

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

**PUBLIC MEETING MATERIAL**



**POLICE ACCOUNTABILITY BOARD  
REGULAR MEETING AGENDA PACKET  
SUPPLEMENTAL NO. 1**

**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 9.a.

DRAFT PAB Letter to City Council re “BPD’s Proposed Acquisition and Use of Unmanned Aerial Surveillance Systems (UAS)” & Proposed Redlines



Joshua Cayetano | Chair  
Police Accountability Board  
[JCayetano@berkeleyca.gov](mailto:JCayetano@berkeleyca.gov)

March 10, 2026

VIA ELECTRONIC MAIL [Email]

Honorable Mayor Ishii and Members of the City Council  
[Council@berkeleyca.gov](mailto:Council@berkeleyca.gov)  
2180 Milvia Street  
Berkeley, California 94704

**Re: BPD's Proposed Acquisition and Use of Unmanned Aerial Surveillance Systems (UAS)**

Dear Honorable Mayor Ishii and Members of the City Council,

The Police Accountability Board submits the following recommendations regarding the Berkeley Police Department's proposed acquisition and use of unmanned aerial surveillance systems, commonly known as "police drones." This Board does not take the responsibilities before us lightly. We understand that law enforcement in the 21<sup>st</sup> century requires adopting new tools to effectively address crimes. We also understand that new tools require an appropriate level of accountability. To reach these findings, the PAB was guided by the process and values articulated in the City of Berkeley's Police Equipment Ordinance<sup>1</sup>, Surveillance Technology Ordinance<sup>2</sup>, and California's Assembly Bill AB 481—all of which emphasize transparency, accountability, and the protection of the community's civil rights and liberties.<sup>3</sup>

Since 1994, the Berkeley Police Department has operated under a Community Involved Policing (CIP) model, an approach premised on partnership with the community and oriented toward addressing underlying conditions that contribute to crime. This approach has led to measurable public-safety outcomes, including reductions in crime and improvements in public trust. The Berkeley Police Department has incorporated this model into its mission, vision, and values, and those commitments are reflected in the recommendations that guide this work.

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<sup>1</sup> Police Equipment and Community Safety Ordinance: <https://berkeley.municipal.codes/BMC/2.100>

<sup>2</sup> Acquisition and Use of Surveillance Technology: <https://berkeley.municipal.codes/BMC/2.99.010>

<sup>3</sup> Assembly Bill 481: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB481](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481)

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While the PAB recognizes the potential benefits of technology in advancing public safety, we are also concerned that the proposals to adopt or enhance a large suite of surveillance technologies can undermine the principles of community policing with an approach that is potentially more pervasive and less personal, model that creates a modern-day panopticon.

We don't believe that the use of technology to support public safety efforts leads to this outcome. Our purpose, rather, is to raise concerns to the City Council to proceed carefully and thoughtfully when authorizing relatively new—and, in several respects, still statistically unproven applications of emerging technologies, including the use of drones to assist local policing efforts. If such tools are authorized, they should be governed by clear, measurable performance metrics, implemented under transparent and readily understandable policies, and constrained with strict budgetary oversight, and subject to meaningful oversight with defined areas of accountability.

We also write to repeat our concern about BPD's proposal to contract all its surveillance needs out to Flock Safety Inc, a company that provides data to federal immigration authorities and has suffered numerous data breaches. Flock's data-sharing practices raise serious concerns for Berkeley, given the City's longstanding commitment to Sanctuary policies. Considering these risks, it is particularly troubling that at least forty-two jurisdictions across the United States have terminated, paused, or declined to enter into contracts with Flock Safety over concerns about unlawful data sharing, privacy violations, and inadequate safeguards against federal access. The PAB does not believe that expanding BPD's reliance on this vendor is consistent with the City's legal obligations, its Sanctuary commitments, and the trust it seeks to maintain with immigrant residents and community members who rely on local government to safeguard their rights and access to services.

Included in this letter is a proposed redline of the Berkeley Police Department's draft Policy 1303. We emphasize, however, that our recommendations are not limited to textual revisions, but a broader framework around the role of technology and public safety. Our recommendations are as follows:

### **1. Increase Compliance with AB 481 Requirements**

AB 481 requires a publicly posted Military Equipment Use Policy (Policy 709) and a governing-body finding that the equipment is necessary because no reasonable alternative can achieve the same safety objective for officers and civilians. As drafted, the packet addresses most required categories, but it relies heavily on cross-references and does not build a sufficient evidentiary record to support the statute's "necessity/no-reasonable alternative" finding.

Our recommended compliance improvements:

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- Strengthen the “necessity/no reasonable alternative” record with city of Berkeley-specific data. The current narrative justification and alternatives discussion are largely qualitative. At minimum, the policy should be supplemented with clear metrics and supporting information addressing:
  1. Frequency of incidents for which aerial perspective has historically been needed by call type.
  2. Documented historical delays/availability issues when relying on external aerial support
  3. Establish baseline officer injury rates and documented officer safety issues relevant to articulated use cases (quantitative, not just qualitative)
  4. Baseline Call-For-Service (CFS) response time data by call type
  5. Baseline crime clearance rate data by crime type
- Improve compliance with AB-481 complaint/concern process requirements. Policy 709 should specify:
  - a. A complaint intake channel
  - b. Acknowledgement timeline
  - c. Substantive response target
  - d. Routing (who reviews UAS complaints)
  - e. A commitment to include complaint counts/themes in the AB 481 annual report.
- Make Policy 709 self-contained with respect to required AB 481-required elements. Even if operational detail remains in other policies, 709 should include short summaries of authorized uses/prohibited uses, training prerequisites, audit/compliance structure, and consolidated fiscal disclosure (rather than requiring readers to reconstruct core AB 481 elements from other documents).

## **2. Identify Performance Metrics Prior to Program Deployment**

If Council proceeds with authorization, it should adopt a defined evaluation framework at the outset and incorporate it into AB 481’s annual reporting by adding a new subsection to Policy 709 (Performance Reporting) that includes all required metrics. Based on BPD’s stated rationale for procuring drones, the metrics should include, at a minimum:

5. CFS response time by call type
6. Crime clearance rates and outcomes by crime type
7. False alarm cancellation rates
8. Efficient Allocation of Police Resources
9. Reduction of officer injury rates

Specific proposed metrics are set forth in Appendix A.

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### 3. Limit Authorized Uses of Drones

Policy 611, as drafted, set out broad categories of acceptable use. The PAB recommends a phased approach that begins with a more narrowly defined allowable-use framework. Adopting this approach would prevent generalized-surveillance risk, educate and promote public trust, and make compliance monitoring more workable. It would also ensure the technology is integrated under defined security and privacy controls at the outset—minimizing the risk of data breaches and other compliance failures. Our recommendations include.

- Specific enumeration of high-risk and critical incident categories in 611.5 Permitted Use:
  - a. Violent felonies in progress/recently committed
  - b. Armed suspect
  - c. Missing/at-risk person
  - d. Active fire/disaster hazard
  - e. Imminent threat to life, plus a narrowly defined ‘exigent threat to life’ catchall.
- Limit drones-as-first-responder (DFR) to a bounded set of call types for a limited pilot period.
- Clarify (or remove) ‘special events/mass gatherings’ as an allowable category unless the policy adds strict prerequisites: written incident-specific threat assessment, supervisor approval, narrow geographic/time bounds, explicit First Amendment safeguards, and a prohibition on generalized crowd monitoring.
- Add explicit prohibitions to prevent generalized surveillance and proxy profiling: no area sweeps untethered to a specific incident; no pattern monitoring of neighborhoods; no deployment for minor code/quality-of-life violations; no use to monitor constitutionally protected activity absent a judicial warrant and documented exigency.

### 4. Strengthen Oversight and Accountability Mechanisms

The proposed revisions (attached) strengthen Policy 1303 by establishing clear guardrails around when and how the Berkeley Police Department may deploy drones. The changes intentionally narrow officer discretion by limiting drone use to specifically enumerated circumstances. Just as importantly, the revisions require supervisory approval before deployment except in urgent threats to public safety, ensuring that the decision to use this technology is not left to the unilateral judgment of an individual operator. By defining permissible uses and requiring supervisory approval these edits create a framework that prioritizes civil liberties while ensuring the technology is used only when it provides clear public safety value.

Equally important, the revisions introduce meaningful accountability and oversight mechanisms that limit the potential for misuse. Each drone deployment must be documented, including the reason for the deployment and the recording time, creating a transparent record of how the technology is used. The policy also mandates quarterly audits conducted by the Office of Strategic

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Planning and Accountability, with real consequences for violations—including mandatory retraining, potential revocation of operator authorization after repeated violations, and possible disciplinary action. Together, these measures ensure that drone technology operates within a structured system of oversight that emphasizes transparency, responsibility, and adherence to clearly defined rules.

At the same time, it is important for the Council to consider the risks associated with expanding drone use to respond to mass gatherings. Allowing aerial surveillance at large assemblies—particularly during protests, demonstrations, or other First Amendment-protected events—raises serious concerns about chilling lawful expression and undermining public trust. Standing by these restrictions will help ensure that the City protects both public safety and the fundamental rights of community members to gather, speak, and protest without fear of aerial surveillance.

### **5. Significantly Narrow Data Retention to Safeguard Privacy Interests and Align with Operational Purpose**

The PAB requests that the Council significantly narrow the data retention window to 7 days, unless the video footage has evidentiary value. The primary purposes of the drones, as articulated by BPD—real-time situational awareness, confirming whether a law enforcement response is unnecessary, locating fleeing suspects, tracking vehicles from a safe distance, clearing buildings—only require immediate video confirmation, as opposed to a large storage database.

These drones would give the BPD the ability to simultaneously surveil large areas, capturing a host of footage of non-consenting Berkeleyans. The drones provide BPD with access to areas traditionally unavailable to law enforcement and at response times that can only be achieved through technological advancement. The exception for evidentiary data satisfies BPD’s concerns presented at the last meeting but would prevent BPD from “rummaging” into stored data in an unparticularized or overbroad manner.<sup>4</sup>

Further, as the PAB explained to the Council during the discussion of the Flock surveillance cameras last year, limiting the availability of footage is the only way to ensure that federal immigration authorities cannot access that data, even with a valid judicial warrant.

### **6. Increase Fiscal Transparency and Accountability**

At present, the fiscal information is dispersed between Policy 709 and the impact report, and certain expenses appear inconsistent. In addition, the materials do not clearly disclose lifecycle costs, including LTE connectivity and related infrastructure, data storage, fleet replacement, and

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<sup>4</sup> <https://wustllawreview.org/2024/07/01/digital-rummaging/>

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the anticipated costs of transitioning to FCC and NDAA compliance, as discussed further in Section 5.

Fiscal recommendations to strengthen disclosure and support an informed decision include:

- Consolidate and reconcile. Create a single fiscal table within Policy 709 with three columns: One Time, Year 1 and Ongoing Annual, and reconcile the identified DFR and radar inconsistencies. See Appendix B
- Disclose full lifecycle costs. Add lifecycle costs that are presently omitted or unclear, including LTE connectivity and related infrastructure, evidence.com (or comparable) data storage, fleet replacement at years 3-4, and any expected subscription inflation/escalators. See Appendix C.
- Address FCC/NDAA transition risk. If replacement with NDAA-compliant alternatives may be required within the stated lifespan, quantify plausible replacement scenarios and the City's resulting fiscal exposure.

## **7. Facilitate Ease of Governance and Accountability Through Policy Restructure**

The packet consists of three interlocking policies (709, 611, and 1303) and an accompanying impact statement. In its current form, the documents incorporate one another through extensive cross-references, making it difficult to determine which provisions are controlling core requirements such as authorized uses, audits, retention, reporting, and fiscal impacts. The structure, in turn, creates avoidable version-control and accountability risks.

Our suggested recommendations:

- Make Policy 709 self-contained for AB 481 purposes. Include all required elements within Policy 709, without requiring cross-references to other policies.
- Add a one-page governance map and a precedence clause to Policy 709. Specify what:
  - a. Policy 709 governs
  - b. Policy 611 governs
  - c. Policy 1303 governs
  - d. Which policy controls conflicts
- Eliminate circularity. Policy 611 should not be necessary to understand Policy 709's AB 481 minimum content; Policy 1303 should serve as the definitive source for retention, access, and audit requirements.
- Or consider consolidation as an alternative. Merge Policies 611 and 1303 into a single "UAS" Operations and Data Governance' policy, which Policy 709 serving as the AB 481

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wrapper. This would reduce the framework from three policies to two making it easier for the public (and auditors) to understand the full rule set.

## **8. Assess FCC Covered List Implications**

UC Berkeley Law's Criminal Law & Justice Center identified supply-chain and lifecycle uncertainty arising from the FCC's December 2025 action. On December 22, 2025, the FCC updated its Covered List to include foreign-produced UAS and UAS critical components, based on a national-security determination. The FCC has also emphasized that this action is forward-looking, its effects future FCC equipment authorizations and does not require consumers to stop using they have already purchased.

BPD's proposed drone fleet relies on foreign-produced UAS platforms. The record should therefore address, expressly and with model-specific clarity: (a) whether each proposed model currently holds the necessary FCC equipment authorizations; (b) whether replacement units, upgrades, or successor models could face authorization constraints going forward; and (c) how that risk bears on the asserted three-year service life and on replacement planning.

## **9. Reassess Plan to Consolidate Surveillance Technology and Services Under Flock**

BPD is proposing to use Flock Safety not only for Drone First Responder (DFR) capability, but also for other procured and deployed technologies, including Automated License Plate Readers (ALPRs) and fixed cameras. This degree of vendor concentration raises several concerns. On the one hand, relying on a single vendor like Flock for multiple public-safety technologies can deliver real operational benefits such as: faster integration and implementation, simpler training and support and a unified platform that helps dispatch and investigators work from a unified system. On the other hand, the trade-off is concentrated risk. The ability to switch to another provider becomes expensive, difficult or operationally disruptive. Any outage security incident, policy change, pricing shift or product limitation can affect multiple critical functions at once. In short, a single-vendor approach can improve operational efficiency, but it needs stronger contractual exit protections and stronger oversight to manage dependency and data-governance risks.

### **A. Concentration/single-vendor risk creates efficiencies and raises concerns:**

- Operational dependency: When one vendor has absolute control over multiple critical systems (hardware, software, and data storage) it creates a dependency risk where the disruption is not confined to one tool but can impair several core capabilities simultaneously.
- Weakened governance leverage: Single vendor consolidation also raises the potential for the City of Berkeley or BPD to negotiate privacy, conduct an audit, manage data

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parameters, privacy limits or the cost of terminating the relationship becomes much more difficult.

- Cost dependency: The reliance on vendor to manage multiple functions allows for initial upfront savings in the forms of discounts, bundles and service integration. However, once the initial contract is executed the bargaining power shifts to the vendor in the form of fees, subscription increases, hardware and software costs, license fees, add-on charges that the City will have limited ability to negotiate given the disruption and expense associated with switching providers.

**B. Flock-specific concerns:**

- Flock Safety value proposition is its network effects capabilities—cross jurisdiction search and data sharing. Even if BPD has strong controls, the platform architecture can make broader access easier than the public would expect.
- Unauthorized or unintended access, including federal use. There continues to be reporting from local jurisdictions alleging federal agencies accessed ALPR data without the local cities consent. As recently as January-February 2026, Mountain View discovered its Flock Safety ALPR data had been accessed outside the city’s approved sharing rules, including access by Federal and state agencies.
- At least 42 jurisdictions, including multiple local jurisdictions, have terminated their contract or refused to contract with Flock Safety following reports showing data access by federal immigration enforcement or other federal entities without clear local approval. Many of these jurisdictions have cited a loss of trust with Flock Safety, given the advertent or inadvertent disclosure of data to federal immigration officials without clear local approval and despite existing restrictions.
- Berkeley has already experienced one such breach of trust in July 2025 when Flock Safety enabled a state-wide look-up tool that caused other agencies to query Berkeley data for “ICE” and “CBP”.
- Retention creep and secondary use: Flock states “standard” retention is often 30 days but may vary by customer policy; in practice, retention can expand over time (by policy amendments, exceptions, or investigative holds.)
- Integration magnifies and intensifies privacy impact. When ALPR data and drone operations integrate, the combined capability can significantly increase tracking power
- Legal process discretion included into the vendor’s policy. Flock Safety own published policy indicates it may access/use/preserve/disclose LPR data when it believes it is “reasonably necessary” for legal process, enforcement of agreements, or to address security/technical issues.

The question for the City Council is not limited to whether Berkeley “trusts” Flock Safety. It is

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whether the City is prepared to approve a contract with a vendor whose platform, can enable and facilitate federal immigration enforcement in any space where data sharing is not expressly prohibited. In that respect, the risk is structural, not personal. Flock's business model depends, at least in part, on network effects and cooperation with outside agencies, including federal entities. Where sharing is permitted, that cooperation can include providing access to, or facilitating the use of, data that may be used to identify and locate undocumented individuals.

If Berkeley's policy judgment is that City resources and City-enabled systems should not function as an input to civil immigration enforcement, then the Council must confront whether contracting with a vendor structured around broad, networked access is consistent with that commitment.

Approval, if granted, should be conditioned on (1) share-off-by-default network settings with public reporting on any external access, (2) enforceable contractual limits on vendor access/disclosure and rapid breach notification, (3) strict retention limits and audit-ready logs (4) controls on cross-tool integration that could enable tracking, (5) clear exit rights and data portability to prevent lock-in.

The Police Accountability Board recognizes that certain technological tools may offer operational benefits, improving public safety outcomes, and supporting recruitment and retention within the Berkeley Police Department. But recognition of potential utility does not relieve the City of its duty to ask the threshold question: what, precisely, is driving BPD's demand for expanded power and access to these tools, and why now?

Berkeley's crime patterns since COVID (2020 onward) declined starting in 2024 toward more typical levels.

Key year-over-year changes BPD highlights:

- Robberies: down 43% from 2023 to 2024 (386 → 221).
- Shootings: down 26% from 2023 to 2024 (34 → 25).
- Commercial burglaries: decreased from 2023 to 2024 (574 → 396).
- Vehicle thefts: decreased from 2023 to 2024 (1,350 → 1,053).
- Catalytic converter thefts: decreased from 2023 to 2024 (457 → 312).
- Sexual assault reports: down from 2023 to 2024 (159 → 120), though BPD notes they remain elevated relative to earlier years.

This question becomes more urgent when the request extends beyond minor implementation of technology to include loosening longstanding restrictions on the Military Equipment Use Policy or reintroducing historically constrained tools, such as access and use of helicopters and

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canine deployment. The public is not demanding these expansions. To the contrary, many residents are concerned and are asking why BPD is seeking so much all at once, particularly when reported crime is declining. The burden rests with BPD to justify not only the asserted benefits, but the necessity, and the safeguards, before the City normalizes the expansion of force surveillance capabilities that may be difficult to unwind.

Respectfully submitted,

Josh Cayetano  
Chair, Police Accountability Board

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

**ATTACHMENTS:**

1. Appendix A – Breakdown of CFS and UAS
2. Appendix B – Consolidated Cost Table
3. Appendix C – Lifecycle Provisional Cost Estimate
4. Appendix D – Flock ALPR Terminated Paused Contracts
  - Timeline View

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## Appendix A

### 1. Calls for Service (CFS) Response Time by Call Type

- a. Broken out by drone vs. ground units

### 2. Crime Clearance Rates by Crime Type

### 3. False Alarm / Cancellation / Downgrade Rates

- Percentage of drone deployments resulting in:
  - Ground response cancellation
  - Response downgrade
  - No enforcement action required
- Break down by call type.

### 4. Use of Force Rates in Drone-Assisted Incidents

Track and report:

- Use-of-force incidents involving drone-assisted calls
- Compare to similar incidents without drone deployment
- Break out by force level (hands-on, intermediate, firearm)

### 5. Officer Injury and Safety Indicators

Track:

- Officer injuries in drone-assisted incidents
- Near-miss or tactical withdrawal events
- High-risk entries avoided due to aerial assessment

### 6. Equity and Geographic Distribution (Cross-Cutting Metric)

Track:

- Deployment counts by *census* tracts or council districts
- Overlay with demographic indicators

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**Appendix B – Consolidated Cost Table**

<b>Category</b>	<b>Line item</b>	<b>Amount</b>	<b>Notes/discrepancies to reconcile</b>
<b>One-time</b>	Field-based UAS purchase (Avata 2 + Matrice 4T units)	\$44,500	Capital purchase
<b>One-time</b>	Dock installation	\$15,000	One-time installation
<b>One-time</b>	Pilot training (4 primary + 8 additional)	\$72,000	One-time training cost stated; no documentation of ongoing training costs
<b>Year 1</b>	DFR lease (Year 1)	\$100,000	Figure appears in impact materials; may conflict with \$125,000 annual figure in Policy 709
<b>Year 1</b>	Radar	Included	Stated as included in Year 1 in impact statement; may conflict with separate \$150,000 annual cost in Policy 709
<b>Ongoing annual</b>	DFR lease	\$125,000 / year	May conflict with \$100,000 Year 1 figure; reconcile
<b>Ongoing annual</b>	Radar	\$150,000 / year	May conflict with “included” in Year 1 in impact statement; clarify subscription structure

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<b>Ongoing annual</b>	Maintenance (purchased units)	(purchased \$2,000 / year	Recurring
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**Appendix C – Lifecycle Provisional Cost Estimate**

- One-time subtotal (excluding Year 1 lease): approximately \$131,500.
- Estimated Year 1 total (one-time + Year 1 lease + annual maintenance): approximately \$233,500.
- Estimated steady-state annual cost (DFR lease + radar + maintenance): approximately \$277,000/year.

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Appendix D – Flock ALPR Terminated Paused Contracts

Agency Name	Agency Type	State	Action Type	Approx Date	Notes	Source URL
<b>Sedona</b>	City	AZ	Program Shut Down	Sept 2025	Permanent Removal	<a href="https://www.iredrocknews.com/2025/09/09/sedona-ends-flock-license-plate-cameras">https://www.iredrocknews.com/2025/09/09/sedona-ends-flock-license-plate-cameras</a>
<b>Flagstaff</b>	City	AZ	Contract terminated & Cameras Deactivated	Dec 2025	Council Vote to end Program	<a href="https://azdaily.azsun.com/news/local/flagstaff-flock-safety-cameras-ended">https://azdaily.azsun.com/news/local/flagstaff-flock-safety-cameras-ended</a>
<b>South Tucson</b>	City	AZ	Contract terminated	Feb 17, 2026	Council voted to terminate contract	<a href="https://www.kgun9.com/news/community-inspired-journalism/south-tucson/south-tucson-ends-flock-camera-contract-city-now-">https://www.kgun9.com/news/community-inspired-journalism/south-tucson/south-tucson-ends-flock-camera-contract-city-now-</a>

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						searching-for-alternatives
<b>Los Alto Hills</b>	City	CA	Cameras turned off, contract to be terminated	Jan 2025	City contracts with Santa Clara County Sheriff	<a href="https://www.losaltosonline.com/news/los-altos-hills-to-remove-alpr-cameras/article_59f90aa8-14c1-4309-9f7f-12d16c649d9e.html">https://www.losaltosonline.com/news/los-altos-hills-to-remove-alpr-cameras/article_59f90aa8-14c1-4309-9f7f-12d16c649d9e.html</a>
<b>Mountain View</b>	City	CA	Cameras turned off during pause (Council vote to decide)	Feb 2026	Police chief shut down/paused Flock ALPRs after discovering a configuration issue that allowed limited outside-agency searching. Council may vote Feb 24.	<a href="https://www.mv-voice.com/public-safety/2026/02/02/mountain-view-police-turn-off-license-plate-cameras-after-data-sharing-breach/">https://www.mv-voice.com/public-safety/2026/02/02/mountain-view-police-turn-off-license-plate-cameras-after-data-sharing-breach/</a>

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<p><b>Richmond</b></p>	<p>City</p>	<p>CA</p>	<p>Program paused/shut down (cameras offline)</p>	<p>Dec 2025</p>	<p>Police chief shut down/paused Flock ALPRs after discovering a configuration issue that allowed limited outside-agency searching; described as a pause pending safeguards.</p>	<p><a href="https://richmondinside.org/2025/12/09/richmond-license-plate-reader-data-breach/">https://richmondinside.org/2025/12/09/richmond-license-plate-reader-data-breach/</a>  <a href="https://richmondstandard.com/community/2025/12/09/richmond-police-suspend-system-that-automatically-reads-license-plates/">https://richmondstandard.com/community/2025/12/09/richmond-police-suspend-system-that-automatically-reads-license-plates/</a></p>
<p><b>Santa Clara County (Covers Saratoga, Los Altos Hills (see above), and Cupertino)</b></p>	<p>County</p>	<p>CA</p>	<p>Sheriff prohibited from using Flock APLR</p>	<p>Feb 24, 2026</p>	<p>The unincorporated areas of Saratoga, Cupertino, and Los Altos Hills have to make their own decision to terminate</p>	<p><a href="https://abc7news.com/post/santa-clara-county-stop-using-flock-safety-cameras-several-cities-privacy-">https://abc7news.com/post/santa-clara-county-stop-using-flock-safety-cameras-several-cities-privacy-</a></p>

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					their respective contracts with Flock (Los Altos has terminated), but the County's vote effectively ends the use of Flock in these three cities because they do not have their own law enforcement agency.	<a href="#">concerns/18646060/</a>
<b>Santa Cruz</b>	City	CA	Contracted Terminated	Jan 13, 2025	Council vote to end program	<a href="https://www.santacruzsentinel.com/2026/01/13/santa-cruz-votes-to-terminate-its-contract-with-flock-safety/">https://www.santacruzsentinel.com/2026/01/13/santa-cruz-votes-to-terminate-its-contract-with-flock-safety/</a>
<b>Windsor</b>	City	CA	Cameras turned off	Feb 17, 2026	Council directed City Manager to turn off	<a href="https://patch.com/connecticut/windsor/win">https://patch.com/connecticut/windsor/win</a>

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					cameras, and explore alternate vendors and/or a contract that protects data	<a href="#">dsor-votes-8-1-shut-down-flock-license-plate-reader-cameras</a>
<b>Denver</b>	City/County	CO	Proposed extension rejected	May 2025	Council vote	<a href="https://www.denverpost.com/2025/05/05/denver-city-council-flock-vote">https://www.denverpost.com/2025/05/05/denver-city-council-flock-vote</a>
<b>Coralville</b>	City	IA	Cameras removed, contract terminated	Feb 25, 2026	Council vote to terminate contract, takedown cameras	<a href="https://www.kcrg.com/2026/02/25/coralville-removes-flock-cameras-after-council-votes-end-contract/">https://www.kcrg.com/2026/02/25/coralville-removes-flock-cameras-after-council-votes-end-contract/</a>
<b>Oak Park</b>	Village	IL	Contract terminated	Aug 2025	Immediate shutdown	<a href="https://oakpark.com/2025/08/05/oak-park-ends-flock-cameras">https://oakpark.com/2025/08/05/oak-park-ends-flock-cameras</a>

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<b>Evanston</b>	City	IL	Contracted terminated	Sept 2025	Termination notice issued	<a href="https://evanstonroundtable.com/2025/09/26/evanston-ends-flock-alpr">https://evanstonroundtable.com/2025/09/26/evanston-ends-flock-alpr</a>
<b>Brookline</b>	Town	MA	Police access paused	2023	Private Flock system	<a href="https://brookline.news/police-pause-flock-access">https://brookline.news/police-pause-flock-access</a>
<b>Cambridge</b>	City	MA	Contracted terminated	2025	Unauthorized installation issues	<a href="https://www.cambridgema.gov/Departments/citymanager/soffice/news/2025/flock-contract-terminated">https://www.cambridgema.gov/Departments/citymanager/soffice/news/2025/flock-contract-terminated</a>
<b>Ferndale</b>	City	MI	Contract ended	Nov 2025	Pilot discontinued	<a href="https://www.freep.com/story/news/local/michigan/2025/11/13/ferndale-ends-flock-cameras">https://www.freep.com/story/news/local/michigan/2025/11/13/ferndale-ends-flock-cameras</a>

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<b>Hillsborough</b>	Town	NC	Contract terminated	2024	Cameras removed	<a href="https://www.newsobserver.com/news/local/article-hillsborough-flock">https://www.newsobserver.com/news/local/article-hillsborough-flock</a>
<b>Ithica</b>	City	NY	Contracted terminated	Mar 4, 2026	Council vote to terminate contract	<a href="https://www.wskg.org/regional-news/2026-03-04/ithaca-common-council-votes-to-end-contract-with-flock-safety">https://www.wskg.org/regional-news/2026-03-04/ithaca-common-council-votes-to-end-contract-with-flock-safety</a>
<b>Poestenkill</b>	Town	NY	Proposal rejected	2024	Town board vote	<a href="https://www.timesunion.com/news/article/poestenkill-rejects-flock-cameras">https://www.timesunion.com/news/article/poestenkill-rejects-flock-cameras</a>
<b>Village of Saranac Lake</b>	Village	NY	Program paused/ shut down (cameras offline)	Feb 26, 2026	Mayor stopped installation, ordered uninstallment	<a href="https://www.northcountrypublicradio.org/news/story/53078/20260302/">https://www.northcountrypublicradio.org/news/story/53078/20260302/</a>

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					of existing cameras	<a href="#">police-stop-installing-surveillance-cameras-in-saranac-lake-for-now</a>
<b>Lucas County</b>	County	OH	Attempted rescission	2024	Legal dispute	<a href="https://www.toledoblade.com/local/county/2024/01/18/lucas-county-flock-contract">https://www.toledoblade.com/local/county/2024/01/18/lucas-county-flock-contract</a>
<b>Washington County</b>	County	OK	Agreement rescinded	2024	County roads only	<a href="https://www.examiner-enterprise.com/story/news/2024/02/06/washington-county-flock">https://www.examiner-enterprise.com/story/news/2024/02/06/washington-county-flock</a>
<b>Woodburn</b>	City	OR	Program suspended/paused	Nov 2025	City suspended use for at least two months after community concerns about	<a href="https://woodburnindependent.com/2025/11/11/woodburn-suspends-flock-safety-license-plate">https://woodburnindependent.com/2025/11/11/woodburn-suspends-flock-safety-license-plate</a>

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					potential federal/ICE enforcement use.	<a href="#">cameras-amid-concerns-of-federal-ice-enforcement/</a>
<b>Eugene</b>	City	OR	Contract terminated	Dec 2025	Immediate termination	<a href="https://www.opb.org/article/2025/12/02/eugene-ends-flock-alpr">https://www.opb.org/article/2025/12/02/eugene-ends-flock-alpr</a>
<b>Springfield</b>	City	OR	Cameras not activated; covered pending removal	Oct – Dec 2025	City stated cameras had not been turned on; planned to cover then remove after ending use.	<a href="https://www.klcc.org/breaking/2025-12-05/eugene-and-springfield-both-announce-end-of-flock-camera-usage">https://www.klcc.org/breaking/2025-12-05/eugene-and-springfield-both-announce-end-of-flock-camera-usage;</a> <a href="https://lookouteugene-springfield.com/story/justice/2025/12/05/eugene-announces-">https://lookouteugene-springfield.com/story/justice/2025/12/05/eugene-announces-</a>

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						<a href="#">termination-of-flock-contract/</a>
<b>Bend</b>	City	OR	Cameras turned off; won't renew contract	Jan 7, 2026	Constituent concerns, data privacy/data collection practices.	<a href="https://www.opb.org/article/2026/01/08/bend-flock-cameras-ai-license-plate-camera-law-enforcement/">https://www.opb.org/article/2026/01/08/bend-flock-cameras-ai-license-plate-camera-law-enforcement/</a>
<b>Austin</b>	City	TX	Contract ended	July 2025	Not renewed	<a href="https://www.kut.org/austin/2025-07-01/austin-ends-flock-cameras">https://www.kut.org/austin/2025-07-01/austin-ends-flock-cameras</a>
<b>Hays County</b>	County	TX	Contract terminated	Oct 14, 2025	County Commission voted to end contract.	<a href="https://www.kvue.com/article/news/local/hays-county/hays-county-contract-flock-license-plate-reader-">https://www.kvue.com/article/news/local/hays-county/hays-county-contract-flock-license-plate-reader-</a>

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						<a href="https://www.kut.org/texas/2025-12-03/san-marcos-flock-cameras">cameras/269-f7276915-920a-4216-add1-42fbf17a0056</a>
<b>San Marcos</b>	City	TX	Renewal Rejected	Dec 2025	Council direction	<a href="https://www.kut.org/texas/2025-12-03/san-marcos-flock-cameras">https://www.kut.org/texas/2025-12-03/san-marcos-flock-cameras</a>
<b>Staunton</b>	City	VA	Contract ended	Dec 2025	ALPRs removed	<a href="https://www.whsv.com/2025/12/10/staunton-ends-flock-cameras">https://www.whsv.com/2025/12/10/staunton-ends-flock-cameras</a>
<b>Charlottesville</b>	City	VA	Program paused/ cameras turned off	Dec 16, 2025	City Manager ordered Flock ALPR cameras turned off pending review after concerns about cameras operating	<a href="https://cvillierightnow.com/news/208802-charlottesville-turns-off-flock-license-plate-cameras-after">https://cvillierightnow.com/news/208802-charlottesville-turns-off-flock-license-plate-cameras-after</a>

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					during a pause.	<a href="#">concerns-raised/</a>
<b>Gig Harbor</b>	City	WA	Contracted not awarded	Mar 24, 2025	Council declined to award proposed contract for Flock ALPR	<a href="https://www.tenewstribune.com/news/local/community/gateway/g-news/article302729359.html">https://www.tenewstribune.com/news/local/community/gateway/g-news/article302729359.html</a>
<b>Mountainlake Terrace</b>	City	WA	Contract canceled	2024	Unanimous council vote	<a href="https://www.heraldnet.com/news/mountainlake-terrace-cancels-flock">https://www.heraldnet.com/news/mountainlake-terrace-cancels-flock</a>
<b>Redmon</b>	City	WA	Program suspended	2025	Privacy & records concerns	<a href="https://www.seattletimes.com/seattle-news/politics/redmond-suspends-flock-camera">https://www.seattletimes.com/seattle-news/politics/redmond-suspends-flock-camera</a>
<b>Olympia</b>	City	WA	Pilot Suspended	2025	Under review	<a href="https://www.theolympian.com/news/local/">https://www.theolympian.com/news/local/</a>

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						<a href="#">article-olympia-floc</a>
<b>Sedro-Wooley</b>	City	WA	Program suspended, pending appeal of WA PRA lawsuit	June 2025	Paused while appeals re WA Supreme Court ruling on public records for Flock data	<a href="https://www.goskagit.com/news/local_news/sedro-woolley-turns-off-law-enforcement-cameras-while-it-seeks-court-ruling/article_d0d0bdb9-6502-4686-94ae-346289afd535.html">https://www.goskagit.com/news/local_news/sedro-woolley-turns-off-law-enforcement-cameras-while-it-seeks-court-ruling/article_d0d0bdb9-6502-4686-94ae-346289afd535.html</a>
<b>Skamania County</b>	County	WA	Use delayed/turned off	2025	Public records ruling	<a href="https://www.columbian.com/news/2025/skamania-county-flock">https://www.columbian.com/news/2025/skamania-county-flock</a>
<b>Stanwood</b>	City	WA	Program Paused	May 2025	Litigation concerns	<a href="https://www.heraldnet.com/news/stanwoo">https://www.heraldnet.com/news/stanwoo</a>

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						<a href="#">d-flock-paused</a>
<b>Prosser</b>	City	WA	Cameras turned off (under contract through Nov'26)	Jan 26, 2026	Under contract through Nov '26 - press release silent as to renewal	<a href="https://www.chronline.com/stories/controversial-flock-license-plate-readers-shut-off-by-another-eastern-washington-city,395347">https://www.chronline.com/stories/controversial-flock-license-plate-readers-shut-off-by-another-eastern-washington-city,395347</a>
<b>Lynnwood</b>	City	WA	Program paused	Oct 2025	Cameras turned off	<a href="https://www.heraldnet.com/news/lynnwood-pauses-flock-cameras">https://www.heraldnet.com/news/lynnwood-pauses-flock-cameras</a>
<b>Verona</b>	City	WI	Renewal Declined	2024	Contract expired	<a href="https://madison.com/news/local/verona-flock-renewal-vote">https://madison.com/news/local/verona-flock-renewal-vote</a>

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Appendix D - Timeline View

Agency Name	Agency Type	State	Action Type	Approx. Date	Notes	Source URL
<b>City of Sedona / Sedona PD</b>	City	AZ	Program shut down	Sept 2025	Permanent removal	<a href="https://www.redrocknews.com/2025/09/09/sedona-ends-flock-license-plate-cameras">https://www.redrocknews.com/2025/09/09/sedona-ends-flock-license-plate-cameras</a>
<b>City of Evanston / Evanston PD</b>	City	IL	Contract terminated	Sept 2025	Termination notice issued	<a href="https://evanstonroundtable.com/2025/09/26/evanston-ends-flock-alpr">https://evanstonroundtable.com/2025/09/26/evanston-ends-flock-alpr</a>
<b>City of Austin</b>	City	TX	Contract ended	July 2025	Not renewed	<a href="https://www.kut.org/austin/2025-07-01/austin-ends-flock-cameras">https://www.kut.org/austin/2025-07-01/austin-ends-flock-cameras</a>
<b>City of Springfield / Springfield Police Department</b>	City	OR	Cameras not activated; covered pending removal	Oct–Dec 2025	City stated cameras had not been turned on; planned to cover then remove after ending use.	<a href="https://www.klcc.org/breaking/2025-12-05/eugene-and-springfield-both-announce-end-of-flock-camera-usage">https://www.klcc.org/breaking/2025-12-05/eugene-and-springfield-both-announce-end-of-flock-camera-usage</a> ; <a href="https://lookouteugene-springfield.com/story/justice/2025/12/05/eugene-announces-termination-of-flock-contract/">https://lookouteugene-springfield.com/story/justice/2025/12/05/eugene-announces-termination-of-flock-contract/</a>

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<b>City of Oakland</b>	City	CA	Proposal rejected (committee)	2023	Later approved by council	<a href="https://oaklandside.org/2023/06/13/oakland-flock-vote">https://oaklandside.org/2023/06/13/oakland-flock-vote</a>
<b>Town of Brookline</b>	Town	MA	Police access paused	2023	Private Flock system	<a href="https://brookline.news/police-pause-flock-access">https://brookline.news/police-pause-flock-access</a>
<b>Town of Hillsborough</b>	Town	NC	Contract terminated	2024	Cameras removed	<a href="https://www.newsobserver.com/news/local/article-hillsborough-flock">https://www.newsobserver.com/news/local/article-hillsborough-flock</a>
<b>City of Verona</b>	City	WI	Renewal declined	2024	Contract expired	<a href="https://madison.com/news/local/verona-flock-renewal-vote">https://madison.com/news/local/verona-flock-renewal-vote</a>
<b>Town of Poestenkill</b>	Town	NY	Proposal rejected	2024	Town board vote	<a href="https://www.timesunion.com/news/article/poestenkill-rejects-flock-cameras">https://www.timesunion.com/news/article/poestenkill-rejects-flock-cameras</a>
<b>Lucas County</b>	County	OH	Attempted rescission	2024	Legal dispute	<a href="https://www.toledoblade.com/local/county/2024/01/18/lucas-county-flock-contract">https://www.toledoblade.com/local/county/2024/01/18/lucas-county-flock-contract</a>
<b>City of Mountlake Terrace</b>	City	WA	Contract canceled	2024	Unanimous council vote	<a href="https://www.heraldnet.com/news/mountlake-terrace-cancels-flock">https://www.heraldnet.com/news/mountlake-terrace-cancels-flock</a>
<b>Washington County</b>	County	OK	Agreement rescinded	2024	County roads only	<a href="https://www.examiner-enterprise.com/story/news/2024/02/06/">https://www.examiner-enterprise.com/story/news/2024/02/06/</a>

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						<a href="#">washington-county-flock</a>
<b>City of Cambridge</b>	City	MA	Contract terminated	2025	Unauthorized installation issues	<a href="https://www.cambridgema.gov/Departments/citymanagersoffice/news/2025/flock-contract-terminated">https://www.cambridgema.gov/Departments/citymanagersoffice/news/2025/flock-contract-terminated</a>
<b>City of Redmond / Redmond PD</b>	City	WA	Program suspended	2025	Privacy & records concerns	<a href="https://www.seattletimes.com/seattle-news/politics/redmond-suspends-flock-cameras">https://www.seattletimes.com/seattle-news/politics/redmond-suspends-flock-cameras</a>
<b>City of Olympia</b>	City	WA	Pilot suspended	2025	Under review	<a href="https://www.theolympian.com/news/local/article-olympia-flock">https://www.theolympian.com/news/local/article-olympia-flock</a>
<b>Skamania County</b>	County	WA	Use delayed / turned off	2025	Public records ruling	<a href="https://www.columbian.com/news/2025/skamania-county-flock">https://www.columbian.com/news/2025/skamania-county-flock</a>
<b>City of Stanwood</b>	City	WA	Program paused	May 2025	Litigation concerns	<a href="https://www.heraldnet.com/news/stanwood-flock-paused">https://www.heraldnet.com/news/stanwood-flock-paused</a>
<b>City &amp; County of Denver</b>	City/County	CO	Proposed extension rejected	May 2025	Council vote	<a href="https://www.denverpost.com/2025/05/05/denver-city-council-flock-vote">https://www.denverpost.com/2025/05/05/denver-city-council-flock-vote</a>
<b>Village of Oak Park / Oak Park PD</b>	Village	IL	Contract terminated	Aug 2025	Immediate shutdown	<a href="https://oakpark.com/2025/08/05/oak-park-ends-flock-cameras">https://oakpark.com/2025/08/05/oak-park-ends-flock-cameras</a>

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<b>City of Lynnwood / Lynnwood PD</b>	City	WA	Program paused	Oct 2025	Cameras turned off	<a href="https://www.heraldnet.com/news/lynnwood-pauses-flock-cameras">https://www.heraldnet.com/news/lynnwood-pauses-flock-cameras</a>
<b>City of Eugene / Eugene Police Department</b>	City	OR	Cameras turned off during pause (later contract terminated)	Oct 2025	During a mid-October pause, cameras were turned off; contract later terminated in early Dec 2025.	<a href="https://www.klcc.org/breaking/2025-12-05/eugene-and-springfield-both-announce-end-of-flock-camera-usage">https://www.klcc.org/breaking/2025-12-05/eugene-and-springfield-both-announce-end-of-flock-camera-usage;</a> <a href="https://lookouteugene-springfield.com/story/latest-news/2025/12/09/flock-activated-camera-during-pause-chief-says-pushing-city-to-axe-contract/">https://lookouteugene-springfield.com/story/latest-news/2025/12/09/flock-activated-camera-during-pause-chief-says-pushing-city-to-axe-contract/</a>
<b>City of Ferndale</b>	City	MI	Contract ended	Nov 2025	Pilot discontinued	<a href="https://www.freep.com/story/news/local/michigan/2025/11/13/ferndale-ends-flock-cameras">https://www.freep.com/story/news/local/michigan/2025/11/13/ferndale-ends-flock-cameras</a>
<b>City of Woodburn</b>	City	OR	Program suspended / paused	Nov 2025	City suspended use for at least two months after community concerns about potential federal/ICE enforcement use.	<a href="https://woodburnindependent.com/2025/11/11/woodburn-suspends-flock-safety-license-plate-cameras">https://woodburnindependent.com/2025/11/11/woodburn-suspends-flock-safety-license-plate-cameras-</a>

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						<a href="#">amid-concerns-of-federal-ice-enforcement/</a>
<b>City of Flagstaff / Flagstaff PD</b>	City	AZ	Contract terminated & cameras deactivated	Dec 2025	Council vote to end program	<a href="https://azdailysun.com/news/local/flagstaff-flock-safety-cameras-ended">https://azdailysun.com/news/local/flagstaff-flock-safety-cameras-ended</a>
<b>City of Eugene</b>	City	OR	Contract terminated	Dec 2025	Immediate termination	<a href="https://www.opb.org/article/2025/12/02/eugene-ends-flock-alpr">https://www.opb.org/article/2025/12/02/eugene-ends-flock-alpr</a>
<b>City of Staunton</b>	City	VA	Contract ended	Dec 2025	ALPRs removed	<a href="https://www.whsv.com/2025/12/10/staunton-ends-flock-cameras">https://www.whsv.com/2025/12/10/staunton-ends-flock-cameras</a>
<b>City of San Marcos</b>	City	TX	Renewal rejected	Dec 2025	Council direction	<a href="https://www.kut.org/texas/2025-12-03/san-marcos-flock-cameras">https://www.kut.org/texas/2025-12-03/san-marcos-flock-cameras</a>
<b>City of Richmond / Richmond Police Department</b>	City	CA	Program paused / shut down (cameras offline)	Dec 2025	Police chief shut down/paused Flock ALPRs after discovering a configuration issue that allowed limited outside-agency searching; described as a pause pending safeguards.	<a href="https://richmondside.org/2025/12/09/richmond-license-plate-reader-data-breach/">https://richmondside.org/2025/12/09/richmond-license-plate-reader-data-breach/</a> <a href="https://richmondstandard.com/community/2025/12/09/richmond-police-suspend-system-that-automatically-reads-license-plates/">https://richmondstandard.com/community/2025/12/09/richmond-police-suspend-system-that-automatically-reads-license-plates/</a>

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<b>City of Charlottesville / Charlottesville Police Department</b>	City	VA	Program paused / cameras turned off	Dec 16, 2025	City Manager ordered Flock ALPR cameras turned off pending review after concerns about cameras operating during a pause.	<a href="https://cvillerrightnow.com/news/208802-charlottesville-turns-off-flock-license-plate-cameras-after-concerns-raised/">https://cvillerrightnow.com/news/208802-charlottesville-turns-off-flock-license-plate-cameras-after-concerns-raised/</a>
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Policy

**1303**

Law Enforcement Services Manual

**NEW/EDITED TEXT IN RED**

## Surveillance Use Policy-Unmanned Aerial System (UAS)

### 1303.1 PURPOSE

The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval and dissemination of images and data captured by the UAS. Department personnel shall adhere to requirements for Unmanned Aerial Systems covered in this policy as well as the corresponding Use Policy - 611.

### 1303.2 AUTHORIZED USE

Authorized operators ~~may~~ shall deploy the UAS only in the following circumstances:

1. To provide real-time situational awareness during high-risk or critical incidents, such as barricaded suspects, hostage situations, active shooters, the apprehension of armed and dangerous suspects, the pre-planning and service of a warrant allowing officers to create time and distance to formulate de-escalation strategies, facilitate safe tactical planning, and reduce the need for immediate physical engagement.
2. To assist in locating lost, missing, or injured persons during search and rescue operations.
3. To rapidly respond to calls for service to verify the nature of the incident, potentially determining that a law enforcement response is unnecessary for unfounded reports or low-priority incidents, thereby acting as a resource multiplier and keeping patrol officers available for other calls.
4. To locate fleeing suspects to effectively contain perimeters and reduce the need for dangerous ground-based foot pursuits.
5. To track fleeing vehicles from a safe distance, allowing patrol units to de-escalate or terminate dangerous ground pursuits while maintaining visual contact.
6. To clear interior buildings or confined spaces remotely to prevent potentially violent encounters between officers and hidden suspects.

7. To assist the Fire Department with fire mitigation and suppression, hazardous materials releases, or disaster response and recovery.
8. To remotely inspect potential explosive devices or hazardous objects.
9. To document complex crime scenes, accident scenes, or areas where an aerial perspective is critical for the investigation.
- ~~10. To respond to active criminal activity at mass gatherings or special events.~~
- ~~11. To mitigate hazards caused by other UAS interfering with emergency operations.~~
- ~~12. 11. For pilot certification training and maintenance of proficiency.~~

~~13. Authorized operators must first obtain supervisory approval before deploying a UAS, except where immediate deployment is necessary to address a threat to public health or safety. Supervisors shall only authorize the deployment of a UAS in accordance with this section. To address other unforeseen exigent circumstances where there is an imminent threat to public safety, provided the deployment is consistent with the general privacy and safety principles of this policy.~~

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### 1303.3 PROHIBITED USE

The UAS shall not be used:

1. To conduct random or arbitrary surveillance activities. This prohibition includes, but is not limited to, first amendment assemblies in accordance with Policy 428 First Amendment Assemblies.
2. To target a person based solely on actual or perceived characteristics, such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability.
3. To harass, intimidate, or discriminate against any individual or group.
- ~~4. For any reason not specifically enumerated in 1303.2 (Authorized Use).~~

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Furthermore, the UAS shall not be equipped with:

1. Facial recognition software
2. Biometric analysis capabilities
3. Weapons of any kind, including lethal or non-lethal munitions.

**1303.4 DATA COLLECTION**

Data collection shall be limited to video (visible and infrared) and associated telemetry.

(e.g., flight path, altitude) necessary for safe flight operations and situational awareness. The UAS will capture real-time video to assist pilots in navigating safely and assessing authorized scenes. These recordings shall be utilized solely for legitimate law enforcement purposes, including criminal investigations, administrative reviews, and training, in strict accordance with state laws and Department policy.

### 1303.5 DATA ACCESS

Access to videos shall be limited to authorized personnel with a legitimate law enforcement, ~~or~~ administrative, or oversight need. Any release or access to videos by third parties requires prior authorization and shall be limited to legally authorized agencies or pursuant to a valid court order.

### 1303.6 DATA PROTECTION

The Department shall implement and maintain comprehensive data security protocols to preserve the integrity, confidentiality, and lawful use of UAS videos. Video recording shall occur only during authorized operations and shall not include continuous or passive surveillance.

### 1303.7 CIVIL LIBERTIES AND RIGHTS PROTECTIONS

The Department acknowledges that UAS operations involve inherent privacy considerations, specifically the risk of inadvertently capturing footage of private areas (e.g., backyards or through windows) or uninvolved community members. To address this, the Department prioritizes civil liberties by restricting recording to authorized missions and strictly adhering to the restrictions on random surveillance outlined in Section 611.6 (Prohibited Use).

To safeguard these rights, UAS operations shall adhere to the following restrictions:

1. Absent a warrant or exigent circumstances, operators and observers shall adhere to FAA regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure).
2. Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of uninvolved community members or areas where there is a reasonable expectation of privacy. Cameras shall be diverted away from private spaces when not actively engaged in a permitted use.
3. For DFR operations, cameras shall be programmed to orient toward the horizon (preventing ground recording) while in transit to a call for service and shall only be directed toward the scene upon arrival at the authorized location.

### 1303.8 DATA RETENTION

UAS footage should be purged by BPD within 60-7 days if it does not contain any data of evidentiary value. If the data has evidentiary value, it should be uploaded into BPD's evidence database and kept pursuant to the established retention guidelines set forth in policy 804-Records Maintenance and Release.

### 1303.9 PUBLIC ACCESS

Unauthorized use, duplication, and/or distribution of UAS camera footage is prohibited. Personnel shall not make copies of any UAS camera footage for their personal use and are prohibited from using a recording device such as a personal camera or any secondary video camera to capture UAS camera footage.

All UAS camera footage is property of the Berkeley Police Department and shall not be copied, released or disseminated in any form or manner outside the parameters of established policy, procedure, or laws.

The Custodian of Records, or their designee, will be responsible for handling requests for UAS camera footage.

### 1303.10 THIRD PARTY DATA SHARING

Pursuant to the Records Maintenance and Release policy, data collected from the UAS may only be shared with other law enforcement agencies on a case-by-case basis in connection with an active investigation, or in response to a lawful judicial warrant or court order in compliance with state and local law.

### 1303.11 TRAINING

The Program Coordinator will coordinate training of PICs and Visual Observers. The training course and materials will be approved through the training staff. An approved department instructor will oversee all training. Each training session will be documented and forwarded to the Policy and Training Bureau Sergeant.

### 1303.12 AUDITING AND OVERSIGHT

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy. Whenever the UAS is deployed, the operator shall log the reason for the deployment, the recording time start, and the recording time end.

The Office of Strategic Planning and Accountability shall conduct ~~biennial~~-quarterly audits of UAS use. If an audit concludes that an operator violated this policy, that operator's authorization shall be revoked until the operator completes at least three hours of additional training.

BPD shall maintain a record of violations of this policy. If an operator has violated this policy three times in a five-year span, the operator's license will be revoked.

Intentional or negligent violation of this policy may serve as grounds for disciplinary action pursuant to the Policy 1010, Personnel Complaints policy.

### 1303.13 MAINTENANCE

All UAS maintenance shall be conducted by the owner/operator of the device consistent with the manufacturer's specifications and as needed based on UAS usage.

DRAFT

Item 9.a.

Report by UC Berkeley Criminal Law & Justice Center  
Titled "Recommendations for Use of Drones as First  
Reponders"



<https://unsplash.com/photos/3t0ackwands> while drone flying under blue sky using drone in VT 202011A

# Recommendations for the Use of Drones as First Responders

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Imaan Maftah, Ianina Lipara  
UC Berkeley Criminal Law & Justice Center

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# UC Berkeley Criminal Law & Justice Center

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# UC Berkeley Criminal Law & Justice Center

## EXECUTIVE SUMMARY

The UC Berkeley Law, Criminal Law & Justice Center (CLJC) conducted research on the use of Drone as First Responder (DFR) program. This report presents policy recommendations for the Police Accountability Board's review in connection with the potential adoption of Drone as First Responder (DFR) technologies by the Berkeley Police Department. These recommendations are grounded in the City's legal framework, equity mandates, comparative analysis with other jurisdictions and sanctuary laws, and reflect best practices in oversight, data governance, and public safety accountability. The intent of this report is to provide the Berkeley Police Accountability Board (PAB) with independent empirical, constitutional, and comparative analysis to inform the Board's evaluation of the Department's DFR proposal, and includes policy recommendations grounded in that analysis.

### 1. Reject Interior Drone Procurement

CLJC recommends that the City of Berkeley **categorically prohibit** the procurement, trialing, or deployment of interior unmanned aerial systems—drones designed or capable of entering enclosed structures through doors, windows, ventilation shafts, or other apertures.

### 2. Authorize Exterior Drone Pilot Program

Given the limited and mixed empirical evidence pertaining to Drone as First Responder (DFR) programs nationwide, as well as unaccounted fiscal and operational risks embedded in the Berkeley Police Department's current use policies; the Criminal Law & Justice Center recommends that the City Council authorize a tightly bounded exterior drone program only as part of an independent research pilot designed to evaluate the technology's real-world impacts. To ensure methodological rigor, the pilot should be conducted in partnership with an independent academic or policy research institution capable of designing and evaluating such a pilot program. The Criminal Law & Justice Center would be willing to assist the City in identifying an appropriate research partner and exploring potential funding opportunities to support the evaluation, to offset independent research costs.

If structured appropriately, Berkeley has the opportunity to lead the nation in developing evidence-based governance standards for emerging policing technologies. A research-based pilot conducted with a research partner would allow the City to address many of the unresolved empirical questions surrounding DFR programs, while also identifying and mitigating the significant fiscal and operational risks embedded in Berkeley Police Department's current use policies. At the same time, such a pilot would enable the City to establish a robust evaluative framework for measuring program success and to develop evidence-based best practices for the governance and oversight of emerging policing technologies.

Accordingly, CLJC recommends that any authorization for an exterior drone pilot program be contingent upon the sequential completion of the following stages before operational deployment:

### Stage 1 — Independent Research Partnership and Mandatory Risk Assessment

Prior to any procurement, the City should establish a formal partnership with an independent research institution to design and evaluate the pilot program. In partnership with the research institution, Berkeley Police Department should develop a robust evaluative framework to assess program success, monitor implementation, analyze ongoing and project costs, and publish findings in a transparent and publicly accessible format.

In addition, Berkeley Police Department and the research partner should complete a comprehensive risk assessment addressing:

- Constitutional exposure under the Fourth and First Amendments and California Art. I, § 1
- Disparate impact analysis modeled against deployment patterns observed in San Francisco and other peer cities
- Data governance architecture, including sanctuary law compliance, vendor data access controls, and federal agency sharing prohibitions
- Total cost of ownership over a five-year horizon, including oversight, hardware replacement, staffing, legal liability, and community trust costs

This assessment must be reviewed by the Board and made available for public comment before Council votes on any use policy ordinance under AB 481.

### Stage 2 — Limited Research Pilot Program with Categorical Restrictions

Any authorized program should operate as a limited research pilot, designed to generate reliable and actionable evidence about the technologies effectiveness as well as potential risks.

The pilot program should account for the following limitations:

- **Duration:** 12 months, with mandatory sunset absent affirmative Council reauthorization following evaluation
- **Scope:** Restricted to the thirteen permitted use cases expressly enumerated and authorized under Berkeley Police Department's Use Policy (Section 611.5)
- **Data governance:** All footage stored on City-controlled infrastructure; no vendor data access; footage purged within 60 days absent documented evidentiary need, consistent with Policy 611.8; evidentiary footage retained per Policy 804; complete prohibition on sharing with federal agencies, immigration enforcement authorities, or any third party acting on their behalf, in compliance with Berkeley's Values Act (BMC 13.90).
- **Geographic equity:** Per-census-tract deployment cap tracking; mandatory demographic logging of all flights, including standardized case-level deployment data

### Stage 3 — Pre-Established Success Metrics and Evaluation Protocol

The Council should adopt a set of binding success thresholds against which the pilot will be evaluated at its conclusion. Based on the evidence presented in this report, the Criminal Law & Justice Center recommends that the Berkeley Police Department, in coordination with its independent research partner, consider evaluating the following metrics across five domains as part of a rigorous assessment of any Drone as First Responder pilot program :

#### **Operational Effectiveness**

Response time improvements; the relationship between drone deployment and case resolution; measurable public safety outcomes associated with deployment; the percentage of calls resolved without dispatching ground units; and the collection of standardized deployment data sufficient to enable meaningful outcome analysis.

#### **Constitutional Compliance**

Warrant compliance rates; documented incidents involving First Amendment–protected activity; and any unauthorized surveillance, data access, or data sharing, with zero-tolerance thresholds for First Amendment violations and unlawful information sharing.

#### **Equity**

Geographic distribution of flights across census tracts; comparison of deployment patterns against demographic data; demographic impact assessment; and compliance with established per–census tract deployment limits designed to prevent disproportionate surveillance of vulnerable communities.

#### **Data Governance and Security**

Vendor access incidents; compliance with footage retention and deletion policies; third-party data access incidents; completeness and integrity of audit logs; and the adequacy of oversight reporting and public transparency mechanisms.

#### **Cost Effectiveness**

Total program cost compared to alternative response models; hardware procurement and replacement costs; infrastructure requirements; staffing and training needs; and comparison of projected program costs with actual expenditures at the conclusion of the pilot.

Critically, all metrics must be adopted before the pilot launches, and the data architecture to support them must be built into procurement requirements from the outset.

## 1.0 Findings that Require the Board's Attention

### Lack of Empirical Justification

Claims that DFR technologies improve safety, response time, and staffing efficiencies advanced by vendors and captured in the Department's policies remain largely unsubstantiated.

### Fiscal Concerns

The Department's fiscal projections do not account for several significant cost categories. The \$277,000 annual cost figure excludes projected fleet replacement, connectivity infrastructure, data storage, and transition costs related to compliance changes defined in the National Defence Authorization Act for Fiscal Year 2025, which restricts federal funding to foreign-made video equipment, and the Federal Communications Commission's Covered List which prohibits foreign-made video equipment from operating in U.S. airspace.<sup>1</sup> Chula Vista's comparable program required a \$1.5 million annual investment after its salary-absorption model proved unsustainable.<sup>2</sup> Although Berkeley is smaller than Chula Vista, the Department's proposed funding model does not appear to cover the full lifecycle cost of the program and lacks clarity on how the department intends to manage costs as the program scales or operational demands increase.

### Data Security & Governance Concerns

Flock Safety vendor data governance presents sanctuary law exposure. ACLU analysis of Flock's default agreements state that data sharing may occur regardless of agency opt-out. In 2025, Oakland PD – prohibited by state law from sharing with federal agencies – allowed federal-marked data access through Flock's platform.

### NDAA Compliance Risks

The Department's fiscal projections do not account for several significant cost categories. The \$277,000 annual cost figure excludes projected fleet replacement, LTE/connectivity infrastructure, data storage, and transition costs associated with two recent federal regulatory developments: the National Defense Authorization Act (NDAA) for Fiscal Year 2025,<sup>3</sup> which prohibits the use of federal funds to procure unmanned aircraft systems (UAS) manufactured by covered foreign adversary companies, and the Federal Communications Commission's Covered List, expanded in December 2025 to include Da-Jiang Innovations (DJI) and other Chinese manufacturers, which restricts the marketing, sale, and continued FCC authorization of foreign-made UAS.<sup>4</sup> The Department's current Impact Statement does not contain any reference to this ruling, which creates operational uncertainty around potential hardware replacement costs within the disclosed 3-year hardware lifespan of these models.

### Mission creep†

Mission creep is a documented pattern across many peer jurisdictions reviewed, not a hypothetical risk. Use case restrictions enforced through policy language alone have proven insufficient. Authorized use cases should be clearly defined with automatic sunset provisions requiring Council reauthorization if drone deployments expand beyond their intended uses.

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<sup>1</sup> *Public Law 118-159, "Securing America's Borders and Immigration Enforcement Act,"* 118th Cong., 2d sess. (signed December 23, 2024), <https://www.congress.gov/118/plaws/publ159/PLAW-118publ159.pdf>.

<sup>2</sup> Don Redmond, "Chula Vista's High-Flying First Responder Reduces Costs and Response Times, Improves De-Escalation Tactics, and Saves Lives," *Western City Magazine*, November 1, 2021, <https://www.westerncity.com/article/chula-vistas-high-flying-first-responder-reduces-costs-and-response-times-improves-de>.

<sup>3</sup> *Pub. L. 118-159 (2024)*.

<sup>4</sup> Federal Communications Commission, *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, DA 25-1086 (Washington, DC: Federal Communications Commission, 2025), <https://docs.fcc.gov/public/attachments/DA-25-1086A1.pdf>.

## 1.1 Background and Overview

The Berkeley Police Department has proposed acquiring a Drone as First Responder (DFR) program. Drone as First Responders programs use automated and remote camera equipped unmanned aerial system deployments to respond to 911 calls. The Department has cited the following justifications:

- Improved response times to emergency calls
- Enhanced officer safety through advance situational awareness
- Resource efficiency in an increasingly constrained staffing environment
- Public safety benefits through crime reduction

In response to this proposal, the Police Accountability Board requested that the UC Berkeley Criminal Law & Justice Center conduct an independent policy review.

† See Appendix B for peer-jurisdiction examples.

Berkeley's Surveillance Technology Use and Community Safety Ordinance (BMC Chapter 2.99) establishes a formal review process that must be satisfied before any surveillance technology, including police drones, may be deployed. Under BMC § 2.99, the Police Department must obtain City Council approval following community engagement and civilian oversight prior to acquiring or using drones for routine operations.<sup>5</sup> Under BMC § 2.99, the Police Accountability Board plays a critical oversight role in evaluating proposed surveillance technologies through an independent review of the Berkeley Police Department's use policy and an analysis of potential civil liberties implications before providing a recommendation to City Council on whether to approve, reject, or modify the proposal. This report fulfills the Board's responsibility to conduct an independent, evidence based evaluation of the proposed DFR program. The analysis draws on a comparative review of peer jurisdictions, empirical evidence on program effectiveness, relevant constitutional law considerations, and Berkeley's specific policy context to provide City Council with a comprehensive analytical basis for informed decision making.

## 1.2 Objective

This report evaluates the Berkeley Police Department's proposed Drones as First Responder use policies under Policy 611<sup>6</sup> and assesses the preliminary analytical framework developed by the Office of the Director of Police Accountability and shared with CLJC in an October 2025 memorandum.<sup>7</sup>

- Empirical Verification: Evaluate the factual basis for claims about safety, response time, and staffing efficiency using peer-jurisdiction data and academic research.
- Policy and Civil-Liberties Analysis: Examine privacy, data-governance, and audio-recording implications raised by Councilmembers—particularly defining when microphones or audio features may be activated—and ensure compliance with AB 48140 and BMC §2.99 reporting requirements.
- Transparency and Oversight Framework: Identify best practices for public dashboards or audit portals that display deployment data (flight activity, call type, geography) while protecting privacy.
- Cost and Operational Modeling: Develop a cost framework covering procurement, training, maintenance, and data storage. Examine whether drone operation offsets or redistributes staff workload.
- Equity and Community Impact: Assess whether DFR deployments disproportionately affect certain neighborhoods and recommend inclusive engagement models.
- Comparative Benchmarking: Review established DFR programs (e.g., Chula Vista, Fremont, San Mateo) to identify best practices in accountability, transparency, and public reporting.

<sup>5</sup> Berkeley Municipal Code ch. 2.99, "Acquisition and Use of Surveillance Technology," <https://berkeley.municipal.codes/BMC/2.99>.

<sup>6</sup> Berkeley Police Department, *Policy 611: Unmanned Aerial System (UAS) Operations*, Berkeley Police Department Law Enforcement Services Manual, January 27, 2026.

<sup>7</sup> Office of the Director of Police Accountability, *Memorandum on Unmanned Aerial Systems (UAS) and Drone as First Responder Programs*, City of Berkeley, October 24, 2025.

### 1.3 Methodology

This report uses a mixed-methods approach to evaluate the operational, legal, and policy implications of adopting a Drone as First Responder (DFR) program in Berkeley. The analysis draws from the following components:

1. **Empirical Effectiveness Analysis** to examine claims advanced by technology vendors and the Department's personnel, including performance assertions and data privacy guarantees, by drawing on publicly available crime statistics, drone deployment data, comparative jurisdictional analysis, and peer-reviewed literature.
2. **Policy Analysis** was undertaken to evaluate the Department's proposed use policies, oversight structures, and documented cost frameworks through a comparative review of peer jurisdictions. The goal was to identify essential safeguards and enforceable provisions that must be in place should the City choose to move forward with approving a Drone as First Responder program.
3. **Legal and Constitutional review** focused on Fourth Amendment search limitations, First Amendment protected-activities, California privacy law (Art. I, § 1), AB 481 (2021) requirements and CalECPA electronic surveillance provisions were undertaken to evaluate legal and constitutional risks. See Appendix A for a detailed legal framework.
4. **Limitations:** This report draws on publicly available data from peer jurisdictions, peer-reviewed scholarship and secondary analyses of department flight logs, and findings should be interpreted accordingly. In particular, the San Francisco Police Department's clearance rate comparison is descriptive rather than causal. The observed divergence between high- and low-drone deployment categories may reflect differences in crime type, reporting patterns, prosecutorial standards, or concurrent policy interventions, and cannot be attributed to drone deployment alone without controlled study design and case-level outcome data.

**2.0 DFR Program Empirical Effectiveness: What the Evidence Shows Thus Far**

In a recent community meeting hosted by the Berkeley Police Department, Police Chief Jennifer Louis and members of the department claimed that DFR technology could help improve staffing shortages, improve safety, prioritize de-escalation and improve situational awareness.<sup>8</sup> Similarly, in a memorandum issued by Office of the Director of Police Accountability (ODPA), several of these asserted benefits, particularly improvements in response time and safety, were cited by City Council members as considerations in evaluating the potential adoption of a Drone as First Responder program. ODPA has tasked CLJC with empirically evaluating operational and safety claims through comparative analysis, audits, and published research.

The analysis that follows examines evidence from peer jurisdictions and online artifacts to assess the extent to which these claims are supported by empirical data. Specifically, it distinguishes between benefits that are substantiated by data, those that appear to be conditionally supported and may warrant further evaluation through limited or pilot implementation, and those that remain largely anecdotal or grounded primarily in vendor-provided assertions without empirical evidence.

**Table A – DFR Claims VS. Evidence Matrix**

Claimed Benefit	Evidence Level	Key Finding	Implication
Faster Response Time	✓ Strong	Drones arrive 3-5 minutes faster than ground units	Operational benefit
Enhanced Situational Awareness	△ Moderate	Real-time video useful in emergency scenarios	Limited to specific high-risk encounters; raises potential privacy risks for routine use
Staffing Efficiency and “Force Multiplier”	△ Moderate	Drones reduce officer dispatch to lower-priority calls in limited deployments; however, no peer-reviewed study confirms net staffing savings	Force multiplier claims rely on department self-reporting rather than independent analysis. The department’s proposed salary-absorption model lacks clarity, staffing impact analysis and may undercount true operational costs
Improve Case Clearance, Reduces Crime	✗ No Evidence	No demonstrated causal relationship between drone use and reduced crime rates.  Data shows inconclusive or mixed relationship between drone use and improvements in case clearance rates	Primary public safety justification is unsubstantiated.
Reduce Use of Force/De-escalation	△ Anecdotal Only	Single-incident examples; no empirical evidence	Alternative response models show stronger evidence of success
Cost Effectiveness	△ Unverified	No independent comprehensive audit to determine cost effectiveness of DFR programs	Soft cost (trust, civil liberties) not accounted for; NDAA compliance changes; replacement fees not quantified under Policy 611

<sup>8</sup> Zak Sos, “Berkeley Police Hear Concerns as They Consider Expanding Flock Safety Cameras, Adding Drones,” *KTVU FOX 2*, January 15, 2026, <https://www.ktvu.com/news/berkeley-police-hear-concerns-consider-expanding-flock-safety-cameras-adding-drones>.

## 2.1 Proven Benefits Supported by Independent Evidence

*Analysis of claimed benefits reveals that most primary public safety justifications for DFR programs are either unsubstantiated or inconclusive. The strongest evidence supports operational improvements in response time and situational awareness. These gains should be evaluated in the context of the pilot program's findings before any broader deployment is authorized.*

### Faster Response Times

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Available evidence indicates that drones deployed under Drone as First Responder (DFR) programs often arrive at incident scenes quicker than dispatched ground units. Data from Chula Vista, California, for example, shows that police drones respond to 911 calls in approximately 3.5 minutes on average, compared to roughly eight minutes for patrol vehicles (~8 minutes).<sup>9</sup> In Chula Vista, police drones arrived before ground units in 74 percent of dispatched incidents, while the Brookhaven, Georgia Police Department reported that drones arrived on scene ahead of patrol units in 72 percent of cases.<sup>10</sup> Currently, Berkeley Police Department reports a median response time of 7 minutes for Priority 1 calls.<sup>11</sup>

Therefore, these findings suggest that DFR programs can meaningfully reduce the Department's response times and provide situational awareness during emergency responses, a factor that may be operationally significant in time-sensitive incidents. However, it remains a pertinent policy question whether improvements in response times attributable to DFR programs exceed those achieved through alternative dispatch innovations. For example, Albuquerque has pursued a combination of non-police crisis response models through its Albuquerque Community Safety (ACS) program, deployment of real-time public notification technology (Spidr Tech), and enhanced supervisory accountability for call prioritization. Collectively, these measures contributed to a documented reduction of approximately one minute and forty-four seconds in emergency response times, without reliance on aerial surveillance technologies.<sup>12</sup>

### Enhanced Situational Awareness

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DFR drones provide valuable real-time aerial video footage to ground units prior to their arrival on the scene. Drones streamline and report important sensory information to departments before and during incidents, relaying critical and timely data to ground units. This has proven useful as decision-making tactics and strategies improve through more reliable and informed data collection via real-time aerial footage.<sup>13</sup> Equipped with sensory, auditory and visual capabilities, drones have provided real-time situational awareness to emergency units that include warning firefighters if a crash vehicle is leaking fuel or if people are trapped in dangerous spaces.<sup>14</sup> The Department's Policy (611.5) authorizes drone deployment to provide "situational awareness during high-risk or critical incidents" before enumerating a list of possible examples. However, this language creates an open category, leaving high-risk or "critical incident" undefined, which increases the risk of routine service in a manner that goes beyond emergency responses. The Department's use policy should affirmatively state that situational awareness alone, absent a qualifying emergency trigger, does not constitute authorized grounds for deployment.

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<sup>9</sup> Steve King, Shay Major, and Marlis McCollum, *Drone as First Responder Programs: A New Paradigm in Policing* (McLean, VA: The MITRE Corporation, August 2023), [www.mitre.org/sites/default/files/2023-08/PR-23-2677-DFR-Drone-First-Responder-Programs.pdf](https://www.mitre.org/sites/default/files/2023-08/PR-23-2677-DFR-Drone-First-Responder-Programs.pdf).

<sup>10</sup> City of Brookhaven, *Drone as First Responder (DFR)*, <https://www.brookhavenga.gov/477/Brookhaven-Drone-as-First-Responder>.

<sup>11</sup> Berkeley Police Department, *2024 Berkeley Police Department Presentation*, City of Berkeley, March 18, 2025, <https://berkeleyca.gov/sites/default/files/documents/2025-03-18%20Special%20Item%2001%202024%20Berkeley%20Police%20Department%20-%20Pres.pdf>.

<sup>12</sup> City of Albuquerque Police Department, "APD Sees Significant Improvement in Response Times," *City of Albuquerque*, <https://www.cabq.gov/police/news/apd-sees-significant-improvement-in-response-times>.

<sup>13</sup> City of Brookhaven, *Drone as First Responder (DFR)*.

<sup>14</sup> King, Major, and McCollum, *Drone as First Responder Programs*.

## 2.2 Conditionally Supported Claims Requiring Further Analysis

*Claims about use-of-force reduction, cost-effectiveness and staffing efficiency are conditionally supported but not compelling. The Department should provide a supplemental disclosure addressing the FY2025 FCC Covered List ruling as it applies to the three proposed DJI models (Avata 2, Matrice 4T, Matrice 4TD.) This disclosure should address estimated replacement cost with NDAA-approved alternatives and the potential operational risk that may arise during the three year hardware lifespan.*

Some asserted benefits of DFR programs are supported in part by initial evidence, but require further analysis and validation. These conditionally supported claims demand further review to discern their effectiveness.

### Enhanced De-Escalation and Reduced Use of Force

As noted above, proponents of Drones as First Responder (DFR) programs have asserted that expanded drone deployment may contribute to reductions in use-of-force incidents by enabling earlier situations assessment, facilitating de-escalation tactics and limiting police encounters.<sup>15</sup> In a frequently cited example, the Chula Vista Police Department reported an incident in which a drone was dispatched to a report of a man allegedly wielding a firearm at a taco shop. A teleoperator confirmed it was in fact a lighter, not a firearm, enabling officers to approach the individual without drawing their weapons, avoiding what could have quickly become a violent escalation. Similarly, police strategists have noted that when a supervisor has real-time situational awareness, use-of-force incidences plummet, indicating that live feed capabilities have the potential to limit violent encounters.

Notwithstanding these accounts, no comprehensive, peer-reviewed study has demonstrated a causal relationship between drone deployment and systematic reductions in use-of-force incidents.

By contrast, a growing body of empirical research supports alternative response models that divert appropriate calls away from armed police intervention altogether. A Stanford-affiliated study examining Denver's STAR program (Support Team Assistance Response) found that dispatching mental health professionals and paramedics to low-risk, non-violent calls (public disorder, public intoxication, welfare checks, trespassing), resulted in a 34 percent reduction in reports of less serious crimes over a six-month period, with no corresponding increase in public safety incidents.<sup>16</sup> The STAR program operated across eight precincts serving predominantly low-income and historically over-policed neighborhoods. This evidence suggests that alternative deployment strategies could potentially provide meaningful public safety outcomes without introducing community surveillance and the constitutional risks associated with drone programs. Absent rigorous evaluation metrics and demonstrated effectiveness, DFR programs should not be presumed to have superior results relative to alternative deployment models.

### Cost Effectiveness

Several law enforcement agencies have asserted that DFR programs can provide aerial support capabilities at substantially lower costs than traditional manned aircrafts. In principle, this assertion is directionally supported: unmanned aerial systems (UAS) are typically less expensive to procure and operate than helicopters or other crewed aircraft. For example, public reported figures indicate that Chula Vista's city council initially approved ~1.5 million for its DFR program after a salary-absorption model and asset seizure fund failed to provide long-term stability for the program.<sup>17</sup> Moreover, the ongoing cost of staffing remote pilots at Chula Vista's four launch sites is estimated at \$400,000 annually,<sup>18</sup> compared to the several million dollars typically required to acquire, operate, and maintain a single manned aircraft.<sup>19</sup>

<sup>15</sup> Office of Community Oriented Policing Services (COPS Office), *Chula Vista Police Department's Unmanned Aircraft System Program: Addressing Crime through Innovative Technology* (Washington, DC: U.S. Department of Justice, Community Oriented Policing Services, 2024), <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-r1170-pub>.

<sup>16</sup> Krysten Crawford, "Stanford Study Shows Benefits to Reinventing 911 Responses," *Stanford Report*, June 8, 2022, <https://news.stanford.edu/stories/2022/06/stanford-study-shows-benefits-reinventing-911-responses>.

<sup>17</sup> Don Redmond, "Chula Vista's High-Flying First Responder Reduces Costs and Response Times, Improves De-Escalation Tactics, and Saves Lives," *Western City Magazine*, November 1, 2021, <https://www.westerncity.com/article/chula-vistas-high-flying-first-responder-reduces-costs-and-response-times-improves-de>.

<sup>18</sup> Steve King, Shay Major, and Marlis McCollum, *Drone as First Responder Programs: A New Paradigm in Policing*, MITRE Corporation, August 2023, [www.mitre.org/sites/default/files/2023-08/PR-23-2677-DFR-Drone-First-Responder-Programs.pdf](http://www.mitre.org/sites/default/files/2023-08/PR-23-2677-DFR-Drone-First-Responder-Programs.pdf).

<sup>19</sup> Ibid.

However, no independent audit or comprehensive cost-benefit analysis has been conducted to determine whether DFR programs are categorically less costly than alternative emergency response innovations when accounting for full lifecycle costs, including staffing, training, hours of operation, forecasted technology updates, infrastructure, contracts, software licensing, data management, and oversight requirements. Critically, potential soft costs, such as diminished public trust and impacts on community-police relations, though difficult to quantify, represent significant long-term risks. These factors should be weighed alongside direct expenditures when evaluating the full cost of a DFR program. Similarly, the early collapse of Chula Vista’s salary-absorption model raises questions about the viability of Berkeley Police Department’s proposed funding structure, which relies on a similar model without confirmed long-term financial commitment. Table B reflects itemized costs as outlined in Policy 709. However, in light of potential revisions to the Department’s cost framework discussed at the February 25 Board meeting, an updated cost model should be submitted to the Board for review and evaluation. The following analysis is based on the figures currently provided in Policy 709.

**Table B – BPD Policy Impact Statement Summary of Disclosed vs Undisclosed Program Costs**

Item	Cost	Source
Initial Hardware	\$44,500	Policy 701, Sec.3
DFR Lease (Year 1)	\$100,000	Policy 709, Sec.3
Dock Installation	\$15,000	Policy 709, Sec.3
Training (12 pilots)	\$72,000	Policy 709, Sec.3
Annual DFR Lease + Radar (ongoing)	\$277,000/yr	Policy 709, Sec.3
Connectivity/LTE infrastructure (ongoing)	Not quantified	Police1, Oct. 2025
Axon <a href="#">Evidence.com</a> data storage	Not quantified	Policy 709, Sec 1
Fleet placement (Year 3-4)	Not projected	Policy 709, Sec 1
NDAAs/FCC compliance transition cost	Not quantified	FCC Dec, 2025; FY25 NDAAs

Source note: FCC Covered List ruling reported in DroneLife(Dec.22,2025): “FCC Adds Foreign-Made Drones and Components to Covered List, Citing National Security Risks.” NDAAs legislative history: FY2024 NDAAs (American Security Drone Act Pub.L.118-31); FY2025 NDAAs (signed Dec.23, 2024), Section 1709.

Although the Department’s Impact Statement discloses initial acquisition and ongoing lease costs it omits any reference to the December 2025 FCC Covered List ruling that affects three of the four proposed model lines and carries associated procurement and replacement costs.<sup>20</sup> Within the disclosed 3-year hardware lifespan, firmware updates, and part replacements may be restricted or revoked, potentially prompting early replacement. NDAAs-complaint alternatives (Skydio, Parrot, ANAFI USA) command significantly higher price premiums requiring significantly more investment from the City. Similarly, projected costs of high-speed cellular/LTE infrastructure, costs and terms of Axon’s data storage agreement and fleet replacement costs beyond the 3-year hardware lifespan are unaccounted for in the Department’s Impact Statement. An additional cost consideration tied to Berkeley’s focus on rescue operations is the significant expense of upgrading to UAS hardware that supports advanced sensory capabilities and extended flight durations necessary for effective search and rescue deployment.<sup>21</sup> These enhanced technologies substantially increase overall program costs and must be accounted for in any procurement or deployment planning. As such, claims of net cost savings should be treated as provisional and evaluated through a rigorous, independent cost-benefit analysis that accounts for projected cost volatility.

<sup>20</sup> Public Law 118-159, “Securing America’s Borders and Immigration Enforcement Act,” 118th Cong., 1st sess. (2024), <https://www.congress.gov/118/plaws/publ159/PLAW-118publ159.pdf>.

<sup>21</sup> NASA, *Unmanned Aircraft Systems Use in Post-Disaster Response*, NASA Technical Reports Server document no. 20250006807 (2025), [https://ntrs.nasa.gov/api/citations/20250006807/downloads/UAS\\_use\\_post\\_disaster\\_r1.pdf](https://ntrs.nasa.gov/api/citations/20250006807/downloads/UAS_use_post_disaster_r1.pdf).

## Staffing Efficiency and “Force Multiplier” Effectiveness

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Documented benefits of Drone as First Responder programs suggest that drones are capable of resolving certain 911 calls without dispatching ground units, thereby conserving limited emergency response resources. In Chula Vista, for example, drones returned ground units before they arrived on scene in approximately 25 percent of response.<sup>22</sup> However, two key structural limitations constrain what these figures can support. First, a substantial share (66 percent) of Chula Vista’s drone deployments were officer-initiated rather than dispatched in response to 911 calls for service, inflating the perceived impact on public-initiated emergencies. Second, and more fundamentally, the absence of case-level data linking individual drone deployments to call outcomes precludes meaningful causal analysis.

Similar claims have been made elsewhere. In Elizabeth, New Jersey, police reported that in 2022, 21 percent of the 1,400 calls involving drones were resolved prior to ground units arriving.<sup>23</sup> Fort Wayne, Indiana, observed comparable patterns, with its first 100 drone deployments resulting in “disregard” notices and the canceled ground response units.<sup>24</sup> Police-operated media outlet, *Police1*, reported that between 20 and 30 percent of drone-first calls were resolved without an in-person response.<sup>25</sup> Yet, a 2023 Drone as First Responder program industry analysis explicitly frames these statistics as “perceived benefits” based on agency self reporting, not independently validated outcomes.<sup>26</sup> Without granular data clarifying whether drones resolved calls or merely coincided with resolution, these figures remain correlational and casual.

### 2.3 Anecdotal or Vendor-Derived Assertions Lacking Evidence

*The primary public safety justification for the DFR program is not supported by available evidence. Jurisdictions employing DFR programs cite operations benefits but cannot demonstrate impact on crime or clearance rates. Berkeley Police Department should ensure that case-level deployment data is captured, appropriately recorded and standardized across response categories.*

Finally, there are assertions about UAS/DFR benefits that remain largely anecdotal or stem from vendor optimism, without sufficient evidence to support them.

## Crime Clearance, Safety and Crime Reduction

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Advocates claim that DFR programs enhance public safety by deterring crime and improving the speed and effectiveness of emergency response.<sup>27</sup> Although, DFR programs have evidently resulted in improvements in situational awareness and response times, any claim that suggests drones make entire communities safer is unsubstantiated and requires further examination. While faster response times are frequently cited as a critical metric in crime reduction, they do not alone determine the likelihood of case solvability. One study finds that incremental gains in clearance rates are modestly attributable to coordinated investigative strategies that pair timely response with robust inter-agency information sharing and integration of complementary technologies, such as fixed CCTV networks, gunshot detection systems, degree of coverage, crime-mapping platforms, and access to criminal history data.<sup>28</sup>

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<sup>22</sup> Charles Werner, “2025: The Year Drone as First Responder Programs Went Mainstream,” *Police1*, June 26, 2025, <https://www.police1.com/drones/2025-the-year-drone-as-first-responder-programs-went-mainstream>.

<sup>23</sup> Steve King, Shay Major, and Marlis McCollum, *Drone as First Responder Programs: A New Paradigm in Policing* (McLean, VA: The MITRE Corporation, August 2023), <https://www.mitre.org/sites/default/files/2023-08/PR-23-2677-DFR-Drone-First-Responder-Programs.pdf>.

<sup>24</sup> Ibid.

<sup>25</sup> Noreen Charlton, “A Letter to the American Public: Autonomous Drones as First Responders Will Make Americans Safer,” *Police1*, June 24, 2024, <https://www.police1.com/police-products/police-drones/a-letter-to-the-american-public-autonomous-drones-as-first-responders-will-make-americans-safer>.

<sup>26</sup> King, Major, and McCollum, *Drone as First Responder Programs*.

<sup>27</sup> Zak Sos, “Berkeley Police Hear Concerns as They Consider Expanding Flock Safety Cameras, Adding Drones,” *KTVU FOX 2*, January 15, 2026, <https://www.ktvu.com/news/berkeley-police-hear-concerns-consider-expanding-flock-safety-cameras-adding-drones>.

<sup>28</sup> Rachael Arietti, “Do Real-Time Crime Centers Improve Case Clearance? An Examination of Chicago’s Strategic Decision Support Centers,” *Police Quarterly* (2024).

By contrast, a separate quasi-experimental evaluation reports mixed results, concluding that even integrated real-time crime center (RTCC) models do not produce substantial increases in clearance rates and that the majority of violent crimes remain unsolved despite RTCC support.<sup>29</sup> Across the empirical literature, there is no evidence demonstrating that police drone deployments improve crime solvability or result in reductions in crime rates. Departments like Chula Vista have credited drones with assisting in thousands of arrests over years, but that reflects usage volume, not a net improvement in public safety outcomes. Most significantly, Chula Vista does not formally evaluate its drone program, meaning that it is difficult to empirically assess the efficiency of such a program in mitigating the harms it purports to address.

**Table C: San Francisco PD Drone Deployment Clearance Rates by Crime Categories**

Crime Type	Pre-Drone Improvement (23→24)	Post-Drone Improvement (24→25)	Acceleration
<b>TREATMENT GROUP (High Drone Deployment)</b>			
Robbery	+3.4pp	+7.11pp	+3.77
Assault	+4.3pp	+0.6pp	-3.7pp
Burglary	+2.2pp	+3.9pp	+1.7pp
<b>Mean</b>	<b>+3.3pp</b>	<b>+3.9p</b>	<b>+0.6pp</b>
<b>CONTROL GROUP (Low/No Drone Deployment)</b>			
Rape	+0.8pp	+2.5pp	+1.7pp
HIT-Inv Serv	-	-	excl.
Arson	-1.6pp	+17.9pp	+19.5pp*
Larceny	+4.3pp	+0.8pp	-3.5pp
<b>Mean</b>	<b>+1.2pp</b>	<b>+7.1pp</b>	<b>+5.9pp</b>

Source: SFPD Crime Clearance Dashboard 2023 - 2025  
<https://www.sanfranciscopolice.org/stay-safe/crime-data/clearance-rates-dashboard>

Leveraging operational deployment patterns (see Fig 1), the quasi-experimental analysis above compares clearance for high-deployment categories (burglary, assault, robbery) against categories with lower drone deployment (rape, human trafficking, arson, larceny).

Crime clearance rates across high-deployment categories underperformed lower drone deployment categories (mean acceleration: +0.6pp vs. +5.9pp). This slower acceleration rate after drone deployment could be attributed to a number of important variables such as crime patterns, reporting delays, selection bias in deployment and other concurrent interventions, preventing definitive conclusions about causation. However, these trends raise important questions about drone effectiveness, reporting mechanisms, success frameworks and deployment strategies more broadly.

To accurately evaluate efficacy, reasons for drone deployment must be standardized and appended to case-level clearance outcomes. Without such integration, empirical assessments remain methodologically incomplete and fail to capture the operational or longitudinal effects of DFR programs. This absence of structured deployment-to-outcome mapping impedes any valid causal inference analysis and limits the potential for informed policy decisions.†

† This quasi-experiment does not provide a reliable basis for causal attribution. As such, results should be interpreted as descriptive, not causal. To rigorously assess DFR effectiveness, agencies must collect and publicly report disaggregated deployment-to-case clearance data, enabling future statistical and attitudinal analyses grounded in empirical validity.

<sup>29</sup> Ronald V. Clarke Guerette and Kelsey Przeszlowski, "Does the Rapid Deployment of Information to Police Improve Crime Solvability? A Quasi-Experimental Impact Evaluation of Real-Time Crime Center (RTCC) Technologies on Violent Crime Incident Outcomes," *Justice Quarterly* 40, no. 7 (2023): 950–974.

## Robust Controls for Use Safety & Data Privacy

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Flock Safety claims to uphold strong privacy and security standards by allowing agencies to retain ownership of their data, control access and sharing, and rely on industry-standard security protocols.<sup>30</sup> However, investigations by the ACLU of Massachusetts have raised concerns about the company's default user agreements, which may permit Flock to access or share license plate data under certain conditions.<sup>31</sup> These agreements also allow participating agencies to grant expansive access to other jurisdictions, a practice that has occurred in nearby cities such as San Mateo and Oakland. While Flock's Security Trust Center outlines its internal policies and controls, the company has not published any independent third-party security audits (e.g., SOC 2 or ISO certifications) to substantiate its claims. As such, vendor-issued assurances should not be accepted as a substitute for verified, externally validated and tested privacy guardrails. Additionally, multiple reports have documented that law enforcement data collected through Flock's systems have been accessed or provided to federal agencies, including immigration enforcement, despite the company's stated commitment to non-disclosure.<sup>32</sup> Police departments across the country have reported sharing data through Flock Safety's "National Lookup Tool," a platform that facilitates inter-jurisdictional access to license plate reader data. Approximately 75 percent of Flock's law enforcement clients nationwide have opted into this tool, enabling participating agencies to conduct cross-state searches and information exchange.<sup>33</sup> Although this integration empowers police departments to share information across jurisdictions, it renders agencies bound by strict data-sharing prohibitions more vulnerable to indirect or unauthorized third-party access. For instance, in 2025 Oakland Police Department, which is prohibited under SB 54 (2017) from sharing police data with federal agencies,<sup>34</sup> allowed out-of-state police departments to access license plate reader data marked for federal agencies.<sup>35</sup>

In a related legal development, a Washington state court ruled that Flock camera data constitutes a public record under state law, indicating that agencies may be unable to restrict public or institutional disclosure as tightly as Flock suggests.<sup>36</sup> Several police departments have since terminated their contracts with Flock Safety, citing unresolved privacy concerns. Berkeley's sanctuary status (BMC 13.90) prohibits city resources from supporting federal immigration enforcement, however, the Department's draft proposal does not specify whether vendors retain any data access, where footage is stored, whether access logs track every view of footage and how warrant-compelled disclosure would operate.

### 2.4 Summary of Findings

Claims that DFR programs enhance safety and staffing efficiency remain unsubstantiated. Similarly, there is no demonstrated impact of drone deployments on crime reduction or improved clearance rates. Purported benefits, such as potential reductions in use of force or operational costs, require further substantiation. The Board should require the Department to provide detailed projections of high-speed cellular/LTE infrastructure costs, anticipated replacement expenses, and the operational as well as fiscal risks associated with transitioning to NDAA-compliant systems. The most consistent evidence supports improvements in response time and situational awareness; however, these gains alone are insufficient to justify the risks and costs associated with DFR programs. Similarly, mission creep and program expansion examined among a number of jurisdictions surveyed in this report serve as documented patterns that inform expectations for Berkeley's program on the long-term evolution of DFR programs; currently the Department's Use Policy documents do not account for the expected fiscal and ethical implications of the programs growth.

Even when the most favorable assumptions regarding DFR outcomes are accepted, the evidentiary basis for implementation in Berkeley remains limited.

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<sup>30</sup> Flock Safety, "Privacy & Ethics," <https://www.flocksafety.com/privacy-ethics>.

<sup>31</sup> Jay Stanley, "Flock Can Share Driver-Surveillance Data Even When Police Departments Opt Out, And Other Flock Developments," *American Civil Liberties Union*, October 24, 2025, <https://www.aclu.org/news/privacy-technology/flock-massachusetts-and-updates>.

<sup>32</sup> Jay Stanley, "Flock Can Share Driver-Surveillance Data Even When Police Departments Opt Out, And Other Flock Developments," *American Civil Liberties Union*, October 24, 2025, <https://www.aclu.org/news/privacy-technology/flock-massachusetts-and-updates>.

<sup>33</sup> *Ibid.*

<sup>34</sup> California Senate Bill 54, *California Values Act*, 2017–2018 Reg. Sess. (Cal. 2017), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB54](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB54).

<sup>35</sup> Tomo Chien, "Oakland Police Illegally Shared License Plate Data: Lawsuit," *San Francisco Standard*, November 18, 2025, <https://sfstandard.com/2025/11/18/oakland-police-opd-lawsuit-flock-surveillance/>.

<sup>36</sup> *City of Sedro-Woolley and City of Stanwood v. Jose Rodriguez*, No. 25-2-00717-29, ruling (Skagit County Superior Court, Washington, November 6, 2025), <https://www.documentcloud.org/documents/26223229-20251106-ruling-25-2-00717-29-city-of-sedro-woolley-et-al-vs-jose-rodriguez/>.

Accordingly, the Criminal Law & Justice Center recommends that the City authorize a pilot program designed to generate the empirical evidence necessary to assess the technology's effectiveness and address the critical evidence gaps identified in this section.

### 3.0 Berkeley UAS Policy Analysis

Berkeley's proposed Section 611.5 authorizes UAS deployment across 13 enumerated use cases, all oriented toward emergency response and officer safety. The table below maps each authorized use against documented Chula Vista Police Department (CVPD) operations, which we have identified as the closest operational analog to Berkeley's proposed model to assess available outcome evidence of a DFR program. Unlike SFPD, whose drone program is driven by crime-type response (stolen vehicles, burglary, robbery), CVPD deploys drones exclusively in response to emergency calls for service, mirroring Berkeley's proposed framework. Critically, the DOJ-funded COPS/CNA case study confirms that CVPD has conducted no formal program evaluation, meaning even the strongest analog in the literature rests primarily on anecdotal narratives and aggregate deployment counts.<sup>37</sup>

#### Unmanned Aerial Systems – Interior Drones

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The deployment of interior drones, which are designed to enter buildings through doors or windows for reconnaissance, raises privacy and security concerns that warrant categorical prohibition in Berkeley. No peer jurisdiction has established a legal or evidentiary framework for interior drone deployment, and no independent empirical literature documents their public safety efficacy. Berkeley should explicitly prohibit the procurement, retrofitting, or deployment of drones equipped with entry capabilities. Notably, Policy 611.5(6) authorizes deployment to "clear interior buildings or confined spaces remotely" without specifying any use-specific warrant requirements, privacy safeguards, or evidentiary standards applicable to footage captured inside private dwellings, a gap that makes explicit categorical prohibition at the ordinance level necessary. This prohibition is necessary to safeguard Fourth Amendment privacy protections, preserve community trust, and prevent mission creep associated with indoor surveillance technology.

#### Table D: UAS Policy Framework Comparison — Berkeley, San Francisco & Chula Vista

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The table below compares Berkeley's full Policy 611 (Sections 611.2-611.7) against San Francisco Police Department and Chula Vista Police Department across eight governance dimensions. Berkeley's full Use Policy reveals that the Department has addressed several governance areas more rigorously than peer jurisdictions in the analysis: the City Manager approval chain (611.6), the 60-day data purge requirement (611.7), the 14-day transparency portal publication mandate (611.2), and the explicit prohibited use list including demographic targeting (611.4) all exceed standards found in San Francisco or Chula Vista's written policies.

While Berkeley's policy establishes a stronger governance framework relative to peer jurisdictions there are some critical gaps that should be addressed. The remaining critical gap is outcome evaluation: Policy 611 contains no effectiveness metrics, no program assessment requirements, and no benchmarks against which to measure whether the Department's authorized uses produce the intended public safety outcomes. Berkeley's DFR program's projected draft policies in Policy 611 are summarized against peer-adopted use policies in Table D. Appendix B presents critical peer-jurisdiction case studies that document instances of policy overreach and operational misuse, and offers a framework of enforceable guardrails for the City to consider in evaluating the DFR proposal.

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<sup>37</sup> U.S. Department of Justice, Office of Community Oriented Policing Services, *Chula Vista Police Department's Unmanned Aircraft System Program* (Washington, DC: COPS Office), <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-r1170-pub.pdf>.

Governance Dimension	Berkeley BPD 611.5 (Draft Policy)	San Francisco PD (Adopted Policy)	Chula Vista PD (Adopted Policy)
<b>Scope of Authorized Use</b>	Narrow: 13 enumerated uses (611.5); explicitly limited to “remote surveillance and monitoring”; BPD personnel operate UAS (611.7); UAS shall not be weaponized (611.4)	Broad: crime-response driven; uses include training and simulations, critical incidents, exigent circumstances, search & rescue, missing persons, Crime Scene Investigation (CSI/TCIU), during suspicious device assessments, planned operations, disaster response and community outreach related to vehicle pursuits and active criminal investigations; top 5 uses are Stolen Vehicle, Burglary, Robbery, Person with Gun, Fight; SFPD personnel operate independently; city-owned equipment	Moderate: Tier 1/2 emergency calls only; explicitly prohibits routine patrol or surveillance; CVPD officers operate drones; city-owned equipment
<b>Operational Model</b>	Deployment requires City Manager approval via chain of command (611.6); Watch Commander → Chief → City Manager approval chain before any use	SFPD-operated; only assigned operators who have completed training authorized to operate UAS; fixed launch sites; no City Manager equivalent approval	Drone-as-First-Responder (DFR); 4 fixed rooftop launch sites; citywide coverage; trained pilot/operator can initiate deployment independently via Live911
<b>Oversight &amp; Accountability</b>	Multi-layer: Watch Commander → Chief of Police → City Manager must approve each deployment (611.6); City Manager logs all uses and ensures reporting compliance per BMC 2.99.040; annual Surveillance Technology Report required (BMC 2.99.070); 14-day transparency portal publication requirement (611.2)	Police Commission oversight; annual review process; Tableau public clearance rate dashboard; CompStat reporting; no standardized per-deployment  Private donations enabled program expansion without the typical budget constraints or cost-tracking mechanisms’ resulting in reduced fiscal scrutiny and limited public oversight	Supervising sergeant full-time; 20 part-time CVPD sworn personnel are assigned to program; 2 full time UAS pilots; lieutenant at 50%; public dashboard on CVPD website; daily AirData flight path uploads; no elected official approval required per deployment
<b>Data Retention &amp; Transparency</b>	60-day purge requirement for non-evidentiary data (611.7); evidentiary data retained per Policy 804; data published to BPD transparency portal within 14 days of each deployment (611.2); governed by Surveillance Technology Ordinance BMC 2.99; warrant/exigent circumstances required before recording in privacy-expectation areas (611.3)	Digital media evidence (DME) reviewed and evaluated for evidentiary value after every flight. All DME uploaded into the Department’s digital evidence database; If DME is found to have no evidentiary value, data must be deleted within 30 days; Captain or determines whether data should be retained for more than 30 days due to an open criminal investigation, then the department will retain the record for the period set forth in that determination; Captain determined that DME has evidentiary value the data is retained for 2.5 years as directed by the City Attorney’s Office	Drone footage is stored in the same system and in the same manner as body-worn cameras; daily public flight path uploads to AirData portal; Drone footage stored in Evidence.com and nominally subject to CPRA; CVPD FAQ states non-evidentiary footage retained one year or less; CBS 8 (2024) investigation reported 90-day purge for non-evidentiary footage, 2–5 year retention for evidentiary footage, and permanent retention for homicide footage; schedules not independently verified or codified in a publicly available written policy

<p><b>Prohibition Provisions</b></p>	<p>Explicit prohibitions (611.4): no random surveillance; no targeting based on race, ethnicity, religion, sex, sexual orientation, gender identity, economic status, age, cultural group, or disability; no harassment or intimidation; no personal use; no weaponization; privacy protections require avoiding recording areas with reasonable expectation of privacy absent warrant or exigency (611.3)</p>	<p>AB 481 compliance required; no explicit demographic targeting prohibition in deployment policy language; UAS-recorded not collected, disseminated, or retained solely for the purpose of monitoring activities protected by the U.S. Constitution, such as the First Amendment’s protections of religion, speech, press, assembly, and redress of grievances (e.g., protests, demonstrations); explicit weapon and use-of-force prohibition</p>	<p>AB 481 compliance required; explicitly prohibits routine patrols and surveillance; ACLU consulted during development; no documented facial recognition use prohibition</p>
<p><b>Public/Community Engagement</b></p>	<p>Governed by Surveillance Technology Ordinance (BMC 2.99) — requires City Council approval for surveillance technology adoption; community engagement embedded in ordinance framework; policy currently in public comment/Council review process</p>	<p>Police Commission public meetings; community input via Commission process; no ordinance-level community engagement requirement for individual deployments</p>	<p>~ 18 month community engagement period; ACLU consultation during development; multiple public forums; separate UAS complaint channel; written policy developed and published for community comment before equipment was purchased or operational use began</p>
<p><b>Interior Drones</b></p>	<p>Policy 611.5(6) authorizes deployment to ‘clear interior buildings or confined spaces remotely’ without privacy safeguards or evidentiary standards</p>	<p>DFR program includes one smaller model intended for interior operations; no authorized use provision; no governance framework in use policy documents</p>	<p>Tactical drone program deploys smaller UAS to fly indoors or in tight spaces; used only in situations where officers would be allowed to enter a private space or exigent circumstances; no clear parameters on exigent circumstances in policy use documents</p>
<p><b>Outcome Evaluation</b></p>	<p>None specified in Policy 611; annual Surveillance Technology Report (BMC 2.99.070) requires deployment counts and descriptions but does not mandate outcome metrics or effectiveness evaluation</p>	<p>Clearance rate dashboard; deployment data on DataSF; quasi-experimental analysis possible (see 2.3); no mandated formal evaluation program in policy</p>	<p>No formal program evaluation conducted (COPS/CNA 2024, p.17); dashboard provides deployment counts and response times; no outcome metrics specified in written policy</p>

Sources: Berkeley Police Department Draft Policy 611.5; SFPD Clearance Rates Dashboard; SFPD Unit Order 24-02, August 22, 2024; U.S. Department of Justice, Office of Community Oriented Policing Services, Chula Vista Police Department’s Unmanned Aircraft System Program (Washington, DC: COPS Office); California AB 481 (2021); CVPD UAS Policy ([chulavistaca.gov](http://chulavistaca.gov)); CVPD Frequently Asked Questions (<https://pub-chulavista.escribemeetings.com/filestream.ashx?documentid=11817>); AirData UAV. Chula Vista Police — Drone Program Historical Flight Data; CBS 8. “Chula Vista Model for Police Use of Drones amid Privacy Concerns.” 2024; City of Chula Vista, Drone Program webpage; SFPD, AB 481 Annual Report: Community Meetings Summary (October 2024); SF Admin Code § 19B.2(c), as amended by Ord. 284-24 (effective January 19, 2025); City of Chula Vista, News Release (2017); Government Technology, November 2024; City of Chula Vista, News Release: “Chula Vista Police Finalizing Drone Use Procedures; Public Input Welcomed.”

Table E: Evidence Gap Matrix — What Data Exists for Berkeley’s Authorized Uses

This matrix identifies, for each of Berkeley’s 13 authorized use cases, the current state of outcome evidence across the published literature and comparable programs. The matrix distinguishes between the existence of any evidence, its quality and source, the specific data that is missing, and the outcome metrics that should be collected if Berkeley proceeds with a pilot program. This evidence gap analysis indicates that Berkeley is being asked to authorize uses for which no rigorous outcome evidence exists or no comparable program has formally evaluated those uses. Berkeley Police Department’s pilot program should aim to address and evaluate the effectiveness of drone technology in supporting responses to these designated emergency categories.

Berkeley 611.5 Authorized Use	Outcome Data Currently Exists?	Best Available Evidence Source	Critical Data Gap	Recommended Outcome Metric
Mass casualty incidents	Partial	CVPD response time data (Priority 1 calls); no casualty reduction data	No casualty count or injury severity data before/after drone deployment	Casualties per incident; officer injury rate; scene stabilization time
Disaster management	None	No law enforcement drone program documents disaster-specific outcomes	Complete absence of disaster-specific drone outcome research	Scope of scene coverage; resource deployment efficiency; civilian evacuation time
Missing/lost persons	Anecdotal only	CVPD runaway child case narrative (1 example)	No systematic data on search duration, success rate, or comparative baseline	Search resolution time; success rate vs. ground search; cost per resolved case
Hazardous material releases	None	No documented law enforcement drone use for hazmat response	No drone-specific hazmat outcome data exists in public literature	Perimeter accuracy; officer exposure reduction; hazmat unit response coordination time
Sideshow / reckless driving	None	No CVPD or SFPD analog; not an authorized use in either program	No comparable program exists to draw evidence from	Dispersion time; arrest rate; injury reduction; repeat incident rate at location
Rescue operations	Anecdotal only	CVPD wellness check / indoor drone case narrative (1 example)	No systematic data on rescue outcomes vs. non-drone baseline	Time to locate subject; officer injury rate on entry; use-of-force rate
Armed/dangerous persons (h-i, i)	Aggregate only	950+ CVPD DFR-assisted arrests (2018-2021); SFPD drone deployment flight data indicates Person with Gun as top five reasons for flight	No breakdown of arrest rate, use-of-force rate, or de-escalation outcomes by call type; SFPD drone deployment flight data is not standardized making it difficult to quantify impact	Arrest rate; use-of-force rate; officer injury rate; suspect injury rate
Hostage / barricaded suspects (h-ii, h-iii)	Anecdotal only	CVPD single tactical drone wellness check case	No systematic data; single high-stakes use case cannot support generalization	Incident resolution time; negotiation success rate; use-of-force rate
High-risk warrants (j)	None	No documented drone-specific warrant service outcome data in any jurisdiction	Significant legal/civil liberties dimension not addressed in any program evaluation	Warrant success rate; officer injury; collateral incident rate

<b>Training (g)</b>	<b>Descriptive only</b>	CVPD training curriculum description; POST certification framework	No outcome data linking training program to operational performance improvements	Pilot error rate; re-certification rates; operational proficiency benchmarks
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*Sources: Berkeley Police Department Draft Policy 611.5; U.S. Department of Justice, Office of Community Oriented Policing Services, Chula Vista Police Department's Unmanned Aircraft System Program (Washington, DC: COPS Office); SFPD Clearance Rate Dashboard; CVPD AirData Portal; CBS8 CPRA Records (2022–2024); Police Executive Research Forum (PERF) UAS Guidelines (2020).*

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#### 4.0 Conclusion

The promise of Drone as First Responder (DFR) technologies remains largely unsubstantiated. In light of the constitutional, fiscal, and operational risks outlined in this report, Berkeley should proceed with caution and reaffirm its commitment to evidence based, community centered public safety strategies. The Berkeley Police Department's proposed DFR program carries unproven public safety benefits, unresolved constitutional concerns, and significant fiscal uncertainty. The strongest available evidence from peer jurisdictions does not demonstrate a clear causal relationship between drone deployment and improved clearance rates or crime reduction outcomes. In addition, critical safeguards, including independent cost analysis, equity protections, and robust vendor data controls, are not yet fully reflected in the Department's current proposal.

Under AB 481, the City Council may authorize acquisition of surveillance technologies only upon determining that the anticipated community benefits outweigh the associated costs and risks. Based on the evidentiary record examined in this report, that determination cannot presently be made with confidence.

Accordingly, rather than immediately authorizing full operational deployment, the City should consider a more cautious and evidence-based approach. A tightly bound pilot program implemented in partnership with an independent research institution and governed by clear safeguards, evaluation metrics, and oversight mechanisms would allow Berkeley to rigorously assess the real world impacts of DFR technology before making any long term fiscal commitments. Such an approach would enable the City to address the critical empirical, operational and fiscal gaps identified in this report while establishing a transparent framework for evaluating current and future emerging public safety technologies.

Until these safeguards, evaluation mechanisms, and governance structures are formally adopted, full scale implementation of a DFR program would expose the City to unnecessary legal, operational, and financial risks.

The Criminal Law & Justice Center is prepared to support this work, including assisting the City in identifying appropriate research partners and exploring funding opportunities to support an independent evaluation. This approach would benefit not only Berkeley but also jurisdictions across the country working to develop evidence-based governance frameworks for emerging policing technologies.

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## Appendix A

### California State Law Constraints

At the state level, California's Assembly Bill 481 (2021) establishes additional oversight and accountability guidelines that govern law enforcement acquisition and use of equipment designated as "military equipment," thereby requiring Berkeley to satisfy AB 481's statutory requirements prior to the acquisition or deployment of police drones.<sup>38</sup>

AB 481 requires that the Berkeley Police Department adopt a detailed Military Equipment Use Policy by ordinance before the City Council can approve the funding, procurement and deployment of drones.<sup>39</sup> The Council may authorize police drone use "only if it determines" that the benefits to the community outweigh the potential costs and that strong safeguards are in place to protect the public's welfare, civil rights and civil liberties.<sup>40</sup> This state criteria echoes BMC 2.99 mandate that surveillance tech be approved only when civil liberties are appropriately protected and that there are no other viable alternative options.<sup>41</sup> AB 481 effectively ensures that the City must prioritize community well-being and rights before permitting a drone program.

Similarly, a Berkeley drone Use Policy adopted under AB 481 must include certain required elements (purpose, authorized use, fiscal impact) and be made publicly available. The City Council is further required to review this ordinance at least annually. Each year, the Police Department must provide an Annual Military Equipment Report to the Council, disclosing how the drones were used, any complaints or violations, and other outcomes.<sup>42</sup> If the Council identifies through review that the drones were misused or the policy's safeguards are failing to be met, it must either amend the policy or disapprove renewal authorization for the equipment in use. That is, if the drone program does not comply with the standards originally set, that is, if it erodes privacy rights or is deployed outside approved usage, the Council is obligated under state law to limit the scope of the program or cease its operation.<sup>43</sup>

This oversight framework establishes baseline requirements across California. In summary, AB 481 permits law enforcement drone use only upon explicit authorization by the City Council through adoption of an ordinance and subject to ongoing compliance with statutory requirements. Any Berkeley drone policy would therefore need to satisfy both the City's local surveillance ordinance and AB 481. In practice, this necessitates a single, comprehensive policy that is developed through public process, formally adopted by the Council, and subject to regular review to ensure continued compliance.

### California Constitutional Privacy

The California Supreme Court has held that in order to prove a violation of the state constitutional right to privacy, a person must show (1) a legally protected privacy interest, (2) a reasonable expectation of privacy in the context, and (3) a serious invasion of privacy by the government.<sup>44</sup>

In the application of drone usage, these provisions indicate that citizens have a strong interest in the privacy of their homes, attendant land and personal activities. By extension, California law recognizes that moving "in and out" of one's homes carries an expectation of privacy from constant government surveillance.<sup>45</sup> If police drones conduct persistent surveillance of someone's property, that could be seen as a serious invasion of privacy under state law. California courts aim to balance privacy rights against the government's justification for any intrusion. Even if drone usage might be lawful in a judicial sense, it may not be upheld under California's privacy-centric ethos unless tightly regulated. Thus, the state constitution's privacy clause pushes Berkeley to consider not just whether drone surveillance can hold up in a court of law, but whether it erodes fundamental privacy values and community trust.

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<sup>38</sup> California Assembly Bill 481, *Law Enforcement and State Agencies: Military Equipment: Funding, Acquisition, and Use*, [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB481](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481).

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> City of Berkeley, *Resolution Accepting the Surveillance Impact Report for the Berkeley Police Department's Unmanned Aircraft System*, City Council Agenda Item 03, January 26, 2021, <https://berkeleyca.gov/sites/default/files/documents/2021-01-26%20Item%2003%20Resolution%20Accepting%20the%20Surveillance.pdf>.

<sup>42</sup> Santa Clara County Sheriff's Office, "Military Equipment Use," Transparency Portal, <https://sheriff.santaclaracounty.gov/transparency-portal/policies-and-procedures/military-equipment-use>.

<sup>43</sup> Cal. Assembly. B. 481, 2021–2022 Reg. Sess. (Cal. 2021), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB481](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481).

<sup>44</sup> *Hill v. National Collegiate Athletic Association*, 7 Cal. 4th 1 (1994), <https://law.justia.com/cases/california/supreme-court/4th/7/1.html>.

<sup>45</sup> ACLU Sues Sonoma County, Alleges Illegal Drone Surveillance Program," *KTVU Fox 2*, June 4, 2025, <https://www.ktvu.com/news/aclu-sues-sonoma-county-alleges-illegal-drone-surveillance-program>.

Berkeley's current ordinance enshrines this principle, requiring that surveillance decisions weigh civil liberties "to the maximum extent possible."<sup>46</sup> Therefore, the prudent course is to align drone usage with California's heightened privacy expectations, that includes using drones only for specific incidents or locations where there is an articulable and verifiable public safety need, and not for indiscriminate surveillance. In doing so, Berkeley can ensure that any drone program complies with California's judicial precedence while also giving effect to the state's constitutional privacy protections in a manner that supports transparency and public trust.

#### CalECPA – Electronic Communications Privacy

Another state law integral to drone deployments is the California Electronic Communications Privacy Act (CalECPA). CalECPA is a digital privacy law that generally mandates law enforcement obtain a search warrant before accessing electronic communication information or electronic device data.<sup>47</sup> While CalECPA governs digital data like emails, text messages, geolocation records, and cellphone data, it has broader implications for police deployment of drones that have advanced technical capabilities beyond video recording.

- Under CalECPA, officers may not use an electronic device to remotely access or communicate with someone's phone or other electronic device without a warrant.<sup>48</sup> If drone technology were to be equipped with a cell-site simulator (e.g. Stingray), that capability would require law enforcement to obtain a warrant requirement. The integration of this technology may heighten constitutional risk and raise serious concerns about compliance and oversight within Berkeley's legal and policy framework. Therefore, Berkeley's drone policy should ensure that any such capability is prohibited now or in the future.
- CalECPA also reinforces California's strict auditory surveillance laws (Penal Code § 632, part of the Invasion of Privacy Act) which makes it illegal to use electronic devices to overhear or record private communications without consent.<sup>49</sup> Many drones often have auditory capabilities and in California, recording a private conversation requires all-party consent or a warrant.<sup>50</sup> A drone's microphone, if activated, could potentially violate this law, absent appropriate judicial authority. Therefore, a strong drone policy should prohibit audio capabilities altogether, unless an articulable reason demands that this technology be used.

In summary, Berkeley's drone program should be structured to comply with California's layered judicial and legislative landscape

#### Other Relevant California Laws and Codes To Consider

In addition to AB 481, constitutional privacy, and CalECPA, a few other state provisions mandate appropriate drone usage:

- California Civil Code § 1708.8 establishes civil liability for the use of any device to capture visual or auditory recordings of individuals engaged in personal or familial activity under circumstances where they have a reasonable expectation of privacy.<sup>51</sup> Although the statute primarily targets private individuals and paparazzi, it affirms the broader principle that aerial surveillance of private spaces, such as peering into windows or hovering over backyards, constitutes a privacy intrusion. While law enforcement officers may be afforded certain immunities when acting under lawful authority, these protections do not preclude local jurisdictions like Berkeley from adopting stricter standards. Specifically, Berkeley can and should explicitly prohibit routine surveillance of residential curtilage, including backyards and interior views, without a judicial warrant. This policy would align with state-recognized privacy expectations and reinforce the City's broader commitments to civil liberties and constitutional safeguards.

In summary, California law does not condemn police drones but it erects strict bulwarks. Berkeley can legally implement a successful DFR pilot program only if it operates within these guardrails.

#### Federal Constitutional Protections (First and Fourth Amendments)

<sup>46</sup> Berkeley Municipal Code § 2.99.010, "Purposes," <https://berkeley.municipal.codes/BMC/2.99.010>.

<sup>47</sup> California Legislature, *Senate Bill No. 178 (2015–2016)*, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB178](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB178).

<sup>48</sup> Ibid.

<sup>49</sup> *California Penal Code* § 632, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=632](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=632).

<sup>50</sup> Ibid.

<sup>51</sup> *California Civil Code* § 1708.8 (2024), Justia, <https://law.justia.com/codes/california/code-civ/division-3/part-3/section-1708-8/>.

Berkeley's drone program must comply with the First and Fourth Amendments, to ensure that civil liberties are protected. While Berkeley sets higher standards, it is important to identify scenarios likely to draw legal challenges.

The Fourth Amendment protects against "unreasonable searches and seizures." An important question then becomes whether police monitoring via drone constitutes a "search" that requires a warrant or special exceptions. Past, foundational surveillance cases provide some guidance, though it should be noted that drone technology has evolved since those decisions, as has case law:

- In *California v. Ciraolo*, 476 U.S. 207 (1986), the U.S. Supreme Court held that law enforcement's warrantless aerial observation of a fenced backyard from an airplane flying at 1,000 feet did not violate the Fourth Amendment. The Court reasoned that what is visible to the naked eye from public navigable airspace does not carry a reasonable expectation of privacy.<sup>52</sup>
- Similarly, in *Florida v. Riley*, 488 U.S. 445 (1989), the Court upheld the constitutionality of a warrantless observation from a helicopter flying at 400 feet above a private residence. The Court concluded that because the helicopter was in lawful airspace and the observation required no advanced technology, the homeowner did not have a reasonable expectation of privacy in what was visible through openings in the greenhouse roof.<sup>53</sup>
- In *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986), the Court ruled that EPA's aerial photography of an industrial complex using a commercially available mapping camera did not constitute a Fourth Amendment search. Although Dow argued that the facility was private, the Court distinguished between "intimate details" of private residences and the open areas of industrial facilities, concluding that surveillance of the latter from lawful airspace did not infringe upon reasonable expectations of privacy.<sup>54</sup>

Police drone flights over Berkeley that operate at lawful altitudes and capture images of open areas exposed to public view would likely be permissible under the Fourth Amendment. Courts have long upheld aerial observations of public spaces, including city streets and parks, as lawful when conducted from navigable airspace. For example, using a drone to locate an armed suspect in a public park would be analogous to helicopter searches that courts have deemed permissible. However, critical caveats must be addressed:

- First, under *United States v. Causby* (1946), property owners retain rights to the immediate reaches of the airspace above their homes. Prolonged, low-altitude drone flights over private property may constitute a trespass or search, even if the drone does not physically intrude. Berkeley should therefore impose altitude minimums and explicitly prohibit sustained low-hovering over residences without legal justification.<sup>55</sup>
- Second, under *Ciraolo*, *Riley*, and *Dow Chemical*, legal precedent was predicated on naked-eye observation or standard photography. Modern drones, by contrast, often carry enhanced surveillance capabilities: thermal imaging, infrared, night vision and zoom lenses. Under *Kyllo v. United States* (2001), the use of thermal imaging to detect details inside a home without a warrant was held unconstitutional, as the technology was not in general public use and revealed information otherwise inaccessible without physical intrusion. If Berkeley police use thermal-equipped drones or any tools capable of penetrating walls, detecting heat signatures, or observing intimate details within a home, such deployments would likely require a warrant. Policy 611 should therefore clearly prohibit the use of advanced sensing technology absent express legal authorization.<sup>56</sup>
- Third, *Carpenter v. United States* (2018) held that prolonged tracking of individuals' location data constituted a search requiring a warrant, even though the data reflected public movements. Applied to drones, persistent aerial surveillance over a neighborhood, community or of an individual could raise similar constitutional concerns. Berkeley's current proposal does explicitly prohibit persistent surveillance and safeguards should be codified to prevent this risk.<sup>57</sup>

Similarly, police use of drones raises First Amendment concerns, particularly when deployed to monitor political protests, public rallies, or other protected activities. The First Amendment guarantees the rights to free speech and peaceful assembly, and courts have long recognized that government surveillance of lawful assemblies can exert a chilling effect on these constitutional freedoms. For example, in *White v. Davis* (1975), the California Supreme Court

<sup>52</sup> *California v. Ciraolo*, 476 U.S. 207 (1986), <https://supreme.justia.com/cases/federal/us/476/207/>.

<sup>53</sup> *Florida v. Riley*, 488 U.S. 445 (1989), <https://supreme.justia.com/cases/federal/us/488/445/>.

<sup>54</sup> *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986), <https://supreme.justia.com/cases/federal/us/476/227/>.

<sup>55</sup> *United States v. Causby*, 328 U.S. 256 (1946), <https://supreme.justia.com/cases/federal/us/328/256/>.

<sup>56</sup> *Kyllo v. United States*, 533 U.S. 27 (2001), <https://supreme.justia.com/cases/federal/us/533/27/>.

<sup>57</sup> *Carpenter v. United States*, 585 U.S. 296 (2018), <https://supreme.justia.com/cases/federal/us/585/16-402/>.

condemned a covert LAPD surveillance operation targeting university protesters, emphasizing covert police surveillance will inhibit the exercise of First Amendment rights.<sup>58</sup> When individuals fear they are being watched by law enforcement, especially through aerial surveillance, they may be deterred from participating in protests or public demonstrations, thereby undermining democratic expression.

In short, to ensure constitutional compliance, Berkeley must narrowly tailor its drone operations to avoid privacy violations and legal risk. Strong internal controls, clear policy language, and deployment auditing mechanisms are essential to prevent overreach and ensure adherence to the Fourth and First Amendment.

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## Appendix B

### B Enforcement Framework: Preventing Misuse, Ensuring Accountability

This section examines documented misuse cases from peer jurisdictions and recommends enforcement mechanisms to prevent similar violations in Berkeley.

#### **A categorical prohibition on First Amendment surveillance is necessary as “public safety” justification is easily claimed and difficult to challenge in real-time.**

In 2017, the Alameda County Sheriff and Contra Costa County Sheriff flew drones over largely peaceful political protests and demonstrations.<sup>59</sup> This kind of crowd surveillance is prohibited under FAA guidelines without judicial approval but police departments have managed to circumvent this requirement by characterizing the need for covert drone deployment operations as public safety concerns.<sup>60</sup> In 2020, U.S. Customs and Border Protection (CBP) diverted a Predator-class surveillance drone from its standard patrol of the U.S.-Canada border to fly over protests in Minneapolis for approximately three hours.<sup>61</sup> While CBP claimed the drone was used to provide “situational awareness” to federal partners, members of Congress later raised concerns that its deployment amounted to surveillance of individuals engaged in constitutionally protected First Amendment activities.<sup>62</sup>

#### **Technological capabilities must be restricted at the procurement stage, not merely through policy language. Evidence from peer jurisdictions suggests that available capabilities tend to be deployed regardless of policy restrictions alone.**

Retrofitting facial recognition or other biometric technology to drones is widely considered a high-risk use with significant potential for misuse. Currently, at least two states – Illinois and Vermont – have banned law enforcement from procuring and using drones with facial recognition capabilities, with exceptions for articulable emergencies like finding missing persons.<sup>63</sup> This legislation arose from fears that police drones could be deployed to identify, track and monitor individuals in crowds, akin to mass surveillance. Similarly, in 2015, the Baltimore Police Department reportedly used aerial surveillance equipped with facial recognition technology to identify and track individuals participating in protests.<sup>64</sup>

#### **Even narrow “emergency only” exceptions create ambiguity. Categorical prohibition on weaponization is essential to prevent precedent-setting expansions.**

Federal law generally prohibits the weaponization of civilian drones, and many states have explicitly banned law enforcement from deploying armed drones.<sup>65</sup> However, in a notable exception, the Dallas Police Department in 2016 used a ground-based robotic device equipped with C-4 explosives to neutralize a barricaded sniper.<sup>66</sup> A grand jury

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<sup>58</sup> *White v. Davis*, 13 Cal. 3d 757 (1975), <https://law.justia.com/cases/california/supreme-court/3d/13/757.html>.

<sup>59</sup> Dave Maass and Mike Katz-Lacabe, “Alameda and Contra Costa County Sheriffs Flew Drones Over Protests,” *Electronic Frontier Foundation (EFF) Deeplinks*, December 5, 2018, <https://www.eff.org/deeplinks/2018/12/alameda-and-contra-costa-county-sheriffs-flew-drones-over-protests>.

<sup>60</sup> Lexipol Content Development Team, “Key Considerations for a Law Enforcement Drone Policy,” *Police1*, March 11, 2024, <https://www.police1.com/drones/key-considerations-for-a-law-enforcement-drone-policy>.

<sup>61</sup> Enemark, Christian. “Armed Drones and Ethical Policing: Risk, Perception, and the Tele-Present Officer.” *Criminal Justice Ethics* 40, no. 2 (2021): 124–144. <https://doi.org/10.1080/0731129X.2021.1943844>.

<sup>62</sup> Enemark, Christian. “Armed Drones and Ethical Policing: Risk, Perception, and the Tele-Present Officer.” *Criminal Justice Ethics* 40, no. 2 (2021): 124–144. <https://doi.org/10.1080/0731129X.2021.1943844>.

<sup>63</sup> Lexipol Content Development Team, “Key Considerations for a Law Enforcement Drone Policy,” *Police1*, March 11, 2024, <https://www.police1.com/drones/key-considerations-for-a-law-enforcement-drone-policy>.

<sup>64</sup> Nicol Turner Lee and Caitlin Chin-Rothmann, “Police Surveillance and Facial Recognition: Why Data Privacy Is an Imperative for Communities of Color,” *Brookings Institution*, April 12, 2022, <https://www.brookings.edu/articles/police-surveillance-and-facial-recognition-why-data-privacy-is-an-imperative-for-communities-of-color/>.

<sup>65</sup> Lexipol Content Development Team, “Key Considerations for a Law Enforcement Drone Policy.”

<sup>66</sup> “No Charges for Dallas Officers Who Killed Sniper With Robot Bomb,” *Reuters*, January 31, 2018, <https://www.reuters.com/article/world/no-charges-for-dallas-officers-who-killed-sniper-with-robot-bomb-idUSKBN1FL3HQ>.

later found this operation justified under exigent circumstances, but this incident raised concerns around the permissibility of deadly force under “extreme conditions.”<sup>67</sup> Although the Dallas case involved the use of a ground drone, private companies like taser manufacturer Axon have floated proposals to develop quadcopter drones with stun gun capabilities.<sup>68</sup> The backlash to this proposal was immediate, but it illuminated the possibility of future adoption of weaponized drone technology if not met with strict preventative guardrails.

**Sanctuary city protections must be explicitly embedded in vendor contracts with termination provisions and third-party security audits, as vendor assurance have proven insufficient.**

Transparency is a critical pillar for ensuring both the enforceability and long-term legitimacy of a police drone program. While many assume that stringent transparency standards govern the use of drone technology, real-world practices have often diverged from these expectations. The Chula Vista Police Department, which operates one of the nation’s most prominent Drone as First Responder program, initially denied a 2021 public records request from a local journalist seeking access to drone video.<sup>69</sup> The department claimed that all DFR footage was categorically exempt as part of ongoing criminal investigations. However, the Fourth District Court of Appeal rejected this position, ruling that many 911 drone deployments are not tied to active criminal investigations and that such footage must be disclosed upon request.<sup>70</sup> This case underscores the need for clear public access policies but also for robust data infrastructure capable of supporting transparency, auditability, and safeguards against data leakage or misuse. Oakland has faced scrutiny over Flock Safety’s data-sharing practices after investigations revealed that federal agencies accessed the Department’s Flock’s automated license plate reader (ALPR) and video surveillance systems, despite local sanctuary laws prohibiting such cooperation.<sup>71</sup>

**Mission creep is a documented pattern across many peer jurisdictions reviewed, not a hypothetical risk. Use case restrictions enforced through policy language alone have proven insufficient. Capability restrictions must be embedded at the procurement stage with automatic sunset provisions requiring Council reauthorization.**

Drone programs tend to scale rapidly over time. San Francisco Police Department’s drone fleet increased from 6 to 63 drones with over 1,400 completed flights in roughly a year after Prop E passed.<sup>72</sup> What was initially a selective deployment drone program consisting of high-risk and emergency operations, quickly expanded to encapsulate functions beyond emergency support. This included flying drones over the Dolores Hill Bomb skateboarding event for over five hours in July 2024, at Pride for over five hours in June 2024 and the Outside Lands festival on three different occasions.<sup>73</sup> Similarly, Las Vegas plans to expand drone deployment from emergency response incidents to operating a 24/7 aerial response infrastructure across the county.<sup>74</sup> Chula Vista’s authorized deployment uses initially included Tier 1/2 emergency calls but recorded flight logs indicate drones are often used to investigate crimes related to homelessness.<sup>75</sup> These cases underscore the risk of mission creep across DFR programs and the likelihood of drone deployments extending beyond their stated scope.

**Despite assurances, surveillance technology has disproportionately targeted communities of color.** In San Francisco, publicly available data indicates that drone deployments and broader surveillance technologies are concentrated in specific neighborhoods—particularly the Tenderloin, Mission, SoMa, and Bayview. These areas are often considered crime hotspots by police but also home to some of the city’s highest concentrations of low-income and minority residents. The spatial correlation between surveillance intensity and neighborhood demographics raises concerns that drone use may reinforce historical patterns of over-policing and exacerbate racial and socioeconomic disparities (see Fig1 and Appendix C). This disproportionate exposure to surveillance risks reproducing systemic bias under the guise of public safety.

Berkeley should anticipate similar risks. If drones are used to monitor protests, assist with evictions, or respond disproportionately in specific neighborhoods, already-marginalized communities may bear the brunt of surveillance. To mitigate this, the Department should require a demographic impact assessment as part of its oversight framework.

<sup>67</sup> Ibid.

<sup>68</sup> Jeffrey Dastin and Pares Dave, “Taser maker Axon Enterprise halts drone project as most of its ethics panel resigns,” *Reuters*, June 6, 2022, <https://www.reuters.com/world/us/exclusive-axon-halts-taser-drone-work-some-ethics-panel-said-resign-2022-06-06/>.

<sup>69</sup> Pedro Rios, “Chula Vista Tried to Withhold Police Drone Footage. Then a Latino Newspaper Fought Back,” *CalMatters*, June 4, 2024, <https://calmatters.org/commentary/2024/06/chula-vista-police-drone-lawsuit/>.

<sup>70</sup> Ibid.

<sup>71</sup> Tomo Chien, “SF, Oakland Cops Illegally Funneled License Plate Data to Feds,” *San Francisco Standard*, July 14, 2025, <https://sfstandard.com/2025/07/14/oakland-san-francisco-ice-license-plate-readers/>.

<sup>72</sup> Olivia Raykhman and Brianna Sosa, “Inside San Francisco’s Police Drone Program,” *Peninsula Press*, November 5, 2025, <https://peninsulapress.com/2025/11/05/inside-san-franciscos-police-drone-program/>.

<sup>73</sup> David Hernandez and Sriharsha Devulapalli, “San Francisco Police Used Drones Nearly 1,400 Times Since 2024,” *Government Technology*, October 17, 2025, <https://www.govtech.com/public-safety/san-francisco-police-used-drones-nearly-1-400-times-since-2024>.

<sup>74</sup> Las Vegas Metropolitan Police Department, *Small Unmanned Aerial Systems*, Homeland Security Bureau, <https://www.lvmpd.com/about/bureaus/homeland-security/small-unmanned-aerial-systems#ad-image-4>.

<sup>75</sup> Chula Vista Police Department, *UAS Flight Transparency Portal*, City of Chula Vista, <https://app.airdata.com/u/cvppd>.

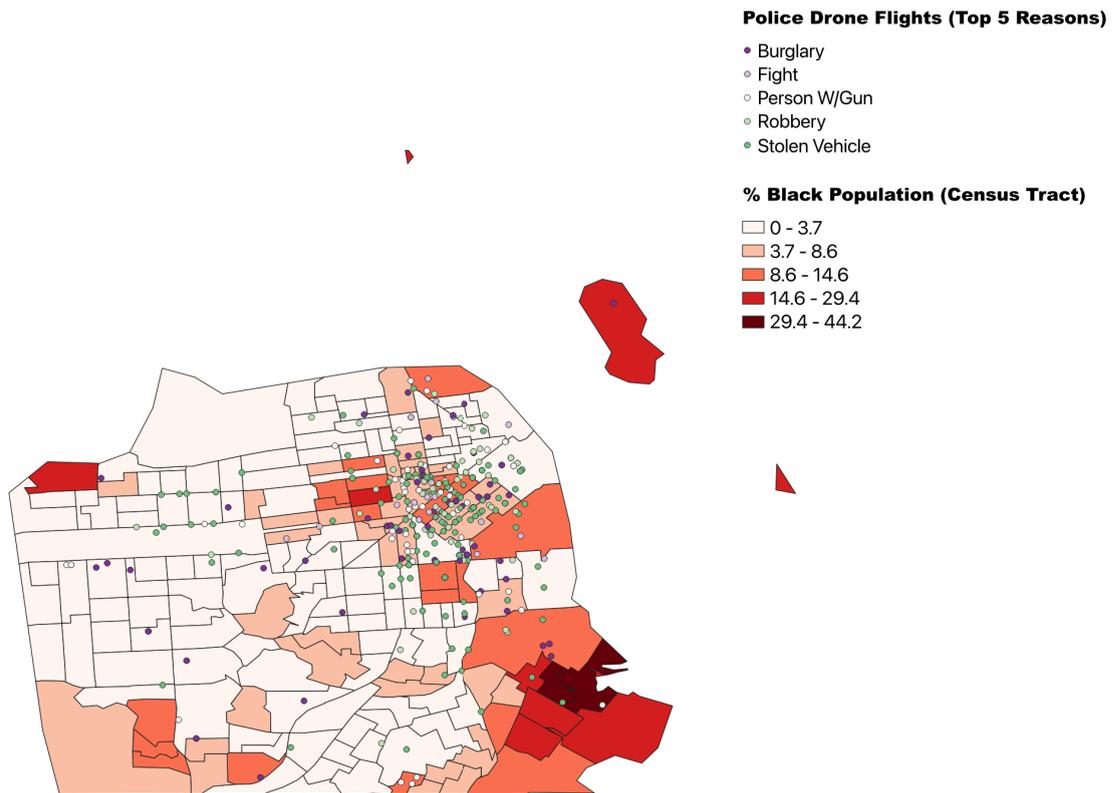


Fig 1: The results show top 5 reasons for police drone flights and black population share by census tract in San Francisco.  
[https://data.sfgov.org/Economy-and-Community/San-Francisco-Population-and-Demographic-Census-Da/4qbq-hvtt/about\\_data](https://data.sfgov.org/Economy-and-Community/San-Francisco-Population-and-Demographic-Census-Da/4qbq-hvtt/about_data)  
<https://catalog.data.gov/dataset/san-francisco-police-department-drone-flight-logs>

**Figure 1** overlays San Francisco Police Department drone flight locations (limited to the five most common stated reasons for deployment) with census tract-level Black population counts. The map reveals a clear spatial concentration of drone flights in a relatively small number of census tracts, particularly in the northeastern and southeastern portions of the city (see Appendix C for comparison with other race data). These areas also tend to have higher Black population counts relative to other tracts. While the map does not establish causality, the spatial overlap raises important equity and governance questions about where drone surveillance is most frequently deployed and which communities are most exposed to this technology.

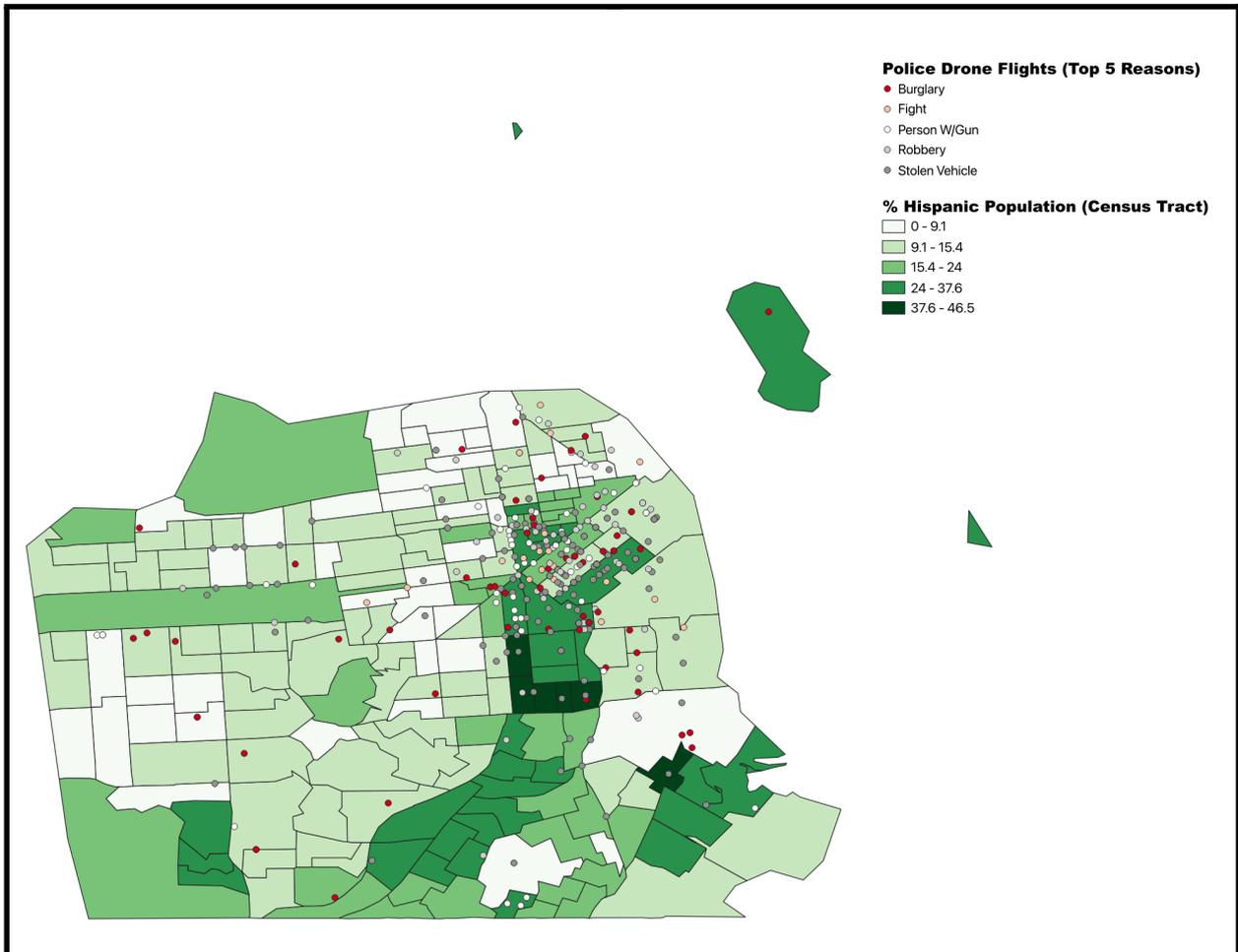
Table F – Mandatory Safeguards and Enforcement Matrix

Risk Area	Policy Recommendation	Required Safeguard	Enforcement Mechanism	Violation Consequence
<b>First Amendment Monitoring</b>	Categorically prohibited	Categorical ban on protest/assembly deployment	Real-time flight logging; ODPa audit access; incident-specific justification required	Personnel discipline; public disclosure
<b>Biometric Surveillance</b>	Categorically prohibited	No facial recognition; no audio recording; technical audit of all sensor technology	Independent third-party verification and audits	Vendor contract termination; program suspension
<b>Interior Operations</b>	Categorically prohibited	No entry into buildings, enclosed spaces or spaces where there is reasonable expectation of privacy	Flight path logging; altitude restrictions; third-party audits	Criminal investigation; program termination
<b>Data Sharing</b>	Purging of captured data after 60 days unless required for ongoing investigations	ICE/federal agency prohibition; explicit sanctuary protections which includes out-of-state jurisdictions	Access logs; encryption keys held exclusively by City; non-disclosure clauses with peer jurisdictions with access to City data	Immediate program termination; personnel termination; public investigation
<b>Weaponization</b>	Categorically prohibited	Absolute ban on force application and capabilities	Procurement restrictions; inspection protocols	Criminal charges; program termination
<b>Private Property</b>	Categorically prohibit use of interior drone technology; Establish geofencing framework to allow mapping out and programming of city boundaries within which drones may and may not fly	Warrant requirement for non-public areas or areas that have a reasonable expectation of privacy	Real-time legal review	Program suspension until corrective action
<b>Geographic Equity</b>	Robust oversight framework; annual area flight caps	Deployment caps per census tract; disparate impact monitoring	Quarterly demographic reporting; Police Accountability Board review authority	Suspension until corrective action; policy revision
<b>Transparency</b>	Robust oversight framework with enforceable guardrails	Public dashboard; 48-hour flight log publication; quarterly reporting; public flight paths; democratic control over drone deployment	Automated data feeds; independent audit; accurate and standardized case-level deployment logs	Council review; potential program suspension
<b>Mission Creep</b>	Robust oversight framework with enforceable guardrails	Enumerated permissible use cases; automatic sunset	Use case documentation; annual Council reauthorization	Denial or reauthorization; program termination

Appendix C

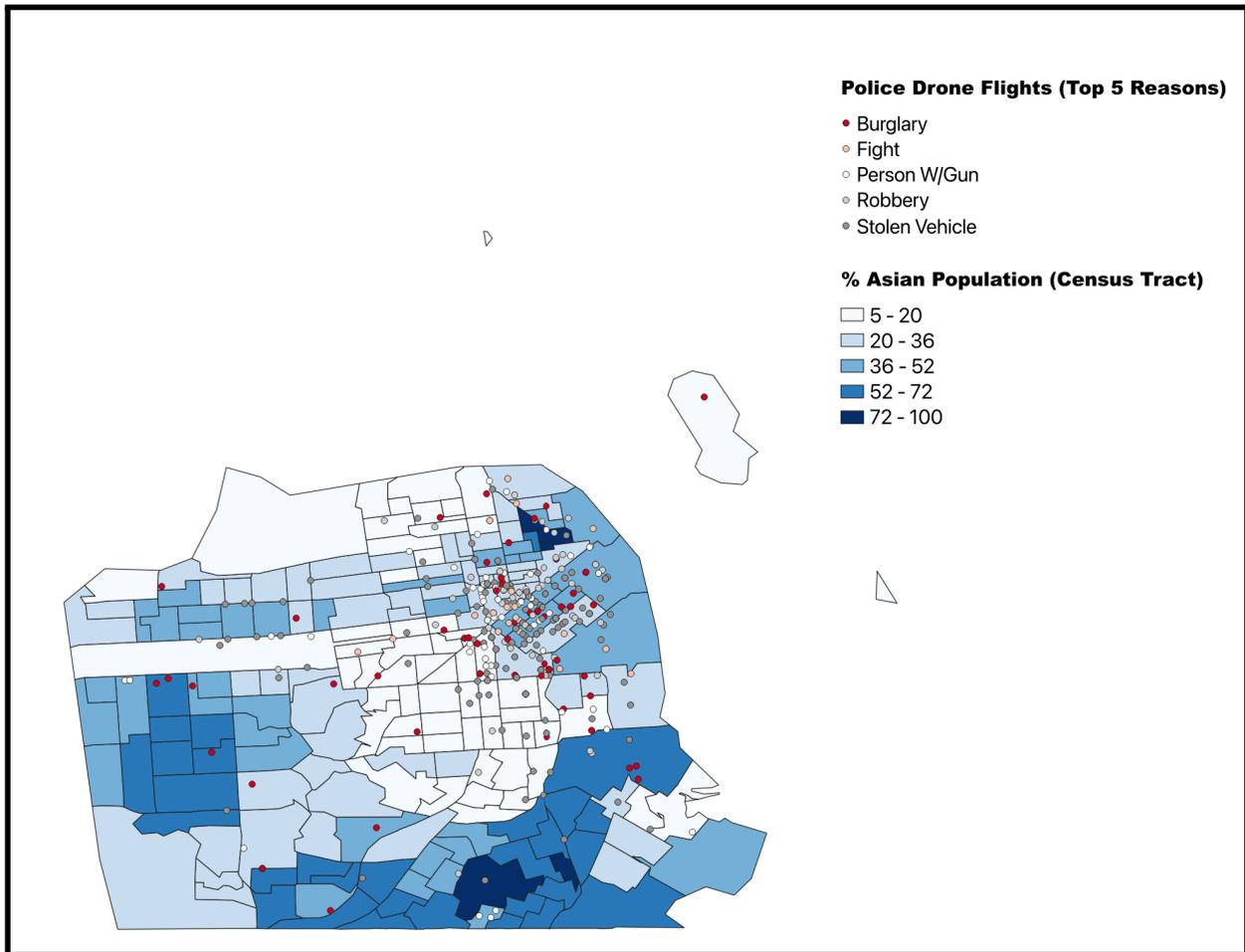
C Spatial Analysis – SFPD Drone Deployment Data by Race

Fig 2: % Hispanic Population by Drone Flight Reasons



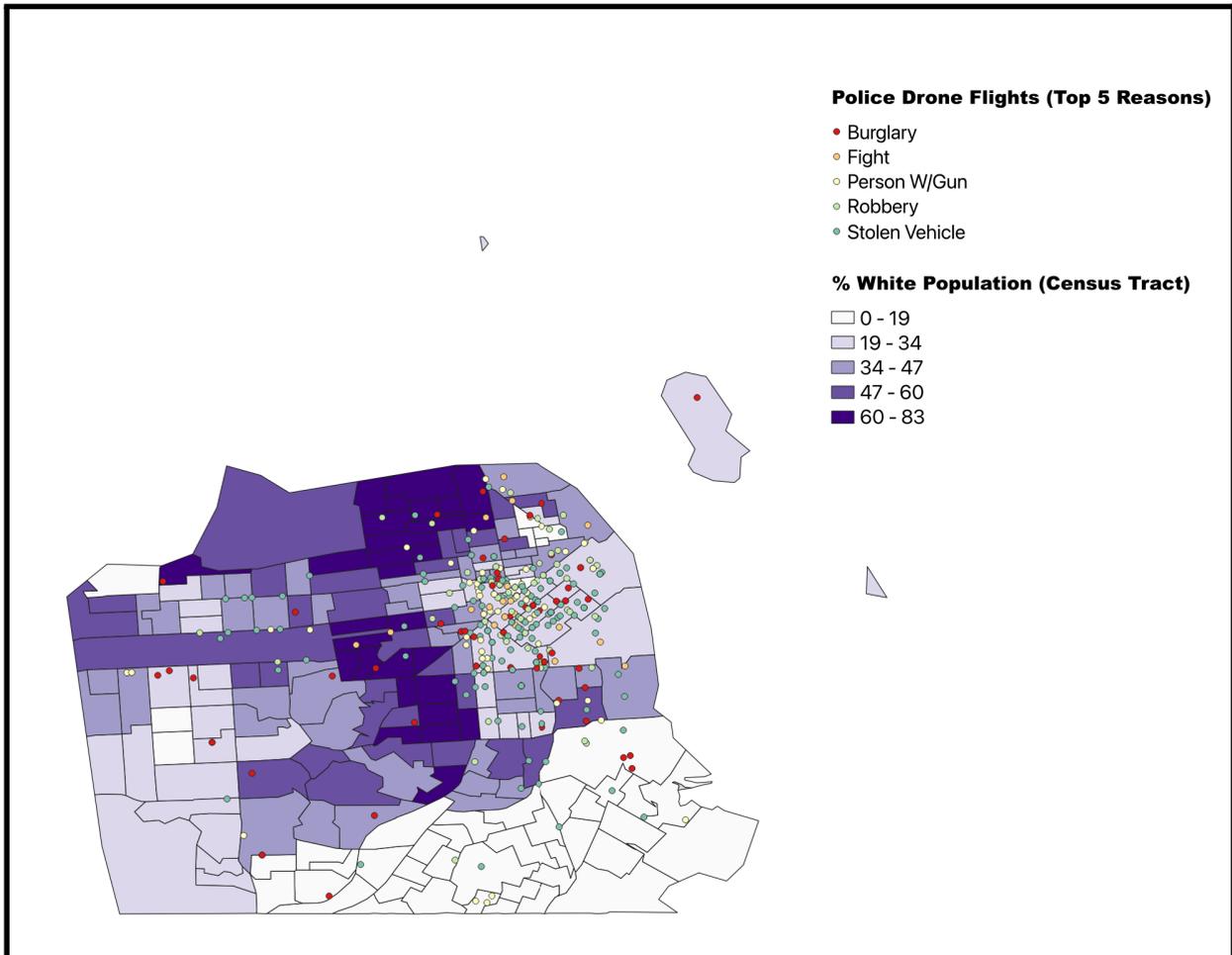
Source: [https://data.sfgov.org/Economy-and-Community/San-Francisco-Population-and-Demographic-Census-Da/4qbq-hvtt/about\\_data](https://data.sfgov.org/Economy-and-Community/San-Francisco-Population-and-Demographic-Census-Da/4qbq-hvtt/about_data)  
<https://catalog.data.gov/dataset/san-francisco-police-department-drone-flight-logs>

Fig 3: % Asian Population by Drone Flight Reasons



Source: [https://data.sfgov.org/Economy-and-Community/San-Francisco-Population-and-Demographic-Census-Da/4qbq-hvtt/about\\_data](https://data.sfgov.org/Economy-and-Community/San-Francisco-Population-and-Demographic-Census-Da/4qbq-hvtt/about_data)  
<https://catalog.data.gov/dataset/san-francisco-police-department-drone-flight-logs>

Fig 4: % White Population by Drone Flight Reasons



Source: [https://data.sfgov.org/Economy-and-Community/San-Francisco-Population-and-Demographic-Census-Da/4qbq-hvtt/about\\_data](https://data.sfgov.org/Economy-and-Community/San-Francisco-Population-and-Demographic-Census-Da/4qbq-hvtt/about_data)  
<https://catalog.data.gov/dataset/san-francisco-police-department-drone-flight-logs>

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## Appendix D

### D Categorically Prohibited Uses

Should the Council proceed with authorizing a Drone as First Responder pilot program, CLJC recommends revising the list of prohibited uses to include categorical bans on audio surveillance technologies and the adoption of more stringent data security requirements.

**Audio Surveillance and Personal Identification:** The policy should ban activating any onboard microphones or other audio interception capabilities of drones during operations. Capturing audio of individuals without consent or a wiretap order is generally illegal in California (Penal Code § 632) and is not necessary for the stated drone use-cases. Likewise, using facial recognition or other biometric identification on live drone video should be prohibited. Several jurisdictions – including San Francisco and Oakland – have banned government use of facial recognition outright, and while Berkeley’s ordinance doesn’t explicitly ban it, applying these advanced capabilities to drone footage would heighten privacy and bias concerns.

**Data Security:** The City must categorically prohibit any drone system or deployment model that introduces unmitigable risks to privacy, transparency, or legal compliance. Drone footage and associated data may not be stored, processed, or accessed by vendor personnel. Any software system that prevents Berkeley from exercising full data ownership or manages data on proprietary cloud services must be excluded from consideration. Any DFR software that includes embedded facial recognition, behavioral, or predictive policing analytics should be disqualified from use as these technologies are inconsistent with Berkeley’s privacy and constitutional laws. Federal agencies including ICE and HSI, or any agency operating in a manner inconsistent with Berkeley’s sanctuary laws, must be categorically exempt from accessing drone footage or metadata. Similarly, vendor-platforms that do not support automated deletion within a specified time-frame, user-level tracking, access audit trails or could inadvertently share City data through vendor-facilitated access pathways should be prohibited.

Berkeley can ensure the drone program adheres to strong data privacy and transparency guardrails. Each of the above prohibitions is grounded in reducing legal and operational risk.

Item 9.b.

Master Services Agreement with Flock Safety for various  
surveillance technologies

### Master Services Agreement

This Master Services Agreement (this “*Agreement*”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Road NW Suite 210, Atlanta, GA 30318 (“*Flock*”) and the City of Berkeley (“*Customer*”) (each a “*Party*,” and together, the “*Parties*”) on this the \_\_\_ day of \_\_\_\_\_ 2026. This Agreement is effective on the date of mutual execution (“*Effective Date*”). Parties will sign an Order Form (“*Order Form*”) which will describe the Flock Services to be performed and the period for performance, attached hereto as **Exhibit A**. The Parties agree as follows:

### RECITALS

**WHEREAS**, Flock offers a software and hardware situational awareness solution through Flock’s technology platform that upon detection is capable of capturing audio, video, image, and recording data and provide notifications to Customer (“*Notifications*”);

**WHEREAS**, Customer desires access to the Flock Services (defined below) on existing devices, provided by Customer, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, via the Flock Services;

**WHEREAS**, Customer shall have access to the Footage in Flock Services. Pursuant to Flock’s standard Retention Period (defined below) Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the *Order Form*. Customer shall be responsible for extracting, downloading and archiving Footage from the Flock Services on its own storage devices; and

**WHEREAS**, Flock desires to provide Customer the Flock Services and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations and evidence gathering for law enforcement purposes, (“*Permitted Purpose*”).

## AGREEMENT

**NOW, THEREFORE,** Flock and Customer agree that this Agreement, and any Order Form, purchase orders, statements of work, product addenda, or the like, attached hereto as exhibits and incorporated by reference, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

### 1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Anonymized Data**” means Customer Data or Customer Generated Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 “**Authorized End User(s)**” means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this Agreement.

1.3 “**Customer Data**” means the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data includes Footage and Anonymized Data.

1.4. “**Customer Hardware**” means the third-party camera owned or provided by Customer and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.5 “**Embedded Software**” means the Flock proprietary software and/or firmware integrated with or installed on the Flock Hardware or Customer Hardware.

1.6 “**Flock Hardware**” means the Flock device(s), which may include the pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Flock Services as specifically set forth in the applicable product addenda.

1.7 “**Flock IP**” means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage (as defined below).

1.8 “**Flock Network End User(s)**” means any user of the Flock Services that Customer authorizes access to or receives data from, pursuant to the licenses granted herein.

1.9 “**Flock Services**” means the provision of Flock’s software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.10 “**Footage**” means still images, video, audio and other data captured by the Flock Hardware or Customer Hardware in the course of and provided via the Flock Services.

1.11 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e., NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.12 “**Installation Services**” means the services provided by Flock for installation of Flock Services.

1.13 “**Retention Period**” means the time period that the Customer Data is stored within the cloud storage, as specified in the product addenda.

1.14 “**Vehicle Fingerprint™**” means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

1.15 “**Web Interface**” means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

## 2. SERVICES AND SUPPORT

2.1 **Provision of Access.** Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data retention time defined on the Order Form (“*Retention Period*”). Authorized End Users will be required to sign up for an account and select a password and username (“*User ID*”). Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, including any acts or omissions of Authorized End User which would constitute a breach of this agreement if undertaken by Customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

2.2 **Embedded Software License.** Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.

2.3 **Support Services.** Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality. Flock will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Flock will provide Customer with reasonable technical and on-site support and maintenance services in-person, via phone or by email at [support@flocksafety.com](mailto:support@flocksafety.com) (such services collectively referred to as “*Support Services*”).

2.4 **Upgrades to Platform.** Flock may make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Flock’s products or services to its agencies, the competitive strength of, or market for, Flock’s products or services, such platform or system’s cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.

**2.5 Service Interruption.** Services may be interrupted in the event that: (a) Flock’s provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) Flock reasonably believes Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance necessitates interruption (“**Service Interruption**”). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Customer, to provide updates, and to resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer’s direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term.

**2.6 Service Suspension.** Flock may temporarily suspend Customer’s and any Authorized End User’s access to any portion or all of the Flock IP or Flock Service if (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer’s or any Authorized End User’s use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer’s account (“**Service Suspension**”). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

**2.7 Hazardous Conditions.** Flock Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock

is to perform services under this Agreement, Flock shall have the right to cease work immediately.

### 3. CUSTOMER OBLIGATIONS

**3.1 Customer Obligations.** Flock will assist Customer Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, Customer shall not designate Authorized End Users for persons who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up to date contact information at all times during the Term of this agreement. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Flock Services. Customer shall (at its own expense) provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services (such obligations of Customer are collectively defined as “*Customer Obligations*”).

**3.2 Customer Representations and Warranties.** Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

### 4. DATA USE AND LICENSING

**4.1 Customer Data.** As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and perform all acts as may be necessary for Flock to provide the Flock Services to Customer. Flock does not

own Customer Data and shall not use, sell, or share Customer Data except as provided herein or as authorized in writing by Customer.

**4.2 Customer Generated Data.** Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer (“**Customer Generated Data**”). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer’s intellectual property rights of Customer Generated Data. Customer grants Flock a limited, non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not use, sell, or share Customer Generated Data except as provided herein or as authorized in writing by Customer.

**4.3 Anonymized Data.** Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data in order to create Anonymized Data. Customer hereby grants Flock a limited, non-exclusive, worldwide, perpetual, royalty-free right to use Anonymized Data to improve and enhance the Flock Services and for other development, diagnostic or corrective purposes for other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not use, sell, or share Anonymized Data except as provided herein or as authorized in writing by Customer.

**4.4 Security Incidents.** Flock shall promptly notify Customer of any actual or suspected unauthorized access to, disclosure of, or breach of the security of Customer Data (“**Security Incident**”). Such notice shall include a description of the nature and scope of the Security Incident, the date of the Security Incident, the individual(s) who are suspected of having obtained unauthorized access, the types of data affected, and the corrective actions taken or planned.

## 5. CONFIDENTIALITY; DISCLOSURES

5.1 **Confidentiality.** To the extent required by the California Public Records Act or any other applicable public records law, each Party that receives a public records request (the “*Receiving Party*”) understands that the other Party (the “*Disclosing Party*”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “*Proprietary Information*” of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own Proprietary Information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document that (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the Agreement. Notwithstanding any termination, all confidentiality obligations for Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret.

5.2 **Usage Restrictions on Flock IP.** Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in

Flock's sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Customer's rights. There are no implied rights.

**5.3 Disclosure of Footage.** Subject to and during the Retention Period, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so (e.g., by court order). Flock shall not otherwise share or disclose any Footage to any third party without the written consent of Customer. If Flock receives a legal request or demand (including subpoenas, court orders, or other legal process) seeking access to Footage or other Customer Data, Flock shall, to the extent legally permitted, promptly notify Customer of such request and obtain the written consent of Customer prior to disclosing any such Footage or Customer Data.

## **6. PAYMENT OF FEES**

**6.1 Billing and Payment of Fees.** Customer shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Customer acknowledges and agrees that a failure to contact Flock within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Flock may, without limiting its other rights and remedies, suspend delivery of its service until such undisputed invoice is paid in full. Flock shall provide at least

thirty (30) days' prior written notice to Customer of the payment delinquency before exercising any suspension right.

**6.2 Notice of Changes to Fees.** Flock reserves the right to change the fees for subsequent Renewal Terms by providing sixty (60) days' notice (which may be sent by email) prior to the end of the Initial Term or Renewal Term (as applicable).

**6.3 Late Fees.** If payment is not issued to Flock by the due date of the invoice, an interest penalty of 1.0% of any unpaid amount may be added for each month or fraction thereafter, until final payment is made.

**6.4 Taxes.** Customer is responsible for all taxes, levies, or duties, excluding only taxes based on Flock's net income, imposed by taxing authorities associated with the order. If Flock has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Customer is responsible, the appropriate amount shall be invoice to and paid by Customer unless Customer provides Flock a legally sufficient tax exemption certificate and Flock shall not charge customer any taxes from which it is exempt. If any deduction or withholding is required by law, Customer shall notify Flock and shall pay Flock any additional amounts necessary to ensure that the net amount that Flock receives, after any deduction and withholding, equals the amount Flock would have received if no deduction or withholding had been required.

## 7. TERM AND TERMINATION

**7.1 Term.** The initial term of this Agreement shall be for the period of time set forth on the Order Form (the "**Term**"). Following the Term, the City shall have the option to extend the Agreement as indicated on the Order Form. Aside from this option, the Agreement shall not automatically renew, but rather may be renewed only if specifically authorized by the City Council.

**7.2 Termination.** Upon termination or expiration of this Agreement, Flock will remove any applicable Flock Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period ("**Cure Period**"). Either Party may terminate this

Agreement (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Flock, and Flock is unable to cure within the ***Cure Period***, Flock will refund Customer a pro-rata portion of the pre-paid fees for Services not received due to such termination.

**7.3 Survival.** The following Sections will survive termination: 1, 3, 4, 5, 6, 7, 8.3, 8.4, 9, 10.1, 11.1 and 11.6.

## 8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

8.1 **Manufacturer Defect.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a “*Defect*”), Customer must notify Flock’s technical support team. In the event of a Defect, Flock shall make a commercially reasonable attempt to repair or replace the defective Flock Hardware at no additional cost to the Customer. Flock reserves the right, in its sole discretion, to repair or replace such Defect, provided that Flock shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after Customer gives notice to Flock.

8.2 **Replacements.** In the event that Flock Hardware is lost, stolen, or damaged, Customer may request a replacement of Flock Hardware at a fee according to the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>). In the event that Customer chooses not to replace lost, damaged, or stolen Flock Hardware, Customer understands and agrees that (1) Flock Services will be materially affected, and (2) that Flock shall have no liability to Customer regarding such affected Flock Services, nor shall Customer receive a refund for the lost, damaged, or stolen Flock Hardware.

8.3 **Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock’s reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

8.4 **Disclaimer.** THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER’S SOLE REMEDY, AND FLOCK’S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED “AS IS” AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6.

8.5 **Insurance.** Flock will maintain commercial general liability policies as stated in Exhibit B.

8.6 **Force Majeure.** Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

### **9. LIMITATION OF LIABILITY; INDEMNITY**

9.1 **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF

LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 10.6.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

9.2 **Responsibility.** Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.

9.3 **Flock Indemnity.** Flock shall indemnify and hold harmless Customer, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Flock's installation of Flock Hardware, except for where such damage or injury was caused solely by the negligence of the Customer or its agents, officers or employees. Flock's performance of this indemnity obligation shall not exceed the fees paid and/or payable for the services rendered under this Agreement in the preceding twelve (12) months.

## 10. INSTALLATION SERVICES AND OBLIGATIONS

10.1 **Ownership of Hardware.** Flock Hardware is owned and shall remain the exclusive property of Flock. Title to any Flock Hardware shall not pass to Customer upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, Customer is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Customer agrees and understands that in the event Customer is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by Customer. Customer shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Customer default on any payment of the Flock Services, Flock may remove Flock Hardware at

Flock's discretion provided that Flock give Customer the opportunity to remove any Customer Data and Customer Generated Data that may be stored on the Flock Hardware before it is returned to Flock. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

**10.2 Deployment Plan.** Flock shall advise Customer on the location and positioning of the Flock Hardware for optimal product functionality, as conditions and locations allow. Flock will collaborate with Customer to design the strategic geographic mapping of the location(s) and implementation of Flock Hardware to create a deployment plan ("**Deployment Plan**"). In the event that Flock determines that Flock Hardware will not achieve optimal functionality at a designated location, Flock shall have final discretion to veto a specific location, and will provide alternative options to Customer.

**10.3 Changes to Deployment Plan.** After installation of Flock Hardware, any subsequent requested changes to the Deployment Plan, including, but not limited to, relocating, re-positioning, adjusting of the mounting, removing foliage, replacement, changes to heights of poles will incur a fee according to the reinstall fee schedule located at (<https://www.flocksafety.com/reinstall-fee-schedule>). Customer will receive prior notice and confirm approval of any such fees.

**10.4 Customer Installation Obligations.** Customer is responsible for any applicable supplementary cost as described in the Customer Implementation Guide, attached hereto as Exhibit C ("**Customer Obligations**"). Customer represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.

**10.5 Flock's Obligations.** Installation of any Flock Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Flock will continue to monitor the performance of Flock Hardware for the length of the Term. Flock may use a subcontractor or third party to perform certain obligations

under this agreement, provided that Flock's use of such subcontractor or third party shall not release Flock from any duty or liability to fulfill Flock's obligations under this Agreement.

## 11. MISCELLANEOUS

**11.1 Compliance With Laws.** Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s) in the manner provided in Section 5.3 of this Agreement.

**11.2 Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

**11.3 Assignment.** This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

**11.4 Entire Agreement.** This Agreement, together with the Order Form(s), the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>), and any attached exhibits are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Customer's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. Customer agrees that Customer's purchase is neither contingent upon the delivery of any future functionality or features nor

dependent upon any oral or written comments made by Flock with respect to future functionality or feature.

**11.5 Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

**11.6 Governing Law; Venue.** This Agreement shall be governed by the laws of the state in which the Customer is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Customer is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

**11.7 Special Terms.** Flock may offer certain special terms which are indicated in the proposal and will become part of this Agreement, upon Customer's prior written consent and the mutual execution by authorized representatives ("**Special Terms**"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

**11.8 Publicity.** Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Services in business and development and marketing efforts.

**11.9 Feedback.** If Customer or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

**11.10 Export.** Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential

component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11.11 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

11.12 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

11.13 **Conflict.** In the event there is a conflict between this Agreement and any applicable statement of work, or Customer purchase order, this Agreement controls unless explicitly stated otherwise.

11.14 **Superseding of Prior Agreements.** In the event there is a conflict between Section 4.1 through 4.4, Section 5.1 through 5.3, Section 7.3, Section 10.1, or Section 11.1 of this Agreement and corresponding sections of a prior agreement between Flock and Customer, including a prior agreement relating to automated license plate reader (“ALPR”) cameras, the terms and conditions of this Agreement shall control.

11.15 **Morality.** In the event Customer or its agents become the subject of an indictment, contempt, scandal, crime of moral turpitude or similar event that would negatively impact or tarnish Flock’s reputation, Flock shall have the option to terminate this Agreement upon prior written notice to Customer.

11.16 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.

11.17 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, all obligations of the Customer under this Agreement which require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. Customer shall have the right to terminate this Agreement for non-appropriation with thirty (30) days written notice without penalty or other cost.



FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210  
ATLANTA, GA 30318  
ATTN: LEGAL DEPARTMENT  
EMAIL: legal@flocksafety.com

Customer NOTICES ADDRESS:

ADDRESS:

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ATTN:

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EMAIL:

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EXHIBIT B  
INSURANCE

**Required Coverage.** Flock shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services under this Agreement and the results of that work by Flock or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than “A” and “VII”. Flock shall obtain and, during the term of this Agreement, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance for insurable amounts of not less than the limits listed herein. The insurance policies shall provide that the policies shall remain in full force during the life of the Agreement. Flock shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable State law for all Flock employees.

**Types and Amounts Required.** Flock shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

- (i) **Commercial General Liability** insurance written on an occurrence basis with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and product and completed operations coverage;
- (ii) **Umbrella or Excess Liability** insurance written on an occurrence basis with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate;
- (iii) **Professional Liability/Errors and Omissions** insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate;
- (iv) **Commercial Automobile Liability** insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, death, and property coverage, including owned and non-owned and hired automobile coverage; and

(v) **Cyber Liability** insurance written on an occurrence basis with minimum limits of Five Million Dollars (\$5,000,000).

Item 9.c.

ODPA Memorandum to the PAB re “Proposed Berkeley  
Police Department Policy 351 “External Fixed Video  
Surveillance Cameras”



## MEMORANDUM

Date: March 9, 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 Policy 351 “External Fixed Video Surveillance Cameras”

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This memorandum is intended to provide the PAB with an overview of the proposed updates to BPD Policy 351, External Fixed Video Surveillance Cameras, and to ensure that the elements requested by Council are implemented.

### Background:

On July 22, 2025, the Berkeley City Council approved the adoption of Resolution No. 71,903–N.S., accepting the Surveillance Acquisition Report for the Flock Safety Condor video cameras pursuant to Berkeley Municipal Code (B.M.C.) Chapter 2.99 and reaffirming the associated Berkeley Police Department (BPD) Use Policies, BPD Policy 351: External Fixed Video Surveillance Cameras and BPD Policy 1304: Surveillance Use Policy for External Fixed Video Surveillance Cameras, which were previously approved by Council on June 13, 2023.<sup>1</sup> As part of the item, the City Council also directed the City Manager to address several additional elements, summarized as follows:

1. **Biannual (Twice Per Year) Audit Report:** The Berkeley Police Department has been asked to include additional privacy safeguards in its Biannual Surveillance Technology Report. This includes confirming that BPD does not enter into direct data-sharing agreements or provide outside agencies with direct access to

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<sup>1</sup> Annotated Agenda July 22, 2025 City Council Regular Meeting: <https://berkeleyca.gov/sites/default/files/city-council-meetings/2025-07-22%20Annotated%20Agenda%20-%20Council.pdf#Page=11>

surveillance systems. The report must also include a log of any instances where surveillance video or audio data was shared, detailing the date, time, reason for the search, and recipient agencies.

2. **Recommendations from the PAB:** BPD must ensure that its policies include safeguards to protect privacy and limit data sharing. Specifically, the policies must prohibit sharing surveillance video or recordings with federal immigration enforcement officials except as required by law and prevent disclosure to out-of-state law enforcement agencies for enforcing laws that restrict reproductive rights or gender-affirming care. The policies must also establish procedures for handling and reporting requests for surveillance data from federal, vendor, or non-local agencies, including notifying the City Manager, City Attorney, and City Council within 72 hours if such data is accessed. Finally, the policies must incorporate safeguards consistent with the BPD ALPR Policy (Section 1305.12).
3. **Additional Safeguards:** BPD must ensure that all contracts for the Flock Safety Condor cameras comply with Berkeley City law and BPD policies, address any potential conflicts in contract language, and maintain authority for the City Manager or Police Chief to pause or terminate camera deployment, with the City Council notified within 48 hours.

The proposed updates as well as the master services agreement with Flock are coming back to Council for consideration on March 24, 2026.

### Overview of Proposed Policy

The ODPAs review of the proposed policy centered on verifying that all elements specified in the City Council’s July 22, 2025, action regarding the policy were addressed. The table below summarizes the required components as directed by Council and their status:

Item	Description	Status
Approved PAB Recommendation 1	Use Policies Section 351.4.2 / 1304.2: Ensure video surveillance systems and recordings may not be shared with federal immigration enforcement officials unless required by federal law	Completed

Approved PAB Recommendation 2	Use Policies Section 351.4.2 / 1304.2: Ensure video recordings are not disclosed to out-of-state law enforcement agencies if the purpose is enforcement of laws restricting: - Reproductive rights- Provision or receipt of gender-affirming care	Completed
Approved PAB Recommendation 3	Align with Sanctuary City Ordinance (Fall 2025): - Track and report requests from federal immigration authorities, vendors, or non-local agencies for access to data. - Notify City Manager, City Attorney, and City Council within 72 hours if BPD-owned data stored with Flock is provided to any federal agency.	Completed
Approved PAB Recommendation 4	Add a new section to the Fixed Video Surveillance Policy requiring BPD to observe safeguards from ALPR Policy Section 1305.12	Completed
Biannual (Twice Per Year) Audit Report	Section 351.7 should be clarified to specify a biannual (twice per year) schedule rather than a biennial (every two years) basis.	Not Complete

**Conclusion**

The ODPAs review finds that the BPD’s updated draft of BPD Policy 351 “External Fixed Video Surveillance Cameras” incorporates most of the requested changes made by City Council on July 22, 2025. The only pending item is section 351.7 which should be clarified to specify a biannual schedule (twice per year) schedule rather than a biennial (every two years) basis.

**Potential PAB Actions:**

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

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

**Attachments:**

- Draft of BPD Policy 351 “External Fixed Video Surveillance Cameras”

Item 9.f.

DRAFT PAB Letter to City Council re “Urgent Concern  
Regarding BPD’s Unilateral Revision of Council-Approved  
Use of Force Policy 300”



Joshua Cayetano | Chair  
Police Accountability Board  
[JCayetano@berkeleyca.gov](mailto:JCayetano@berkeleyca.gov)

March 10, 2026

VIA ELECTRONIC MAIL [Email]

Honorable Mayor Ishii and Members of the City Council  
City Manager Paul Buddenhagen  
City Attorney Farimah Brown  
[Council@berkeleyca.gov](mailto:Council@berkeleyca.gov)  
2180 Milvia Street  
Berkeley, CA 94704

**Re: Urgent Concern Regarding BPD's Unilateral Revision of Council-Approved Use of Force Policy 300**

Dear Honorable Mayor and Councilmembers, City Manager Buddenhagen, and City Attorney Brown:

I write to bring to your awareness an urgent matter regarding the Berkeley Police Department's unilateral decision to revise its Use of Force Policy 300—a policy that the Council previously considered and explicitly approved—that requires your immediate attention.

On December 17, 2025, Deputy Chief Jen Tate and Sergeant Darrin Rafferty presented the Police Accountability Board (PAB) with a proposal to substantially revise (and significantly weaken) BPD's Use of Force Policy 300. At that meeting, I informed Deputy Chief Tate and Sergeant Rafferty that BPD's Use of Force Policy was the product of years of negotiation between many stakeholders, brought together by a referral of the City Council, and, relevant here, explicitly approved by the City Council at its July 23, 2020 meeting. I further told Deputy Chief Tate and Sergeant Rafferty that they cannot revise the Use of Force Policy 300 without first bringing the revisions to the City Council, precisely because they are seeking to overturn policy that was debated and ultimately approved by the City Council.<sup>1</sup> The Office of the Director of Police

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<sup>1</sup> See minutes 1:11:59–1:12:50 of the December 17, 2025 PAB Regular Meeting recording:  
<https://www.youtube.com/watch?v=k6mhDQWO9H0>

**DRAFT DOCUMENT**

Accountability confirmed in a memo dated December 30, 2025 that the City Council approved the Use of Force Policy 300, with certain amendments, by a vote of 7-0 with 2 abstentions.<sup>2</sup>

Nevertheless, on Friday, March 6, 2026, Deputy Chief Jen Tate informed me via email that the Berkeley Police Department revised its Use of Force Policy 300 and that the revision was issued to all Departmental personnel. To my knowledge, BPD never sought Council approval for this revision that effectively overturns the decision of Berkeley's democratically-elected, legislative body.

I fear that the actions taken by the Department are contrary to the rule of law, show a contempt for the policy directives by City of Berkeley's democratically-elected representatives, and make Berkeley a more dangerous city to live in. I respectfully request that the City Council and the City Manager immediately direct the Department to cease and desist their implementation of their revised Use of Force Policy 300 until the Council decides to overturn its prior decision—if that time ever comes. I also respectfully request that the Council refrain from considering the Department's proposed revisions until the PAB has had an opportunity to fully assess the policy implications and issue a formal recommendation to the Council.

Sincerely,

Joshua Cayetano, Chair

Police Accountability Board

Attachments:

- A. ODPa Memo Titled "Overview of Development and Council Approval of BPD Policy 300 Use of Force"

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<sup>2</sup> See Attachment A, ODPa Memo Titled "Overview of Development and Council Approval of BPD Policy 300 Use of Force"

**DRAFT DOCUMENT**

Attachment A.  
ODPA Memo Titled "Overview of Development and  
Council Approval of BPD Policy 300 - Use of Force"



**MEMORANDUM**

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

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

**Background**

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

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

<sup>1</sup> See Attached BPD Policy 300, “Use of Force.”  
<sup>2</sup> July 23, 2020 PRC Staff Report Titled “Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force”:  
<https://records.cityofberkeley.info/PublicAccess/api/Document/ATnfkp4tGBNI%C3%81nKqp8eFHYGogupNd1lcs25rJqp1WMCwEkxwK6bKv5Lmkve6lF%C3%894NQ%C3%89SQumTlAnT33XE9bmCJ24%3D/>  
<sup>3</sup> Berkeley City Council Resolution 69,438-N.S.:  
<https://records.cityofberkeley.info/PublicAccess/api/Document/Ae2SKTCnGOMlvKBoXVhr1rE40osCeV81hcK0I08el%C3%89gyndcoE0mblfrTTv21CRQWZBh2tPkWmUcNKICHz3Yi6Zc%3D/>  
<sup>4</sup> October 31, 2017 Regular Meeting Minutes of the Berkeley City Council:  
<https://records.cityofberkeley.info/PublicAccess/api/Document/AXO%C3%89Ct86ANdVEGN67LGd6JC4ZQlknQDrMuOa2sIZFnYXRggFxoKpANuRQngFBnhy0C68JdcG5xRgwfcgOVM0BHM%3D/>  
<sup>5</sup> General Order U-2 “Use of Force” (See Page 55):  
<https://records.cityofberkeley.info/PublicAccess/api/Document/ATnfkp4tGBNI%C3%81nKqp8eFHYGogupNd1lcs25rJqp1WMCwEkxwK6bKv5Lmkve6lF%C3%894NQ%C3%89SQumTlAnT33XE9bmCJ24%3D/#Page=55>

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

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

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

Council Amendments	
Section	Amended to read:
300.1.3	C. MINIMIZING THE USE OF DEADLY FORCE. Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger or death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons.
300.4	An officer’s use of deadly force is justified only when it is objectively reasonable based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.  Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that

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

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

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

<https://records.cityofberkeley.info/PublicAccess/api/Document/AXjjUxOBBAogruxeA7MQWPky8wBLcczSZppEtiZT8g2LpLCaHBPWrpSBY8l%C3%89fBx8GXSbceJXhoQL4RNLZMvtdc0%3D/>

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

<https://records.cityofberkeley.info/PublicAccess/api/Document/AcsHyeWyT%C3%89KdM6m1P%C3%81IH3RpUbrqZusDiekW1E7LWtXmgRetbCpfAtcG5PePwQ10qTFA4Di3nJly%C3%81XGB1OYIrqIY%3D/>

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

	<p>deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.</p> <p>An officer shall not use deadly force against another person unless it is objectively reasonable that using deadly force would not unnecessarily endanger innocent people.</p> <p>Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.</p> <p>An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.</p>
300.6	<p>All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a “Use of Pepper Spray Report.” Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a “Use of Restraint Device Report” and document, review and report such uses in accordance with section 300.11.</p> <p>Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation, documentation and review requirements.</p>

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

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

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

The action was passed with the following votes:

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

**Attachments:**

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

Item 9.f.

Redlined Changes to BPD Policy 300 – March 6, 2026

## 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).~~