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**PUBLIC MEETING MATERIAL**



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

**May 20, 2026  
6:30 PM**

**Board Members**

|                         |                          |
|-------------------------|--------------------------|
| Joshua Cayetano (Chair) | Leah Wilson (Vice-Chair) |
| Randy Wells             | Joshua Buswell-Charkow   |
| Benjamin Nash           | Stephanie Allan          |

**MEETING LOCATION**

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

**Agenda Item Materials**

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Item 9.c.

Memorandum from Chair Cayetano to the PAB Titled “Item 9.c. – Discussion and Action on the Berkeley Police Department’s Proposed Revisions to Policy 300 Use of Force”



## MEMORANDUM

Date: May 19, 2026  
To: Honorable Members of the Police Accountability Board (PAB)  
From: Joshua Cayetano, Chair of the PAB  
Subject: Item 9.c. – Discussion and Action on the Berkeley Police Department’s Proposed Revisions to Policy 300 “Use of Force”

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**Recommendation:** Approve only the Berkeley Police Department’s limited revisions to the Level 1 Use of Force Reporting Requirements and defer any further consideration of the proposed revisions to Policy 300 (Use of Force) until the effect and purpose of the revisions are clarified.

**Executive Summary:** This memorandum proceeds in three parts. *First*, it reports on the status of discussions between the Police Accountability Board (“PAB”), the Berkeley Police Department (“BPD” or the “Department”), and the City Attorney’s Office (“CAO”) regarding the Department’s proposed revisions to Policy 300 (Use of Force). *Second*, it summarizes the investigative work I have undertaken to date; identifies the substantive differences I have identified between the current Policy 300 (adopted by Council in 2020 and updated in 2023 and 2024) and the Department’s proposed Policy 300 (the “2026 Proposed UOF Policy”); and previews the recommendations I anticipate bringing to the Board ahead of the July 7, 2026 Council meeting for which the Department’s staff report is due on June 4, 2026. *Third*, it recommends that the PAB approve the Department’s proposed changes to the Level 1 use-of-force reporting requirements, which would eliminate some but not all reporting for Level 1 uses of force.

### Background:

#### A. BPD’s Effort to Revise Policy 300 and Submission to Council Following PAB Engagement

On December 17, 2025, the Department presented the 2026 Proposed UOF Policy to the PAB at the Board’s regular meeting. At that meeting, the PAB informed the Department that, because the Department was seeking to revise a policy that had been debated and

adopted by Council, BPD could not unilaterally revise Policy 300 and would first need to bring any proposed revisions to Council for its consideration.

On Friday, March 6, 2026, Deputy Chief Tate informed me by email that the Department had revised Policy 300 and that the revised policy had been issued to all departmental personnel. On March 12, 2026, the PAB transmitted an urgent letter to Mayor Ishii and the members of the City Council, City Manager Paul Buddenhagen, and City Attorney Farimah Brown, bringing attention to BPD's unilateral revision of a Council-approved policy and urged Council and the City Manager to call a special meeting to direct the Department to cease and desist implementation of the revised policy unless and until Council determined to overturn its prior decision. The letter further requested that Council refrain from considering the Department's proposed revisions until the PAB had had an opportunity to fully assess the policy implications and to issue a formal recommendation to Council. Attached to the letter were the underlying authorities and legislative history, including Resolution No. 69,438-N.S., the minutes of the July 23, 2020 special meeting, the December 30, 2025 ODPa memorandum, and a redlined version of the revised policy reflecting the Department's adopted revisions.

A few days later, Chief Louis—following consultation with City Manager Buddenhagen—paused the Department's revised Policy 300 and reinstated the prior, Council-approved version pending further review. The City Attorney recommended that the Department bring the 2026 Proposed UOF Policy before the Council for review, in line with the PAB's letter.

The Department has indicated that it intends to present its proposed revisions to Council at the July 7, 2026, meeting, with the staff report due to the City Clerk's Office on June 4, 2026.

#### **B. Research to Date**

Since the Department first introduced the 2026 Proposed UOF Policy to the PAB in December 2025, I have undertaken substantial investigative work to review the legislative history of the current Policy 300 and to assess whether, and to what extent, the proposed changes substantively depart from the current Policy 300. That work has included:

- Comprehensive review of the legislative history of the current Policy 300, including the materials maintained by the Office of the Director of Police Accountability ("ODPA") reflecting the deliberations of the prior Police Review Commission ("PRC"), the BPD working group, the CAO, and the Council.

- Review of the PRC Use-of-Force Subcommittee’s drafts (including input from BPD and the CAO) and the two policy items the Department submitted to Council in 2020 (in July and again in December 2020), together with the Council’s actions on those items.
- Conversations with several members of the prior PRC who participated in the 2020 UOF Policy deliberations.
- Side-by-side review of the current Policy 300 against the 2026 Proposed UOF Policy, from which I have identified approximately fifty substantive differences. Those differences are catalogued in a chart that I have shared with the Department and that is attached to this memorandum.
- Three meetings with BPD focused on (i) the Department’s rationale for the proposed revisions and (ii) the results of my proposed findings to date.
- Analysis prepared with ODPa staff of the disposition of all Policy 300 complaint allegations adjudicated by the PAB from 2021 to the present. ODPa staff is also compiling a chart of the Department’s use-of-force frequency from 2016 (when BPD first began publishing these statistics) to 2026, which I will share with the Board when finished.

## Analysis:

### A. The Department’s Stated Rationale for the Proposed Revisions

When the Department first introduced the 2026 Proposed UOF Policy in December 2025, the principal rationale it cited was the need to update Policy 300 to account for changes to California Government Code section 7286 enacted by SB 230. The Department also cited a desire to streamline the policy and to clarify certain ambiguities.

**SB 230.** Through intensive review of the previous PRC materials and discussion with City officials, I confirmed that the current Policy 300—which was developed by the PRC Use-of-Force Subcommittee in collaboration with BPD and the CAO, submitted to Council in July 2020, and resubmitted by BPD in December 2020—already incorporates SB 230’s requirements. SB 230 became effective January 1, 2021, and the current policy was drafted in 2020 with that pending state law expressly in view. A subsequent, narrower revision to Government Code section 7286 by AB 26 also appears to have been incorporated into the current Policy.

The Department does not dispute that the current Policy 300 is compliant with SB 230. Indeed, former Chief Greenwood's submission to the Council in December 2020 highlighted that the 2020 amendments to Policy 300 were proposed to comply with SB 230 and clarify ambiguous language.

In sum, there is no change to state law that compels changing Policy 300 in the manner or to the extent that the Department is proposing.

**Streamlining Policy.** The Department also expressed a desire to streamline Policy 300 language because officers have "at times found the current policy's terminology difficult to operationalize." As Deputy Chief Tate put it, the proposed revisions are aimed at "having clear policy language to ensure compliance rather than fixing a compliance gap." The Deputy Chief also pointed out that its 2026 Proposed UOF Policy is a few pages shorter than the current policy, and suggested that it was better organized.

I am in favor of clear language within a well-organized policy. My concern is that the Department's revisions are not streamlined edits at all, but actually substantive revisions to the obligations and standards that have guided our sworn officers for the past five years.

My own review of the Department's proposed revisions, paired with ODPA's previous memorandum on the same topic, confirms that suspicion. I identified approximately 50 substantive differences between the current Policy 300 and the 2026 Proposed UOF Policy. The full chart of those differences is attached to this memorandum.

Identifying these substantive differences was time-intensive, and, in my view, the burden of doing so should not have fallen primarily on the PAB. The Department's characterization of its proposal as principally a streamlining effort has obscured substantive departures from the current policy—including departures on issues that were the subject of extensive deliberation in 2020. The Department may have sound reasons for proposing each of these changes (or may disagree that a particular change is substantive at all), and I look forward to working through those reasons in the weeks ahead.

**Operational Concerns.** The Department has also cited operational concerns regarding training and officer decision-making as an additional motivation to revise the current Policy 300.

In prior meetings I asked the Department to provide concrete examples from training or officer decision-making that would illustrate how the current policy's language is operationally ambiguous or difficult to apply. At the May 12 meeting, Captain Okies

indicated that he was still working to gather those examples but acknowledged that it may be difficult to connect specific activity to particular policy language. I appreciated the Department’s candor on this point. The difficulty of producing such examples, however, makes it correspondingly difficult for me to recommend revisions purportedly designed to address those ambiguities.

Two empirical considerations counsel against substantive revision absent a clearly identified and adequately documented problem. First, the rate at which BPD officers use force has remained low over the past decade. According to the BPD’s UOF statistics, In 2025, there were 275 incidents involving 1,273 uses of force. Level 1 and Level 2 actions accounted for 93% of all uses (70% and 23%, respectively). Of the 60,374 calls for service received in 2025, 0.46% resulted in the use of force, and 0.07% (45 incidents) involved level 3 or level 4 force. To me, this indicates that the Department’s policy ensuring minimal reliance on force, emphasizing de-escalation techniques, and training is working exactly as intended.

Second, the PAB has sustained vanishingly few civilian complaint allegations against BPD officers concerning improper use of force over the past five years. (The Policy 300 complaint allegation data is reproduced below.) Of the 74 Policy 300 complaint allegations adjudicated by the PAB over the past five years, only four have been sustained by the PAB, and only two of those—both arising from a single case—concerned an allegation that a BPD officer improperly used force in an encounter. In my view, this record reflects a Department that is, by and large, effectively training its officers on the current Policy 300. That fact does not foreclose targeted revisions where the Department identifies a concrete problem, but it does counsel against wholesale substantive revision of standards whose application in the field appears to be working.

**Policy 300 Complaint Allegations (2021-present)**

| <b>PAB Allegation Disposition</b> | <b>Number of Allegations</b> | <b>Percentage</b> |
|-----------------------------------|------------------------------|-------------------|
| Admin Closure                     | 8                            | 10.81%            |
| Exonerated                        | 26                           | 35.14%            |
| No Consensus Reached              | 2                            | 2.70%             |
| Not Sustained                     | 1                            | 1.35%             |
| Sustained                         | 4                            | 5.41%             |
| Tolling                           | 9                            | 12.16%            |
| Under DPA Investigation           | 6                            | 8.11%             |

|              |           |                |
|--------------|-----------|----------------|
| Unfounded    | 18        | 24.32%         |
| <b>Total</b> | <b>74</b> | <b>100.00%</b> |

**Breakdown of PAB-Sustained Policy 300 Allegations**

| UOF Allegation Type                               | PAB Recommendation | BPD/Chief Disposition | Count    |
|---|--------------------|-----------------------|----------|
| Improper Use of Force – Reporting Requirements    | Sustained          | Sustained             | 1        |
| Improper Use of Force – Reporting Requirements    | Sustained          | Not Sustained         | 1        |
| Improper Use of Force – Improper Physical Contact | Sustained          | Exonerated            | 2        |
| <b>Total</b>                                      |                    |                       | <b>4</b> |

**B. Reducing Level 1 Use of Force Reporting Requirements in Line with BPD’s Proposal**

Although I am reticent to recommend that the Board concur with most of the substantive changes identified above, there is one category of revision that I recommend the Board adopt today: the Department’s proposed changes to the Level 1 use-of-force reporting requirements.

The current Policy 300 (Section 300.6.2) lists six categories of low-level force that trigger Level 1 reporting where 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; (b) leverage; (c) grab; (d) bodyweight; (e) the officer lowered the subject to a seated position or to the ground while partially or completely supporting the person’s bodyweight; and (f) takedown.

The 2026 Proposed UOF Policy retains Level 1 reporting only for control holds/pain compliance techniques and takedowns, and adds a qualifier (“but not as part of routine handcuffing”) for control holds. The remaining four categories—leverage, grab, bodyweight, and the supported-lowering category—are removed.

**Level 1 Use of Force Reporting Requirements**

| <b>Trigger:</b> <i>The officer used any of the following, and the circumstances of the application would lead an objectively reasonable officer to conclude that the subject <b>did not experience more than momentary discomfort</b>.</i> |                            |
|--|----------------------------|
| <b>Current Policy</b>  | <b>Proposed Revisions</b>  |
| Control Holds  | Control Holds              |
| Leverage   | Pain Compliance Techniques |
| Grab   | Takedown                   |
| Bodyweight   |                            |
| Lowering subject to ground with bodyweight assistance  |                            |
| Takedown   |                            |

Throughout the meetings to date, the Department has explained, with the level of operational specificity that has been lacking elsewhere, the following:

- The current reporting framework requires officers and supervisors to undertake a defined, multi-step process to report and review every use of force. At each level, that process includes both written documentation and review of the associated body-worn camera footage.
- Berkeley’s Level 1 Use-of-Force Reports capture certain low-level physical contacts (for example, a “grab”) that other jurisdictions do not separately classify or document as reportable uses of force.
- The operational definitions used to trigger Level 1 reporting (such as what constitutes a “grab”) have proven ambiguous in practice, which both inflates the documentation burden and produces inconsistent classification of similar conduct in the field.
- The documentation burden associated with these low-level Level 1 events is disproportionate to the limited operational and accountability utility of the resulting reports.

I agree with the proposed revisions to the Level 1 reporting requirements and recommend that the Board approve these changes. The reasoning is straightforward. First, the Department has articulated a concrete operational problem (definitional ambiguity producing inconsistent classification and an outsized documentation burden) and has tied that problem to specific policy language. Second, the Level 1 reporting changes do not alter the underlying substantive standards governing when and how officers may use force; they recalibrate documentation thresholds. Third, the Department has shared with the PAB both a template Blue Team / use-of-force report and a use-of-force process workflow guide, which will allow the Board and the public to understand precisely what is and is not being captured under the revised framework.

**Next Steps and Recommendation:**

The Department has indicated that it intends to bring the 2026 Proposed UOF Policy to Council on July 7, 2026, with the staff report due to the City Clerk on June 4, 2026. In the time remaining before that date, I will continue to meet with the Department and the CAO with the following objectives:

- Receive and review the Department's row-by-row response to the attached chart of substantive differences.
- Finalize the ten-year (2016–2026) use-of-force frequency analysis with ODPA staff.
- Continue to engage in good faith on any substantive change for which the Department articulates some concrete, documented operational rationale.

Today, I recommend that the PAB approve only the Berkeley Police Department's limited revisions to the Level 1 Use of Force Reporting Requirements and defer any further consideration of the proposed revisions to Policy 300 (Use of Force) until the effect and purpose of the revisions are clarified. I will return to the Board at its June 3, 2026, special meeting with a substantive recommendation on the balance of the 2026 Proposed Policy, informed by the Department's row-by-row response to the attached chart of substantive differences and our continued discussions.

I welcome the Board's input on this anticipated recommendation and will report further at the Board's next meeting.

**Attachments:**

1. Chart of Significant Differences Between Current Policy 300 and 2026 Proposed UOF Policy 300
2. BPD Policy 300 (Current, updated December 12, 2024)
3. Redline of BPD Policy 300 (2026 Proposed Revision, November 2025)
4. Sample Blue Team Report

**Appendices:**

- A. Summary of Significant Differences Between the Current Policy 300 and the 2026 Proposed UOF Policy
- B. Use of Force Reporting Process Workflow

# Attachment 1

Potential Substantive Differences Between Policy 300 and Proposed BPD Revision to Policy 300 (Updated 05.17.2026)

| Topic  | Current Policy 300 Section              | Current Policy 300 Language  | Chair Cayetano Comments   | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|--|---|--|---|--------------|------------------|---------------------------------------|
| Foundational Standard / Sanctity of Life         | Section 300.1 (Sanctity of Life)        | The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force. Officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public. | No equivalent in 2026 Policy. The 2026 Policy contains no sanctity-of-life preamble, no statement that the Department's 'highest priority' is safeguarding life and dignity, and no affirmative command that officers 'must respect the sanctity of all human life.' The general purpose statement in Section 300.1 of the 2026 Policy addresses the reasonable use of force but does not carry these foundational commitments.   |              |                  |                                       |
| Supervisor Duty to Ensure Policy Compliance      | Section 300.1.1                         | Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it.  | No equivalent in 2026 Policy. The 2026 Policy contains no provision requiring supervisors to ensure that personnel in their command know the content of the policy and operate in compliance with it. The 2026 Policy's Watch Commander Responsibility provision (Section 300.7.1) requires only that the Watch Commander review each use of force by personnel within their command for compliance, and the Training provision (Section 300.10) requires annual training on the policy. Neither imposes the affirmative, ongoing supervisory duty found in the 2024 Policy to ensure command-level knowledge of and operational compliance with the policy outside of post-incident use-of-force review.   |              |                  |                                       |
| Use of Force Standard – Minimum Force Obligation | Section 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 2026 Policy states officers 'shall use only that amount of force that reasonably appears necessary' and that force must be 'proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.' The 2026 Policy lacks the affirmative command that officers 'shall use alternatives to physical force whenever reasonably possible' and does not use the 'objectively necessary' standard, instead relying on 'reasonably appears necessary,' which is a lower bar. The current standard also ties the use of force to that which is objectively reasonable, necessary, and proportional to effectively resolve a conflict, while the 2026 Policy ties the inquiry to "the reasonably perceive level of actual or threatened resistance". |              |                  |                                       |

| Topic  | Current Policy 300 Section                      | Current Policy 300 Language  | Chair Cayetano Comments   | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|--|---|--|---|--------------|------------------|---------------------------------------|
| Use of Force Standard – Policy More Restrictive Than Law           | Section 300.1.2 (Use of Force Standard)         | 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.   | The 2026 Policy contains no statement that it is intentionally more restrictive than constitutional minimums or state law, and no explicit acknowledgment that it imposes a 'higher duty' on officers beyond what the law requires.   |              |                  |                                       |
| Core Principles – De-Escalation & Force Minimization               | Section 300.1.3 (Core Principles) – Principle A | 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. | The 2026 Policy's alternative-tactics provision (Section 300.3.1, Alternative Tactics – De-Escalation) is framed permissively ('should consider', 'when feasible') rather than imposing a mandatory goal that every officer 'shall de-escalate throughout every encounter. The 2026 Policy also does not use the 'objectively necessary' standard for force actually applied.   |              |                  |                                       |
| Core Principles – Proportionality (Unarmed / Non-Firearm Subjects) | Section 300.1.3 (Core Principles) – Principle B | 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.  | No direct equivalent in 2026 Policy. The 2026 Policy addresses proportionality generally in Section 300.3 but contains no specific heightened obligation when a subject is unarmed or armed only with a non-firearm weapon. The general proportionality language ('proportional to the seriousness of the suspected offense') in the 2026 Policy could be read to cover this situation implicitly, but the explicit call-out for unarmed subjects is absent.            |              |                  |                                       |
| Core Principles – Minimizing Deadly Force                          | Section 300.1.3 (Core Principles) – Principle C | 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.   | The 2026 Policy states that officers 'shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force' if it is safe and feasible to do so. This is directionally similar, but the 2024 formulation is stronger: it affirmatively prohibits deadly force whenever alternatives would 'eliminate the imminent danger,' whereas the 2026 version frames the alternative-techniques obligation as a consideration. |              |                  |                                       |

| Topic   | Current Policy 300 Section                           | Current Policy 300 Language   | Chair Cayetano Comments   | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|---|--|---|---|--------------|------------------|---------------------------------------|
| Core Principles – Duty to Intercede (Pre-Use Intervention)              | Section 300.1.3 (Core Principles) – Principle D      | 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.   | The 2026 Policy imposes a duty to intercede when an officer observes force 'clearly beyond that which is necessary' and provides for discipline for failure to intercede. However, the 2026 duty is reactive (triggered by observed force), whereas the 2024 language explicitly covers intervention before force is used ('about to use'). The 2026 Policy does not contain a pre-use intervention obligation.   |              |                  |                                       |
| Core Principles – Vulnerable Populations (Limited English Proficiency)  | Section 300.1.3 (Core Principles) – Principle E      | 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.   | The 2026 Policy's training provision (Section 300.10.2, State-Specific Training Requirements) does not impose an operational obligation during encounters with vulnerable populations, and the 2026 Policy omits 'people with limited English proficiency from its vulnerable populations list entirely.  |              |                  |                                       |
| Core Principles – Foster Strong Community Relationships                 | Section 300.1.3 (Core Principles) – Principle F      | 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. | No equivalent in 2026 Policy. The 2026 Policy contains no acknowledgment that lawful force can damage community relationships, no commitment to progressive policing as a historic tradition, and no community trust or transparency commitment. The 2026 Policy's fair and unbiased use of force provision (Section 300.2.1) addresses bias but does not address community relationship-building.  |              |                  |                                       |
| Duty to Intercede – Broader Trigger (Violation of Policy, Not Just Law) | Section 300.2 (Duty to Intercede and Duty to Report) | Any officer who observes another officer or member of the Berkeley Police Department using force that is clearly in violation of this policy shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, when in a position to do so, physical intervention.  | The 2026 Policy's duty-to-intercede trigger (Section 300.2.2) is narrower than the 2024 standard. The 2026 Policy is triggered only when force is 'clearly beyond that which is necessary, as determined by an objectively reasonable officer,' whereas the 2024 standard requires intercession whenever force is 'clearly in violation of this policy,' a broader category that includes proportionality, de-escalation, and other policy obligations beyond necessity. The 2026 provision also does not explicitly enumerate verbal and physical intervention as available methods. |              |                  |                                       |
| Duty to Intercede – Non-Witnessed Incidents                             | Section 300.2 (Duty to Intercede and Duty to Report) | 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.   | No direct equivalent in 2026 Policy. The 2026 duty-to-report provisions (Sections 300.2.2 and 300.2.4) are limited to force an officer 'observes' or 'witnesses.' The 2024 Policy uniquely extends the reporting obligation to situations where an officer 'learns of unauthorized force through any means, even without personal observation. This broader trigger is absent from the 2026 Policy.   |              |                  |                                       |

| Topic  | Current Policy 300 Section                           | Current Policy 300 Language  | Chair Cayetano Comments  | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|--|--|--|--|--------------|------------------|---------------------------------------|
| Duty to Intercede – Other Agencies                       | Section 300.2 (Duty to Intercede and Duty to Report) | 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 2026 Policy requires officers to report when a law enforcement officer or an employee uses force potentially exceeding what is necessary. This language is broad enough to encompass officers from other agencies, and a strong argument can be made that Section 300.2.4 captures this obligation. However, the 2024 Policy's Section 300.2 makes the other-agency obligation explicit and standalone, whereas in the 2026 Policy it is subsumed into the general reporting duty.   |              |                  |                                       |
| Resistance Levels / Force Continuum – Compliant Subjects | Section 300.3.1 (Factors / Resistance Levels)        | 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.   | No equivalent in 2026 Policy. The 2026 Policy does not include a force continuum or resistance-level framework. While the 2026 Policy's general proportionality language (Section 300.3) would arguably prohibit using force against a compliant person, the explicit guidance tying specific resistance levels to maximum permissible force options, along with the explicit protection for compliant persons, is entirely absent.  |              |                  |                                       |
| Resistance Levels / Force Continuum – Passive Resistance | Section 300.3.1 (Factors / Resistance Levels)        | 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.  | No equivalent in 2026 Policy. Same analysis as compliant subjects above. The 2026 Policy contains no resistance-level framework and no explicit limit on the force permitted against passively resistant individuals. The general proportionality standard in Section 300.3 provides some implicit protection but not the specific ceiling the 2024 Policy establishes.  |              |                  |                                       |
| Resistance Levels / Force Continuum – Active Resistance  | Section 300.3.1 (Factors / Resistance Levels)        | 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.  | No equivalent in 2026 Policy. Same analysis as above. The 2024 Policy's explicit force ceiling for actively resistant subjects (pain compliance and takedowns only) has no counterpart in the 2026 Policy.   |              |                  |                                       |
| Resistance Levels / Force Continuum – Framework          | Section 300.3.2 (Use of Force Continuum)             | The Department uses a 'use of force continuum' that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions. | No equivalent in 2026 Policy. The 2026 Policy contains no force continuum framework. While Section 300.3.3 lists factors for assessing reasonableness and the general proportionality standard applies, the structured continuum is absent, including the 2024 mandate that officers shall escalate and de-escalate their level of force in response to the subject's actions. The 2026 Policy's 'reasonably appears necessary' standard does not replicate the continuum's explicit requirement that force track the subject's resistance level in real time. |              |                  |                                       |

| Topic   | Current Policy 300 Section              | Current Policy 300 Language   | Chair Cayetano Comments  | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|---|---|---|--|--------------|------------------|---------------------------------------|
| De-Escalation – Mandatory Use When Safe   | Section 300.3.4 (De-Escalation Tactics) | Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately.   | No equivalent in 2026 Policy. The 2026 Policy contains no affirmative duty requiring officers to continually assess the dynamics of a situation and modulate their response and actions appropriately as the encounter evolves. The 2026 Policy's general use of force standard (Section 300.3) directs officers to judge reasonableness 'at the time of the event' and references the totality of circumstances, but does not impose the ongoing real-time reassessment duty that the 2024 Policy commands. The 2026 Policy also omits the 2024 acknowledgment that an officer may be justified in using force at one moment but not the next due to a change in dynamics, and it omits the broader 2024 command that de-escalation tactics 'shall be used when it is safe to do so.' |              |                  |                                       |
| De-Escalation – Mandatory Verbal Attempt  | Section 300.3.4 (De-Escalation Tactics) | If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques.   | The 2026 Policy (Section 300.3.1(a)) frames de-escalation as one option among alternative tactics to 'consider and utilize,' a weaker command than the 2024 'shall attempt' formulation, which imposes a mandatory obligation when immediate action is unnecessary.  |              |                  |                                       |
| De-Escalation – CIT / Crisis Resources (Mandatory When Available and Practicable) | Section 300.3.4 (De-Escalation Tactics) | 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.   | The 2026 Policy (Section 300.3.1(b)) lists the use of crisis intervention techniques by properly trained personnel as an alternative tactic to consider when reasonably available. The 2024 provision is stronger: it specifically names the CIT, crisis negotiators, and the Berkeley Mental Health Mobile Crisis Team, and uses 'shall be called upon' rather than a permissive consideration.   |              |                  |                                       |
| De-Escalation – Information Gathering and Coordination                            | Section 300.3.4 (De-Escalation Tactics) | 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. | No direct equivalent in 2026 Policy. The 2026 Policy's de-escalation provision (Section 300.3.1) addresses alternative tactics at a high level but does not impose specific affirmative duties to gather information, assess risks, assemble resources, or slow momentum as discrete steps. The 2024 language 'shall gather information... shall... assess the risks... assemble resources' creates explicit mandatory steps that are absent from the 2026 Policy.   |              |                  |                                       |

| Topic  | Current Policy 300 Section                               | Current Policy 300 Language   | Chair Cayetano Comments  | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|--|--|---|--|--------------|------------------|---------------------------------------|
| De-Escalation – Mental Health / Erratic Behavior (Mandatory Attempt) | Section 300.3.4 (De-Escalation Tactics) – subsection (g) | When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug additions, 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.  | No direct equivalent in 2026 Policy. The 2026 Policy references an individual's 'apparent mental state or capacity' as a factor in assessing force (Section 300.3.3(f)) but does not impose a specific mandatory obligation to de-escalate when an officer recognizes mental health or substance abuse issues as the cause of erratic behavior. The 2024 'shall... try to de-escalate' obligation in this specific context has no counterpart in the 2026 Policy.  |              |                  |                                       |
| Non-Lethal Force – Authorized Circumstances for Employees            | Section 300.3.6 (Use of Non-Lethal Force)                | When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use objectively reasonable, objectively necessary, and proportional approved non-lethal force techniques and weapons in the following circumstances: (a) To protect themselves or another person from physical injury; (b) To restrain or subdue a resistant individual; or (c) To bring an unlawful situation safely and effectively under control. | No direct equivalent in 2026 Policy. The 2026 Policy addresses the use of force generally but does not have a standalone provision specifically governing non-lethal force, defining when it is authorized, or extending the authorization framework to non-sworn 'authorized employees.' The general force provisions in 2026 Section 300.3 could arguably cover officers, but the explicit employee authorization and the tripartite authorized-circumstances framework are absent.  |              |                  |                                       |
| Chokehold – Broader Definition (Front, Side, Back of Neck)           | Section 300.3.9 (Chokehold Prohibition)                  | 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.  | The 2026 Policy prohibits carotid restraint holds (Section 300.3.5) and choke holds (Section 300.3.6) separately. However, the 2024 definition is more comprehensive: it explicitly covers any contact with 'the front, side, or back of the neck,' which is broader than the 2026 definitions focused on blood flow restriction (carotid) and trachea/windpipe pressure (chokehold). Techniques applying pressure to the back of the neck, for example, may not be captured by the 2026 definitions.  |              |                  |                                       |
| Chokehold – Bar-Arm Hold and City Council Resolution                 | Section 300.3.9 (Chokehold Prohibition)                  | 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.'                             | No equivalent in 2026 Policy. The 2026 Policy does not reference the 1985 City Council Resolution (No. 52,605-N.S.) or the bar-arm hold prohibition. While the 2026 chokehold prohibition in Section 300.3.6 covers direct tracheal pressure, the explicit grounding in Council authority and the bar-arm hold ban (which covers forearm pressure against the front of the neck) are absent. The bar-arm hold prohibition may fall within the 2026 carotid or chokehold definitions depending on application, but the explicit Council Resolution reference is gone. |              |                  |                                       |

| Topic   | Current Policy 300 Section          | Current Policy 300 Language  | Chair Cayetano Comments   | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|---|-------------------------------------|--|---|--------------|------------------|---------------------------------------|
| Deadly Force – Objectively Necessary Standard                             | Section 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 person 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. | The key difference is that the 2024 Policy requires that it be 'objectively reasonable' that deadly force is 'objectively necessary' (a dual objective test), whereas the 2026 Policy uses the officer's subjective reasonable belief as the operative standard. This is a meaningful difference in the level of scrutiny applied to deadly force decisions.  |              |                  |                                       |
| Deadly Force – Prohibition on Endangering Innocent People                 | Section 300.4 (Use of Deadly Force) | An officer shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily endanger innocent people.  | The 2026 Policy (Section 300.4) frames bystander safety only as a consideration, stating officers 'should consider their surroundings and any potential risks to bystanders prior to discharging a firearm.' The 2024 provision is stronger: it affirmatively prohibits deadly force when it 'reasonably appears' it would endanger innocent people, rather than treating bystander safety as a consideration.                    |              |                  |                                       |
| Deadly Force – Prohibited When Sole Purpose Is Arrest / Escape / Property | Section 300.4 (Use of Deadly Force) | 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.   | The 2024 Policy's separate explicit prohibition on using lethal force solely to effect an arrest or overcome resistance (absent an imminent threat) is not replicated in the 2026 Policy. The 2026 provision in Section 300.4(b), 'apprehend a fleeing person,' covers part of this scenario but only for the fleeing-felon context, not the general arrest or resistance situation.  |              |                  |                                       |
| Use of Vehicles – Prohibition on Ramming (Lethal Force Standard)          | Section 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 the Use of Deadly Force section above or in the Vehicle Pursuit policy.   | No equivalent in 2026 Policy. The 2026 Policy's vehicle section (Section 300.5) describes the VCT but does not contain a general prohibition on using vehicles as lethal force instruments. The 2026 Policy's deadly force provision (Section 300.4) would apply to vehicle ramming constituting lethal force, but the explicit prohibition with the lethal-force threshold and vehicle pursuit policy cross-reference is absent. |              |                  |                                       |
| Use of Vehicles – VCT Definition and Scope                                | Section 300.5 (Use of Vehicles)     | Vehicle Containment Technique (VCT) is a dynamic procedure conducted by sworn personnel during which marked or unmarked police vehicles are positioned around a suspect vehicle to stop and prevent movement, to decrease the likelihood of a vehicle pursuit, and to take a suspect into custody. Depending on the totality of the circumstances, the police vehicle may make contact with the individual's vehicle when using this technique.  | The 2026 Policy (Section 300.5) differs from the 2024 Policy in two respects: (1) the 2024 Policy explicitly identifies 'decreasing the likelihood of a vehicle pursuit' as a purpose of VCT, which the 2026 Policy does not; and (2) the 2024 Policy frames contact as contingent on 'the totality of the circumstances,' providing a more explicit limiting principle on when contact is authorized.                            |              |                  |                                       |

| Topic  | Current Policy 300 Section              | Current Policy 300 Language   | Chair Cayetano Comments   | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|--|---|---|---|--------------|------------------|---------------------------------------|
| Reporting – Articulation Standard Includes 'Objectively Necessary' | Section 300.6 (Reporting Requirements)  | The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances.  | No direct equivalent in 2026 Policy. The 2026 Policy's reporting provision (Section 300.6, Reporting Requirements) requires the officer to articulate the factors perceived and why they believed the use of force was reasonable under the circumstances; 'omitting objectively necessary.' This is a meaningful difference: the 2024 standard requires officers to justify force as objectively necessary, not merely reasonable, which sets a higher documentation bar and creates a stronger accountability record. |              |                  |                                       |
| Reporting – Use of Restraint Device Report Required                | Section 300.6 (Reporting Requirements)  | 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.  | No equivalent in 2026 Policy. The 2026 Policy requires a Use of Pepper Spray Report (Section 300.6) but contains no requirement for a separate Use of Restraint Device Report for body wraps or spit hoods. The 2026 Policy's Level 3 reporting category captures some restraint-device uses, but the standalone report requirement and the cross-reference to Section 300.11 analysis are absent.  |              |                  |                                       |
| Reporting – Employee Use of Force Reporting Obligation             | Section 300.6.3 (Employee Use of Force) | When any Berkeley Police Department employee has engaged in a use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy.  | No direct equivalent in 2026 Policy. The 2026 Policy's reporting provisions address officer-involved force but do not contain an explicit standalone provision requiring non-sworn employees to report and have their use of force investigated. The 2026 Policy's general reporting section (300.5) uses 'member of this department' language that arguably covers employees, but the explicit employee-specific provision is absent.  |              |                  |                                       |
| Reporting – Unusual Occurrence Supplemental Report                 | Section 300.6.3 (Employee Use of Force) | In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence as described in such as widespread disaster or civil disturbance, the officer shall prepare a supplemental report as soon as practical following the incident. | No equivalent in 2026 Policy. The 2026 Policy contains no provision for supplemental reporting during unusual occurrences such as disasters or civil disturbances. The general reporting obligation in Section 300.5 of the 2026 Policy (requiring 'prompt' documentation) would apply, but there is no specific accommodation or supplemental report requirement for mass-event scenarios.   |              |                  |                                       |
| Reporting – Specific Information Required in Report                | Section 300.6.3 (Employee Use of Force) | 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.                     | No direct equivalent in 2026 Policy. The 2026 Policy requires that the officer 'articulate the factors perceived' but does not enumerate the specific information elements (reason, location, subject description, type of force) that must appear in the report. The 2024 provision provides a checklist that the 2026 Policy lacks.   |              |                  |                                       |

| Topic   | Current Policy 300 Section                                | Current Policy 300 Language  | Chair Cayetano Comments  | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|---|---|--|--|--------------|------------------|---------------------------------------|
| Reporting – Public Records Compliance   | Section 300.6.5 (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.   | The 2026 Policy's public records provision (Section 300.14, Public Records Requests) is narrower than the 2024 provision. The 2026 Policy addresses public records involving 'an officer's personnel records' under Penal Code section 832.7, whereas the 2024 provision covers all use of force records (not just personnel records) and explicitly cites Government Code section 6254(f) in addition to Penal Code section 832.7. The 2026 provision's narrower scope to personnel records may leave a gap for other use of force records.   |              |                  |                                       |
| Supervisor Responsibility – Level 3: Statements Attached to Investigation                 | Section 300.6.2 (Use of Force Reporting Levels) – Level 3 | Suspect and witness statements from the crime report will be attached to the use of force investigation.   | No equivalent in 2026 Policy. The 2026 Policy's Level 3 provisions (Section 300.7.2) require that a Use of Force Investigation Report narrative be completed in Blue Team, but do not require that crime report statements be affirmatively attached to the use of force investigation. Without the attachment requirement, force investigations may proceed without the full context of witness and suspect accounts.   |              |                  |                                       |
| Supervisor Responsibility – Administrative Review Includes Use of Restraint Device Report | Section 300.8 (Use of Force Administrative Review)        | The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in the Use of Force Review Board Policy 301 instead of utilizing Division Captain Review.  | The 2026 Policy's administrative review provision (Section 300.8, Use of Force Administrative Review) requires Division Captain review of the Use of Force Report and Use of Pepper Spray Report but does not include restraint device reports. The substantive gap follows from the missing restraint device report requirement noted above.  |              |                  |                                       |
| Use of Force Reporting Levels – Level 1 Additional Categories                             | Section 300.6.2 (Use of Force Reporting Levels) – Level 1 | The officer used any of the following, and the circumstances of the application would lead an objectively reasonable officer to conclude that the subject did not experience more than momentary discomfort: (a) Control holds/pain compliance techniques; (b) Leverage; (c) Grab; (d) Bodyweight; (e) The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight; (f) Takedown. | The 2026 Policy's Level 1 reporting category (Section 300.7.2, Use of Force Reporting Levels) lists only control holds/pain compliance techniques and takedowns, omitting leverage, grab, bodyweight, and the 'lowered to seated position while supporting bodyweight' category. These omissions mean that certain lower-level force applications that triggered Level 1 reporting under the 2024 Policy may not be captured at all in the 2026 reporting framework. Additionally, the 2026 Policy's Level 1 list adds a qualifier absent from the 2024 list ('but not as part of routine handcuffing') for control holds/pain compliance techniques, which further narrows what triggers Level 1 reporting under the 2026 Policy. |              |                  |                                       |

| Topic   | Current Policy 300 Section             | Current Policy 300 Language   | Chair Cayetano Comments  | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|---|--|---|--|--------------|------------------|---------------------------------------|
| Use of Force Analysis – Demographic Details Required                        | Section 300.11 (Use of Force Analysis) | An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age. | No equivalent in 2026 Policy. The 2026 Policy (Section 300.11) requires an analysis of use of force incidents but does not require demographic details of impacted individuals. The 2026 provision lists training, equipment, and policy recommendations as required components but omits the race, gender, and age data that the 2024 Policy mandates. This is a significant accountability gap.  |              |                  |                                       |
| Use of Force Analysis – All Force Levels Required in Report                 | Section 300.11 (Use of Force Analysis) | All types of force as delineated in Levels 1, 2, 3 and 4.   | No equivalent in 2026 Policy. The 2026 Policy's analysis provision does not require that the report break down incidents by force level. The general 'analysis of use of force incidents' language in 2026 Section 300.11(a) could be read broadly to encompass all levels, but the explicit requirement to report all Level 1 through 4 types is absent, which may result in lower-level force incidents being underreported in the annual analysis.                        |              |                  |                                       |
| Use of Force Analysis – Trend Identification Required                       | Section 300.11 (Use of Force Analysis) | The identification of any trends in the use of force by members.  | No equivalent in 2026 Policy. The 2026 Policy's analysis provision (Section 300.11) lists specific required report components (training needs, equipment needs, and policy revisions recommendations) but does not require trend identification. While a thorough analysis would naturally include trends, the explicit mandate is absent, and its omission weakens the accountability function of the annual report.  |              |                  |                                       |
| Use of Force Analysis – Prepared by Professional Standards Division Captain | Section 300.11 (Use of Force Analysis) | The Professional Standards Division Captain or his or her designee shall prepare a comprehensive analysis report on use of force incidents.   | The 2026 Policy (Section 300.11) assigns the analysis to 'the Office of Strategic Planning and Accountability' rather than the Professional Standards Division Captain. This is a substantive organizational difference. The 2024 Policy places accountability within the command structure (a Division Captain), while the 2026 Policy assigns it to an administrative office, potentially reducing command-level ownership of the analysis.                                |              |                  |                                       |
| Use of Force Analysis – Quarterly Reporting to Police Accountability Board  | Section 300.11.1 (Reporting Frequency) | On a quarterly basis to the Police Accountability Board.  | No equivalent in 2026 Policy. The 2026 Policy's reporting frequency provision (Section 300.11.1) requires quarterly reporting via the City's Open Data Portal and an annual report to City Council, but does not require quarterly reporting directly to the Police Accountability Board. This is a significant accountability gap: the FAB receives the annual report under the 2026 Policy but loses the quarterly direct-reporting channel that the 2024 Policy provides. |              |                  |                                       |

| Topic   | Current Policy 300 Section                 | Current Policy 300 Language   | Chair Cayetano Comments  | BPD Response | Discussion Notes | Final Revised Chair Cayetano Comments |
|---|--|---|--|--------------|------------------|---------------------------------------|
| Civilian Complaints – Filing with IAB and/or PAB    | Section 300.12 (Civilian Complaints)       | Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police Accountability Board (PAB). Complaints will be investigated in compliance with the respective applicable procedures of the IAB and the PAB. | No equivalent in 2026 Policy. The 2026 Policy's analogous provision (Section 300.9) states that civilian complaints 'should be handled in accordance with the Personnel Complaints Policy' without specifying that complaints may be filed with the PAB, and without referencing the PAB's investigation procedures. The 2024 Policy's explicit dual-filing pathway (IAB and/or PAB) and the guarantee of PAB-procedure compliance are absent from the 2026 version. |              |                  |                                       |
| Policy Review – Annual BPD/PAB Convening per SB 230 | Section 300.13 (Policy Review and Updates) | 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.   | No equivalent in 2026 Policy. The 2026 Policy's review provision (Section 300.12) states that the Chief of Police 'shall regularly review and update this policy' but does not require the BPD and PAB to convene jointly for that review, and does not reference SB 230. The 2024 Policy's mandatory annual joint review, which gives the PAB a seat at the policy-update table, is absent from the 2026 version.   |              |                  |                                       |

# Attachment 2

**Policy  
300****Berkeley Police Department**  
Law Enforcement Services Manual

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## Use of Force

### 300.1 SANCTITY OF LIFE

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

#### 300.1.1 PURPOSE AND SCOPE

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

#### 300.1.2 USE OF FORCE STANDARD

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

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

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

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

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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. (Government Code § 7286(b)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 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.

**300.3.2 USE OF FORCE CONTINUUM**

The Department uses a “use of force continuum” that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively

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necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions.

#### **Continuum of Force**

##### **Officer Presence — No force is used. Considered the best way to resolve a situation.**

- The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
- Officers' attitudes are professional and nonthreatening.

##### **Verbalization — Force is not physical.**

- Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
- Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."

##### **Weaponless defense — Officers use bodily force to gain control of a situation.**

- Pain Compliance and control holds. Officers use grabs, holds and joint locks to restrain an individual.
- Personal body weapons. Officers may use punches and kicks to restrain an individual.

##### **Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**

- Blunt impact. Officers may use a baton or projectile to immobilize a combative person.
- Chemical. Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).

##### **Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**

#### 300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Berkeley Police Department for this specific purpose.

#### 300.3.4 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and shall be used when it is safe to do so, De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to

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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.

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

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

#### 300.3.5 PAIN COMPLIANCE TECHNIQUES

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

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

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

#### 300.3.6 USE OF NON-LETHAL FORCE

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

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

#### 300.3.7 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

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aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

#### 300.3.8 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).

#### 300.3.9 CHOKEHOLD PROHIBITION

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

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

#### 300.4 USE OF DEADLY FORCE

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

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

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

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or

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prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

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

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

#### 300.4.1 DRAWING AND POINTING FIREARMS

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

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

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

#### 300.4.2 DIRECTED FIRE

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

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

#### 300.4.3 SHOOTING AT OR FROM MOVING VEHICLES

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

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer

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reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

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

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

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

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

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

Officers shall not use police vehicles to ram other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in the Use of Deadly Force section above or in the Vehicle Pursuit policy.

Vehicle Containment Technique (VCT) is a dynamic procedure conducted by sworn personnel during which marked or unmarked police vehicles are positioned around a suspect vehicle to stop and prevent movement, to decrease the likelihood of a vehicle pursuit, and to take a suspect into custody. Depending on the totality of the circumstances, the police vehicle may make contact with the individual's vehicle when using this technique.

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.

#### **300.6 REPORTING REQUIREMENTS**

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

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

##### **300.6.1 SUPERVISOR RESPONSIBILITY**

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

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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.

#### 300.6.2 USE OF FORCE REPORTING LEVELS

##### **Level 1**

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

- (a) Control holds/ pain compliance techniques
- (b) Leverage
- (c) Grab
- (d) Bodyweight
- (e) The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.
- (f) 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.

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

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

#### **Level 3**

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

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

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

#### **Level 4**

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

#### 300.6.3 EMPLOYEE USE OF FORCE

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

- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an

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unusual occurrence as described in such as widespread disaster or civil disturbance, the officer shall prepare a supplemental report as soon as practical following the incident.

- (b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

#### 300.6.4 REPORT RESTRICTIONS

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

#### 300.6.5 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.

#### **300.7 MEDICAL CONSIDERATIONS**

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

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

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

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

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

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

See the Medical Aid and Response Policy for additional guidelines.

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

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in the Use of Force Review Board Policy ~~304~~ instead of utilizing Division Captain Review.

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

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

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

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

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

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

#### **300.10 TRAINING**

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

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

Required annual training shall include:

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

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Code § 13519.10.

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

**300.10.2 STATE-SPECIFIC TRAINING REQUIREMENTS**

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

**300.11 USE OF FORCE ANALYSIS**

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

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

**300.11.1 REPORTING FREQUENCY**

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

**300.12 CIVILIAN COMPLAINTS**

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

**300.13 POLICY REVIEW AND UPDATES**

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

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

# Attachment 3

## 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~~

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~~**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~~

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~~**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)).

**300.1314 ~~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).~~

# Attachment 4

## Berkeley Police Department Use of force Report

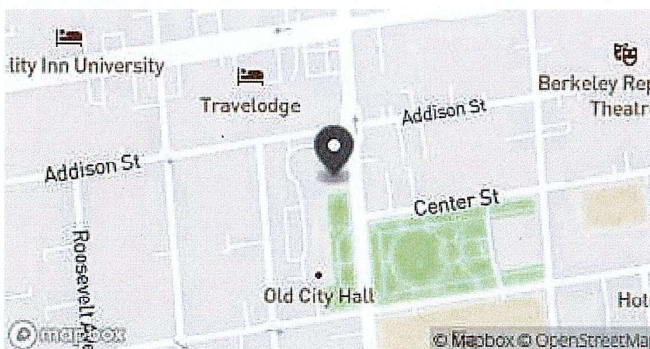
This report is generated from demo/training data

### Incident Details

Date Received 05/12/2026  
 Entered By Police Sergeant  
 Jumaane Jones -  
 08174  
 Date/Time of Occurrence 05/12/2026 00:00  
 Date/Time Entered 05/12/2026 14:34  
 Record ID Number 1222  
 Case # 00000  
 File # —

### Incident Location

Location of Occurrence Beat 01  
 2100 Martin Luther King Jr Way  
 Berkeley, CA, 94704  
 -122.27313, 37.87005



### Incident Summary

A DETAILED SUMMARY OF THE INCIDENT IS WRITTEN\*

### Use of Force Details

|                               |          |                           |                    |
|-------------------------------|----------|---------------------------|--------------------|
| More Than 1 Citizen Involved  | No       | Reason For Using Force    | Assault on Citizen |
| Citizen Arrested              | Yes      | Distance to Citizen       | —                  |
| Employee(s) Injured           | No       | Citizen Injured           | No                 |
| Employee(s) Taken to Hospital | No       | Citizen Taken to Hospital | No                 |
| Service Being Rendered        | Ped Stop | Citizen Build             | —                  |
| Weather Condition             | —        | Citizen Height            | —                  |

|                 |   |                              |               |
|-----------------|---|------------------------------|---------------|
| Light Condition | — | Citizen Influence Assessment | None detected |
|-----------------|---|------------------------------|---------------|

**Crisis Details**

|                   |  |
|-------------------|--|
| Nature of Crisis  | Unknown  |
| Crisis Behaviors  | Disorderly / disruptive behavior   |
| Force/Violence    | Citizen threatened violence towards another person<br>Citizen threatened violence towards police |
| Final Disposition | Arrested   |

**Reporting/Involved Citizen**

**Unknown Citizen**

|  |  |
|--|--|
| Role   | Arrested   |
| Type of Resistance<br>Citizen Used Against<br>Employee | Assault on<br>Citizen<br>Combative<br>Active<br>Assault on Officer |
| Charges Against<br>Citizen                             | Misdemeanor<br>Felony  |

**Injuries Sustained By Citizen**

No injuries noted or visible  
Points

**Involved Employees**

[Snapshot Title Unavailable] BPD Officer

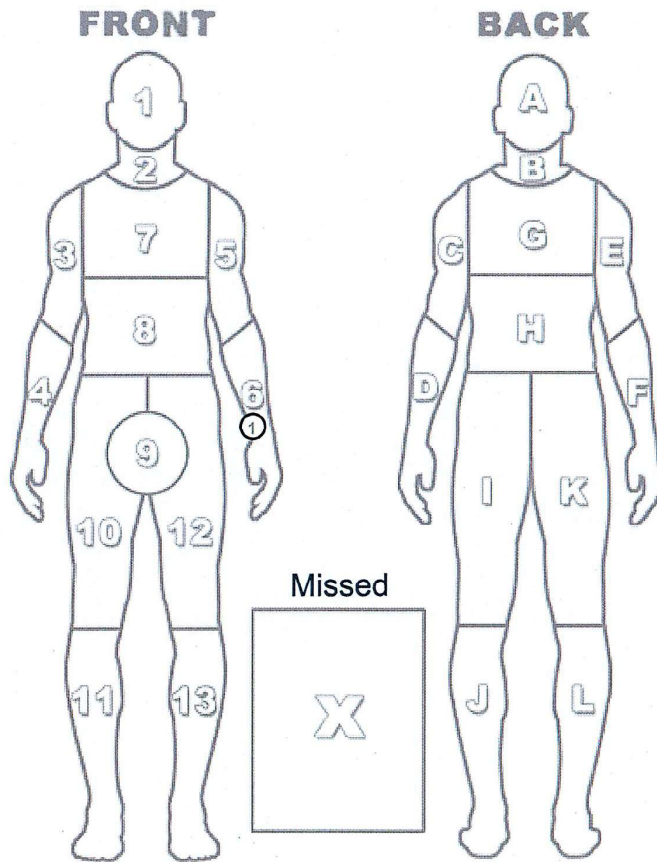
(Data at the time of incident)

|                  |                       |
|------------------|-----------------------|
| Assignment       | Operations/Operations |
| Video<br>Footage | BWC                   |
| Role             | Primary Assigned Unit |
| Height           | —                     |
| Weight           | —                     |

|                          |                               |     |
|--------------------------|-------------------------------|-----|
| Additional Snapshot Data | Officer was off-duty          | No  |
|                          | Officer was employed off-duty | No  |
|                          | Officer was in uniform        | Yes |

Force used by this Employee against Citizen

- o Control Hold - Force Effective: Yes — Points: 1



Injuries Sustained By Employee

No injuries noted or visible

Points

# Appendix A

## **Appendix A: Significant Differences Between the Current Policy 300 and the 2026 Proposed UOF Policy**

The most significant of the substantive differences identified to date are summarized below.

### **1. Foundational Standard – Sanctity of Life and “More Restrictive Than Law”**

The current Policy 300 opens with a Sanctity-of-Life preamble (Section 300.1) declaring that the Department’s “highest priority is safeguarding the life, dignity, and liberty of all persons” and affirmatively commanding that 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.” The 2026 Proposed UOF Policy contains no Sanctity-of-Life preamble. Its general purpose statement at Section 300.1 addresses the “reasonable use of force” but does not carry forward the foundational commitment to sanctity of life that has anchored the current policy since 2020.

Similarly, the current Policy 300 (Section 300.1.2) expressly acknowledges that BPD policy imposes a “higher duty” on officers than constitutional minimums or state law—requiring officers to use “only such force that is objectively proportionate to the circumstances,” considering the seriousness of the offense, the availability of de-escalation, and the risks to the public and to officers. The 2026 Proposed UOF Policy contains no comparable statement that BPD policy is intentionally more restrictive than the legal floor.

### **2. Minimum Use-of-Force Standard (Section 300.1.2)**

The most consequential substantive change identified to date is to the policy’s foundational use-of-force standard. On the May 12 call, those present acknowledged that there is, at a minimum, a substantive change to this requirement.

The current Policy 300 (Section 300.1.2) provides that “in dealing with suspects, officers shall use alternatives to physical force whenever reasonably possible,” and that “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 2026 Proposed UOF Policy departs from this formulation in three important ways:

- It eliminates the affirmative command that officers “shall use alternatives to physical force whenever reasonably possible.”
- It replaces the “minimum amount of force that is objectively reasonable [and] objectively necessary” standard with a directive that officers “shall use only that amount of force that reasonably appears necessary.” The “reasonably appears necessary” formulation is a lower bar than “objectively necessary” and shifts the inquiry toward the officer’s subjective perception rather than an objective assessment after the fact.
- It re-anchors the proportionality inquiry to “the reasonably perceived level of actual or threatened resistance” rather than to the prior touchstone of using force “objectively reasonable, necessary, and proportional to effectively and safely resolve a conflict.”

These are not stylistic edits. They lower the threshold for permissible force in the field, soften the affirmative obligation to seek alternatives before resorting to force, and re-orient the proportionality assessment around perceived resistance rather than around the objective necessity of resolving the encounter. Each of these formulations was the subject of extensive deliberation in 2020, and the current standard reflects a deliberate policy choice by Council. I am not presently inclined to recommend that the Board concur with these changes absent a substantially stronger operational justification than has been presented to date.

### **3. Deadly Force Standard (Section 300.4)**

The current Policy 300 (Section 300.4) provides that “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 ... or (2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury,” provided certain additional conditions are met. The deadly force section in the current policy was adopted by Council in 2020 with specific amendments (made on the floor by then-Councilmember Harrison) that calibrated Berkeley’s deadly force standard in light of AB 392 and the forthcoming SB 230.

I have identified the following substantive departures in the 2026 Proposed UOF Policy:

- **Dual objective test replaced with subjective belief.** The current policy requires that it be “objectively reasonable” that deadly force is “objectively necessary”—a dual objective test. The 2026 Proposed UOF Policy operates on the officer’s subjective

reasonable belief as the operative standard. The level of scrutiny applied to deadly force decisions is meaningfully reduced.

- **Prohibition on endangering innocent people downgraded to a “consideration.”** The current policy provides that an officer “shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily endanger innocent people.” The 2026 Proposed UOF Policy (Section 300.4) reframes bystander safety as something officers “should consider” prior to discharging a firearm, rather than as a prohibition.
- **Loss of express prohibition on deadly force for arrest, resistance, or property protection.** The current policy expressly states that “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,” and is also “prohibited solely to prevent property damage or prevent the destruction of evidence.” The 2026 Proposed UOF Policy does not replicate this explicit prohibition. Its fleeing-felon clause covers part of the prior protection but does not extend to the general arrest or resistance scenarios.
- **“Minimizing the Use of Deadly Force” principle weakened.** The current policy (Section 300.1.3, Principle C) provides that officers “shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger.” The 2026 Proposed UOF Policy directs officers to “evaluate and use other reasonably available resources and techniques” where safe and feasible. The current formulation is a prohibition; the proposed formulation is a consideration.

Read together, these changes substantially loosen the framework that governs the most consequential decision a BPD officer can make. As with the foundational standard, the current deadly force formulation was the product of careful calibration by Council in 2020 and reflects considered policy choices that should not be displaced without an articulated, documented basis.

#### **4. De-Escalation and Continuous Assessment (Current Section 300.3.4)**

The current Policy 300 imposes several affirmative, ongoing de-escalation obligations that the 2026 Proposed UOF Policy does not carry forward in equivalent form:

- **Continuous assessment and adjustment.** The current policy commands that “officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately,” and acknowledges that “an officer may be justified in using force at one moment but not the next due to a change in

dynamics.” The 2026 Proposed UOF Policy contains no equivalent ongoing real-time reassessment duty. At the May 12 meeting, Captain Okies and Sergeant Rafferty pointed to Section 300.3.1 (de-escalation) and Section 300.3 (proportionality) of the proposed policy as the asserted homes for this obligation, but in my reading those sections do not capture the continuous-assessment-and-adjustment requirement with sufficient clarity.

- **Mandatory verbal de-escalation when feasible.** The current policy provides that “if immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques.” The 2026 Proposed UOF Policy frames de-escalation as one alternative tactic to “consider and utilize” – a weaker, permissive formulation.
- **Crisis Intervention Team resources.** The current policy provides that “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.” The 2026 Proposed UOF Policy lists “crisis intervention techniques by properly trained personnel” as one consideration among others, weakening both the specificity (no longer naming the Berkeley Mental Health Mobile Crisis Team) and the imperative force of the requirement.
- **Mandatory de-escalation attempt when erratic behavior is attributable to mental illness or substance use.** The current policy provides that when an officer recognizes that mental illness, PTSD, alcohol/drug addiction, or other health issues are causing erratic behavior, the officer “shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis intervention techniques.” The 2026 Proposed UOF Policy references an individual’s “apparent mental state or capacity” as one factor among many in assessing force, but does not retain the affirmative de-escalation obligation in this specific context.

##### **5. Force Continuum and Resistance-Level Protections (Current Sections 300.3.1 and 300.3.2)**

The current Policy 300 includes a Use-of-Force Continuum that ties specific resistance levels to maximum permissible force options: officers “may rely on police presence and/or verbal control techniques, but should not use greater force” against compliant persons; officers facing passive resistance may rely on “police presence, verbal control techniques, or control holds, but should not use greater force”; and officers facing active resistance may, in addition, “rely on pain compliance techniques or takedowns, but should

not use greater force.” The continuum further commands that “officers shall escalate and de-escalate their level of force in response to the subject’s actions.”

The 2026 Proposed UOF Policy contains no force continuum and no resistance-level framework. While the proposed policy’s general proportionality language at Section 300.3 may provide some implicit protection, the explicit force ceilings tied to each resistance level—and the command that force track the subject’s resistance in real time—are absent.

### **6. Duty to Intercede**

The current Policy 300 (Section 300.2) imposes a duty to intercede whenever an officer observes another BPD officer or employee “using force that is clearly in violation of this policy.” That trigger is broader than the trigger in the 2026 Proposed UOF Policy (Section 300.2.2), which is activated only when the observed force is “clearly beyond that which is necessary, as determined by an objectively reasonable officer.” The current standard reaches violations of proportionality, de-escalation, and other policy obligations beyond bare necessity.

The current policy also extends the duty to intercede or report to two situations that the 2026 Proposed UOF Policy does not capture: (i) circumstances in which an officer “learns of” an unauthorized use of force without having personally witnessed it, and (ii) circumstances in which an officer observes an employee of a different law enforcement agency use force exceeding what is permitted by law. The current Policy 300 also expressly enumerates both verbal and physical intervention as available methods; the 2026 Proposed UOF Policy does not.

Finally, the current policy expressly includes a pre-use intervention obligation: “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.” The 2026 Proposed UOF Policy’s duty is reactive, triggered only by observed force.

### **7. Chokehold Prohibition (Current Section 300.3.9)**

The current Policy 300 prohibits “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.” The current policy also expressly invokes Berkeley City Council Resolution No. 52,605-N.S. (Feb. 14, 1985), which bans the chokehold “including but not limited to the carotid restraint and the bar-arm hold.”

The 2026 Proposed UOF Policy splits the prohibition into two narrower provisions (a carotid-restraint prohibition at Section 300.3.5 and a chokehold prohibition at Section 300.3.6), and it omits the express “front, side, or back of the neck” language. It also omits the reference to the 1985 Council Resolution and the bar-arm hold. Techniques that apply pressure to the back of the neck, or that constitute a bar-arm hold, may not clearly fall within the proposed policy’s definitions.

#### **8. Use-of-Force Analysis and Reporting to the PAB (Current Sections 300.11 and 300.11.1)**

The current Policy 300 imposes several specific requirements on the Department’s annual use-of-force analysis that the 2026 Proposed UOF Policy does not preserve, including:

- A required analysis of “use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.” The 2026 Proposed UOF Policy’s analysis provision omits this demographic-data requirement.
- A required breakdown by force level (“all types of force as delineated in Levels 1, 2, 3 and 4”). The proposed policy does not retain this explicit requirement.
- A required identification of “any trends in the use of force by members.” The proposed policy does not retain this explicit requirement.
- Direct quarterly reporting to the Police Accountability Board. The 2026 Proposed UOF Policy preserves quarterly reporting to the City’s Open Data Portal and annual reporting to Council, but eliminates the direct quarterly reporting channel to the PAB.

The current policy also assigns the analysis to the Professional Standards Division Captain, placing it within the command structure. The 2026 Proposed UOF Policy reassigns the function to the Office of Strategic Planning and Accountability—an administrative office—which may reduce command-level ownership of the analysis.

#### **9. Annual Joint BPD-PAB Policy Review (Current Section 300.13)**

The current Policy 300 provides that “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.” The 2026 Proposed UOF Policy (Section 300.12) provides that the Chief of Police “shall regularly review and update this

policy,” but does not require BPD and the PAB to convene jointly for that review and does not reference SB 230. The mandatory annual joint review—which gives the PAB an institutional seat at the policy-update table and is itself a mechanism for ongoing SB 230 compliance—is eliminated.

#### **10. Other Substantive Differences**

In addition to the changes summarized above, the attached chart identifies further substantive departures relating to (a) the Department’s articulation standard for use-of-force reports (deletion of “objectively necessary” from the articulation standard); (b) the Use of Restraint Device Report requirement for body wraps and spit hoods; (c) employee (non-sworn) use-of-force reporting obligations; (d) supplemental reporting during unusual occurrences such as disasters or civil disturbances; (e) the public-records compliance provision; (f) civilian complaint filing pathways with IAB and/or the PAB; (g) the supervisor’s affirmative duty to ensure command-level knowledge of and operational compliance with the policy outside of post-incident review; (h) vulnerable-populations protections (including the deletion of “people with limited English proficiency” from the vulnerable-populations list); (i) the explicit non-lethal force authorization framework, including its extension to non-sworn authorized employees; and (j) the express prohibition on using police vehicles to ram other vehicles, persons, or moving objects in a manner that would constitute lethal force.

# Appendix B

**Appendix B: Use of Force Reporting Process Workflow**

According to the Department, the use of force reporting lifecycle is as follows:

- An officer involved in a use-of-force incident reports the incident to a supervisor and documents the event in the associated police report.
- The sergeant then initiates the use-of-force investigation, reviews the relevant information outlined in policy, completes the Blue Team report, and submits it for review.
- A lieutenant reviews the report, evaluates whether the force was within policy, and forwards it to a Captain, who conducts an additional review before submitting it to IAB.

\*Each level of review typically includes evaluating the written report as well as reviewing the associated body-worn camera footage.

Item 9.c.

George Perezvelez – Civilian Oversight and Public Service  
Biography

George Perezvelez is a nationally recognized civilian oversight leader with more than 18 years of experience in police accountability, law enforcement policy, civilian review systems, and public-sector governance. He recently accepted the position of Deputy Police Ombuds for the City of Spokane, where he will continue advancing transparency, accountability, and effective public service within public safety systems.

Perezvelez currently serves as Vice President of the National Association for Civilian Oversight of Law Enforcement (NACOLE) and has served on the organization's Board of Directors for the past six years. He has been a NACOLE Certified Practitioner of Oversight (CPO) since 2018.

From 2006 to 2020, Perezvelez served on the Berkeley Police Review Commission (PRC), and since 2010 has served on the Bay Area Rapid Transit (BART) Police Civilian Review Board (BPCRB), where he currently remains an active member and Immediate Past Chair. He served multiple terms as Chair and Vice Chair of the Berkeley PRC and held leadership roles as both founding Chair and recurring Chair of the BART BPCRB through 2025.

Over the course of his career, Perezvelez has participated in the review and development of more than 400 law enforcement policies and contributed to the administrative review of more than 1,000 allegations of officer misconduct, including case analysis and disciplinary recommendations within established accountability frameworks. His work has included policy analysis involving use of force, professional standards, body-worn camera systems, complaint procedures, and constitutional policing practices. In 2025, he presented "23 Principles for an Effective Use of Force Policy" at the NACOLE Conference in Minneapolis, contributing to national discussions on police reform and accountability standards.

Perezvelez has worked collaboratively with the Office of the Independent Police Auditor (OIPA) on structural and procedural reforms related to civilian review processes within the BART Police system. He has also participated in national-level policy and training initiatives, including the U.S. Department of Homeland Security (DHS) Use of Force training and module review process, as well as U.S. Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS Office) programs focused on civil rights, accountability systems, and best practices in civilian oversight.

Beyond policing accountability work, Perezvelez's public service experience extends into the intersection of public safety and community health. He has served as a Fire Advisory Commissioner in Alameda County, California, and currently serves as a financial advisor to The HAVI (Health Alliance for Violence Intervention), supporting initiatives focused on hospital-based violence intervention and community-centered violence reduction strategies. Across local, regional, and national platforms, Perezvelez has built a career focused on strengthening accountability systems, advancing constitutional policing practices, and fostering public trust through transparent, effective, and community-centered governance.