

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  
MARCH 11, 2026  
6:30 PM**

**Board Members**

Joshua Cayetano (Chair)                      Leah Wilson (Vice-Chair)  
Randy Wells                                      Joshua Buswell-Charkow

**MEETING LOCATION**

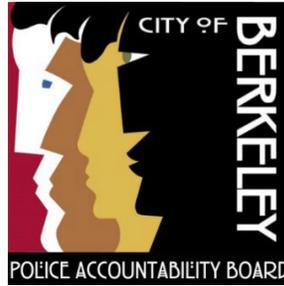
Office of the Director of Police Accountability  
1900 Addison Street, Floor 3  
Berkeley, CA 94704

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Item 2

March 11, 2026 PAB Regular Meeting Agenda



**POLICE ACCOUNTABILITY BOARD  
REGULAR MEETING AGENDA  
WEDNESDAY, MARCH 11, 2026  
6:30 P.M.**

**Board Members**

Joshua Cayetano (Chair)  
Randy Wells

Leah Wilson (Vice-Chair)  
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 February 25, 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 (Est. 1 HOUR 45 MINUTES)**

- a. Discussion and action on the proposed policies and acquisition reports for unmanned aerial systems and drones as first responders (Wells) – (25 Minutes)

**Review Deadline:** March 11, 2026 (PAB meeting); the item will be presented to the City Council on March 24, 2026.

- b. Discussion and action on the proposed master service agreement with Flock Safety for various surveillance technologies (Wilson) – (20 Minutes)

**Review Deadline:** March 11, 2026 (PAB meeting); the item will be presented to the City Council on March 24, 2026.

- c. Discussion and action on the proposed update to BPD Policy 351 “External Fixed Video Surveillance Cameras” (ODPA) – (15 Minutes)

**Review Deadline:** March 11, 2026 (PAB meeting); the item will be presented to the City Council on March 24, 2026.

- d. Discussion and action on the proposed policies and acquisition report for community video streams (ODPA) – (15 Minutes)

**Review Deadline:** March 11, 2026 (PAB meeting); the item will be presented to the City Council on March 24, 2026.

- e. Discussion and action on the proposed resolution rescinding Resolution No. 51,408-N.S. restricting the use of air support and canine units and updating mutual aid policies (Cayetano) – (15 Minutes)

**Review Deadline:** March 11, 2026 (PAB meeting); the item will be presented to the PSPC in late March. Exact date to be determined.

- f. Discussion and action on BPD Policy 300 “Use of Force” as updated on March 6, 2026 (Cayetano) – (15 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: Leah Wilson, Designated PAB Representative;  
 Jose Murillo, Acting Director of Police Accountability  
 Employee organization: Berkeley Police Association

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

- |       |              |        |              |
|-------|--------------|--------|--------------|
| i.    | 2023-CI-0016 | xi.    | 2025-CI-0035 |
| ii.   | 2024-CI-0004 | xii.   | 2025-CI-0036 |
| iii.  | 2025-CI-0018 | xiii.  | 2025-CI-0037 |
| iv.   | 2025-CI-0020 | xiv.   | 2025-CI-0038 |
| v.    | 2025-CI-0026 | xv.    | 2025-CI-0039 |
| vi.   | 2025-CI-0027 | xvi.   | 2025-CI-0041 |
| vii.  | 2025-CI-0029 | xvii.  | 2026-CI-0001 |
| viii. | 2025-CI-0030 | xviii. | 2026-CI-0002 |
| ix.   | 2025-CI-0033 | xix.   | 2026-CI-0003 |
| x.    | 2025-CI-0034 | xx.    | 2026-CI-0004 |

**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. 2026 PAB Meeting Calendar

**Communications Disclaimer**

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

**Communication Access Information (A.R. 1.12)**

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

**SB 343 Disclaimer**

Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1900 Addison Street, Floor 3, Berkeley, CA 94704

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

1900 Addison Street, Floor 3, Berkeley, CA 94704

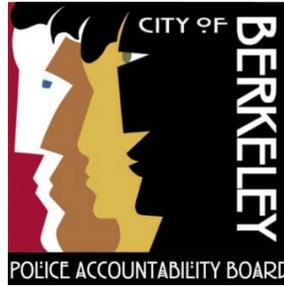
TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955

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

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

Item 4

Minutes for the Regular Meeting of February 25, 2026



**POLICE ACCOUNTABILITY BOARD  
 REGULAR MEETING MINUTES  
 WEDNESDAY, FEBRUARY 25, 2026  
 6:30 P.M.**

**Board Members**

Joshua Cayetano (Chair)  
 Randy Wells

Leah Wilson (Vice-Chair)  
 Joshua Buswell-Charkow

**MEETING LOCATION**

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

**MEETING MINUTES**

**1. CALL TO ORDER AND ROLL CALL AT 6:35 PM**

- Present:** Board Member Leah Wilson (Vice Chair)  
 Board Member Buswell-Charkow  
 Board Member Randy Wells
- Absent:** Board Member Joshua Cayetano (Chair)<sup>1</sup>
- ODPA Staff:** Jose Murillo, Acting Director of Police Accountability (DPA)  
 Syed Mehdi, Data Analyst  
 Daniel Weinberg, Investigator
- BPD Staff:** Lt. Coats  
 Arlo Malmberg, Strategic Planning and Accountability Manager

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<sup>1</sup> Chair Cayetano was granted a leave of Absence

## 2. APPROVAL OF AGENDA

**Motion to approve the agenda as amended to hear Item 7 (Chief of Police Report), followed by Items 9A and 9B, after Item 4.**

Moved/Second (Wilson/Wells) Motion carried.

Ayes: Wells, Buswell-Charkow, Wilson.

Noes: None. Abstain: None. Absent: Cayetano.

## 3. PUBLIC COMMENT

*1 Physically Present Speakers*

*1 Virtually Present Speakers*

## 4. APPROVAL OF MINUTES

a. Minutes for the Regular Meeting of February 11, 2026.

**Motion to approve the minutes for the Regular Meeting of February 11, 2026.**

Moved/Second (Buswell-Charkow/Wilson) Motion carried.

Ayes: Wells, Buswell-Charkow, Wilson.

Noes: None. Abstain: None. Absent: Cayetano.

## 5. ODPa STAFF REPORT

Acting Director Murillo reported that City Council met in closed session to discuss the appointment of an Interim Director and the initiation of recruitment for a permanent DPA. He stated that an Interim Director has been identified, with an anticipated start date in April, pending completion of administrative steps. He further reported that a Council subcommittee will oversee the recruitment process for the permanent DPA, and that the City is in the process of retaining a recruiter to assist with stakeholder outreach and candidate selection.

## 6. CHAIR AND BOARD MEMBERS' REPORTS

No activities have been reported since the last PAB meeting on February 11, 2026

## 7. CHIEF OF POLICE'S REPORT

Lt. Coats provided updates on recent incidents, including an arrest related to a robbery and arson investigation, a felony DUI collision, and a series of commercial burglaries under regional investigation. Arlo Malmberg presented an overview of the Department's public safety technology proposals scheduled for City Council consideration, including automated license plate readers, fixed cameras, DFR, and community video streams. He stated that the Department is proposing to fund certain technology acquisitions through the permanent reduction of six sworn positions.

## 8. SUBCOMMITTEE REPORTS

Subcommittees report on their activities since the last PAB meeting on February 11, 2026.

## 9. DISCUSSION AND ACTION ITEMS

- a. Discussion and action on the FY 2027 and 2028 Budget Process (ODPA)

**No action was taken.** The City Budget Manager presented an overview of the Fiscal Year 2026 mid-year budget update and the projected Fiscal Years 2027–2028 baseline budget.

- b. Discussion and action on the proposed policies and acquisition reports for unmanned aerial systems and drones as first responders (Wells)

**Review Deadline:** March 11, 2026 (PAB meeting); the item will be presented to the City Council on March 24, 2026.

- i. Presentation by the UC Berkeley Law Criminal Law & Justice Center
- ii. Review of BPD's Proposed UAS and DFR Policies

**No action was taken.** Representatives from the UC Berkeley Criminal Law and Justice Center presented findings from their independent review of the proposed Drone as First Responder program.

- c. Discussion and action on new Policy Complaint 2025-PR-0007 in accordance with Section G "Policy Complaints and Reviews" of the PAB's Standing Rules (ODPA)
  - i. Preliminary Review Report
  - ii. Complainant's Statement
  - iii. Public Comment
  - iv. BPD Statement

**Motion to approve the staff's recommendation and decline to initiate policy review.**

Moved/Second (Wilson/Wells) Motion carried.

Ayes: Wells, Buswell-Charkow, Wilson.

Noes: None. Abstain: None. Absent: Cayetano.

- d. Presentation of the ODPa 2026 Workplan and Preliminary Calendar of Events (ODPA)

**No action was taken.** Acting Director Murillo presented an overview of ODPa's 2026 priorities and preliminary calendar.

- e. Discussion and action on the proposed updated to BPD Policy 351 "External Fixed Video Surveillance Cameras" (ODPA)

**Review Deadline:** March 11, 2026 (PAB meeting); the item will be presented to the City Council on March 24, 2026.

**No action was taken.** Acting Director Murillo summarized proposed revisions to Policy 351.

- f. Discussion and action on the proposed resolution rescinding Resolution No. 51,408-N.S. restricting the use of air support and canine units and updating mutual aid policies (Cayetano)

**Review Deadline:** March 11, 2026 (PAB meeting); the item will be presented to the PSPC in late March. Exact date to be determined.

**No action was taken.** Acting Director Murillo summarized the proposed resolution.

- g. Recap of the PAB’s 2026 Annual Retreat (Wilson)

**No action was taken.** Board Members discussed the need to refine and narrow priorities and agreed to revisit the workplan at a future meeting.

**10. PUBLIC COMMENT**

1 *Physically Present Speakers*

1 *Virtually Present Speakers*

**11. CLOSED SESSION**

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

- a. Conference With Labor Negotiators; Government Code § 54957.6  
Designated representatives: Leah Wilson, Designated PAB Representative; Jose Murillo, Acting Director of Police Accountability  
Employee organization: Berkeley Police Association

**No action taken.**

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

The PAB took the following actions on the cases listed below:

ODPA Case No. 2025-CI-0040

**Motion to accept the ODPa’s recommendations in ODPa Complaint 2025-CI-0040.**

Moved/Second (Wilson/Wells) Motion carried.

Ayes: Wells, Wilson, and Buswell-Charkow.

Noes: None. Abstain: None. Absent: Cayetano.

ODPA Case No. 2025-CI-0029

**Motion to accept the ODPa’s recommendations, with modifications, in ODPa Complaint 2025-CI-0029.** Moved/Second (Wells/Wilson) Motion carried.

Ayes: Wells, Wilson, Cayetano and Buswell-Charkow.

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

<b>END OF CLOSED SESSION</b>
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**12. ANNOUNCEMENT OF CLOSED SESSION ACTIONS**

Vice Chair Wilson Announced the closed session actions.

**13. ADJOURNMENT AT 9:38 PM**

Motion to adjourn. Moved/Second (Wilson/Wells). The meeting was adjourned at 9:38 PM by unanimous consent.

DRAFT

Item 8  
Subcommittee List

Updated on 3/6/2026



**SUBCOMMITTEES LIST**

**Important Note:** As of March 5, 2026, the PAB has 4 of its 9 seats filled, resulting in a quorum of 3 members. Subcommittees must be composed of fewer than a quorum and may not consist of a single member. Accordingly, vacancies must be filled or the subcommittee must be disbanded. If disbanded, its work can be reassigned to individual board members or formally paused or discontinued. For additional information on subcommittee requirements, please visit Chapter II Section 5 of the City of Berkeley’s Commissioner’s Manual:

<https://berkeleyca.gov/sites/default/files/documents/Commissioners%27%20%26%20Board%20Members%27%20Manual%202025%20Edition.pdf#Page=30>

Subcommittee	Board Members	Chair	BPD Reps
<p><b>Policy Reviews</b>                      Formed 11-08-2023                      Scope Expanded 12-11-2024 to include BWC Policy Review</p>	<p>Cayetano  <span style="color: red;">[Vacant]</span>                      Public members:                      Kitt Saginor</p>	N/A	Deputy Chief Tate Sgt. Rafferty
<p><b>Metrics &amp; Operations</b>                      Formed 02-05-2025 after the Budget &amp; Metrics and Operations &amp; Processes Subcommittees were consolidated into one</p>	Wilson Wells	N/A	N/A
<p><b>Outreach &amp; Engagement</b>                      Formed 11-08-2023                      Scope Expanded 03-02-2024                      Formally “Commendations”</p>	Wells Buswell-Charkow	N/A	N/A

Updated on 3/6/2026

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

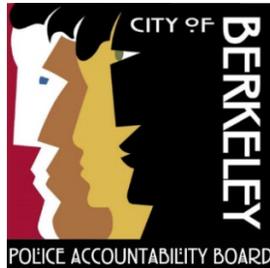
<b>Liaison Name</b>	<b>Assignment</b>
Cayetano	Represent the PAB in the EIS Update Process
Wilson	Represent the PAB in FIP-related matters
Wilson	Represent the PAB in the Regulations Process

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

Item 9.a.

Notice Regarding Supplemental Material re: Discussion  
and action on the proposed policies and acquisition  
reports for unmanned aerial systems and drones as first  
responders



### **Notice Regarding Supplemental Materials**

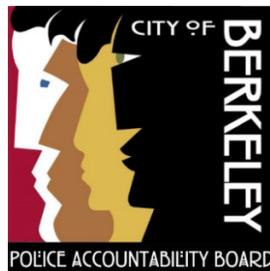
Supplemental materials for this item will be distributed and posted once they become available prior to the meeting.

Please note that the policies currently under consideration as part of this item were previously included in the materials for the **PAB Regular Meeting on February 25, 2026**, where they are available for public review. That material can be accessed via the following link:

<https://berkeleyca.gov/your-government/boards-commissions/police-accountability-board>

Item 9.b.

Notice Regarding Supplemental Material re: Discussion and action on the proposed master service agreement with Flock Safety for various surveillance technologies

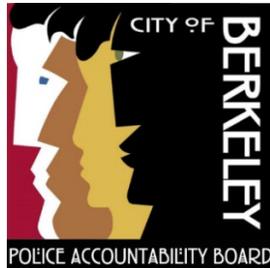


**Notice Regarding Supplemental Materials**

Supplemental materials for this item will be distributed and posted once they become available prior to the meeting.

Item 9.c.

Notice Regarding Supplemental Material re: Discussion  
and action on the proposed update to BPD Policy 351  
“External Fixed Video Surveillance Cameras”



### **Notice Regarding Supplemental Materials**

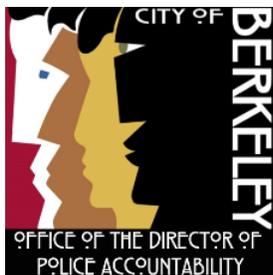
Supplemental materials for this item will be distributed and posted once they become available prior to the meeting.

Please note that the policies currently under consideration as part of this item were previously included in the materials for the **PAB Regular Meeting on February 25, 2026**, where they are available for public review. That material can be accessed via the following link:

<https://berkeleyca.gov/your-government/boards-commissions/police-accountability-board>

Item 9.d.

ODPA Memorandum to the PAB Titled “Proposed  
Berkeley Police Department Policies Governing  
Community Video Streams”



## MEMORANDUM

Date: March 6, 2026  
To: Honorable Members of the Police Accountability Board (PAB)  
From: Jose D. Murillo, Acting Director of Police Accountability (DPA) *JM*  
Subject: Proposed Berkeley Police Department Policies Governing Community Video Streams

This memorandum is intended to present the PAB with an overview of the proposed BPD policies governing community video streams and to provide a recommendation informed by the analysis set forth herein. These policies are presented to the PAB as required by Berkeley Municipal Code 2.99.030.2.<sup>1</sup>

### Background:

On Saturday, February 21, 2026, the PAB received three documents from the BPD pursuant to BMC 2.99.030.2. These documents included the following:

- Draft of BPD Policy 355 “Community Video Streams”
- Draft of BPD Policy 1306 “Surveillance Use Policy – Community Video Streams”
- Draft of BPD BMC 2.99 Acquisition Report for Community Video Streams

As outlined in the acquisition report, the proposed community video stream system does not include physical hardware but provides software that allows authorized BPD personnel to view registered, compatible private cameras without canvassing the area. Community members create accounts to register their cameras, which appear as pins on a BPD map. For compatible systems that opt in, feeds are securely routed via cloud-based API to the BPD dashboard. Access is permission-based, with camera owners retaining control and the ability to revoke access at any time. BPD personnel can view live streams during active incidents and historical footage for investigative purposes via secure login.

Currently, the BPD manages a security camera registry which allows Berkeley residents and business owners to voluntarily register privately owned security cameras with the

<sup>1</sup> BMC 2.99.030, City Council Approval Requirement: <https://berkeley.municipal.codes/BMC/2.99.030>

Department.<sup>2</sup> The program is designed to facilitate investigations by providing police with a centralized list of cameras that may have captured relevant footage in the vicinity of criminal activity. Registration in the current program does not grant BPD direct access to cameras or live feeds; police must contact owners to request footage when needed and generally cannot access feeds remotely. Lastly, the current program does not allow integration with fixed cameras and ALPR technology.

### **Overview of Proposed Policies & Surveillance Technology Acquisition Report**

As part of the surveillance technology acquisition process under BMC 2.99, the Berkeley Police Department (BPD) develops two policies in addition to the Surveillance Technology Acquisition Report: an operational policy that provides guidance for officers using the technology, and a public-facing Surveillance Use Policy that establishes standards governing how the technology and associated data may be used, accessed, protected, and overseen.

#### BPD Policy 355 – “Community Video Streams”

This operational policy provides guidance for BPD’s use of community video stream integration to support criminal, traffic, and police misconduct investigations, as well as responses to critical incidents or natural disasters. The system allows authorized personnel to access footage from voluntarily registered private cameras through software integration, enabling virtual canvassing for evidence and real-time situational awareness without installing new City-owned cameras.

#### BPD Policy 1306 – “Surveillance Use Policy – Community Video Streams”

This policy serves as the public-facing Surveillance Use Policy required under BMC 2.99.020.4.a–l. It establishes requirements related to the technology’s purpose and authorized uses, data collection and access, data protection, civil liberties safeguards, retention and public access to information, third-party data sharing, required training, oversight and auditing, and system maintenance.

#### Surveillance Acquisition Report

The surveillance acquisition report describes community video streams technology and its purpose, where it may be deployed, and potential impacts on civil liberties and civil rights. The report also outlines mitigation measures, data sources and security protections, fiscal cost and funding, any third-party access or data handling, alternative approaches considered, and the experience of other government entities using the technology.

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<sup>2</sup> Berkeley Police Department Security Camera Registry: <https://berkeleyca.gov/safety-health/police/security-camera-registry>

### Items for PAB Consideration

BMC 2.99.030.2 requires the PAB to review each Surveillance Use Policy along with its corresponding Surveillance Acquisition Report. Within 30 days of receipt, the PAB must vote to recommend approval, object to the proposal, recommend modifications, or take no action. Neither opposition nor inaction by the PAB prevents the City Manager from proceeding with review and potential adoption.

The ODPa's review of the policies and the corresponding Surveillance Acquisition Report concludes that they comply with the municipal code's core requirements, contingent on the PAB raising no objections to the proposal itself. Nonetheless, the ODPa has identified several points for the PAB to consider prior to determining whether to support or oppose the proposed community video stream program. Those points are the following:

- **Cost:** The acquisition report indicates that for the first four years, operating costs will be covered under the department's existing agreement with Flock for the FlockOS platform, with the annual subscription estimated at \$65,000 thereafter. After the four-year term, the BPD would have to return to Council to request funding to continue the program should it wish to do so.
- **No prohibitions on use for monitoring first amendment activity:** Although the policies' purpose and scope are defined to support specific and active criminal investigations, serious traffic-related investigations, police misconduct investigations, and the response to or review of critical incidents or natural disasters, the language should explicitly prohibit random or arbitrary surveillance activities, including surveillance of First Amendment assemblies, consistent with Policy 428. Currently, that language is not included under the prohibited uses sections.
- **Reporting timeline requirements on request from federal immigration authorities:** As currently written, the policies require the Chief of Police to report any requests from federal immigration authorities, vendors, or other non-local agencies to access data for federal immigration enforcement purposes within 10 days of receipt. The PAB may wish to consider whether this 10-day timeline is appropriate or if a shorter notification period would be more suitable. The policies also do not clearly state who the Chief of Police must report to and in what format.
- **Integration with other technologies:** As previously noted, the proposed technology does not involve new hardware; rather, it integrates existing privately owned cameras with software that enables connection to other surveillance systems. The program is described as a 'resource multiplier' due to its potential to increase efficiency in collecting footage. However, the proposal does not clarify how this integration would function with external fixed cameras or automated license plate readers that are also part of the software platform.

**Conclusion**

The ODPa's review finds that the proposed community video stream policies and acquisition report comply with the core requirements of BMC 2.99. Compared to the existing security camera registry, which provides a centralized list of camera locations but requires officers to contact owners and visit physical locations to access footage, the proposed system would streamline access to registered feeds, make identifying camera locations easier, and save time typically spent on in-person evidence review and collection. The technology integrates voluntarily registered private cameras with BPD software, offering potential efficiency gains during active investigations and critical incidents while allowing camera owners to retain control over access. However, several areas warrant further consideration, including prohibitions on random surveillance (particularly of First Amendment activities), clarity on integration with other surveillance systems, reporting timelines for requests from external agencies, and long-term operating costs.

**Potential PAB Actions:**

Pursuant to BMC 2.99.030.2, the PAB may take one of the following actions:

1. Recommend approval of the policies as submitted.
2. Recommend approval of the policies with modifications.
3. Object to the proposal in its entirety; or
4. Take no action.

**Attachments:**

- Draft of BPD Policy 355 "Community Video Streams"
- Draft of BPD Policy 1306 "Surveillance Use Policy – Community Video Streams"
- Draft of BPD BMC 2.99 Acquisition Report for Community Video Streams

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## Community Video Streams

### 355.1 PURPOSE AND SCOPE

This policy provides guidance for the use of the community video stream integration by the Berkeley Police Department (BPD). The purpose of accessing community video streams is to provide real-time awareness and investigative capacity in the following use cases:

- To support specific and active criminal investigations.
- To support serious traffic-related investigations.
- To support police misconduct investigations.
- To respond to and review critical incidents or natural disasters.

This initiative leverages software integration to access camera footage from cameras voluntarily registered and shared with BPD. This approach acts as a resource multiplier, allowing authorized staff to virtually canvass areas for evidence and gain real-time situational awareness during critical incidents without the cost or intrusiveness of installing new City poles and cameras.

### 355.2 POLICY

The Berkeley Police Department utilizes a community video streams system to enhance its anti-crime strategy, to effectively allocate and deploy personnel, support investigations, and to enhance safety and security in public areas. As specified by this policy, cameras owned by community partners in strategic locations throughout the City may be shared with the Police Department in order to record, deter, and solve crimes, to help the City safeguard against potential threats to the public, and to help manage emergency response situations during natural and human-made disasters, among other uses specified in Section 355.3.1.

Community video streams in public areas will be used in a legal and ethical manner while recognizing and protecting constitutional standards of privacy.

### 355.3 OPERATIONAL GUIDELINES

BPD members authorized to review community video streams may only access and review video from public areas and public activities where no reasonable expectation of privacy exists, and only for the purposes authorized by this policy.

#### 355.3.1 PLACEMENT REVIEW AND MONITORING

Deployment of the Community Video Stream integration is a voluntary software integration with the Police Department. However, the Department will focus its integration efforts on cameras located in the following high-priority areas:

- Integration will be prioritized for cameras owned by businesses and non-residential commercial property owners in major thoroughfares and districts, such as the Elmwood, Solano, Telegraph, Fourth Street, and Downtown business improvement districts.
- To facilitate rapid response to active shooter events, mass casualty incidents, or other critical public safety threats, the Department may enter into agreements with facilities or

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campuses where immediate video access could be vital for saving lives.

Actual locations are determined entirely by the entities that voluntarily agree to register or integrate their cameras and meet the requirements for integration. All locations will be within the City of Berkeley.

### 355.3.2 COMMUNITY VIDEO STREAM CAMERA MARKINGS

All public areas monitored by integrated community video streams shall be marked in a conspicuous manner with unobstructed signs to inform the public that the area is under police surveillance, as required by the Pre-Integration Review process below. Signage shall be maintained for the duration of the integration.

### 355.3.3 INTEGRATION WITH OTHER TECHNOLOGY

The Department may integrate technologies not otherwise prohibited with the community video streams system, provided that such use does not conflict with this policy or expand internal or external access beyond what is allowed by City law or Department policy. For example, integration may occur on a shared access platform where video data and automated license plate reader data are viewable in the same system.

### 355.3.4 PRE-INTEGRATION REVIEW

Before any community video stream is integrated into the Department's system, the following review process shall be completed:

- A designated Department member shall conduct an in-person visit to each camera location to:
  - Confirm the camera's physical location and field of view.
  - Verify the camera is not positioned to capture areas where a reasonable expectation of privacy exists, including but not limited to the interior of residences, private yards, restrooms, changing areas, or medical facilities.
- Prior to integration, signage shall be posted in a conspicuous location near each integrated camera informing the public that the area is monitored by a camera integrated with the Berkeley Police Department. Signage shall be maintained for the duration of the integration.
- The Department shall publish and maintain on the City of Berkeley website a current list and map of all community cameras that have been integrated with the Department's system.
- The Investigations Division Captain, or their designee, shall review and approve the site assessment before integration is finalized. Integration shall not proceed if the site assessment identifies unresolved privacy concerns.

## 355.4 VIDEO SUPERVISION

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Access to community video streams camera data shall be limited to Berkeley Police Department (BPD) personnel utilizing the camera database for uses authorized above, with technical assistance from Public Works Department and Department of Information Technology personnel. Information may be shared in accordance with Sections 355.6 or 1304.9 below. BPD members seeking access to the camera system shall obtain the approval of the Investigations Division Captain, or their designee.

Supervisors should monitor community video streams access and usage to ensure BPD members are complying with this policy, other applicable department policy, and applicable laws. Supervisors should ensure such use and access is appropriately documented.

#### 355.4.1 VIDEO LOG

No one without authorization will be allowed to login and view the recordings. Those who are authorized and login should automatically trigger the audit trail function to ensure compliance with the guidelines and policy.

#### 355.4.2 PROHIBITED ACTIVITY

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

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

Community video streams equipment shall not be used to harass, intimidate or discriminate against any individual or group.

Community video streams systems and recordings are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials, unless required by federal law.

Video recordings shall not be disclosed to law enforcement agencies from other states if the purpose of the request is to support the enforcement of laws that restrict or criminalize reproductive rights or rights regarding the provision or receipt of gender-affirming care.

#### 355.5 STORAGE AND RETENTION OF MEDIA

The Department acknowledges that the Community Video Stream integration relies on cameras and storage systems owned and operated by non-City entities. Consequently, video footage and associated metadata that is not downloaded or captured by the Department remains under the sole control and retention schedule of the camera owner.

Evidentiary data downloaded for investigations is stored in the Department's digital evidence system. Once downloaded, data is retained in accordance with state law and existing Departmental evidence retention protocols.

Any recordings needed as evidence in a criminal or police misconduct proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures

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#### 355.5.1 EVIDENTIARY INTEGRITY

All media downloaded and retained pursuant to this Policy shall be treated in the same manner as other evidence. Media shall be accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, digital masking of innocent or uninvolved individuals to preserve anonymity, authenticity certificates and date and time stamping, shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.

#### 355.6 RELEASE OF VIDEO IMAGES

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law, also referenced in Policy 1304.8.

Requests for recorded video images from the public or the media shall be processed in the same manner as requests for department public records pursuant to Policy 804, Records Maintenance and Release.

Requests for recorded video from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with this policy and must be related to a specific active criminal investigation.

Requests for recorded video from the Office of Director of Police Accountability and Police Accountability Board shall be referred to the Investigations Division Captain, or their designee, for release in accordance with Charter Article XVIII, Section 25, Subdivision (20)(a).

Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process.

The Chief of Police will report any request from federal immigration authorities, vendor, or any non-local agency to access data for federal immigration enforcement purposes within 10 days of receiving the request.

The Department does not own, control, or have the right to share the live video streams or raw data stored on the third-party camera systems involved in this integration. Release and data-sharing provisions in this policy and in Surveillance Use Policy 1306 apply only to evidentiary data the Department has actually downloaded and retained.

#### 355.7 COMMUNITY VIDEO STREAMS AUDIT

The community video streams software generates a site log each time the system is accessed. The site log is broken down by server, device, user or general access. The site log is kept on the server for two years and is exportable for reporting. System audits will be conducted by the Office of Strategic Planning and Accountability (OSPA) on a regular basis, at least biennial. As part of the audit, OSPA will confirm that BPD does not enter any direct data sharing agreements or give direct access to outside agencies. A log of any instance of when surveillance footage has been shared, including date, time, reasons for search, and any recipient agencies.

BPD will enforce against prohibited uses of the cameras pursuant to Policy 1010, Personnel Complaints, or other applicable law or policy. The City Manager shall enforce against any

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prohibited use of cameras and/or access to data by other City of Berkeley personnel.

The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be published on the City of Berkeley website in an appropriate location, and retained within the Office of Strategic Planning and Accountability.

### **355.8 TRAINING**

All BPD members authorized to access community video streams systems shall receive appropriate training. Training should include guidance on the use of cameras, associated software, and review of relevant policies and procedures, including this policy as well as review of relevant City of Berkeley laws and regulations. Training should also address state and federal law related to the use of video surveillance equipment and privacy. All relevant recordings that are utilized will be collected pursuant to Policy 802 Property and Evidence, and retained pursuant to Policy 804 Records and Maintenance.

### **355.9 MAINTENANCE**

It shall be the responsibility of the private owners of the cameras to facilitate and coordinate any updates and required maintenance.

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## Surveillance Use Policy - Community Video Streams

### 1306.1 PURPOSE

This policy provides guidance for the use of the Community Video Stream integration by the Berkeley Police Department (BPD). The purpose of accessing community video streams is to provide real-time awareness and investigative capacity.

This initiative leverages software integration to access video footage from cameras voluntarily registered and shared with the Police Department. This approach acts as a resource multiplier, allowing authorized staff to virtually canvass areas for evidence and gain real-time situational awareness during critical incidents without the cost or intrusiveness of installing new City poles and cameras.

### 1306.2 AUTHORIZED USE

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

Community video streams may be accessed and reviewed by authorized BPD personnel for the following purposes:

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

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

The following are prohibited uses of the video surveillance system:

- (a) Unauthorized recording, viewing, reproduction, dissemination, or retention of video footage is prohibited.
- (b) Community video streams shall not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.
- (c) Community video streams shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.

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- (d) Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.
- (e) Community video streams and recordings that are retained by Berkeley Police Department as evidence are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials, unless required by federal law.
- (f) Community video streams and recordings that are retained by Berkeley Police Department as evidence shall not be disclosed to law enforcement agencies from other states if the purpose of the request is to support the enforcement of laws that restrict or criminalize reproductive rights or rights regarding the provision or receipt of gender-affirming care.

### **1306.3 DATA COLLECTION**

Data collection is limited to camera footage and associated metadata voluntarily provided by community members. Community members create an account and register their cameras. This places a pin on the BPD map indicating a camera exists at that location. For compatible systems that opt-in, the video feed is routed via secure API to the BPD dashboard. The system integrates data from third-party hardware owned by non-City entities. BPD does not own the cameras. Camera owners retain ownership and either party can revoke access at any time.

### **1306.4 DATA ACCESS**

Access to community video streams data shall be limited to BPD personnel utilizing the camera database for uses described above and pursuant to the Community Video Streams Policy. BPD members seeking access to the video surveillance system shall obtain the approval of the Investigations Division Captain, or their designee.

Supervisors should monitor camera access and usage to ensure BPD members are complying with this policy, other applicable department policy, and applicable laws. Supervisors should ensure such use and access is appropriately documented.

### **1306.5 DATA PROTECTION**

This program shall utilize a multi-layered security architecture to preserve the integrity and confidentiality of the data:

- Access shall require secure login credentials with Multi-Factor Authentication (MFA).
- Access shall be restricted to authorized personnel and audited for compliance.
- The storage environment shall comply with CJIS standards.
- Evidentiary data downloaded for investigations shall be stored in the Department's digital evidence system and retained according to state law. Non-evidentiary data remains under the control of the camera owner.

### **1306.6 CIVIL LIBERTIES AND RIGHTS PROTECTION**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to

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protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1306.4 Data Access, 1306.5 Data Protection, 1306.7 Data Retention, 1306.8 Public Access, 1306.9 Third Party Data Sharing, and 1306.13 Pre-Integration Review serve to protect against any unauthorized use of community video streams. The use of facial recognition technology on any community video stream is prohibited. These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

#### **1306.7 DATA RETENTION**

The Department acknowledges that the Community Video Stream integration relies on cameras and storage systems owned and operated by non-City entities. Consequently, video footage and associated metadata that is not downloaded or captured by the Department remains under the sole control and retention schedule of the camera owner.

Evidentiary data downloaded for investigations is stored in the Department's digital evidence system. Once downloaded, data is retained in accordance with state law and existing Departmental evidence retention protocols.

Any recordings needed as evidence in a criminal or police misconduct proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures.

This policy reaffirms the City Manager's authority, which may be delegated to the Berkeley Police Chief, to pause or end the deployment of the subject equipment at any time and for any cause. The City Council shall be, within 48 hours, notified of any such decision to pause or end its deployment.

#### **1306.8 PUBLIC ACCESS**

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

Requests for recorded video images from the public or the media shall be processed in the same manner as requests for department public records pursuant to Policy 804.

Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process.

#### **1306.9 THIRD-PARTY DATA-SHARING**

The Department does not own, control, or have the right to share the live video streams or raw data stored on the third-party camera systems involved in this integration. Consequently, the Department cannot and shall not grant third-party access to the camera registry or the live video feeds themselves.

Requests for evidentiary footage retained by BPD from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with this policy and must be related to a specific active criminal investigation.

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The Chief of Police will report any request from federal immigration authorities, vendor, or any non-local agency to access data for federal immigration enforcement purposes within 10 days of receiving the request.

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### 1306.10 TRAINING

All BPD members authorized to access community video streams systems shall receive appropriate training. Training should include guidance on the use of cameras, associated software, and review of relevant policies and procedures, including this policy as well as review of relevant City of Berkeley laws and regulations.

Training should also address state and federal law related to the use of video surveillance equipment and privacy. All relevant recordings that are utilized will be collected pursuant to Policy 802 Property and Evidence, and retained pursuant to Policy 804 Records Maintenance.

### 1306.11 AUDITING AND OVERSIGHT

The community video streams software generates a site log each time the system is accessed. The video surveillance software generates a site log each time the system is accessed. The site log is broken down by server, device, user or general access. The site log is kept on the server for two years and is exportable for reporting. Community video stream audits will be conducted on a regular basis, at least biennial. As part of the audit, OSPA will confirm that BPD does not enter any direct data sharing agreements or give direct access to outside agencies. A log of any instance of when surveillance footage has been shared, including date, time, reasons for search, and any recipient agencies.

BPD will enforce against prohibited uses of the cameras pursuant to Policy 1010, Personnel Complaints, or other applicable law or policy. The City Manager shall enforce against any prohibited use of cameras and/or access to data by other City of Berkeley personnel.

The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained within the Professional Standards Bureau.

### 1304.12 ACCOUNTABILITY

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data:

- (a) Non-law enforcement requests for access to stored community video streams data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) All community video streams data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time.
- (c) Berkeley Police Department members approved to access community video streams data under these guidelines are permitted to access the data for legitimate California law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.
- (d) Aggregated community video streams data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the consent of the Chief of Police or City Manager.
- (e) Measures will be taken to ensure the accuracy of community video streams information. Errors discovered in community video streams data collected by community

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video streams units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

(f) Such community video streams data may be released to other authorized and verified law enforcement officials and agencies for legitimate California law enforcement purposes.

(g) Every community video streams browsing inquiry must be documented by either the associated Berkeley Police case number or incident number, and/or a reason for the inquiry. For security or data breaches, see the Records Release and Maintenance Policy.

#### **1306.12 MAINTENANCE**

It shall be the responsibility of the private owners of the cameras to facilitate and coordinate any updates and required maintenance.

#### **1306.13 PRE-INTEGRATION REVIEW**

Before any community video stream is integrated into the Department's system, the following review process shall be completed:

1. A designated Department member shall conduct an in-person visit to each camera location to:
  - a. Confirm the camera's physical location and field of view.
  - b. Verify the camera is not positioned to capture areas where a reasonable expectation of privacy exists, including but not limited to the interior of residences, private yards, restrooms, changing areas, or medical facilities.
2. All public areas monitored by integrated community video streams shall be marked in a conspicuous manner with unobstructed signs to inform the public that the area is under police surveillance. Signage shall be maintained for the duration of the integration.
3. The Department shall publish and maintain on the City of Berkeley website a current list and map of all community cameras that have been integrated with the Department's system.
4. The Investigations Division Captain, or their designee, shall review and approve the site assessment before integration is finalized. Integration shall not proceed if the site assessment identifies unresolved privacy concerns.

## Background

Pursuant to BMC 2.99 Surveillance Technology Ordinance, this report and the associated surveillance use policy must be approved by City Council before “[e]ntering into an agreement with a non-City entity to acquire, share or otherwise use Surveillance Technology or the information it provides” (BMC2.99.030(1)(d)). The Berkeley Police Department (BPD) seeks to implement a community safety video integration capability to enhance real-time public safety operations and improve investigative efficiency. This initiative leverages software integration to access video footage from cameras voluntarily registered and shared by non-City entities.

This acquisition report is not for physical hardware but for the software capability to view community video streams. This approach acts as a resource multiplier, allowing authorized staff to virtually canvass areas for evidence and gain real-time situational awareness during critical incidents without the cost of installing new City poles and cameras.

This document satisfies the requirements of BMC 2.99 for “publicly-released written report produced prior to acquisition... that includes...” sections covering description, purpose, location, impact, mitigation, data types and sources, data security, fiscal cost, third party dependence and access, alternatives, and experience of other entities of the equipment.

## 1. Description

*Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers*

### **Description:**

The technology does not involve the City purchasing new cameras. Instead, it leverages software integrations to allow authorized BPD personnel to view live or recorded video streams from private cameras, only where the owner has explicitly granted permission to share data.

This system aggregates disparate video feeds into a centralized dashboard accessible to authorized BPD personnel, acting as a resource multiplier for investigations without requiring the City to install infrastructure.

### **How it Works:**

The system functions through a cloud-based platform. Community members create an account and register their cameras. This places a pin on the BPD map indicating a camera exists at that location. For compatible systems that opt-in, the video feed is routed via secure API to the BPD dashboard. Access is permission-based. Camera owners retain ownership and can revoke access at any time. BPD personnel access the system via

secure login. Live viewing is restricted to active incidents, while historical access is used for gathering evidence.

### **Manufacturers' Descriptions:**

The following descriptions are provided by Flock Safety, which is one vendor capable of delivering this integration.

"Flock Safety Wing® allows customers to easily integrate video cameras into FlockOS® for a seamless workflow. [It] integrates live stream traffic cameras, publicly or privately owned livestream security cameras into one cloud-based situational awareness dashboard to increase response time in mission-critical incidents."

"Registering your camera lets law enforcement know you have footage that could help during a criminal investigation. Places a pin on your local law enforcement's camera map... Integrating your business cameras gives law enforcement secure, live access to video streams and the ability to download footage when it's needed as evidence, or for a real-time crisis response."

## **2. Purpose**

*Information on the proposed purpose(s) for the Surveillance Technology*

The proposed purpose of accessing community video streams is to provide real-time awareness and investigative capacity in following use cases:

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

## **3. Location**

*The general location(s) it may be deployed and reasons for deployment*

Deployment of the Community Video Stream integration is a voluntary software integration with the Police Department. The Department will focus integration efforts on cameras located in the following high-priority areas:

- Integration will be prioritized for cameras owned by businesses and non-residential commercial property owners in major thoroughfares and districts, such as the Elmwood, Solano, Telegraph, Fourth Street, and Downtown business districts.

- To facilitate rapid response to active shooter events, mass casualty incidents, or other critical public safety threats, the Department may enter into agreements with facilities or campuses where immediate video access could be vital for saving lives.

Actual locations are determined entirely by the entities that voluntarily agree to register or integrate their cameras and meet the requirements for integration. All locations will be within the City of Berkeley.

#### 4. Impact

*An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups*

The Department acknowledges that community video streams involve privacy considerations. The use policy strictly prohibits accessing cameras in areas where a reasonable expectation of privacy exists without a warrant. Access would be driven by specific criminal incidents or calls for service, not constant monitoring. The policy, local ordinances, and state law all would prohibit sharing this information for immigration enforcement purposes.

To further mitigate impacts, every camera must pass a Pre-Integration Review- including an in-person site assessment to confirm the camera is not positioned to capture areas where a reasonable expectation of privacy exists- before it is connected to the Department's system.

#### 5. Mitigations

*Information regarding technical and procedural measures that can be implemented to appropriately safeguard the public from any impacts identified*

To safeguard the public's welfare and civil liberties, the Department will implement the following affirmative technical and procedural measures:

- Access is strictly permission-based. Camera owners must actively "opt-in" and can revoke access at any time.
- The use of facial recognition technology on any stream is strictly prohibited.
- All system access is logged. The audit trail records the user, date, time, and specific camera accessed as well as the case number and/or reason.
- Data is stored on CJIS-compliant servers.

**Pre-Integration Review:** In addition to the above, before any community video stream is integrated into the Department's system, the following review process shall be completed:

- A designated Department member shall conduct an in-person visit to each camera location to: (i) confirm the camera's physical location and field of view; and (ii) verify the camera is not positioned to capture areas where a reasonable expectation of privacy exists, including but not limited to the interior of residences, private yards, restrooms, changing areas, or medical facilities.
- Prior to integration, signage shall be posted near each location with integrated cameras informing the public that the area is monitored by a camera integrated with the Berkeley Police Department. Signage shall be maintained for the duration of the integration.
- The Department shall publish and maintain on the City of Berkeley website a current list and map of all community cameras that have been integrated with the Department's system.
- The Investigations Division Captain, or their designee, shall review and approve the site assessment before integration is finalized. Integration shall not proceed if the site assessment identifies unresolved privacy concerns.

## 6. Data Types and Sources

*A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including "open source" data*

Data collection is limited to camera footage and associated metadata voluntarily provided by community members. The system would integrate data from third-party hardware owned by non-City entities. BPD would not own the cameras nor any non-evidentiary data. Footage found to contain evidentiary value would be downloaded and stored according to existing evidence retention policies and protocols.

## 7. Data Security

*Information about the steps that can be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure*

This program would utilize a multi-layered security architecture to preserve the integrity and confidentiality of the data:

- Access requires secure login credentials with Multi-Factor Authentication (MFA).
- Access is restricted to authorized personnel and audited for compliance.
- The storage environment complies with CJIS standards.
- Evidentiary data downloaded for investigations is stored in the Department's digital evidence system (Evidence.com) and retained according to state law. Non-evidentiary data remains under the control of the camera owner.

## 8. Fiscal Cost

*The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.*

The costs below represent estimates. Hardware costs and integration costs are paid by the private camera owners.

### Initial Cost:

- Hardware: \$0 (Cameras are owned by private entities).
- Software Integration: Estimated \$30 per stream per year paid by camera owners.
- For the first four years of integration, operating costs are covered through the department's existing agreement with Flock for the FlockOS platform. Thereafter, the annual subscription cost is estimated to be \$65,000.

### Cost of Use:

- The operational cost is absorbed within the existing salary of the investigating officers and this increased efficiency will likely result in time savings.

### Costs of Potential Adverse Impacts:

- Potential costs could arise from data breach litigation or claims of privacy violation. However, the reliance on voluntary consent to access cameras that already are in place as well as strict audit logs minimizes this risk. Strict adherence to the Use Policy will further mitigate liability.

### Annual and Ongoing Costs:

- No ongoing costs are incurred by the Department.

### Training Costs:

- Training is included in the software subscription and absorbed into regular in-service training hours.

### Maintenance and Storage Costs:

- Maintenance of the software platform is included in the subscription. Maintenance of physical cameras is the responsibility of the private owners.

### Upgrade Costs:

- Software upgrades are included in the annual subscription model.

## 9. Third Party Dependence and Access

*Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats*

All evidentiary video will be uploaded and stored on the Department's digital evidence platform (Evidence.com) in line with existing departmental protocol for evidence collection. The evidence platform vendor complies with applicable data protection frameworks regarding the collection, use, and retention of personal information.

Live and recorded video streams that have not been downloaded as evidence remain on the third-party camera systems and under the control of the camera owners. The Department does not own, store, or have ongoing custody of this data.

## 10. Alternatives

*A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology*

In the absence of a community video streams program, the primary alternative is the traditional method of physical canvassing. This process requires officers to physically walk neighborhoods after a crime, locate cameras, identify owners, and request footage manually. This method is time and resource-consuming and often relies on the owner being present, having the appropriate login and being technically capable of exporting the footage. It delays investigations and pulls officers away from other duties. In contrast, remote access makes the process more efficient for both the department and the community member.

The Department considered significantly expanding the network of City-owned and operated fixed cameras to match the coverage provided by community streams. This alternative was deemed fiscally unfeasible. The cost to purchase additional City-owned cameras would be prohibitively expensive.

Another alternative is to rely on physical surveillance by officers to deter crime and capture evidence. While physical surveillance is a valid tactic, it is limited by the cost and availability of resources. It does not provide the persistent, resource-multiplying capability of a camera network, nor does it allow for the retrospective review of evidence crucial for prosecution.

A final alternative would be not acquiring access to community video streams. Without this technology, the Department would forgo enhancements in investigative efficiency and

would continue to rely on slower, manual methods that may result in the loss of critical evidence or loss of available personnel power.

### **11. Experience of Other Entities**

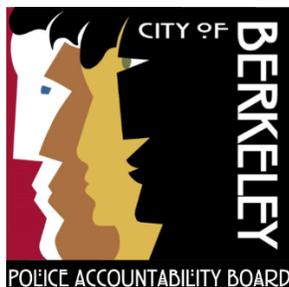
*To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities*

In December 2025, the City of Oakland City Council voted 7-1 to approve a similar program under their "Community Safety Camera Systems" policy. OPD has established strict governance that explicitly prohibits the use of the technology for facial recognition, harassment, or immigration enforcement.

Regional jurisdictions like Alameda County, Vacaville, and Elk Grove also utilize fixed surveillance cameras and video integration as tools for public safety and crime deterrence which reflects a regional standard for the use of such technology in modern policing. San Francisco has publicized substantial public safety benefits associated with this technology used in concert with drones as a first responder and automated license plate readers.

Item 9.e.

ODPA Memorandum to the PAB Titled “Proposed Resolution Rescinding Resolution 51,408-N.S. Restricting the Use of Air Support and Canine Units and Updating Mutual Aid Policies”



## MEMORANDUM

Date: March 6, 2026  
 To: Honorable Members of the Police Accountability Board (PAB)  
 From: Jose D. Murillo, Acting Director of Police Accountability *JM*  
 Subject: Proposed Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units and Updating Mutual Aid Policies

This memorandum provides the PAB with an overview of Councilmember Kesarwani's proposal for the City Council to adopt a resolution rescinding Resolution No. 51,408-N.S.,<sup>1</sup> which limits the use of air support and canine units, and to update mutual aid policies, and also outlines the requested actions from the PAB.

### Requested PAB Action:

The PAB is being asked to provide input on two primary proposed changes:

1. Does the PAB support, oppose, or decline to comment on the proposed change to Resolution No. 51,408-N.S.,<sup>2</sup> which would replace the prior requirement for City Manager approval of helicopter use with an after-action notification to the City Manager?
2. Does the PAB support, oppose, or decline to comment on the proposed changes to the approved reasons for requesting helicopter assistance, which expand and revise the list of permissible uses?

### Background:

On July 15, 1982, the Berkeley City Council adopted Resolution No. 51,408-N.S.,<sup>3</sup> which restricted the deployment of helicopters and canine units to narrowly defined

<sup>1</sup> Proposed Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units and Updating Mutual Aid Policies: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-29%20Agenda%20Packet%20-%20Public%20Safety.pdf#Page=21>

<sup>2</sup> Resolution No. 51,408-N.S.: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-29%20Agenda%20Packet%20-%20Public%20Safety.pdf#Page=26>

<sup>3</sup> July 15, 1982 Berkeley City Council Regular Meeting Minutes: <https://records.cityofberkeley.info/PublicAccess/api/Document/AdAxwciViX5vOcjMnArOhzEb%C3%89xMyvaCJ%C3%81SF0Fq1XBYTvp5YYLDDwh8UTiGY5wy3VIXTNZ2vWHmbzTND0HBvwS3s%3D/>

circumstances. The resolution required the Berkeley Police Department (BPD) to obtain approval from the City Manager, in emergency situations when the City Manager was not immediately available, from the Chief of Police before requesting air support or canine assistance. It also limited their use to specific, enumerated situations.

With respect to canine units, the resolution authorized only three permissible uses. First, canines could be used to apprehend suspects when there was a threat to human life, the suspect was reasonably believed to be armed with a deadly weapon, and the suspect was located in a controlled and contained area with no known occupants other than the suspect. Second, canines could be used to locate missing persons. Third, they could be used to locate crime scenes. The resolution expressly prohibited the use of canine units for crowd control.

Similarly, the use of helicopters from other law enforcement agencies was limited to three circumstances: to assist in the event of a disaster; to support rescue efforts, explicitly excluding hostage rescues; and to aid in locating missing persons.

In the July 22, 2025 update to BPD's Memorandums of Understanding (MOU) compendium,<sup>4</sup> Section 6.8, Use of Police Canines and Helicopters, was removed because the subject matter is addressed in BPD Policies 308<sup>5</sup> and 418<sup>6</sup> and Resolution No. 51,408-N.S. BPD Policy 308 establishes guidelines for the use of canines to augment police services to the community, including, but not limited to, locating missing or at-risk individuals and apprehending criminal offenders. The policy sets forth standards for apprehension, deployment preparation, and other authorized uses, such as bomb and explosive detection.

Similarly, BPD Policy 418 provides guidance on the use of air support, including the process for requesting assistance from another agency's helicopter and the circumstances under which such assistance may be requested.

At the January 29, 2026 Public Safety Policy Committee special meeting, 30 speakers expressed concerns regarding the proposal.<sup>7</sup> Due to time constraints, not all members of the public in attendance were able to provide comment that day. However, there was strong public interest in participating in the discussion, which was continued to the PSPC meeting scheduled for February 19, 2026.

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<sup>4</sup> July 22, 2025 Public Hearing: Memorandum of Understanding (MOU) Compendium: Agreements with Other Law Enforcement Agencies and Private Organizations: <https://berkeleyca.gov/sites/default/files/documents/2025-07-22%20Item%2016%20Memorandum%20of%20Understanding%20%28MOU%29%20Compendium.pdf>

<sup>5</sup> BPD Policy 308, Canines:

[https://berkeleyca.gov/sites/default/files/documents/RELEASE\\_20240301\\_T161429\\_Berkeley%20PD%20Policy%20Manual.pdf#Page=119](https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=119)

<sup>6</sup> BPD Policy 418, Obtaining Air Support:

[https://berkeleyca.gov/sites/default/files/documents/RELEASE\\_20240301\\_T161429\\_Berkeley%20PD%20Policy%20Manual.pdf#Page=411](https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=411)

<sup>7</sup> January 29, 2026 PSC Special Meeting Minutes: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2026-01-29%20Annotated%20Agenda%20Public%20Safety.pdf>

**Proposed Resolution vs. Resolution No. 51,408-N.S.**

The table below compares the proposed resolution to the existing Resolution No. 51,408 N.S. and shows that the primary changes concern the approval process for requesting helicopter and canine use and the circumstances under which helicopter assistance may be requested through mutual aid agreements.

	Resolution No. 51,408-N.S.	Proposed Resolution
<b>Is Prior Approval Needed for Use?</b>	Yes, City Manager or upon approval of the Chief of Police in emergency situations where the City Manager is not immediately available.	No, the former requirement for advanced approval by the City Manager or Chief of Police would be replaced with an after-action notification to the City Manager.
<b>Approved Reasons for Request of Helicopters</b>	<ul style="list-style-type: none"> <li>• To assist in case of a disaster</li> <li>• To assist in rescue efforts (specifically excluding the rescue of hostages)</li> <li>• To assist in locating missing persons</li> </ul>	<ul style="list-style-type: none"> <li>• Activation under existing mutual aid agreements</li> <li>• Support during incidents that place officers at risk when an aerial presence can reduce the danger</li> <li>• Assistance in pursuing a fleeing felony suspect whose continued flight threatens the community</li> <li>• Searches for missing or lost individuals whose absence creates a serious hazard</li> <li>• Vehicle pursuits where aircraft can safely assist tracking or coordination</li> </ul>
<b>Approved Reason for Request of Canine Units</b>	<ul style="list-style-type: none"> <li>• To apprehend suspects                             <ul style="list-style-type: none"> <li>○ Where there is a threat to human life</li> <li>○ Where the suspect is reasonably believed to be armed with a deadly weapon</li> <li>○ Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect</li> </ul> </li> <li>• To locate missing persons</li> <li>• To locate crime scenes</li> <li>• Explicitly prohibited for use in crowd control.</li> </ul>	Remains unchanged.

As shown in the table above, the most significant shift occurs in how helicopter assistance is addressed. The previously permissible uses of helicopter assistance were limited to clearly defined humanitarian and emergency purposes, including disaster response, rescue efforts excluding hostage situations, and locating missing persons. The proposed

resolution does not formally replace these uses but reframes and narrows them by incorporating them implicitly into broader, risk-based categories, such as mutual aid activation and searches for missing individuals only when their absence poses a serious hazard. At the same time, the proposal introduces new, explicitly enforcement-oriented justifications, including felony suspect pursuits, vehicle chases, and deployments intended to reduce risk to officers, that go beyond the scope of the earlier permissions. Taken together, the proposed resolution reflects a shift in emphasis from primarily emergency assistance toward authorizing helicopter use as a tactical law enforcement tool, should it be adopted.

**Attachments:**

1. Materials Presented by Councilmember Kesarwani Regarding the Proposed Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units and Updating Mutual Aid Policies:  
<https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-01-29%20Agenda%20Packet%20-%20Public%20Safety.pdf#Page=21>

Item 9.f.

BPD Policy 300 "Use of Force" as updated on March 6,  
2026

## Use of Force

### 300.1 PURPOSE AND SCOPE

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 DEFINITIONS

Definitions related to this policy include:

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

**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.

**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.

**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).

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

**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

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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.

**300.2.1 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.

**300.2.2 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)).

**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)).

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**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 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:

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

**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 their 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 their 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).

**300.3.3 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 their 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.

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- (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.

**300.3.4 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.

**300.3.5 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 RESTRICTION ON THE USE OF 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

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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.

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

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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 DISPLAYING OF FIREARMS**

Given that individuals might 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 the 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.

**300.4.2 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

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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.

**300.5 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.

**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).

**300.5.2 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.
- (c) The application of control holds or pain compliance techniques (but not as part of routine handcuffing).
- (d) The individual subjected to the force complained of injury or continuing pain.
- (e) The individual indicates intent to pursue litigation.
- (f) Any application of a conducted energy device or control device.
- (g) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (h) The individual subjected to the force was rendered unconscious.
- (i) An individual was struck or kicked.
- (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.

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**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.

**300.6 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.

See the Medical Aid and Response Policy for additional guidelines.

**300.7 SUPERVISOR RESPONSIBILITY**

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.

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- (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 their Miranda rights, the following should 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.
- (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.

**300.7.1 WATCH COMMANDER RESPONSIBILITY**

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

**300.7.2 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:

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

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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. 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 and that photos are taken of all involved parties. 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.

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**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.

**300.8 USE OF FORCE ADMINISTRATIVE REVIEW**

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray 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 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.

**300.9 USE OF FORCE COMPLAINTS**

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)).

**300.10 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).

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- (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)).

Additionally, training should include training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

**300.11 USE OF FORCE ANALYSIS**

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.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revisions recommendations.

**300.11.1 REPORTING FREQUENCY**

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

**300.12 POLICY REVIEW**

The Chief of Police or the authorized designee shall regularly review and update this policy to reflect developing practices and procedures. (Government Code § 7286(b)).

**300.13 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)).



## Redlines of Use of Force Policy

### ~~300.1~~ ~~SANCTITY OF LIFE~~PURPOSE AND SCOPE

~~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.~~

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~~ ~~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.~~

~~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.~~

300.1.41 DEFINITIONS

Definitions related to this policy include:

~~**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**~~

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

**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.

**Deadly force** - Any use of force that creates a substantial risk of causing death or serious bodily injury, including

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but not limited to

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the discharge of a firearm ([Penal Code § 835a](#)).

~~Feasible – Reasonably capable of~~

~~Feasible - Reasonably capable of~~ being done or carried out under the circumstances to successfully achieve the arrest or

~~lawful objective without~~

~~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

~~themselves~~

~~him/herself~~ 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.~~

~~**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~~

~~restrained.~~

~~**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~~

~~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~~

~~=~~

~~**Personal Body Weapons**—An officer's use of their 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~~

~~leg or head by means of 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~~

;

~~**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~~

~~**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**—~~

~~: 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 DUTY TO INTERCEDE AND DUTY TO REPORT POLICY**

~~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.~~

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.

#### 300.2.1 ~~FAILURE TO INTERCEDE~~ FAIR AND UNBIASED USE OF FORCE

~~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.~~ 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.

#### 300.2.2 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)).

### 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)).

### **300.3 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.~~

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 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY, AND PROPORTIONALITY OF FORCE~~ ALTERNATIVE TACTICS - DE-ESCALATION

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

- ~~a. The apparent immediacy and severity of the threat to officers or others.~~
- ~~b. The conduct of the individual being confronted, as reasonably perceived by the officer at the time.~~
- ~~c. Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).~~
- ~~d. The conduct of the involved officer.~~
- ~~e. The effects of drugs or alcohol.~~
- ~~f. The individual's apparent mental state or capacity.~~
- ~~g. The individual's apparent ability to understand and comply with officer commands.~~
- ~~h. Proximity of weapons or dangerous improvised devices.~~
- ~~i. The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.~~
- ~~j. The availability of other reasonable and feasible options and their possible effectiveness.~~
- ~~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.~~

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 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.

### 300.3.2 USE OF FORCE ~~CONTINUUM~~TO EFFECT AN ARREST

~~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.**~~

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 their 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 their 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).

300.3.3 USE FACTORS USED TO DETERMINE THE REASONABLENESS 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.~~

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 their 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.

300.3.4 ~~DE-ESCALATION TACTICS~~ PAIN COMPLIANCE TECHNIQUES

~~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:~~

- ~~j. Make a tactical approach to the scene.~~
- ~~k. Maintain a safe distance.~~
- ~~l. Use available cover or concealment and identify escape routes.~~
- ~~m. Stage Berkeley Fire Department.~~
- ~~n. Control vehicle and pedestrian traffic.~~
- ~~o. Establish communication, preferably with one officer.~~
- ~~p. Create an emergency plan and a deliberate plan with contingencies.~~
- ~~q. The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.~~

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.

### 300.3.5 ~~PAIN COMPLIANCE TECHNIQUES~~ RESTRICTIONS ON THE USE OF CAROTID CONTROL HOLD

~~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.~~

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 RESTRICTION ON THE USE OF ~~NON-LETHAL FORCE~~ CHOKE HOLD

~~When lethal force and less than lethal force~~ Officers of this department 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:-~~

~~To protect themselves or another person from physical injury; To restrain or subdue a resistant individual; or To bring an unlawful situation safely and effectively under control.~~

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 ~~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.~~

### 300.3.97 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.

### 300.4 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~~

themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to

~~believe the~~

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~~ 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

~~-Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence~~

- b. to the officer or another person.

- c. 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 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~~ 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~~ instant attention. (Penal Code § 835a).

#### 300.4.1 ~~DRAWING AND POINTING~~ DISPLAYING OF FIREARMS

Given that individuals ~~may~~ might perceive the display of a firearm as a potential application of force, ~~officers~~ officers should carefully evaluate each tactical situation and use sound discretion when drawing ~~a firearm~~ 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 ~~it is objectively reasonable~~ the officer reasonably believes that a ~~significant~~ threat exists based on the totality of the circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward ~~said~~ such threat until the officer no longer perceives such threat.

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

#### 300.4.2 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~~ 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.~~

### 300.65 REPORTING REQUIREMENTS THE USE OF FORCE

All ~~uses~~ 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 ~~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. 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-”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.

### 300.65.1 ~~SUPERVISOR RESPONSIBILITY~~ REPORT RESTRICTIONS

~~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.~~ 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).

### 300.65.2 ~~USE OF FORCE REPORTING LEVELS~~ NOTIFICATION TO SUPERVISORS

#### ~~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~~

- ~~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.~~

## **Level 3**

- ~~c. Suspect has sustained an injury or complains The application of control holds or pain compliance techniques (but not as part of routine handcuffing).~~
- ~~d. The individual subjected to the force complained of injury or continuing pain ~~due to interaction with the officer.~~~~
- ~~e. 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.~~
- ~~f. The officer used any of the following force options:~~
  - ~~1. Chemical Agents/Munitions~~
  - ~~2. Impact Weapon Strikes~~
  - ~~3. Personal Body Weapons~~
- ~~g. 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 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.~~

~~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~~

- a. ~~.~~
- b. The individual indicates intent to pursue litigation.
- c. Any application of a conducted energy device or control device.
- d. Any application of a restraint device other than handcuffs, shackles, or belly chains.
- e. The individual subjected to the force was rendered unconscious.
- f. An individual was struck or kicked.
- g. 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.

#### **300.65.3 ~~EMPLOYEE USE OF FORCE~~REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

~~When any Berkeley Police Department employee has engaged in a~~ Statistical data regarding all officer-involved shootings and incidents involving 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.~~

~~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.~~

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.

#### ~~300.6.4 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.~~

#### **300.76 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.

### **300.87 USE OF FORCE ADMINISTRATIVE REVIEW SUPERVISOR RESPONSIBILITY**

~~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~~

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 their Miranda rights, the following should 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.
- 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.

#### 300.7.1 WATCH COMMANDER RESPONSIBILITY

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

#### 300.7.2 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:

- a. Control holds/ pain compliance techniques (but not as part of routine handcuffing)
- b. 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. 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 and that photos are taken of all involved parties. 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.

### 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.

### **300.98 ~~WATCH COMMANDER RESPONSIBILITY~~ USE OF FORCE ADMINISTRATIVE REVIEW**

The ~~Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy.~~ Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray 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 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.

### **300.9 USE OF FORCE COMPLAINTS**

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)).

### **300.10 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:

1. Legal updates.
2. De-escalation tactics, including alternatives to force.
3. The duty to intercede.
4. The duty to request and/or render medical aid.

5. 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).
6. 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)).

Additionally, training should include training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

### 300.11 USE OF FORCE ANALYSIS

~~The Professional Standards Division Captain or his or her designee shall prepare a comprehensive~~

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

~~but not be limited to~~

:

- a. An analysis of use of force incidents ~~with demographic details of the individual impacted including, but not limited to race, gender and age.~~
- b. ~~All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2).~~
- c. ~~The identification of any trends in the use of force by members.~~
- d. Training needs recommendations.
- e. Equipment needs recommendations.
- f. Policy revisions recommendations.

### 300.11.1 REPORTING FREQUENCY

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

**300.12 CIVILIAN COMPLAINTS POLICY REVIEW**

~~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 Chief of Police or the authorized designee shall regularly review and update this policy to reflect developing practices and procedures. (Government Code § 7286(b)).

**300.13 POLICY AVAILABILITY**

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

**300.~~13~~14 ~~POLICY REVIEW AND UPDATES~~ PUBLIC RECORDS REQUESTS**

~~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.~~

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)).

-

**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 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.~~

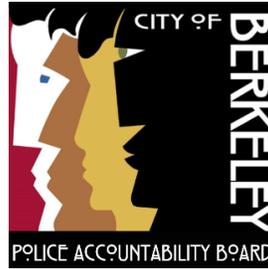
~~When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation. See the VCT policy for more details on this tactic.~~

#### ~~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).~~

Off-Agenda Item 1  
Policy Review Status Updates

Updated March 6, 2026



# POLICY REVIEW STATUS REPORT

## Guiding Authority

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

## Case Load Overview

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

<b>Policy Review Number</b>	2023-PR-0007 <sup>2</sup>
<b>Policy Topic</b>	Restraining Orders & Interactions with the Elderly
<b>Relevant Policy</b>	BPD Policy 313 "Senior and Disability Victimization" BPD Policy 430 "Civil Disputes"
<b>Status</b>	Review In Progress; Records Obtained
<b>Date Presented to the PAB</b>	7/24/2024
<b>Anticipated Completion</b>	March 2026
<b>Assigned To</b>	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

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

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

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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.

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

**Summary**

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

**Activity Report**

Evaluating potential referrals to subcommittee or PAB members.

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

**Summary**

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

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

**Activity Report**

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

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

**Summary**

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

**Activity Report**

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

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

**Summary**

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

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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.

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

**Summary**

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

**Activity Report**

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

*Updated March 6, 2026*

The following policy reviews have been temporarily suspended and will be reconsidered at a future date:

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

Off-Agenda Item 2

Legislative Updates Relevant to the PAB's Work



**MEMORANDUM**

**Date:** March 6, 2026  
**To:** Honorable Members of the Police Accountability Board  
**From:** Jose Murillo, Acting Director of Police Accountability *JM*  
 Syed Mehdi, ODPa Data Analyst  
**Subject:** Legislative Updates

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

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

The following bills passed in 2025 and went into effect on January 1, 2026:

NAME OF LEGISLATION	STATUS	SUMMARY/PURPOSE
<a href="#"><u>SB 385 “Peace Officers”</u></a>	<i>(Passed) 2025-10-01 - Chaptered by Secretary of State. Chapter 218, Statutes of 2025.</i>	This bill, SB 385, requires peace officers hired on or after January 1, 2029, to obtain a modern policing degree or a bachelor's or advanced degree from an accredited institution within 36 months of employment. It builds on existing certification and educational requirements and takes effect immediately as an urgency statute.
<a href="#"><u>AB 572 “Criminal Procedure: Interrogations”</u></a>	<i>(Passed) 2025-10-13 - Chaptered by Secretary of State - Chapter 697, Statutes of 2025.</i>	AB 752 required law enforcement officers to clearly identify themselves and provide specified information before interviewing family members of individuals who have been killed or seriously injured by police.
<a href="#"><u>AB1178 “Peace</u></a>	<i>(Passed) 2025-10-11 - Chaptered by</i>	This bill expands redaction requirements under the California Public Records Act,

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

<p><b><u>Officers: Confidentiality of Records</u></b></p>	<p><i>Secretary of State - Chapter 635, Statutes of 2025.</i></p>	<p>requiring law enforcement agencies to remove identifying details of undercover officers, task force members, and those with verified death threats. It imposes a state-mandated local program and includes legislative findings justifying access limitations.</p>
<p><b><u>AB1388 “Law enforcement: settlement agreements.”</u></b></p>	<p><i>(Passed) 2025-10-13 - Chaptered by Secretary of State - Chapter 729, Statutes of 2025.</i></p>	<p>AB 1388 aims to enhance transparency in law enforcement by prohibiting agencies from entering into nondisclosure agreements regarding police misconduct.</p>
<p><b><u>SB707 “Open Meetings: Meeting and teleconference requirements”</u></b></p>	<p><i>(Passed) 2025-10-03 - Chaptered by Secretary of State. Chapter 327, Statutes of 2025.</i></p>	<p>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.</p>
<p><b><u>SB-627 “Law enforcement: masks.”</u></b></p>	<p><i>(Passed) 2025-09-20 - Chaptered by Secretary of State. Chapter 125, Statutes of 2025.</i></p>	<p>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.</p>
<p><b><u>SB524 “Law Enforcement Agencies: Artificial Intelligence”</u></b></p>	<p><i>(Passed) 2025-10-10 - Chaptered by Secretary of State. Chapter 587, Statutes of 2025.</i></p>	<p>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.</p>
<p><b><u>AB487 “Peace officers: confidentiality of records.”</u></b></p>	<p><i>(Passed) 2025-10-06 - Chaptered by Secretary of State - Chapter 383, Statutes of 2025.</i></p>	<p>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</p>

Public

		additional changes to Penal Code Section 832.7 if AB 1178 or AB 1388 are enacted and this bill is enacted last.
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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 2026.

SOURCE	LINK
<b>BPD Policy 1507 “2026 Legislative &amp; Case Law Update”</b>	<a href="https://berkeleyca.gov/sites/default/files/2026-02/RELEASE_20260127_T171031_Berkeley%20PD%20Policy%20Manual.pdf#Page=1061">https://berkeleyca.gov/sites/default/files/2026-02/RELEASE_20260127_T171031_Berkeley%20PD%20Policy%20Manual.pdf#Page=1061</a>
<b>The California Peace Officers Association also provides a yearly California Legislative and Legal Digest.</b>	<a href="https://cpoa.org/wp-content/uploads/2024/11/2025-Legislative-Legal-Digest.pdf">https://cpoa.org/wp-content/uploads/2024/11/2025-Legislative-Legal-Digest.pdf</a>

**Lexipol Policy Updates**

Updates to the following policies have been implemented since the PAB’s last meeting on February 25, 2026.

Policy Title	Summary
<b>BPD Policy 300 “Use of Force”</b>	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).
<b>BPD Policy 1045 “Facial Coverings” (New Policy)</b>	The purpose of this policy is to provide guidelines for all sworn personnel regarding the restriction of facial coverings when performing their duties except in

	limited specific circumstances (Government Code § 7289).
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**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

March 9, 2026 Agenda and Rules Committee Meeting

Item No.	Title	Recommendation
21	Public Safety Technology: Surveillance Technology Ordinance and Police Equipment Ordinance Approvals, Policy Updates, and Contract Authority	See recommendation description here: <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-03-09%20Agenda%20Packet%20-%20Agenda%20Committee.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-03-09%20Agenda%20Packet%20-%20Agenda%20Committee.pdf</a>
17	Adopt a Resolution Authorizing Temporary Employment of Retired Annuitant Kathy Lee as Interim Director of Police Accountability	See recommendation description here: <a href="https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-03-09%20Agenda%20Packet%20-%20Agenda%20Committee.pdf">https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2026-03-09%20Agenda%20Packet%20-%20Agenda%20Committee.pdf</a>

March 10, 2026 City Council Regular Meeting

These following items are under consideration at the Council’s March 10<sup>th</sup> Regular Meeting:

Item No.	Title	Recommendation
11	Citywide Guidelines on Artificial Intelligence	Note: This language is paraphrased. Refer to the City Manager the development of citywide guidelines for the responsible use of Artificial Intelligence tools by City of Berkeley employees. The policy should support secure, ethical, and effective AI use while promoting innovation, protecting privacy, and maintaining public trust. In preparing the policy, the City Manager should review approaches used by other

Public

		<p>California cities and develop Berkeley specific principles addressing bias prevention, data privacy and cybersecurity protections, human oversight and accountability, operational integration opportunities, cross departmental collaboration, transparency and Public Records compliance, and periodic policy review. Adoption of a clear AI framework will help Berkeley responsibly incorporate emerging technologies while upholding equity, integrity, and community trust.</p>
<p><b>17</b></p>	<p>Resolution Rescinding Berkeley Police Department's Pepper Spray Reporting Requirement</p>	<p>Adopt a Resolution rescinding Berkeley Police Department's current required notification process for reporting pepper spray via the Berkeley Police Department Use of Pepper Spray Report after each incident. Further, maintain the recording of pepper spray use within the existing use of force reporting system to minimize the administrative burden on staff. The department's current transparency measures already provide the public with detailed data on all use of force incidents.</p>

Off-Agenda Item 3  
2026 PAB Meeting Calendar

# 2026 PAB MEETING CLENDAR

## JAN

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\*PAB Nominations and Election of Chair and Vice Chair

## FEB

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\*Annual Report to be presented in March

## APR

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## JUN

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## JUL

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## NOV

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## DEC

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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>