Police Equipment and Community Safety Ordinance, is hereby rescinded. ~~in its entirety and replaced by Ordinance No. X,XXX-N.S. Police Equipment Ordinance~~

Section 3. Compliance with State Law

The City of Berkeley shall comply with all applicable provisions of ~~California Assembly Bill 481 Chapter 12.8 (Sections 7070 to 7075) of Division 7 of Title 1 of the California Government Code and any subsequent amendments thereto governing the acquisition, funding, use, and reporting of police equipment.~~

Section 4. Effective Date

~~This amendment ordinance shall be effective immediately upon adoption and its provisions shall apply to the 2025 report due in March 2026 and to all subsequent reports.~~

Section 5. Posting, Filing, and Publication Requirements

~~Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.~~

~~**Chapter 2.100 POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE of the Berkeley Municipal Code is repealed and replaced in its entirety with the following revised ordinance**~~

Section 4. Chapter 2.100 POLICE EQUIPMENT ORDINANCE

2.100.010 Name of Ordinance

(A) This Ordinance shall be known as the Police Equipment Ordinance. ~~(Ord. XXXX-NS § X, 2026)~~

2.100.020 Purposes of Ordinance

(A) The purposes of this ordinance are to:

- (1) Restate requirements for the Berkeley Police Department (BPD) to produce policies and reports regarding the acquisition, funding, deployment, and use of covered Military Equipment.
- (2) Ensure ongoing consistency between local and State requirements with respect to Military Equipment policies, acquisition, funding, and reporting.
- (3) Avoid duplication of reporting and other effort by the Berkeley Police Department and the Police Accountability Board (PAB).
- (4) Ensure that local requirements remain in place in the event State-level requirements established by ~~Assembly Bill 481 Law enforcement and state agencies: military equipment: funding, acquisition, and use (Chiu, 2021) ("AB 481" hereafter)~~ Chapter 12.8 (Sections 7070 to 7075) of Division 7 of Title 1 of the California Government Code are rescinded or struck down.
- (5) Specify how local requirements differ from State-level requirements.

- (6) Clarify roles and timelines with respect to BPD provision of AB 481 Chapter 12.8 documents, the Police Accountability Board, the PAB's involvement in effectuating AB 481 Chapter 12.8.

2.100.030 Local consistency with California State standards

- (A) All provisions of AB 481 Chapter 12.8 (Sections 7070 to 7075) of Division 7 of Title 1 of the California Government Code, including definitions, reporting requirements, policy requirements, review by elected officials, public meetings, and all other provisions, is hereby incorporated into the Berkeley Municipal Code by reference.
 - (1) In the event that AB 481 Chapter 12.8 and/or its requirements are amended/alterd by the State Legislature or by a court whose jurisdiction covers Berkeley, those revisions shall also be incorporated by reference; this includes amendments made to the original statute or new statutes that may add to the requirements of AB 481 Chapter 12.8.
- (B) The Berkeley Police Department shall be responsible for fulfilling the requirements and provisions of AB 481 Chapter 12.8.
- (C) The policies and reports produced in compliance with AB 481 Chapter 12.8 (or requirements amended/established by successor legislation) by the Berkeley police department shall serve to meet these local reporting requirements.
 - (1) In no event shall this ordinance be interpreted to require BPD to produce multiple versions of the policies/reports required by AB 481 Chapter 12.8.

2.100.040 Additional City of Berkeley Standards

- (A) Subsequent to the adoption of this ordinance, the Berkeley Police Department's Policy 300 (or any successor policy) shall maintain any necessary provisions governing the reporting of instances of Military Equipment Use and/or deployment.

2.100.050 Timelines and Police Accountability Board Role

- (A) The Berkeley Police Department shall make all AB 481 Chapter 12.8 policy and reporting documents available to the public and the Police Accountability Board no less than 30 days prior to the Berkeley Council Meeting where they will be considered for acceptance.
- (B) The Police Accountability Board may review and provide comments on AB 481 Chapter 12.8 policy and reporting documents.
- (C) Police Accountability Board review is not required for the Berkeley City Council to accept and/or approve AB 481 Chapter 12.8 policy and reporting documents
- (D) The Agenda and Rules Subcommittee of the Berkeley City Council may, at its discretion, provide additional time for the Police Accountability Board to complete its review of AB 481 Chapter 12.8 documents before agendizing City Council review of such documents.

2.100.060 Additional Reporting

- (A) Police use of force (irrespective of whether it involved military equipment) shall continue to be reported in a manner consistent with Policy 300 (or a successor policy).
- (1) Any reporting on military equipment use shall include, at a minimum:
- (i) The type of military equipment used;
 - (ii) The type and amount of munitions used (if applicable)
 - (iii) Key outcomes from the military equipment use
- (2) “Less lethal” weapons which fall outside of the definitions in ~~AB 481~~Chapter 12.8 but are subject to reporting requirements established by Policy 300 must continue to be reported in a manner consistent with Policy 300 (or any successor policy).
- (B) As part of its annual ~~AB 481~~Chapter 12.8 reporting, the Berkeley Police Department shall report the deployment of military equipment on a limited basis, consistent with the following definition of “reportable deployment” below:
- (1) Reportable deployment shall include instances where military equipment was pointed or aimed at an individual, group, or crowd in the context of a First amendment activity.
 - (2) Reportable deployment shall include instances in the context of a First amendment activity where an individual present would have reasonably believed that use of the military equipment was not merely possible, but imminent.
 - (3) Reportable deployment shall not include the transport of military equipment.
 - (4) Reportable deployment shall not cover any instance outside the context of a First amendment activity (for example, apprehension of an individual for which a judicial arrest warrant has been issued).

Section 5. Effective Date

This ordinance shall be effective upon the second reading and shall apply to the 2025 report and to all subsequent reports.

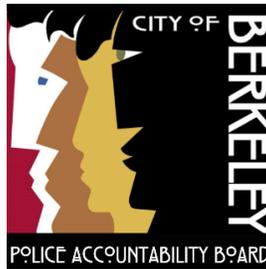
Section 6. Posting, Filing, and Publication Requirements

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Off-Agenda 1

Policy Review Status Updates

Updated January 15, 2026



POLICY REVIEW STATUS REPORT

Guiding Authority

Section 125(3)(a)(1) and Section 125(17)(a) of the Berkeley City Charter¹

Case Load Overview

As of January 7, 2026, the Police Accountability Board (PAB) has six (6) open policy reviews.

Policy Review Number	2023-PR-0007 ²
Policy Topic	Restraining Orders & Interactions with the Elderly
Relevant Policy	BPD Policy 313 "Senior and Disability Victimization" BPD Policy 430 "Civil Disputes"
Status	Review In Progress; Records Obtained
Date Presented to the PAB	7/24/2024
Anticipated Completion	January 2026
Assigned To	ODPA
Summary	
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 complainant indicates possible misunderstandings of order terms. Despite multiple	

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

² 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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encounters and existing orders, the complainant reports continued issues with enforcement.

Activity Report

ODPA staff is finalizing the report and is slated for presentation at a forthcoming Meeting.

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

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

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

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

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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.

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

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

Policy Review No.	Topic
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 2

Legislative Updates Relevant to the PAB's Work



MEMORANDUM

Date: January 16, 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 Updates¹

The deadline for introducing new bills in California is February 20, 2026. As of now, no new bills related to the PAB have been introduced. The following bills passed in 2025 and went into effect on January 1, 2026:

NAME OF LEGISLATION	STATUS	SUMMARY/PURPOSE
<u>SB 385 “Peace Officers”</u>	<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.
<u>AB1178 “Peace Officers: Confidentiality of Records”</u>	<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

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

		verified death threats. It imposes a state-mandated local program and includes legislative findings justifying access limitations.
<u>AB1388 “Law enforcement: settlement agreements.”</u>	<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.
<u>SB707 “Open Meetings: Meeting and teleconference requirements”</u>	<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.
<u>SB-627 “Law enforcement: masks.”</u>	<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.
<u>SB524 “Law Enforcement Agencies: Artificial Intelligence”</u>	<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.
<u>AB487 “Peace officers: confidentiality of records.”</u>	<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
BPD Policy 1505 “2024 Legislative Update”	https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=1037
BPD Policy 1506 “2025 Legislative Update”	https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=1041
The California Peace Officers Association also provides a yearly California Legislative and Legal Digest.	https://cpoa.org/wp-content/uploads/2024/11/2025-Legislative-Legal-Digest.pdf

Lexipol Policy Updates

The following policies have been updated on Lexipol since the PAB’s January 7, 2026, meeting:

Policy	Date Implemented	Description
No. 401 – Fair and Impartial Policing	1/7/2026	Adds the following text to section 401.2: <i>No member of the Department shall establish, enforce, or comply with any quota for arrests or citations (Vehicle Code §§ 41602, 41603).</i>

Berkeley City Council & Council Committee Meeting Updates

The following items are under consideration by the City Council or its committees and are relevant to the PAB:

Upcoming City Council Meetings

January 20, 2026 – Regular Meeting²

Item No.	Title	Recommendation
27	Surveillance Technology Ordinance Report Update	No recommendation is made. The item is an informational report.

January 27, 2026 – Regular Meeting³

Item No.	Title	Recommendation
21	Rescission and replacement of the Police Equipment and Community Safety Ordinance (Reviewed by the Public Safety Committee)	No recommendation is made. The item is an informational report.

Upcoming Council Committees

January 22, 2026 – Budget and Finance Committee⁴

Item No.	Title	Recommendation
2	Fiscal Year 2027 – 2028 Budget Update	No recommendation is made. The item is an informational report.

² January 20, 2026 City Council Regular Meeting Agenda: <https://berkeleyca.gov/city-council-regular-meeting-agenda-january-20-2026>

³ January 27, 2026 City Council Regular Meeting Agenda: <https://berkeleyca.gov/city-council-regular-meeting-agenda-january-27-2026>

⁴ January 22, 2026 Budget and Finance Committee Meeting Agenda: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-22%20Agenda%20Packet%20-%20Budget_0.pdf

Off-Agenda 3

List of Pending PAB Request



MEMORANDUM

Date: January 14, 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 - Jan 2026)

This memorandum summarizes ten requests that remain active made by the Police Accountability Board (PAB) during eight meetings held between January 8, 2025, and January 7, 2026. All requests were made during Regular Meetings. 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: https://youtu.be/56WiTDQB_jo?si=Go90zuEmVqEhNRiH	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.
	1/8/2025 PAB Regular Meeting Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/Final%202025-01-08%20Regular%20MeetingMinutes.pdf			

<p>2</p>	<p>2/19/2025 PAB Regular Meeting Recording: https://youtu.be/9jOYSyLtZc0?si=JtMEtoSvHbkYpDWL</p> <p>2/19/2025 PAB Regular Meeting Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-02-19%20Regular%20Meeting%20Minutes.v2.pdf</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>3</p>	<p>2/19/2025 PAB Regular Meeting Recording: https://youtu.be/9jOYSyLtZc0?si=JtMEtoSvHbkYpDWL</p> <p>2/19/2025 PAB Regular Meeting Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-02-19%20Regular%20Meeting%20Minutes.v2.pdf</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>4</p>	<p>5/07/2025 PAB Regular Meeting Recording: https://www.youtube.com/watch?v=pL5VhNQDU60</p> <p>5/07/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-05-07%20PAB%20Regular%20Meeting%20Draft%20Minutes.pdf</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>ative-body-meeting-minutes/DRAFT%202025-05-07%20Regular%20Meeting%20Minutes.v2.pdf</p>		<p>identify opportunities for engagement.</p> <p>(22:19 – 24:41)</p>	<p>PAB and ODPAs’: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-05-07%20PAB%20Regular%20Meeting%20Packet%20-%20SUPP%201.pdf#page=3</p>
5	<p>5/21/2025 PAB Regular Meeting Recording: https://www.youtube.com/watch?v=mFBeoH6IXWI</p> <p>5/21/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-05-21 Regular Meeting Minutes Updated.pdf</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: https://www.youtube.com/watch?v=0xsKsHlnr7c&t=1824s</p> <p>9/03/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-09-03 Regular Meeting Minutes Updated.pdf</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.

	ative-body-meeting-minutes/DRAFT 2025-09-03 Regular Meeting Minutes.pdf			
7	<p>9/17/2025 PAB Regular Meeting Recording: https://youtu.be/foxCSOZ-qX0?si=nluyj5bY1giNBdsD</p> <p>9/17/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-09-17 Regular Meeting Minutes.pdf</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: https://www.youtube.com/watch?v=IPytFxB6jyw&t=25s</p> <p>11/05/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-11-05 Regular Meeting Minutes .pdf</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: https://www.youtube.com/watch?v=IPytFxB6jyw&t=25s</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.

	Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-11-05 Regular Meeting Minutes .pdf		(1:51:53-1:52:24)	
10	01/07/2026 PAB Special Meeting Recording: https://www.youtube.com/watch?v=RQIXI-c9sPo 01/07/2026 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2026-01-07 PAB Meeting Minutes updated.pdf	ODPA, BPD	The PAB requested that ODPA follow up with BPD to confirm whether the redlined Use of Force Policy 300 is final or still in progress and, if not final, when a finalized draft will be submitted to the PAB, and to compile the relevant versions of the policy into a single comparison packet for side-by-side board review. (46:50-52:01)	Open – ODPA Staff has reached out to BPD regarding the policy timeline and has requested a version that incorporates changes.

Off-Agenda 4
2026 PAB Meeting Calendar

2026 PAB MEETING CLENDAR

JAN

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11	12	13	14	15	16	17
18	19	20	21*	22	23	24
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*PAB Nominations and Election of Chair and Vice Chair

FEB

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MAR*

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*Annual Report to be presented in March

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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>