

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 25, 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

Agenda Item Materials

Item	Description	Page
11.a.i	Materials Presented at the March 23, 2026 Public Safety Policy Committee Re: Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units and Updating Mutual Aid Policies	1
11.a.ii	PAB Presentation for Item 26 "Public Safety Technology: Surveillance Technology Ordinance and Police Equipment Ordinance Approvals, Policy Updates, and Contract Authority" at the March 24, 2026 Berkeley City Council Meeting	13
11.c.	ODPA Memorandum to the PAB Titled "Comparative Analysis and Policy Alignment Review of Berkeley Police Department Policy 300 (Use of Force) Revisions"	29

Item 11.a.i

Materials Presented at the March 23, 2026 Public Safety
Policy Committee Re: Resolution Rescinding Resolution
No. 51,408-N.S. Restricting the Use of Air Support and
Canine Units and Updating Mutual Aid Policies



Rashi Kesarwani
Councilmember District 1

CONSENT CALENDAR
December 2, 2025

TO: Honorable Mayor and Members of the City Council
FROM: Councilmember Rashi Kesarwani (Author)
SUBJECT: Resolution Rescinding Resolution No. 51,408-N.S.
Restricting the Use of Air Support and Canine Units
And Updating Mutual Aid Policies

RECOMMENDATION

Adopt a resolution to rescind Resolution No. 51,408-N.S. which currently restricts the use of helicopters and police canine units by the Berkeley Police Department (BPD) and to update policies authorizing BPD to deploy these resources through mutual aid agreements directly with external agencies. The revised policy framework will replace the prior requirement for City Manager approval with post-deployment notification, ensuring rapid and effective responses during critical incidents. The policy will continue to explicitly prohibit the use of canines for crowd control.

CURRENT SITUATION AND ITS EFFECTS

Resolution No. 51,408-N.S., passed on July 15, 1982, imposes restrictions on deploying helicopters and canine units that function as essential support during high-risk emergencies. Per this resolution, mutual aid in the form of helicopter and canine unit deployment can only be used during high-risk situations. The resolution notes that police use of dogs from other law enforcement agencies is permitted only under the following circumstances:

- To apprehend suspects:
 - Where there is a threat to human life;
 - Where the suspect is reasonably believed to be armed with a deadly weapon; and
 - Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect.
- To locate missing persons;
- To locate crimes scenes;
- Provided that the use of dogs is explicitly prohibited for use in crowd control.

The resolution also notes that police use of helicopters from other law enforcement agencies is permitted in locating missing persons. This item proposes allowing the following uses for air support, in line with Lexipol policy recommendations:

- When the helicopter is activated under existing mutual aid agreements;
- Whenever the safety of law enforcement personnel is in jeopardy and the presence of the helicopters may reduce such hazard;
- When the use of the helicopters will aid in the capture of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community;
- When a helicopter is needed to locate a person who has strayed or is lost and whose continued absence constitutes a serious health or safety hazard; and
- Vehicle pursuits.

The 1982 resolution also requires the pre-approval of the City Manager which imposes a time-intensive effort during emergency situations.¹ Limiting the department's ability to quickly deploy both helicopters and canine units hinders response times and reduces operational flexibility. This limitation can compromise both the public and officer safety by preventing rapid access to resources that could significantly enhance situational awareness of the high-risk incident and on-scene effectiveness.

BACKGROUND

Resolution No. 51,408-N.S. was originally enacted in 1982 to curb potential police overreach; it no longer reflects modern law enforcement practices. Today, mutual aid agreements with external agencies providing access to helicopters and police canine units are standard across many jurisdictions and do not require additional time-intensive approval processes. These resources offer real-time situational awareness, safer monitoring of dynamic incidents, non-lethal suspect apprehension, and enhanced capabilities in search and rescue operations.

PROPOSED CHANGES AND RATIONALE FOR RECOMMENDATION

Resolution No. 51,408-N.S. is recommended for rescission so BPD can more effectively and quickly address high-risk situations using appropriate mutual aid tools. By updating our policies to allow the department to directly deploy these tools we will be aligning ourselves with regional mutual aid best practices and industry standards as well as aligning with our own recently updated agreements with other law enforcement agencies passed on July 22 earlier this year.² Rescission of this resolution will replace the outdated requirement for prior City Manager approval with a post-deployment notification. Rescinding the existing ordinance will remove barriers that delay the deployment of vital resources in emergencies. Mutual aid

¹ See attachment 2, Resolution No. 51,408-N.S. as found in the annotated agenda from the July 15, 1982 City Council meeting.

² July 22, 2025 Public Hearing: Memorandum of Understanding (MOU) Compendium: Agreements with Other Law Enforcement Agencies and Private Organizations;
<https://berkeleyca.gov/sites/default/files/documents/2025-07-22%20Item%2016%20Memorandum%20of%20Understanding%20%28MOU%29%20Compendium.pdf>

arrangements are widely recognized as an effective means of enhancing public and officer safety by providing rapid access to aerial and canine support. Updating the policy will not only modernize Berkeley's law enforcement capabilities but also ensure that resource deployment is carried out with greater efficiency, transparency, and adherence to current industry standards.

FISCAL IMPACTS

No significant new expenditures are expected from this rescission. Any costs incurred for mutual aid support will be managed through established reimbursement agreements. The policy revision is anticipated to deliver operational benefits without imposing undue financial burden on the City.

CONTACT PERSON

Rashi Kesarwani, Councilmember, District 1

(510) 981-7110

ATTACHMENTS

- 1) Resolution
- 2) Resolution No. 51,408-N.S.

RESOLUTION NO. ##,###-N.S.
RESOLUTION MODERNIZING AIR AND CANINE SUPPORT MUTUAL AID
POLICIES

WHEREAS, the Berkeley City Council recognizes that Ordinance Resolution No. 51,408-N.S.- adopted in 1982 imposes outdated restrictions that delay the timely deployment of air support and police canine units during critical law enforcement operations; and

WHEREAS, these restrictions hinder the Berkeley Police Department's ability to secure essential resources in high-risk incidents, thereby reducing operational flexibility and potentially compromising public and officer safety; and

WHEREAS, mutual aid agreements with external agencies providing access to helicopter support as well as police canine units are now standard practice nationwide, enhancing situational awareness, effective suspect apprehension, and search-and-rescue capabilities; and

WHEREAS, replacing the existing requirement for prior City Manager approval with post-deployment notification will facilitate rapid response during emergencies while ensuring accountability through comprehensive documentation and annual reporting;

NOW, THEREFORE, BE IT RESOLVED BY THE BERKELEY CITY COUNCIL
THAT:

1. Resolution No. 51,408-N.S. is rescinded in full. All prior limits on the use of outside air support and police canine units are nullified.
2. The Berkeley Police Department may request and deploy canine teams from external agencies for the following purposes:
 - a. To apprehend suspects:
 - i. Where there is a threat to human life
 - ii. Where the suspect is reasonably believed to be armed with a deadly weapon, and
 - iii. Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect.
 - b. To locate missing persons
 - c. To locate crimes scenes
 - d. Provided that the use of dogs is explicitly prohibited for use in crowd control.
3. The Berkeley Police Department may request and deploy helicopter assistance from external agencies for any of the following purposes:
 - a. Activation under existing mutual aid agreements.
 - b. Support during incidents that place officers at risk when an aerial presence can reduce the danger.
 - c. Assistance in pursuing a fleeing felony suspect whose continued flight threatens the community.
 - d. Searches for missing or lost individuals whose absence creates a serious hazard.
 - e. Vehicle pursuits where aircraft can safely assist tracking or coordination.

4. The Berkeley Police Department may enter into and use mutual aid partnerships with outside agencies for all air support and canine deployments described in this resolution.
5. The former requirement for advance approval by the City Manager is replaced. After each deployment of outside air or canine support, the Chief of Police or a designee shall notify the City Manager as soon as practical.

RESOLUTION NO. 51,408 -N.S.

ESTABLISHING POLICIES FOR USE OF DOGS AND HELICOPTERS BY THE POLICE DEPARTMENT OF THE CITY OF BERKELEY, AND RESCINDING THE PROVISIONS OF RESOLUTION NO. 48,630-N.S. AS THEY APPLY TO THE USE OF DOGS AND HELICOPTERS.

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

That the following policies for use of dogs and helicopters by the Police Department of the City of Berkeley are hereby established:

1. Police use of dogs from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

a. To apprehend suspects

(1) Where there is a threat to human life, and

(2) Where the suspect is reasonably believed to be armed with a deadly weapon, and

(3) Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect; or

b. To locate missing persons; or

c. To locate crime scenes.

Provided, however, that the use of dogs is explicitly prohibited for use in crowd control.

2. Police use of helicopters from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

a. To assist in case of a disaster; or

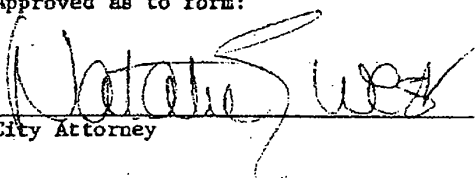
b. To assist in rescue efforts (specifically excluding the rescue of hostages); or

1.

c. To assist in locating missing persons.

FURTHER, RESOLVED, that the provisions of Resolution No. 48,630-N.S. as they apply to the use of dogs and helicopters are hereby rescinded.

Approved as to form:


City Attorney



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

March 17, 2026

VIA ELECTRONIC MAIL [Email]

Hon. Members of the Public Safety Policy Committee
PolicyCommittee@berkeleyca.gov
2180 Milvia Street
Berkeley, California 94704

**Re: PAB Response to the Proposed Resolution Rescinding Resolution No. 51,408-N.S.
Restricting the Use of Air Support and Canine Units and Updating Mutual Aid
Policies**

Honorable Chair Blackaby and Members of the Public Safety Policy Committee:

On behalf of the Police Accountability Board (PAB), I would like to first express our appreciation to the Public Safety Policy Committee (PSPC) for granting the PAB additional time to review this item. The PAB met on March 11, 2026, to discuss the proposal, directing its review to two key questions:

1. Whether the PAB supports, opposes, or declines to comment on replacing the requirement for City Manager (or Chief of Police) approval of helicopter or canine (K9) use with an after-action notification to the City Manager.
2. Whether the PAB supports, opposes, or declines to comment on the proposed expansion and revision of the list of permissible uses for helicopters.

City Manager Approval vs. After-Action Notification for Helicopter and K9 Use

After reviewing the proposal to remove City Manager (or, in the City Manager's absence, Chief of Police) approval for both helicopters and K9 deployments, the PAB does not support this change. The PAB's position is based on the following considerations:

- **Lack of Demonstrated Need:** The PAB believes that no evidence has been presented showing that the current process imposes an undue burden on the Berkeley Police Department (BPD) that would warrant such a change in approval procedures. The PAB understands that requests for helicopter support occur approximately 4–5 times per year,

while canine units are requested about 8–10 times annually, most often for search operations, which does not indicate a frequency that would necessitate modifying the existing approval framework.

- **Preservation of Oversight:** The existing approval requirement provides an important oversight safeguard prior to the deployment of specialized policing resources. Replacing that requirement with an after-action notification reduces that oversight.
- **General Concern About Reduced Oversight:** The PAB notes a pattern of expanding police tools and/or authorities without sufficient justification or oversight.

Expansion of Permissible Uses for Helicopters

The PAB does not support the proposed expansion and revision of the list of permissible uses for helicopters. The PAB's position is based on the following considerations:

- **Lack of Demonstrated Need:** The proposal did not include supporting data, operational analysis, or documented incidents demonstrating a need to broaden the circumstances under which helicopters may be deployed.
- **Relationship with Proposed Drone Technology:** The City is currently considering a proposal regarding the use of police drone technology. While the PAB acknowledges that drones would not be capable of performing all functions that a helicopter can provide, some of the expanded uses contemplated for helicopters appear to overlap with operations described in the drone proposal.
- **Need for Clear Policy Rationale:** Any expansion of permissible helicopter use should be supported by a clearly articulated operational rationale and relevant data regarding current deployment practices to ensure that these resources are used only when necessary and in a manner consistent with the City's objectives.

Conclusion

For the reasons outlined above, the PAB respectfully opposes the proposed rescission of City Manager approval for helicopter and K9 deployments, as well as the proposed expansion of permissible helicopter uses. The Board emphasizes the importance of maintaining appropriate oversight and requiring a clearly demonstrated operational need for changes to these longstanding policies. The PAB appreciates the opportunity to provide its input and looks forward to continuing to work with all stakeholders to ensure that policies governing specialized police resources remain effective, accountable, and transparent.

Respectfully submitted,

Joshua Cayetano, Chair
Police Accountability Board

Cc: Paul Buddenhagen, City Manager
David White, Deputy City Manager
Jennifer Louis, Chief of Police
Jen Tate, Deputy Chief of Police
Jose Murillo, Acting Director of Police Accountability

Item 11.a.ii

PAB Presentation for Item 26 “Public Safety Technology: Surveillance Technology Ordinance and Police Equipment Ordinance Approvals, Policy Updates, and Contract Authority” at the March 24, 2026 Berkeley City Council Meeting

POLICE ACCOUNTABILITY BOARD

Police Accountability Board's Surveillance Technology Recommendations for Item 26

Berkeley City Council · March 24, 2026

CORE RECOMMENDATION

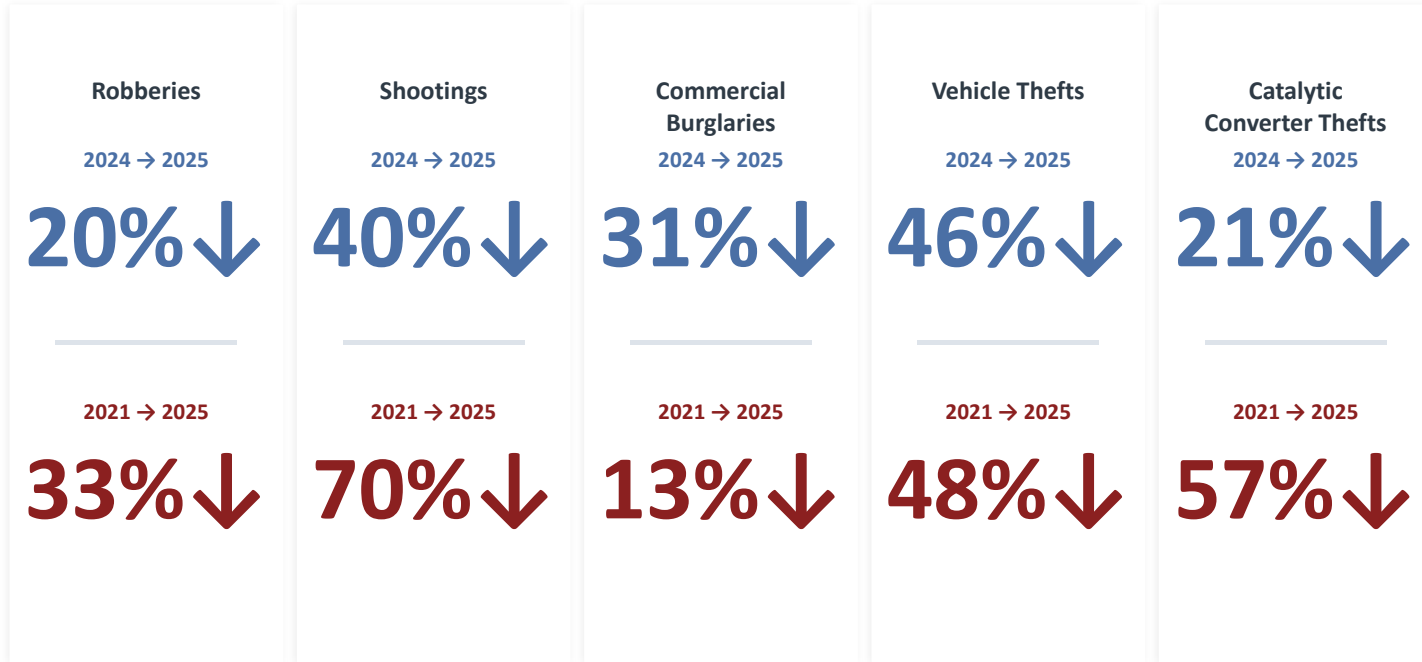
Defer final action on the three surveillance items.

BPD's proposal to (1) authorize a drone-as-first-responder program, (2) integrate Community Video Streams, and (3) combine license plate readers, fixed cameras, community video feeds, and aerial drones on a single integrated platform under a single vendor *represents the largest expansion of BPD's surveillance capacity in Berkeley's history.*

A decision of this magnitude demands thoughtful deliberation and review. This burden has not yet been satisfied.

Berkeley Crime Trends

The case for urgency has not been made.



■ Year-over-year change (2024→2025) ■ Five-year change (2021→2025) Source: 2025 BPD Annual Report

WHY NOT NOW?

Four reasons action is premature.

01 **Concerns with Flock Safety and the lack of a documented vendor selection process.**

The record contains no criteria used to evaluate Flock Safety against alternatives and no justification for choosing a single-vendor approach for Berkeley's entire surveillance infrastructure.

02 **Inadequate review time**

BPD submitted the full MSA to the PAB a day before the March 11 meeting. CVS policies had only a single PAB meeting for consideration. The public has had no more time than the PAB to review these policies or the proposed overall surveillance architecture.

03 **No combined system assessment**

Each of the four programs was evaluated individually. The integrated ecosystem - ALPR, fixed cameras, CVS, and drones - has never been assessed as a whole.

04 **Too many unresolved issues including actions needed for regulatory compliance**

The PAB identified ~30 material issues: MSA provisions undisclosed in any acquisition report, policy non-compliance with regulatory requirements across all three program areas, inadequate notification standards, insufficient vendor sanctions, and a liability framework that would leave Berkeley without appropriate remedy in a major data breach.

FLOCK SAFETY

Why Flock Safety?

BPD proposes Flock Safety as the sole vendor for Berkeley's integrated surveillance platform.

FLOCK SAFETY

Flock Safety: BPD Justifications and PAB Concerns

BPD Justifications

- **Fully integrated, centralized surveillance system**
ALPR, cameras, CVS, and drones on one platform under one vendor.
- **More advanced drone technology**
Flock's drone-as-first-responder (DFR) platform claimed to offer superior capabilities for BPD.

PAB Concerns

- **Concentration risks**
Operational dependency, vendor lock-in, and magnified privacy impact from a single integrated platform.
- **Experience of other jurisdictions**
Over 50 jurisdictions have walked away from Flock over privacy and data-sharing failures.
- **Flaws in the Master Services Agreement**
Perpetual data licenses, no exit rights, and no consent required for new features.
- **Conflict with Sanctuary City commitments**
Flock's network model creates structural risk of federal immigration agency access.
- **Lack of documented vendor selection process**

RECOMMENDED ACTION 1 OF 4

Complete a consolidated BMC 2.99 assessment for the full ecosystem.

A single operator could identify a vehicle by plate, pull fixed and community camera footage, and dispatch a drone in real time. When ALPR, cameras, CVS, and drones integrate on one platform, the combined tracking capability far exceeds what any individual program authorization contemplated.

CONCENTRATION RISKS THE REPORT MUST ADDRESS

Operational Dependency

One vendor controlling hardware, software, and data storage across multiple critical systems means any outage, security incident, or policy change can impair several core capabilities simultaneously.

Cost Lock-In Over Time

Initial bundled pricing shifts bargaining power to the vendor. Subscription increases, hardware costs, license fees, and add-on charges become difficult to resist once switching is operationally disruptive and expensive.

Weakened Governance Leverage

Consolidation makes it significantly harder to negotiate privacy terms, conduct independent audits, or manage data parameters. The city's leverage diminishes once multiple systems depend on the same vendor.

Integration Magnifies Privacy Impact

Combined ALPR, camera, and drone data on one platform creates tracking capability that significantly exceeds what any individual program authorization contemplated and what no single BMC 2.99 review has evaluated.

Additional factors to be considered in consolidated assessment:

- Combined data access capabilities and cross-program data rights
- Adequacy of audit mechanisms to detect platform-wide unauthorized access
- Corrected "experience of other entities" documentation, including adverse findings from comparable jurisdictions
- BPD's need for dedicated technology staffing to competently manage the ecosystem

RECOMMENDED ACTION 2 OF 4

If Council Chooses to Contract With Flock Safety, Renegotiate the Flock Master Services Agreement.

The MSA contains provisions that leave Berkeley without basic protections:

- An irrevocable service license and perpetual anonymized data license that survive contract termination
- No city consent required before Flock activates new platform features including convoy tracking, predict-a-path, and Flock Nova
- No termination-for-convenience right. Berkeley cannot exit without proving material breach
- No post-termination data deletion requirement for city-associated data
- No city consent required before Flock assigns the agreement to an affiliate or acquirer

RECOMMENDED ACTION 2 OF 4

Strengthen the MSA penalty amendment.

As Submitted

- \$75,000 penalty per violation is sole and exclusive remedy, eliminating legal recourse
- Lookup tool carve-out exempts the exact mechanism behind the Mountain View, Ventura, and other similar incidents
- Federal task force carve-out creates proxy-access loophole

What's Needed

- \$200,000–\$290,000 per violation. Flock accepted this range in Oakland and Richmond
- Delete the lookup tool carve-out entirely
- Preserve full legal remedies where actual harm exceeds penalty amount
- Require individual written authorization by Berkeley for any federal access

There is no basis for Berkeley accepting a lower standard than peer cities have already negotiated.

CVS, UAS, and Fixed Camera Use Policies

BPD Policies 351, 355, 611, 709, 1303, and 1306

SURVEILLANCE TECHNOLOGY RECOMMENDATIONS

Surveillance programs under review: policies and governing law

Type of Surveillance Tool	Applicable BPD Policies	Relevant Laws
Community Video Streams	Policy 355, Policy 1306, and Acquisition Report	BMC 2.99 (STO) & Berkeley’s Sanctuary City Commitments
External Fixed Video Surveillance Cameras	Policy 351	BMC 2.99 & Berkeley’s Sanctuary City Commitments
Unmanned Aerial System (UAS)	Policy 611, Policy 709, Policy 1303, and Acquisition Report	BMC 2.99 (STO), BMC 2.100 (Military Equipment), AB 481 (Military Equipment), and Berkeley’s Sanctuary City Commitments

RECOMMENDED ACTION 3 OF 4

Correct policy deficiencies across all programs.

Policies 351, 355, 611, 709, 1303, and 1306 share common deficiencies:

No First Amendment protections

Only UAS Use Policy prohibits using Flock technology to monitor protests, political assemblies, or protected activity.

Inconsistent notification standards

Triggering criteria for notifying of non-California and federal agency access vary across programs and must be standardized at 72 hours.

Insufficient auditing requirements

Audit requirements are inconsistent, and insufficient, across all programs.

No enforceable vendor sanctions

Policies do not include legally enforceable penalties against Flock for unauthorized access, unauthorized feature activation, or data security violations.

Drone policies carry additional concerns: inadequate use restrictions, fiscal discrepancies, and unresolved FCC Covered List issues for the proposed foreign-produced fleet.

DRONE POLICY

Surveillance Use Policy - Unmanned Aerial System (UAS)

BPD proposes Flock Safety as the sole vendor for Berkeley's integrated surveillance platform.

Eight critical deficiencies must be addressed before any drone program can advance.

<p>Authorized Uses Too Broad</p> <p>UAS Use Policy lists permitted uses (e.g., active pursuits, missing persons) but does not limit DFR to those uses. PAB recommends explicit permitted uses and limiting DFR to a closed list for a pilot period. The permissive language allows deployment for any purpose not expressly prohibited, creating broad operational discretion with no warrant or exigency requirement for most deployments.</p>	<p>Data Retention Too Broad</p> <p>UAS Use Policy sets a uniform 60-day retention period for all footage regardless of evidentiary value. PAB recommends tailoring retention periods to achieve the specific permitted purpose, most of which are serviced by immediate video confirmation. Long data retention periods raises privacy concerns, constitutional policing issues, and exposure to federal immigration enforcement.</p>	<p>Oversight & Accountability Gaps</p> <p>Require supervisory approval before each deployment. Mandate logging of reason for deployment and recording times.</p>	<p>No Performance Baseline</p> <p>No framework to evaluate program effectiveness. Require metrics before authorization: CFS response time, crime clearance rates, use-of-force rates, and demographic distribution.</p>
<p>No Clear Decertification Procedure & Complaint Intake Process</p> <p>UAS Use Policy contains no process for revoking officer certification. Repeat violations carry no defined consequence. Also no mechanism exists for community members to report concerns about drone deployments or request review of incidents. Accountability requires an accessible intake channel.</p>	<p>First Amendment Concerns</p> <p>UAS Policy would authorize use to respond to “active criminal activity at mass gatherings or special events.” PAB is concerned that this offers broad discretion in light of expansive definition of what could constitute “criminal activity” (i.e. refusing to follow unlawful dispersal order) and could chill protected First Amendment speech.</p>	<p>FCC Covered List Risk</p> <p>December 2025 FCC action designates foreign-produced drones as national security risks. BPD’s proposed fleet is affected. Equipment authorization status must be confirmed before procurement.</p>	<p>Three-Policy Structure Creates Gaps</p> <p>Policies 709, 611, and 1303 are interlocked through circular cross-references, creating confusion and version-control and accountability risks. Policy 709 must be self-contained for AB 481 purposes.</p>

PATH FORWARD

The PAB is ready to support this work and to expedite review once conditions are met.

- 1** Complete and publish the consolidated BMC 2.99 ecosystem assessment.
 - 2** If Council decides to contract with Flock, renegotiate the MSA.
 - 3** Correct deficiencies across all six submitted policies.
 - 4** If Council to authorize drone program, approve PAB's recommendations for Drone Use Policy
-

Item 11.c.

ODPA Memorandum to the PAB Titled “Comparative Analysis and Policy Alignment Review of Berkeley Police Department Policy 300 (Use of Force) Revisions”



MEMORANDUM

Date: March 23, 2026
To: Honorable Members of the Police Accountability Board (PAB)
From: Jose D. Murillo, Acting Director of Police Accountability *JM*
Subject: Comparative Analysis and Policy Alignment Review of Berkeley Police Department Policy 300 (Use of Force) Revisions

This memorandum is intended to support the PAB's review by identifying substantive differences between the City Council–approved 2020 Berkeley Police Department (“BPD”) Policy 300, “Use of Force,” and the proposed revised policy, and by evaluating how those differences align with City Council direction, including the amendments adopted on July 23, 2020.

Background:

Policy development for BPD's Policy 300, “Use of Force,” has evolved over several years. On October 31, 2017, the City Council directed the City Manager to amend BPD's use of force policy, then General Order U-2, and identified a series of desired policy changes.¹

Following the killing of George Floyd on May 25, 2020, the Council renewed and expanded this directive by adopting Resolution No. 69,438.² The resolution directed the Department and the Police Review Commission (“PRC”) to submit a revised use of force policy for Council review and adoption prior to the summer recess.

In response, BPD and the PRC submitted a proposed revised policy to the Council on July 23, 2020. The proposal reflected several years of deliberation among the PRC, BPD,

¹ October 31, 2017 City Council Meeting Minutes:

<https://records.cityofberkeley.info/PublicAccess/api/Document/AVpT8RScEKCLcNaI%C3%89nXxnCeoj9mwaFD7Dmda8kvK2GRWtzBkvIEVHdZCRct9bh9Wnjrn9JwFVJlsNtpoUR0PcYk%3D/>

² Berkeley City Council Resolution No. 69,438:

<https://records.cityofberkeley.info/PublicAccess/api/Document/Ae2SKTCnGOMlvKBoXVhr1rE40osCeV81hcK0I08el%C3%89gyndcoE0mbIfrTTv21CRQWZBh2tPkWWMUcNKICHZ3Yi6Zc%3D/>

and other stakeholders and was accompanied by a recommendation to approve the revised Use of Force policy as developed by the PRC.³

At its July 23, 2020, special meeting, the Council engaged in extensive deliberation and made substantive revisions to the proposed Policy 300 prior to adoption, including modifications to Sections 300.1.3, 300.4, and 300.6. The Council further directed that the adopted policy would take effect on October 1, 2020.⁴

The adopted policy also established a framework for ongoing review. It provides that the policy be regularly updated to reflect evolving practices and procedures and requires BPD and the Police Accountability Board (“PAB”) to convene at least annually for that purpose in accordance with SB 230. This requirement is consistent with California Government Code section 7286(b)(20), as amended in 2019.

More recently, BPD circulated an extensively revised version of Policy 300.⁵ This proposed revision introduces significant substantive changes, including modifications to sections previously revised by the Council, the removal of certain provisions, and changes to the “objectively reasonable” standard governing the use of force, which was a central focus of Council deliberation in 2020. Accordingly, the proposed policy would effectively rescind and replace the Council-approved version and will require City Council approval for implementation. The policy is expected to come before the City Council on May 12, 2026, subject to confirmation of the agenda.

General Observations and Comparative Analysis

The proposed policy reorganizes several sections and, in some instances, adopts different terminology and levels of specificity compared to the 2020 policy. Certain provisions from the 2020 policy are not retained in their original form, while others are incorporated with modified language or restructured within different sections.

Based on a comparative review of both policy versions and the relevant Council record, the Office of the Director of Police Accountability (ODPA) has identified several key areas in which the proposed revisions modify, remove, or reorganize provisions included in the 2020 policy:

1. Core Principles Related to Deadly Force (Section 300.1.3(C))

The 2020 policy provides that deadly force should not be used when reasonably available alternatives would eliminate the immediate threat. This principle does not appear in the same form in the proposed policy.

³ July 23, 2020 Council Meeting Minutes:

<https://records.cityofberkeley.info/PublicAccess/api/Document/ATqv5ZQXhI9WY105yWQPF0Eg%C3%81LpX6kWZ4I%C3%89ntoW%C3%89GQoGwYCVwIDUgUnbeDIRy%C3%81fYtNqvx9E%C3%89Czs99LxrH60P3Xo%3D/>

⁴ Id.

⁵ March 11, 2026 PAB Agenda Packet (UOF) P.53: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2026-03-11%20PAB%20Reg%20Meeting%20AGENDA%20PACKET_Final.pdf#page=53

2. **Deadly Force Standard (Section 300.4)**
The 2020 policy requires that deadly force be both objectively reasonable and objectively necessary. The proposed policy instead frames the standard in terms of an officer's reasonable belief that force is necessary, reflecting a shift in phrasing from the 2020 version.
3. **Foundational Use of Force Framework (Section 300.1.2)**
The 2020 policy includes explicit language emphasizing minimal reliance on force, the sanctity of life, and the requirement that force be objectively reasonable, objectively necessary, and proportional (resistance levels and use of force continuum). The proposed policy presents a more general statement of purpose and authorization for reasonable force.
4. **Definitions Related to Neck Restraints (Section 300.1.1)**
The 2020 policy defines chokeholds broadly to include any contact with the neck that may restrict breathing or blood flow. The proposed policy uses more specific terminology in defining chokeholds and carotid restraints.
5. **Reporting Requirements (Section 300.6)**
The 2020 policy requires officers to document why force was both objectively reasonable and objectively necessary and includes additional reporting requirements for certain restraint devices. The proposed policy requires documentation related to reasonableness but does not retain all of the same reporting elements.
6. **De-escalation and Alternative Tactics (Sections 300.3, 300.3.2)**
The 2020 policy contains a standalone section on de-escalation with directive language. The proposed policy incorporates de-escalation concepts within broader provisions and uses different phrasing regarding when such tactics should be employed.
7. **Structural Framework (e.g., Resistance Levels)**
The 2020 policy includes defined resistance levels and a structured framework linking levels of resistance to corresponding force options. These elements are not retained in the same form in the proposed policy.
8. **Tear Gas Prohibition (Section 300.5)**
The prohibition on tear gas appears to be retained in the proposed policy, consistent with prior Council direction.

A more detailed breakdown of these changes is provided on the attached table.

Considerations for PAB Discussion

In its review, the Board may wish to consider the following:

- Whether provisions adopted by the City Council in 2020, including those amended on July 23, 2020, are reflected in the proposed policy in both substance and intent, or whether the proposed revisions represent a reasonable refinement or evolution of those directives;

- Whether differences in terminology, such as “objectively necessary” versus “reasonable belief,” result in a material change to the operational standard governing the use of force;
- Whether the reporting requirements provide sufficient detail to support effective oversight and accountability, or whether modifications improve clarity or implementation;
- Whether the elements of the “8 Can’t Wait”⁶ campaign previously recommended by the PRC and subsequently implemented by Council continue to be reflected in the current policy framework;
- Whether definitions and prohibitions, including those related to neck restraints, are consistent with prior Council direction and the City’s policy history, or appropriately updated to reflect modern best practices; and
- Whether the overall structure and level of detail in the policy provide clear and actionable guidance for officers and reviewers, including whether reorganization enhances usability and compliance.

Next Steps and Recommended Approach

In advance of anticipated City Council consideration, the PAB may consider developing a redlined version of the Berkeley Police Department’s proposed revisions to Policy 300, “Use of Force,” to provide targeted, text-based feedback.

This approach would allow the Board to identify where provisions adopted by the City Council in 2020 may warrant reintroduction, modification, or clarification, while also recognizing the Department’s substantial contributions and operational input in developing the proposed revisions. The PAB may request that ODPA staff, in coordination with a designated PAB member and BPD, prepare a proposal for consideration at the next meeting.

Timeline

Assuming the proposed May 12, 2026 date is maintained, the PAB would have its April 22 and, at the latest, May 6 meetings to vote on a proposal to be shared with BPD. The following City Clerk agenda timelines should be taken into consideration:

- April 9 – BPD’s Agenda item and accompanying staff report due to the City Clerk
- April 27 – Agenda and Rules Committee meeting
- May 5 (5:00 PM) – Deadline to submit comments for Supplemental Packet 1
- May 7 – Supplemental Packet 1 distributed
- May 11 (12:00 PM) – Deadline to submit written comments for Supplemental Packet 2

⁶ 8 Can’t Wait is a national advocacy campaign developed by Campaign Zero that promotes eight specific use-of-force policy reforms intended to reduce police violence and encourage immediate policy adoption by law enforcement agencies: <https://8cantwait.org/>

- May 11 (by 5:00 PM) – Supplemental Packet 2 distributed
- After May 11 (after 12:00 PM) – Written comments must be submitted in hard copy at the meeting (40 copies required)

Attachments

1. Use of Force Policy Comparison and Alignment Matrix (2020 vs. Revised Draft)

Topic	2020 Policy (Section + Exact Quote)	Revised Policy (Section + Exact Quote)	Substantive Change	Alignment	Recommended Corrective Language
Foundational Standard / Sanctity of Life	§300.1.2 – Policy: “The Department places minimal reliance on the use of force and recognizes the sanctity of life ... Officers shall use the minimum amount of force that is objectively reasonable, objectively necessary, and proportional ...”	§300.1 – Purpose and Scope / Policy: “Officers are authorized to use objectively reasonable force when it reasonably appears necessary ...”	Removes sanctity-of-life framework and “minimum/objectively necessary” requirement.	Deviates	Reinstate §300.1.2 language requiring minimum, objectively necessary, and proportional force , anchored in sanctity of life.
Core Principle – Minimizing Deadly Force	§300.1.3(C): “Officers shall not use deadly force... if reasonably available alternative techniques would eliminate the immediate threat ...”	<i>(No equivalent section; §300.1.3 removed)</i>	Deletes Council-amended subsection.	Deviates	Restore §300.1.3(C) verbatim requiring exhaustion of alternatives.
General Use of Force Standard	§300.3 – Use of Force: “Officers shall use alternatives to physical force whenever reasonably possible ... and use the minimum amount of force ...”	§300.3 – Use of Force: “Officers should consider other reasonably available resources and techniques ... when reasonable ...”	Mandatory → discretionary; removes minimum-force requirement.	Deviates	Revise §300.3 to require shall use alternatives and minimum force necessary .

<p>De-escalation</p>	<p>§300.3.2 – De-escalation: “Officers shall attempt verbal de-escalation... when feasible...”</p>	<p>§300.3 – Use of Force (Alternative Tactics): “Officers should consider de-escalation tactics... when reasonable...”</p>	<p>Weakens mandate and removes standalone section.</p>	<p>Partially Consistent</p>	<p>Reinstate §300.3.2 with mandatory de-escalation language.</p>
<p>Duty to Intercede / Report</p>	<p>§300.2.1 – Duty to Intercede and Report Misconduct: Applies to violations, including other agencies and post-incident knowledge.</p>	<p>§300.2.1 – Duty to Intercede and Report: Applies to observed force “clearly beyond what is necessary.”</p>	<p>Narrows applicability.</p>	<p>Partially Consistent</p>	<p>Expand §300.2.1 to include all known violations, not just observed incidents.</p>
<p>Resistance Levels / Force Continuum</p>	<p>§300.3.1 – Levels of Resistance: Defines compliant, passive, active, combative; ties to proportional force.</p>	<p><i>(Removed; no equivalent section)</i></p>	<p>Eliminates structured proportionality model.</p>	<p>Potential Deviation</p>	<p>Reinstate §300.3.1 or equivalent proportionality framework.</p>
<p>Chokehold / Neck Restraint Ban</p>	<p>§300.1.1 – Definitions (Chokehold): “Any hold or contact with the neck... including pressure to the front, side, or back...”</p>	<p>§300.1.1 – Definitions: Defines chokehold as pressure to trachea; carotid restraint separately defined.</p>	<p>Narrows prohibited conduct.</p>	<p>Deviates</p>	<p>Restore broad §300.1.1 definition prohibiting any neck contact that restricts breathing/blood flow.</p>
<p>Deadly Force Standard</p>	<p>§300.4 – Use of Deadly Force: “Deadly force may only be used when objectively reasonable and objectively necessary...”</p>	<p>§300.4 – Use of Deadly Force: “Deadly force is justified when the officer reasonably believes it is necessary...”</p>	<p>Removes “objectively necessary” threshold.</p>	<p>Deviates</p>	<p>Revise §300.4 to reinstate objectively reasonable AND objectively necessary standard.</p>

Deadly Force Limitations	§300.4: Prohibits deadly force solely to prevent escape, effect arrest, or prevent property damage absent imminent threat.	§300.4: Limitations less explicit and less restrictive.	Weakens categorical prohibitions.	Deviates	Restore explicit prohibitions in §300.4 consistent with 2020 language.
Reporting Standard	§300.6 – Reporting the Use of Force: Requires articulation of “ objectively reasonable and objectively necessary ” and includes Use of Restraint Device Report .	§300.5 / 300.6 – Reporting: Requires explanation of “reasonable force”; no restraint-device reporting requirement.	Removes Council-required reporting elements.	Deviates	Amend §300.5/300.6 to restore dual standard language and restraint-device reporting requirement .
Tear Gas / Crowd Control	§300.5 – Prohibited Force Applications: Tear gas prohibited; Council confirmed no change.	§300.5 – Prohibited Force Applications: Same prohibition retained.	No change.	Consistent	No change recommended.