

Police Review Commission

November 2, 2020

To: City Council Public Safety Policy Committee
From: Kitty Calavita, Chair, Police Review Commission
Re: Draft Ordinance on Police Acquisition & Use of Controlled Equipment
(Item #2, Nov. 2, 2020 agenda)

This memo supplements the recommended ordinance regulating Police Acquisition and Use of Controlled Equipment (“Controlled Equipment Ordinance”) from the Police Review Commission. Redlined and clean versions of the proposed ordinance appear in the agenda packet for your November 2, 2020 meeting.

Background: The referral of the Controlled Equipment Ordinance to the PRC and the Public Safety Policy Committee, and the PRC’s subsequent work on this item, which included review by a subcommittee, is described in the attached October 1, 2020, memo to the Council Agenda & Rules Committee.

The PRC completed review of the draft Controlled Equipment Ordinance at its October 28, 2020 meeting, and voted to send its recommendation to the Public Safety Policy Committee by the following vote: Moved/Second (Calavita/Leftwich): Ayes – Allamby, Calavita, Chang, Leftwich, Mizell, Perezvelez, Ramsey; Noes – Mikiten; Abstain – None; Absent – None.

Discussion: While the PRC overwhelmingly voted to send this proposed ordinance to you, the Commissioners did not unanimously agree on every provision. The following sections received two or more “noes” or “abstains.” These are:

1. Inclusion of the **Colt M4** under the definition of “Controlled Equipment.” (Sec. 2.100.020 (A)(8), p. 2 of clean and redlined versions). The Colt M4 rifle is a standard issue weapon furnished to every officer. Some Commissioners felt that, as such, and because use of the rifle would be reported under Policy 300, Use of Force (UOF), additional scrutiny as Controlled Equipment was unnecessary. A majority felt inclusion in this ordinance was complementary to, and not duplicative of, UOF reporting.
2. Inclusion of the **LRAD** (Long Range Acoustic Device) in the definition of “Controlled Equipment.” (Sec. 2.100.020 (A)(13), p. 2 clean and redlined.) The LRAD can be used to broadcast messages and instructions clearly and over long distances. It can also be used as a weapon by emitting sound that causes

pain or hearing damage. In the course of discussions at the subcommittee level, the Police Department modified its LRAD policy, Policy 707, to clarify its intent that BPD will not use the LRAD as a weapon. A majority of Commissioners approved omitting LRADs from this ordinance's coverage, with the stipulation that BPD revise its policy to clear state its allowable use in crowd control is only to broadcast dispersal orders, not to use sound to disperse. Opponents believed that, due to the possibility of the LRAD's misuse as a weapon, it should be included in the ordinance.

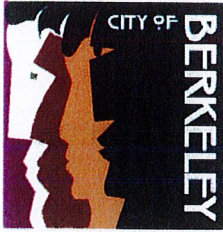
3. **Consequences** if City Council fails to approve policy. (Sec. 2.100.040 (H)(2) p 5 clean / p. 8 redlined.) The ordinance establishes a review process in which Controlled Equipment Impact Reports and Use Policies are first submitted to the PRC, and then to the Council. The ordinance states that if the Council does not approve an item of Controlled Equipment within four regular meetings of when it is first scheduled for consideration, then use of that equipment must cease. Commissioners opposed to this provision felt it created a random and dangerous "cliff," and pointed to the section requiring approval of previously-existing equipment within one year of the ordinance's passage. The majority, however, felt it important that Council act, and that approvals not be left to languish indefinitely.

Additionally, the PRC took no action on the proposed section on **Transparency** (Sec. 2.100.070, p. 7 clean / p. 10 redlined), and thinks it is most appropriate for the City Attorney to review it. While some Commissioners thought subsection (A)(1), prohibit the City from entering into agreements that conflict with the ordinance, others thought it was unnecessary to so state. Regarding subsection (A)(2), Commissioners debated its interpretation.

Finally, the original draft ordinance contained language on **mutual aid** (requiring other law enforcement agencies to adhere to BPD policies when in Berkeley) that was vigorously debated. The Commission ultimately decided this was a complex and consequential matter that deserves discussion by the full City Council.

Attachment

cc: PRC Commissioners



Police Review Commission

October 1, 2020

To: Mayor Jesse Arreguin, Chair, Council Agenda & Rules Committee
From: Kitty Calavita, Chair, Police Review Commission
Re: Proposed Ordinance on Police Acquisition & Use of Controlled Equipment

A proposed ordinance on Police Acquisition & Use of Controlled Equipment was referred to the Police Review Commission from the Agenda & Rules Committee on July 13, 2020, to be submitted to the Public Safety Policy Committee within 90 days (October 11). This is to inform you that, despite working diligently on a review of the ordinance, the PRC will not complete its work within the time requested.

On July 22, 2020, in response to the referral from your Committee, the PRC formed a subcommittee to begin an in-depth look at the proposed new regulation. That subcommittee met six times in August and September, with its final meeting September 29. The PRC then held a special meeting on September 30, to consider the subcommittee's recommendation. The goal of that meeting was to have a draft approved by the Commission, to send to the Public Safety Policy Committee for its October 5, 2020 meeting. The PRC met for four hours, but was unable to complete its review of this important ordinance.

Please know that the PRC's subcommittee and the Commission itself have been working in good faith to meet the deadline. However, because the ordinance establishes an entirely new set of processes for the PRC and the Council – regulating the acquisition, use, and reporting of police equipment in a new way -- the PRC's review process has taken time. Furthermore, the subcommittee and full Commission have sought the participation of the Police Department and members of the public in its deliberations. The Police Department is necessarily involved, due to its subject matter expertise, and members of the public have expressed strong opinions on the proposed ordinance. The subcommittee suspended its rules to allow the public to speak throughout its meetings, not just during public comment.

The PRC is confident that it will have a draft ordinance on Police Acquisition & Use of Controlled Equipment ready for the Public Safety Policy Committee to review at that Committee's November 2, 2020 meeting.

Mayor Jesse Arreguin
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Thank you for your patience and trust that we are doing a thorough review of this complex ordinance.

cc: Councilmember Susan Wengraf, Chair, Public Safety Policy Committee
PRC Commissioners