

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

POLICE ACCOUNTABILITY BOARD REGULAR MEETING

Wednesday, July 13, 2022
7:00 P.M.

Board Members:

MICHAEL CHANG, CHAIR
NATHAN MIZELL, VICE-CHAIR
KITTY CALAVITA

REGINA HARRIS
JULIE LEFTWICH
DEBORAH LEVINE

JOHN MOORE III
CHERYL OWENS
ISMAIL RAMSEY

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82237902987>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **822 3790 2987**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

1. **CALL TO ORDER & ROLL CALL** (2 minutes)
2. **APPROVAL OF AGENDA** (5 minutes)
3. **PUBLIC COMMENT** (TBD)

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.)

The Police Accountability Board and Office of the Director of Police Accountability (ODPA) were created to provide independent civilian oversight of the Berkeley Police Department. They review and make recommendations on police department policies, and investigate complaints made by members of the public against police officers. For more information, contact the ODPA.

1947 Center Street, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

4. **APPROVAL OF MINUTES** (5 minutes)
 - a. Regular meeting of June 22, 2022.
 - b. Special meeting of June 29, 2022.
5. **CHAIR AND BOARD MEMBERS' REPORTS** (5 minutes)
6. **DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT** (5 minutes)

Status of complaints; other items.
7. **CHIEF OF POLICE'S REPORT** (10 minutes)

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.
8. **SUBCOMMITTEE REPORTS (discussion and action)** (5 minutes)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

 - a. Fair & Impartial Policing Implementation – meeting to be scheduled.
 - b. Director Search – consider dissolving subcommittee.
 - c. Regulations Subcommittee – see Item #9.a. below.
 - d. Controlled Equipment Subcommittee – see Item #10.b. below.
 - e. PAB Budget Subcommittee – consider dissolving subcommittee.
9. **OLD BUSINESS (discussion and action)**
 - a. Continue reviewing draft of proposed permanent Regulations for Handling Investigations and Complaints. (1 hour)
10. **NEW BUSINESS (discussion and action)**
 - a. Transition to permanent Director of Police Accountability; Interim Director's schedule until retirement. (10 minutes)

From: Board member Owens
 - b. Attendance at NACOLE Annual Conference (in-person) Sept. 11 – 15 in Ft. Worth, TX. (10 minutes)

From: Interim Director
 - c. Consider recommendations of Controlled Equipment Subcommittee regarding Policy 709, Military Equipment for transmittal to City Council. (30 minutes)

From: Controlled Equipment Use & Reporting Subcommittee
11. **PUBLIC COMMENT** (TBD)

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

12. ADJOURNMENT (1 minute)

Communications Disclaimer

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

Communication Access Information (A.R. 1.12)

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

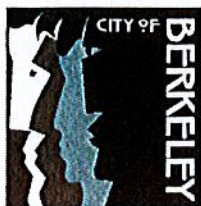
SB 343 Disclaimer

Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5th Floor, Berkeley, CA.

Contact the Director of Police Accountability (Board Secretary) at dpa@cityofberkeley.info

**POLICE ACCOUNTABILITY BOARD (PAB)
REGULAR MEETING ATTACHMENTS
JULY 13, 2022**

<u>MINUTES</u>	
June 22, 2022 Regular Meeting Draft Minutes	Page 7
June 29, 2022 Special Meeting Draft Minutes	Page 11
<u>AGENDA-RELATED</u>	
Item 8. – PAB Subcommittee List updated 6-30-2022.	Page 13
Item 9.a – PAB and Office of the Director of Police Accountability's Draft Permanent Regulations, as of 6-29-22 PAB meeting.	Page 15
Item 9.a – Memo from Board member Calavita re language for Regulations.	Page 39
Item 10.b. – The 28 th Annual NACOLE Conference, 2022 In-Person Annual Conference – Session Schedule.	Page 43
Item 10.c. – 7-7-2022 Memo from Interim Director of Police Accountability to the PAB: Recommendations of Controlled Equipment Use & Reporting Subcommittee Regarding Policy 709, Military Equipment, and Related Use Policies.	Page 45
Item 10.c. – Draft, BPD Policy 709, Military Equipment, 7-6-2022.	Page 47
Item 10.c. – BPD Policy 607, Operations Planning and Deconfliction, 6-29-2022.	Page 83
Item 10.c. – Police Equipment and Community Safety Ordinance Impact Statements Report. (Approved by Council.)	Page 89
Item 10.c. – BPD Policy 303, Control Devices and Techniques, 6-29-2022. (Approved by Council.)	Page 161
<u>COMMUNICATIONS</u>	
2022-06-30 Email to City Council, City Manager, and Chief of Police re PAB commendations of BPD personnel.	Page 167
Commissioner Attendance Report for the period January 1 through June 30, 2022.	Page 175



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Wednesday, June 22, 2022, 7:00 P.M.

No physical location; meeting held exclusively through videoconference and teleconference.

1. CALL TO ORDER & ROLL CALL BY CHAIR CHANG AT 7:00 P.M.

Present: Board Member Michael Chang (Chair)
Board Member Nathan Mizell (Vice-Chair)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member John Moore
Board Member Cheryl Owens
Board Member Ismail Ramsey

Absent: Board Member Regina Harris

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability

BPD Staff: Interim Chief Jennifer Louis, Lt. Melanie Turner

2. APPROVAL OF AGENDA

Motion to approve the agenda.
Moved/Second (Calavita/Leftwich) **Motion Carried by general consent**

3. PUBLIC COMMENT

5 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of June 8, 2022.
Moved/Second (Calavita/Moore) **Motion Carried by general consent**

5. CHAIR AND BOARD MEMBERS' REPORTS

Chair Chang reported on the PAB table at the Juneteenth Festival and thoughts about improving outreach.

6. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT

The Interim Director reported:

- No new complaints filed since the last meeting. Investigation into the death at Alta Bates is currently tolled under POBRA.
- Thank you to Board members who staffed the PAB table at Juneteenth.
- Reminder that the NACOLE Annual Conference will be Sept. 11-15 in Ft. Worth, TX.
- Budget update: of the two additional positions requested, the analyst position is in Tier 1 and the second investigator is in Tier 2. Council will approve a budget on June 28th.

7. CHIEF OF POLICE'S REPORT

Interim Chief Louis reported:

- 2 cases of interest: 1) Shooting at Channing and 6th on June 13. Male juvenile shot in neck but survived. Detectives working on case. 2) Assault and vandalism June 17 started in McDonalds on University & Shattuck where victim robbed and punched; suspect ran and later hit elderly man using a hard hat. Bike officers located suspect; arrested for multiple crimes.
- Several pending retirements and resignations among sworn staff. Currently 150 in solo officer status; 4 in FTO (1 near end and 3 just started); 1 in academy; and 5 conditional offers for officers entering academy July 5.
- Community engagement activities:
 - BPD at Juneteenth; respect comments about separating PAB and BPD booths.
 - Chief offered a joint outreach event – PAB collaborate with Community Services Bureau.
 - This afternoon BPD participated in Special Olympics torch run. Took from Albany PD and passed to UCPD; torch eventually arrives at opening ceremony of Special Olympics.

Interim Chief Louis answered questions from Board members

8. SUBCOMMITTEE REPORTS (discussion and action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Fair & Impartial Policing Implementation – Chair Calavita: haven't met since last meeting. Have approved idea of submitted report annually or biannually on implementation progress.

- b. Director Search – Co-Chair Levine: she and Board member Moore were on panel interviewing DPA candidates; was meaningful and exhausting. Made recommendations on top 3 and assume those names will be sent to Council.
- c. Regulations Subcommittee – renew term of subcommittee.

Motion to renew the term of the Regulations Subcommittee.

Moved/Second (Calavita/Leftwich) **Motion Carried by general consent.**

Board member Mizell withdrew from the Controlled Equipment Use & Reporting Subcommittee.

9. OLD BUSINESS (discussion and action)

- a. Proposed Equipment Impact Statements, Use Policies, Military Equipment Policy, and Annual Use Report
 - i) Consider communicating to the City Council more specifics regarding the shortcomings of the Impact Statements and Use Policies.
 - ii) Review Annual Use Report and make recommendations to the Council for modification or revocation of authorization to use.
 - iii) Consider asking the Council to postpone its consideration of Policy 709 on Military Equipment, and to refer Policy 709 to the PAB for review and recommendations.

The Interim Director reported on City Council's June 21 actions affecting possible PAB action: i) Council passed revised Impact Statements and Policy 303, thus mooting any possible PAB action on those items; ii) Council referred the Annual Use Report to the PAB; return by September 24 ; iii) Council referred to PAB for review and return with recommendations Policy 709 and Use Policies other than Policy 303, by July 26.

Chair Chang appointed Board member Ramsey to Controlled Equipment Subcommittee, with the consent of the Board.

- b. Continue reviewing draft of proposed permanent Regulations for Handling Investigations and Complaints.

Discussed; to be continued.

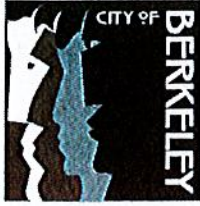
10. PUBLIC COMMENT

3 speakers.

11. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Leftwich/Calavita) **By general consent, the meeting was adjourned at 9:55 p.m.**



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
SPECIAL MEETING
MINUTES
(draft)

Wednesday, June 29, 2022, 7:00 P.M.

No physical location; meeting held exclusively through videoconference and teleconference.

1. CALL TO ORDER & ROLL CALL BY CHAIR CHANG AT 7:00 P.M.

- Present: Board Member Michael Chang (Chair)
Board Member Nathan Mizell (Vice-Chair) (left 9:36)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member John Moore
Board Member Cheryl Owens
Board Member Ismail Ramsey (left 9:41)
- Absent: Board Member Regina Harris
- ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability
- BPD Staff: Lt. Dan Montgomery

2. PUBLIC COMMENT

1 speaker.

3. OLD BUSINESS (discussion and action)

Continue reviewing draft of proposed permanent Regulations for Handling Investigations and Complaints.

Motion to revise Section IV and a create a new Section V to read as follows:

IV. INVESTIGATIONS REQUESTED BY THE BOARD

The Board may request that an investigation be initiated by the ODPA upon a vote of five Board members.

V. COMPLAINTS FILED BY THE BOARD

Subsequent to an investigation pursuant to Section IV, the ODPA may recommend to the Board that a complaint be filed by the Board. Upon a vote of five Board members, the Board may file a complaint. Criteria for Board-filed complaints include:

1. Whether the complaint alleges prima facie misconduct;
2. The seriousness of the alleged misconduct;
3. The timeliness of the complaint;
4. Whether a formal complaint has already been filed about the incident.

Rules of procedure (including, but not limited to, the sufficiency of the complaint) shall follow those set out for formal complaints initiated by aggrieved parties or percipient witnesses of alleged police misconduct. Two exceptions to this general principle apply:

- 1) Regulatory references to "complainant" are moot.
- 2) Only subject officers, their representatives, and witnesses shall be interviewed and testify.

Moved/Second (Calavita/Leftwich) **Motion Carried**

Ayes: Calavita, Chang, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: Harris

Other sections discussed and revisions made by general consensus.

4. PUBLIC COMMENT

No speakers.

5. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Leftwich/Moore) **By general consent, the meeting was adjourned at 9:54 p.m.**

**POLICE ACCOUNTABILITY BOARD
SUBCOMMITTEES LIST
6-30-2022**

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21 Renewed 6-22-22	Calavita Chang Leftwich Owens <u>Public:</u> Kitt Saginor	Chang	Lt. Dan Montgomery
Director Search Formed 8-4-21	Levine Mizell Moore <u>Public:</u> Rivka Polatnick Marc Staton	<u>Co-chairs</u> Levine Moore	
Fair & Impartial Policing Implementation Formed 8-4-21	Calavita Moore Owens Ramsey <u>Public:</u> George Lippman Elliot Halpern	Calavita	Sgt. Peter Lee
Mental Health Response Formed 11-10-21 Scope expanded 3-9-22	Harris Levine <u>Public:</u> Elena Auerbach		Sgt. Joe LeDoux
Fixed Surveillance Cameras (Policy 351) Formed 2-9-22	Mizell Ramsey		
PAB Budget Formed 2-23-22	Levine Harris Owens	Owens	
Controlled Equipment Use & Reporting Formed 5-11-22	Moore Ramsey	Moore	Capt. Rico Rolleri Sgt. Peter Lee Sgt. Joe LeDoux

**Police Accountability Board
and
Office of the Director of Police Accountability
Regulations for Handling Investigations and Complaints**

Preamble

These regulations for handling complaints against sworn members of the Berkeley Police Department (BPD) and investigations are issued in accordance with City of Berkeley Charter Article XVIII, Section 125.

I. GENERAL PROVISIONS

A. Definitions

The following definitions shall apply:

1. Administrative Closure: Closure of a complaint before findings and recommendations are sent to the Chief of Police.
2. Aggrieved party: Any person who is the subject of alleged police misconduct.
3. Allegation: An assertion of specific police misconduct.
4. Board member: A member of the Police Accountability Board appointed by the City Council.
5. Chief; Police Chief: Chief of the Berkeley Police Department.
6. City's discovery of alleged misconduct: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. Complaint: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. Complainant: An aggrieved party or an eyewitness who files a complaint with the Office of the Director of Police Accountability.
9. Complaint hearing: A confidential personnel hearing regarding alleged police misconduct as referenced in City Charter Article XVIII, Section 125.
10. Days: Calendar days unless otherwise specified.
11. Director of Police Accountability (Director): The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).

Section I.B.

12. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying Departmental policy.
13. Eyewitness: A percipient witness.
14. Formal complaint: A complaint filed on the ODPa complaint form by a member of the public or a complaint initiated by the Board upon the Director's recommendation.
15. Hearing Panel: Three Board members impaneled to conduct a confidential hearing of alleged police misconduct.
16. Informal complaint: A communication not on the official ODPa complaint form from any member of the public that identifies an officer by name, badge number, other identifying features, or specific circumstances, and alleges an act of police misconduct.
17. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODPa.
18. Investigation: The fact-finding process engaged in by the ODPa staff.
19. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
20. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
21. Preponderance of the evidence: Standard of proof in which the evidence on one side outweighs, or is more convincing than, the evidence on the other side, but not necessarily because of the number of witnesses or quantity of evidence.
22. Subject officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
23. Toll: To suspend a time period.
24. Witness officer: A sworn employee of the Berkeley Police Department, other than the subject officer, who witnessed the events described in the complaint or has relevant personal knowledge of those events.

B. Confidentiality

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley Police Department personnel. ODPa staff will likewise have access to such confidential information. It is vitally important to the integrity of the complaint process that all parties understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. The testimony of any sworn employee of the Police Department is

Section I.B.

subject to the due process and confidentiality provisions of applicable state and federal law.

2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated.
3. Closed hearings; effect on public records. All confidential complaint hearings, confidential investigative records, and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. However, any public records included in, or attached to, investigative reports shall remain public records.
4. Handling confidential information. Each Board member shall shred or return to ODPa staff all hard copies of confidential material and delete all confidential material sent electronically, at the close of any proceeding or as soon as the information is no longer needed. Board members shall inform ODPa staff after the confidential material has been shredded or electronically deleted.
5. Effect of violation. A Board member who violates confidentiality before or during a confidential complaint hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a closed session of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential complaint hearings for the remainder of the Board member's term.

II. FORMAL COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

A. Initiating a formal complaint

1. Complaint form. A formal complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. Complaints must include language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint, to consult an attorney before filing a

Commented [KL1]: Ask CAO

Section II.A.

complaint. The form shall require the complainant to sign the following statement: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath."

2. Who may file. Aggrieved parties, as well as eyewitnesses (percipient witnesses) to alleged police misconduct, may file a complaint. Complaints may also be initiated-filed by the Board upon the recommendation of the Director, upon and a vote of five Board members ~~to authorize an investigation~~. Complaints shall be signed by the complainant, except for complaints initiated-filed by the Board.
3. Filing period. A complaint must be filed within 180 days of the alleged misconduct, except that the 180 days shall be tolled if:
 - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
 - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.
4. Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be submitted by the Director to the Board for administrative closure at the next meeting that allows the complainant to be provided at least 5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation.
5. Right to representation. Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPa is notified that a complainant or subject officer is represented, then the ODPa shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives, as well.

Commented [LK2]: Board revised 6-29-22 following revision to Secs. IV and new V.

B. Mediation

1. Election
 - a. ODPa staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. E.1 below.

Section II.B.

- b. If the complainant elects mediation, ODPa staff shall issue a Notice of Complaint and Request for Mediation to the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
 - c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before the mediation session concludes.
 - d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and heard at a confidential complaint hearing, unless the subject officer withdraws from mediation.
2. Completion
- a. After receiving notice from the mediator that a mediation has concluded, ODPa staff shall close the case and inform the Board.

C. Complaint investigation

1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's discovery by a person authorized to initiate an investigation of the alleged misconduct, unless a Government Code sec. 3304(d) applies, except:
 - a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPa shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPa shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding.
 - b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.N.
2. ~~Transmittal of complaint.~~ ~~Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed.~~
2. Notice of Complaint and Allegations. Within 30 days of a complaint filing, rejection of a recommendation for administrative closure, or officer's rejection of a mediation offer, the ODPa shall prepare and send a Notice of Complaint and Allegations to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject

Commented [KL2]: 6-29-2022 DPA to combine [former] sections 2 & 3.

Section II.C.

officer. The Notice of Complaint and Allegations need not be sent if the complainant requests mediation, or the Director recommends administrative closure. A copy of each complaint accepted by the Director shall be sent to Board members within 30 days of filing.

After the initial Notice of Complaint and Allegations is sent, ODPa staff may add, modify, or remove allegations as they deem appropriate, with a brief explanation for any such changes, in a revised Notice of Allegations that is sent to the complainant, the Chief or Internal Affairs, and each subject officer. Notices under this section may be sent by hard copy or electronically.

3. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPa staff with the schedules of all sworn employees of the Police Department.
4. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence.
5. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, unless state or federal law forbids the production of those records and information.
 - a. The Director and/or the PAB may issue subpoenas to compel the attendance of persons and the production of books, papers, and documents, including but not limited to photographic, audio, and video evidence, as needed to carry out their duties and functions.
 - b. While an investigation is in process or tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
 - i. The original Communications Center tapes relevant to the complaint.
 - ii. All police reports, records, and documentation, including body-worn camera video.
 - iii. Names, addresses, telephone numbers, and statements of all witnesses.
6. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an

Commented [KL3]: Flag for discussion with full Board. Does the Board have a role in investigations? Also, does subpoena power extend to PAB during F&R process? (See Charter Sec. 3(a)(5). Does the Charter allow for additional investigatory work after F&R are presented but before a hearing?

Section II.C.

interview shall contact the Director or the Investigator immediately to state the reason for their unavailability.

7. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act¹ ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond.

Both the subject officer and the complainant retain all their constitutional rights throughout the process, and any such exercise shall not be considered by the Board in its disposition of a complaint.

D. Pre-hearing complaint disposition.

1. Administrative Closure

a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- i. The complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- ii. The complainant requests closure.
- iii. Staff have been unable to contact the complainant despite at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- iv. The complaint is moot, including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.

¹ Government Code Sec. 3300 et seq.

Section II.D.

b. Procedure

A complaint may be administratively closed by a majority vote of Board members during closed session at a meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 5 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified.

2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.E.1. If the subject officer enters a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them.

E. Initial submission and consideration of investigative findings and disciplinary recommendations.

1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and disciplinary recommendations to the Board in a closed session and convene a confidential complaint hearing if the Board requests it by a majority vote. This deadline may be extended as provided under Section II.M.
2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is "preponderance of the evidence."
3. Categories of Findings.

The Director's recommended finding shall include one of the following categories:

 - a. Unfounded: The alleged actions of the police officer did not occur.
 - b. Not Sustained: The available evidence can neither prove nor disprove whether the alleged actions of the police officer occurred.
 - c. Exonerated: The actions of the police officer occurred, but were found to be lawful, justified, and/or within policy.
 - d. Sustained: The actions of the police officer were found to violate law or department policy.
4. Recommendation of discipline and level of discipline. If the Director recommends a "sustained" finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in

Section II.E.

Penal Code 832.7, as enacted pursuant to Senate Bill 1421 on January 1, 2019, the Director must include a recommendation regarding the level of discipline.

Commented [LK4]: Bd mbr Leftwich suggests deleting but this is taken from Charter sec. 18(m) (and now I think we should add, after 1421, "on January 1, 2019" as the Charter states).

5. Board decision. Upon reviewing the Director's investigative evidence ~~(other than body-worn camera footage)~~ and the Director's findings and disciplinary recommendations, and viewing any relevant body-worn camera footage, the Board shall proceed as follows:

Commented [LK5]: Subcomm. 5-4: flag for full Board – potential prejudicial effect of BWC footage at this stage, prior to hearing.

Commented [KL6R5]: Full Board rejected 6-22-22

- a. If the Board affirms or proposes a sustained finding or a recommendation of discipline on any allegation, or decides that further fact-finding is warranted, a confidential complaint hearing ~~shall~~ may be convened on all allegations in the complaint upon the election of the subject officer. ~~The Board may request that ODPA staff conduct further investigation as needed.~~
- b. If the Director and the Board agree on all proposed findings, none of the findings are "sustained," and the Board decides there is no need for a hearing, the Board shall send its findings to the Chief of Police.
- c. If the Board modifies the Director's findings, none of the findings are "sustained," and the Board decides there is no need for a hearing, the Board shall send its findings to the Chief of Police.
- d. All findings and recommendations must be sent to the Chief of Police within 195 days of the City's discovery of alleged misconduct, except if extended as provided under Section II.M.2.

Commented [LK7]: Board added 6-22-22

Commented [KL8]: 3-22-22: Very complicated issue that should be discussed at full Board.

Commented [LK9]: See comment from Bd mbr Leftwich at II.L.1, p. 19. They are Board's findings but Director (or ODPA staff) performs the act of sending. Suggest, "The Board's findings shall be sent to the Chief of Police."

Commented [LK10R9]: 6-29-22 Board preferred to leave as is.

Commented [LK11]: 6-29-22 Board preferred to leave as is.

F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.

1. Time. If the Board decides to move forward with a confidential complaint hearing, it must be held within 60 days of the date the ODPA has completed its investigation.
2. Scheduling hearing. ODPA staff shall determine the availability of subject officers and complainant before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers identified in the same complaint do not share a common day on duty.
3. Hearing Panel. ODPA staff shall secure a Hearing Panel to conduct the confidential complaint hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which a majority of Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel.
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as

Section II.F.

possible. If substituted within 7 days of a hearing, the subject officer and complainant retain the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing. The hearing will be continued until the challenge can be resolved.

5. Effect of continuance. If a hearing is rescheduled due to the unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened.
6. Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel.
7. Hearing Packet. At least 14 days before the hearing date The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation, and provide access to any relevant body-worn camera footage. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command Officer, and the Police Chief. [The complainant shall receive a Hearing Packet without information protected from disclosure by state law. Witness officers and civilian witnesses shall receive a copy of only their interview transcript.

Commented [KL12]: Ask City Attorney if complainant can be entitled to more materials, or to redacted materials. Trying to align with specific language of Penal Code 832.7.

G. Board member impartiality; recusals; challenges

1. Impartiality.
 - a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential complaint hearings, they shall consider all viewpoints and evidence.
 - b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.
 - c. No Board member with a personal interest or the appearance thereof in the outcome of a hearing shall sit on the Hearing Panel. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs or affiliations
Examples of personal interest include, but are not limited to:

Section II.G.

- i. a familial relationship or close friendship with the complainant or subject officer;
 - ii. witnessing events material to the inquiry;
 - iii. a financial interest in the outcome of the inquiry;
 - iv. a bias for or against the complainant or subject officer.
- d. A Board member who violates Section G.1.b above, before or during a confidential complaint hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendaize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential complaint hearings for the remainder of the Board member's term.
2. Recusal. Board members who recuse themselves for personal interest must do so as soon as they become aware of it.
 3. Disclosure of ex parte contacts. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing.
 4. Challenges to Hearing Panel member
 - a. Basis for Challenge

A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing as defined in Sec. II.G.1.c. shall not sit on the Hearing Panel.
 - b. Procedure
 - i. Within 7 calendar days from the date of mailing of the notice of a confidential complaint hearing, which includes the names of the Board members constituting the Hearing Panel, or 10 calendar days before the hearing date, whichever occurs first, the complainant or the subject officer(s) may file with the ODPa a written challenge for cause to any Hearing Panel member. Such challenge must specify the nature of the personal interest or perceived bias, accompanied by all evidence and argument supporting the challenge.
 - ii. The Director of Police Accountability or their designee shall notify the challenged Board member and send them a copy of

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the challenge and supporting materials within 1 business day after receipt of the challenge.

- iii. A Board member challenge and a Board member's response to being challenged may be filed via email to dpa@cityofberkeley.info. ODPa staff may serve a notice of challenge and supporting materials, and response to a challenge and supporting materials, via email.
 - iv. If the Board member agrees to recuse themselves, the Director or their designee shall ask another Board member to serve.
 - v. If the Board member does not agree that the challenge is for good cause, the Board member has 3 calendar days from the date of contact by staff to file a written response with supporting materials, if they desire, and ODPa staff must send the response and supporting materials to the challenging party within 1 business day of receipt. The Director or their designee shall convene a special meeting of the two other Hearing Panel members to occur as soon as practicable to hear the challenge. For the challenge to be granted, both Board members must agree that the challenge is for good cause using the clear and convincing standard. If the challenge is granted, the Director or their designee shall ask another Board member to serve. If there is not unanimous agreement by the two Board members, the challenged Board member will be allowed to serve. "Clear and convincing" means evidence that is so clear as to leave no substantial doubt; or that shows a high degree of probability."
 - vi. At the special meeting to hear the challenge, the party making the challenge shall, under oath, reiterate the basis of the challenge for the Board members. All parties will be allowed the opportunity to present arguments, witness testimony and answer questions under oath. Testimony and arguments presented at the special meeting shall be recorded.
 - vii. If a challenge to a Board member is rejected, and the Board member serves, the written challenge and the Board member's written response shall be part of the complaint file. If a challenge is upheld, the Board members voting to uphold must prepare a written decision explaining their reasoning. This decision will be furnished to the challenging party and the challenged Board member, and is confidential.
5. Replacement of Board members
- a. If a challenge to a Board member is upheld, DPA staff shall ask another Board member to serve.

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b. In cases where the full Board sits as the Hearing Panel, a Board member who agrees to a challenge or is successfully challenged will be replaced by the alternate Board member.

6. Tolling of time

A challenge to a Board member that is granted at the request of the subject officer shall toll any BPD disciplinary time period.

H. Continuanance requests; other pre-hearing motions

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for the request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i).

2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODPa staff no later than 10 days before the scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. ODPa staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

Commented [KL13]: Add language to section above re notice to parties of new witnesses or evidence and time frame. (IF further investigation is authorized.)

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision.

3. Procedural issues or objections. The complainant and subject officer shall ~~should~~ raise any procedural issues or objections by submitting them in writing to the Director at least 7 days before the hearing date.

4. Pre-hearing submission of questions. The complainant, subject officers, or their respective representatives may submit proposed questions related to the incident in writing at least three business days before the hearing to ODPa staff. Hearing Panel members may ask these questions if they deem them appropriate and useful.

I. Hearing procedures

Section II.I.

1. Who may or must be present at hearing. Hearings are closed to the public. The Director, Investigator, and Hearing Panel members may be present during the entirety of the hearing. The complainant and the subject officer must be present to answer questions from Board members, subject to state law. An attorney or other representative (up to two for each complainant and subject officer) may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for ensuring their representative's presence at the hearing.
2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing to another date due to the unanticipated unavailability of a witness or a representative.
3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained.
4. Good cause for failure to appear at complaint hearing.
 - a. A complainant or subject officer who fails to appear at a complaint hearing due to significant, unforeseen circumstances that could not have been anticipated has 7 calendar days from notice of the dismissal or notice of findings to request that the complaint be re-opened and a hearing or re-hearing held. The request must be made to the ODPa in writing and state the reason for not attending the hearing.
 - b. ODPa staff shall notify the Hearing Panel members and the opposing party of the request. On the same date, staff shall notify the requesting party that they must submit, within 5 business days, documentary or other evidence (such as witness statements, a doctor's note, or an obituary) to support their claim of inability to attend the hearing.
 - c. Staff shall schedule a special meeting date to hear the request, and then send written notice thereof. At least 72 hours' written advance notice of the meeting must be sent. The notice to the opposing party and Hearing Panel members shall include the requesting party's evidence. The opposing party may submit a written response before or at the special meeting.
 - d. At the special meeting, the requesting party will have the opportunity to present their case to the Hearing Panel members, who may ask questions of the requesting party. The opposing party may not ask questions of the requesting party but may present their argument in opposition. Hearing Panel members may ask questions of the opposing party. Each side shall have an opportunity for rebuttal.

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- e. Following the parties' arguments, everyone except ODPa staff is excused while the Hearing Panel members deliberate. In determining whether good cause has been shown, the Hearing Panel members shall consider the reason for not appearing, the prejudice to the opposing party, and other relevant information. The finding of good cause must pass by a majority of the Hearing Panel. The decision of the Hearing Panel will be announced orally and issued in writing. If good cause is found, staff will schedule a hearing or re-hearing.
- f. A re-hearing granted at the request of the subject officer shall toll any BPD disciplinary time period and the one-year investigatory time period under Government Code section 3304(d).
5. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued (i.e. delayed) until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous.
6. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing.
7. Viewing body-worn camera footage. Hearing Panel members, complainants and their representatives, and subject officers and their representatives (in accordance with BPD policy), may view relevant body worn camera footage in advance of the hearing. Relevant body-worn camera footage may also be shown during the hearing.
8. Taking testimony at the hearing. Testimony at the hearing will include the following elements:
 - a. The complainant, witnesses, and officers will be called into the hearing room to testify separately. Hearing Panel Members may ask questions submitted previously in accordance with Section II.H.4, if deemed appropriate and useful.
 - b. The complainant will generally testify first and may be accompanied by their representatives. The complainant and/or their representatives may make a statement or rely on their interview statement. The representatives may ask the complainant questions. Hearing Panel Members may then ask questions. After questioning is completed, the complainant or their representatives will have up to 15 minutes to provide a summary of their case and a closing statement.
 - c. The complainant and their representative will be excused from the hearing room after their testimony or representation is completed.
 - d. Any civilian witnesses will be called into the hearing room to testify separately. They may make a statement or rely on their interview

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statement. Hearing Panel Members may ask questions. After their questioning is completed, witnesses will be excused.

- e. The subject officer(s) and any witness officers will be called into the hearing room to testify separately, and will not be present during the complainant's and civilian witness's testimony. Subject officer representatives may be present for all of their subject officer's testimony. Subject officers may make a statement or rely on their interview statements. The subject officer may be questioned by their representative, after which the officer may be questioned by up to 2 Hearing Panel Members, unless the officer waives this limitation. After questioning is completed, subject officers or their representative will have up to 15 minutes to provide a summary of their case and a closing statement.
- f. Witness officers will then be called into the hearing room. They may make a statement or rely on their interview statement. Hearing Panel Members may then ask questions. After questioning is completed, the officer witness(es) will be excused.

The Duty Command Officer (DCO) may be present during the subject officer and witness officer's testimony. The DCO appears on behalf of the Berkeley Police Department to answer questions from the Board about Department policies and procedures. The DCO is not to testify as to the events pertaining to the complaint, offer any opinion about whether misconduct occurred, or act as a representative of a subject officer.

- g. Board members may call any participant back into the hearing room for follow-up questions.
9. Maintaining order. No person at the hearing shall become subject to undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient.

J. Evidence

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be considered if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Subpoenas. The Director and/or Board may issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out their duties and functions.

Section II.J.

3. Procedure. Evidence shall be considered in accordance with the following provisions:
 - a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and questioned.
 - b. All oral evidence shall be taken under oath.
 - c. The Chairperson shall exclude irrelevant evidence.
 - d. The Chairperson shall conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPa staff will answer Board members' questions on the evidence, points of law, and procedure.
 - e. The City Attorney's opinion shall be sought whenever the interpretation of a City Ordinance or the City Charter is contested and pivotal to the case, or when a case raises substantial legal issues of first impression. If a conflict of interest exists for the City Attorney, outside counsel may be obtained (Article XVIII, Section 125 (15) (b).)
 - f. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
 - g. If either party requests that the hearing be continued at a later date to consider motions or points of law, any applicable BPD disciplinary time limit may be tolled for the period of such continuance. The Hearing Panel, in consultation with the parties, shall decide on the continuance and any possible tolling.
4. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a matter relating to the incident in question by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

Commented [KL14]: Kitty 1-20-2022 would like to clarify what this phrase means. 3-31 City Attorney will be asked about this (Board's role, if any in extending subpoena power)

Commented [LK15]: At 11-30 meeting, Lt. Montgomery said 240 days cannot be extended unless subject officer agrees. Even if officer agrees with PAB to toll, the BPD is still abiding by the original 240? Staff would like to consult with City Attorney's office.

K. **Deliberation and Findings**

1. Deliberation. After the hearing has concluded, the Hearing Panel shall deliberate outside the presence of everyone except ODPa staff. The Hearing Panel shall only consider information provided in the hearing packet, through body-worn camera footage, or during the hearing.
2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability, as set forth in Section II.E.3. All actions of the Hearing Panel shall be by majority vote of those Board members present.

Section II.K.

3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing, unless extended as provided under Section II.M.2. The decision shall also be transmitted to the complainant and the subject officer(s).

4. Content of findings.

a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.

b. If the Board modifies or rejects the DPA's findings and recommendations, the Director shall, if the Hearing Panel desires, reconvene the Hearing Panel within 10 days of the confidential hearing to review and approve the written findings draft prepared by the Director, except as stated below.

If the Director is unable to reconvene the hearing panel or there is insufficient time to meet the investigative deadlines, the Director will circulate the draft findings separately and only once to Hearing Panel members for comment and feedback to the Director, who shall not share the comments or feedback of Panel members with one another. The Director shall prepare and submit the findings and recommendations.

b. If the Hearing Panel modifies or rejects the Director's findings and recommendations, the Director shall prepare and electronically submit a written draft of the new findings and recommendations to the Hearing Panel. If any member of the Hearing Panel advises the Director that the member seeks to make substantive changes to the draft, the Director shall reconvene the Hearing Panel to ensure the Panel has reached consensus on the findings and recommendations.

b. If the Hearing Panel modifies or rejects the Director's findings and recommendations, the Director shall prepare and electronically submit a written draft of the revised findings and recommendations to the Hearing Panel majority and inquire about their availability for a potential reconvening of the panel. If any member of the majority advises the Director that the member seeks to make substantive changes to the draft, the Director shall attempt to reconvene the Hearing Panel majority to ensure they have reached consensus on the findings and recommendations.

If the Director is unable to reconvene the Hearing Panel majority or there is insufficient time to meet the investigative deadlines, the Director will ask the majority to submit comments and feedback in writing. The Director will not share the comments or feedback among Hearing Panel members, but will, in the Director's best judgment,

Commented [LK16]: This section b. and alternate language proposed by Bd. Member Leftwich was flagged for 5-4 meeting but not discussed. New proposed language below.

Commented [KL17]: 6-29-2022 Bring back revised language for next meeting.

Commented [LK18]: Director okay with this but believes additional language to address situations where meeting can't be convened.

Commented [LK19]: NEW language for consideration at 7-13-22 meeting.

Section II.K.

harmonize their opinions in preparing final findings and recommendations.

- b.c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning, unless the dissenter agrees with the Director's finding and recommendation.

L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.E.5.a. above, or from the Hearing Panel under Section II.L.4.b. above, the Chief of Police shall take one of the following actions:
 - a. Issue a final decision if the Chief agrees with the Director or the Hearing Panel.
 - b. Submit a tentative decision including any disagreement with the Director or the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision disagreeing with any findings or recommendations of the Director or Board, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.
3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.
4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.M.2.

Commented [LK20]: Bd mbr Leftwich 4-26 notes should say "Board" for consistency with Sec. II.E.5., p. 9 above. However they are Board's findings, which are sent by the Director.

M. Time limits; extensions; tolling.

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies.
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted

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by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days.

3. Tolling. If a subject officer is unavailable for an interview with ODPA staff or to attend a confidential personnel hearing due to any leave of absence, the 240-day time limit for complaint investigation and notification of discipline under Section 18(d) of Article XVIII of the City Charter shall be tolled pending availability of the officer. This provision shall apply only when the subject officer's leave of absence exceeds 14 consecutive days.

III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT

A. Application

This Section III applies to complaints that a member of the public files with the Police Department only.

B. Procedure

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code.
2. If a finding is "not sustained," "unfounded," or "exonerated," the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief's determination to the Director. The Director, if appropriate, may request to review all files, transcripts, and records related to the complaint.
3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
 - a. The objection is accepted and the Board will convene to conduct a review based on the investigative record provided by the Department; or
 - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.
4. If the Director decides that the Board will conduct a review, ODPA staff shall ask the Board to conduct a review of the investigative record at a closed session meeting.

Section III.B.

- a. At the meeting, only Board members and ODPa staff will be present. A Duty Command Officer may be present.
 - b. The Board shall evaluate the investigative record to determine whether the complainant's objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief's decision is not supported by the evidence in the record.
 - c. All action of the Board must be by majority vote.
5. The Board must, within 45 days of the date the Director accepts an objection:
 - a. Dismiss the complainant's objection;
 - b. Issue a report agreeing with the Chief's determination; or
 - c. Issue a report disagreeing with the Chief's determination if the Board finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.
 6. Within 15 days of receiving a Board's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections.
 7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief, and send a final determination with a written explanation to the Director, the Board, and the Chief.
 8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies.

IV. INVESTIGATIONS INITIATED REQUESTED BY THE BOARD

The Board may request that an investigation be initiated by the ODPa upon a vote of six five Board members.

Commented [LK21]: Section IV and V revised as shown by a vote of the Board on 6-29-22.

V. COMPLAINTS FILED BY THE BOARD

Subsequent to an investigation pursuant to Section IV, the ODPa may recommend to the Board that a complaint process be initiated filed by the Board. Investigations may be initiated by the Board upon a vote of six Board

Section IV.

~~members. Subsequent to an initial inquiry or investigation, a formal complaint may be initiated by the Board in cases of potential serious misconduct, by a vote of six Board members. Upon a vote of five Board members, the Board may file a complaint. Criteria for Board-filed complaints include:~~

- ~~1. Whether the complaint alleges prima facie misconduct;~~
- ~~2. The seriousness of the alleged misconduct;~~
- ~~3. The timeliness of the complaint;~~
- ~~4. Whether a formal complaint has already been filed about the incident.~~

Rules of procedure (including, but not limited to, the sufficiency of the complaint) shall follow those set out for formal complaints initiated by aggrieved parties or percipient witnesses of alleged police misconduct. Two exceptions to this general principle apply:

- 1) Regulatory references to "complainant" are moot.
- 2) Only subject officers, their representatives, and witnesses shall be interviewed and testify.

VI. INFORMAL COMPLAINTS

- A. An informal complaint is a communication not on the official ODPa complaint form from any member of the public that identifies an officer by name, badge number, other identifying features, or specific circumstances, and alleges an act of police misconduct. The individual who initiates an informal complaint may request anonymity (i.e., remain anonymous to all, including ODPa staff) or confidentiality (i.e., remain known only to ODPa staff and Board members).
- B. ODPa staff shall contact the individual to explain how to file a formal complaint.
- C. If ODPa staff is unable to contact the individual, or if the individual declares their intention not to file a formal complaint, staff shall agendaize the informal complaint for closed session at the next PAB meeting with notice to the named officer. At said meeting, the Board shall determine whether to initiate an investigation under Section IV. based, in part, on the following considerations:
 1. Whether the informal complaint alleges prima facie misconduct;
 2. The seriousness of the incident;
 3. The timeliness of the complaint;
 4. Whether a formal complaint has already been filed about the incident.

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- D. The identity of an individual who submits an anonymous or confidential informal complaint shall remain anonymous/confidential, if requested.
- E. A complaint filed anonymously on the official ODPa complaint form shall be treated as an informal complaint

VII. COMPLAINT FOLLOW-UP

After the Chief of Police or City Manager has issued a final decision on a complaint, ODPa staff shall invite the subject officer(s), complainant, and witnesses who testified, to participate in an exit interview or survey, and ODPa staff shall conduct the exit interview or survey with those who are willing.

VIII. AVAILABILITY AND AMENDMENT OF REGULATIONS

- A. These Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPa staff shall furnish them to any person requesting a copy.
- B. Amendments to these Regulations require a majority vote of the Board and ratification by the City Council.

INFORMAL COMPLAINTS

The Regulations Subcommittee--together with Interim Director Lee, former Investigator Norris, and Lt. Montgomery--spent a substantial amount of time discussing this section. The Subcommittee agreed—I believe unanimously—that it is important for members of the public to have the ability to register a complaint informally.

I feel strongly about including this ability of any member of the public to register an informal complaint for several reasons.

- 1) **There may be reasons why an individual might prefer not to file a formal complaint**, including but not limited to fears of retaliation, embarrassment, criminal liability etc. It is in the interest of fulfilling our police oversight function (“promot[ing] public trust through independent, objective, civilian oversight of the Berkeley Police Department”, Berkeley City Charter, Section 125 (1)), that all legitimate concerns of the public have an avenue for redress, if appropriate.

In its 2021 Report on best practices, The National Association of Civilian Oversight (NACOLE) wrote in its “Complaint Process” section as its Number 1 recommendation: “There should be several alternative modes for filing a complaint and the process should be as easy and accessible as possible.” Further, they wrote, the process should be “barrier-free”: “Unless required by state law, the complaint process should not require individuals to notarize a complaint, sign an affidavit, or issue statements under penalty of perjury...”

- 2) Relatedly, **this informal complaint process is the only way for a complaint to be filed anonymously (identity unknown to all, including staff) or confidentially (identity known only to ODP staff and Board Members)**. While allowing for a complainant to make their identity known, the informal complaint process does not require it. Thus, the informal complaint and anonymous/confidential complaints are related but not synonymous.

In its 2021 report (and all previous reports), NACOLE recommended that oversight bodies allow for anonymous complaints: “Unless prohibited by law, the complaint process should allow for the anonymous filing of complaints. Complaint forms and brochures should make clear that complaints can be submitted anonymously and that providing any identifying information is optional. Accepting anonymous complaints is crucial to giving complainants who fear retaliation or retribution or wish to remain private the opportunity to report an incident of alleged misconduct to an oversight agency....Requiring identifying information for complaints to be processed may prevent the civilian oversight agency from learning about an incident of which it should be aware....Accepting anonymous complaints is a fairly common practice in civilian oversight. According to the Civilian Oversight Agency Database (COAD) survey conducted by NACOLE, 72% of 58 responding oversight agencies reported their jurisdictions permitted anonymous complaints.”

I was able to speak by telephone or zoom teleconference to police oversight staff in San Diego, Oakland, San Francisco, and San Jose. They all allow for anonymous complaints. Furthermore, the concern of some ODP staff that the office could be swamped if anonymous complaints were allowed is not born up by the experience of other jurisdictions. Those I communicated with in other California jurisdictions told me that they do not receive many anonymous complaints.

Furthermore, the BPD allows for complaints they receive from the public to be anonymous, as they do for internal complaints from its employees.

The Regulations Subcommittee worked hard on the process for investigating and processing informal and/or anonymous complaints, and the process is listed under Section VI (formerly Section V)(B-E). "Guardrails" (C [1-4]) have been explicitly incorporated.

THE QUESTION OF SUBJECT OFFICERS IN THE HEARING ROOM WHEN COMPLAINANT TESTIFIES

Section II (H)(8) (p. 15 of 22) deals with "Taking testimony at the hearing." While this is not on the list of issues to be addressed by the full PAB, it is a critical element of this document. The Subcommittee spent many hours discussing how to make taking testimony at the hearing more equitable. There was agreement that the PRC practice of allowing subject officers and their representatives to be present and question the complainant, while dismissing the complainant when subject officers are questioned, was inequitable and required some fix.

The solution that the Subcommittee agreed to was to provide for the hearing panel to question complainant and subject officer separately (Section II(H)(8)), with neither being present when the other testifies and is questioned. Some of us (myself included) believe this is a good solution because it is equitable but also because complainants are less likely to feel intimidated if officers are not in the room when they testify.

Because Lt. Montgomery has raised this as potentially problematic since it would not allow subject officers to "cross-examine" their complainants, I wanted to respond here to those objections.

...

It should also be pointed out that most other oversight bodies in California do not have hearing panels and therefore there is no cross-examination opportunity for officers to question complainants. Presumably, this is further evidence that the absence of cross-examination does not violate state law or POBRA due process rights.

Finally, cross-examination is not provided for when external complaints are submitted to the BPD, nor when internal complaints are submitted by other BPD employees.

A WORDING TWEAK

In Section II (C)(5), "Nature of Investigation" (p. 6 of 22), I believe we need to make a distinction here between the kind of fact-finding ODPa investigation that the Board might request (in the absence of a formal complaint having been filed), and investigations subsequent to a complaint filing (which is what is discussed in this section). Therefore, I propose that "Nature of the Investigation" be reworded to "Nature of **Complaint Investigation**" to make it clear this is an investigation following a complaint filing. The section would then read "Nature of Complaint Investigation. The investigation shall consist of conducting recorded interviews with the complainant (**unless complainant is deceased or incapacitated and/or complaint is filed by the Board**) ...".



The 28th Annual NACOLE Conference

Co-Creating Public Safety Through Civilian Oversight, Law Enforcement, and Community Partnerships

2022 In-Person Annual Conference – Session Schedule

Sunday, September 11, 2022

Time	Track	Event Description/Session Title
11:00 a.m. – 5:00 p.m.		Registration Desk Open
1:00 p.m. – 2:30 p.m.		Trauma and Wellness in Oversight
2:45 p.m. – 5:00 p.m.		Wellness Activities – See Information at Hotel
5:15 p.m. – 6:15 p.m.		Navigating My Region
6:30 p.m. – 8:00 p.m.		Opening Reception

Monday, September 12, 2022

Time	Track	Event Description/Session Title
8:30 a.m. – 9:00 a.m.		Opening Remarks and Presentation of the Speaker Gift
9:00 a.m. – 10:00 a.m.		Featured Speaker: Congressman Marc Veasey, 33 rd District of Texas
10:15 a.m. – 11:45 a.m.		General Session: The Changing Landscape of Civilian Oversight in Texas
12:00 p.m. – 1:30 p.m.		Lunch Session: The Challenge of Prosecuting Officers
1:30 p.m. – 3:00 p.m.		General Session: The Role of the DOJ Civil Rights Division in Accelerating Reform in Corrections and Policing
3:15 p.m. – 4:45 p.m.		Concurrent Session: Expansion and Enhancement of Oversight of Sheriff Departments
3:15 p.m. – 4:45 p.m.		First Amendment and Social Media: Where Do Rights End and Discipline Begin?
6:30 p.m. – 8:30 p.m.		Annual Conference Scholarship Fundraising Event

Tuesday, September 13, 2022

Time	Track	Description/Session Title
8:30 a.m. – 10:00 a.m.		Concurrent Session: A Case Study in Oversight Formation: Santa Barbara, California
8:30 a.m. – 10:00 a.m.		Concurrent Session: A Gender Responsive Approach to Corrections
10:15 a.m. – 11:45 a.m.		Concurrent Session: Setting and Communicating Performance Expectations for Oversight
10:15 a.m. – 11:45 a.m.		Concurrent Session: The Fine Line Between Oversight and Operations
12:00 p.m. – 1:30 p.m.		NACOLE Keynote Speaker and Awards Luncheon
1:30 p.m. – 3:00 p.m.		Concurrent Session: Methodological Challenges and Solutions in the Analysis of Police Use of Force Data
1:30 p.m. – 3:00 p.m.		Concurrent Session: Violence in Jails and Prisons: Improving Serious Injury Tracking and Reporting
3:15 p.m. – 4:45 p.m.		Concurrent Session: COPA Academy: A Blueprint for Investigative and Legal Staff Training
3:15 p.m. – 4:45 p.m.		Concurrent Session: The Value of Comparative Prison Oversight Across State Boundaries: Lessons from Illinois, New York, and Pennsylvania
5:00 p.m. – 6:00 p.m.		General Session: Starting a New Prison Oversight Body: A Conversation with New Jersey's Correctional Ombudsman

Please note, this schedule is subject to change.
Updated: June 25, 2022





Wednesday, September 14, 2022

Time	Track	Description/Session Title
8:00 a.m. – 10:00 a.m.		NACOLE Annual Membership Meeting and Elections
10:15 a.m. – 11:45 a.m.		General Session: Anatomy of a Catastrophe: How and Why the LAPD Bomb Squad Blew Up a Neighborhood
12:00 p.m. – 1:30 p.m.		Lunch Session: Civilian Police Oversight in Sierra Leone
1:30 p.m. – 3:00 p.m.		Concurrent Session: The Three C's of Critical Incident Response: Cooperation, Collaboration, and Communication
1:30 p.m. – 3:00 p.m.		Concurrent Session: Why Law Enforcement Agency Culture Towards Sexual Abuse and Harassment Matters to Community
3:15 p.m. – 4:45 p.m.		Concurrent Session: Applying Victim Service Principles to Civilian Oversight of Law Enforcement
3:15 p.m. – 4:45 p.m.		Concurrent Session: Missing and Murdered Indigenous Women and Girls: What Oversight Needs to Know
5:00 p.m. – 6:00 p.m.		Leadership Roundtable
7:00 p.m. – 9:00 p.m.		Sankofa Reception

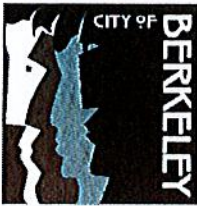
Thursday, September 15, 2022

Time	Track	Event Description/Session Title
8:30 a.m. – 10:00 a.m.		General Session: Use of the Term "Excited Delirium" and its Effects on Racial Equity
10:15 a.m. – 11:45 a.m.		General Session: Addressing White Supremacy and Extremism in Law Enforcement
12:00 p.m.		Conference Concludes

Track Legend:

-  Reform and Innovation
-  Jail & Prison Oversight
-  Addressing Today's Challenges
-  Practice of Effective Oversight

Please note, this schedule is subject to change.
Updated: June 25, 2022



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

July 7, 2022

To: Police Accountability Board
From: Katherine J. Lee, Interim Director of Police Accountability
Re: Recommendations of Controlled Equipment Use & Reporting Subcommittee
Regarding Policy 709, Military Equipment, and Related Use Policies

The following are recommendations made by the Controlled Equipment Subcommittee and reflected in draft Policy 709 in the July 13, 2022, PAB agenda packet. The Subcommittee members will be prepared to provide their rationale about these changes at the July 13 meeting.

Global: delete all references to "Lexipol" policies; e.g., "Lexipol Policy 300" should simply read "Policy 300."

Section 709.4

Rifles:

For all three, add, under "Authorized Uses": "Use of the firearm must comply with Section 607.3, Risk Assessment, of Policy 607, Operations Planning and Deconfliction."

(Note: I communicated with Sgt. LeDoux following the meeting to make sure we both had accurately captured the recommendations. He thought this language fit better under "Legal and Procedural Rules." Also, he suggested referencing Policy 607 only, as Section 607.3 might change later on and would not be a correct reference. I have no opinion on the former but believe the latter is a great idea. Also, Sgt. LeDoux added Policy 607 as one of the Associated Equipment Use Policies in Section 709.10.)

Less Lethal Launchers:

For all three, add, under "Authorized Uses": "Authorized use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices and Techniques, and Policy 428 First Amendment Assemblies."

Tear Gas:

For both CS gas and OC canisters (pp. 25-27), under "Authorized Uses", insert "not": "Tear gas may not be used for crowd control [etc]." Also delete, "Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions

known at the time and determining that such force reasonably appears justified and necessary.”

Sec. 709.6.1

First sentence, before “requirements in BMC 2.100.040” insert “acquisition”.

Sec. 709.9.1

Change title to MILITARY EQUIPMENT COMPLAINTS

And in the first (only) sentence, replace the word “concerns” with “complaints”

Sec. 709.11

Correct the typo “Proccessional” with “Professional”.

Add a second paragraph: “The City Council shall be the governing body required for this policy. The Police Accountability Board shall review and make recommendations to the City Council, with the same procedures and requirements of the Police Equipment and Community Safety Ordinance, as described in Berkeley Municipal Code section 2.100.040.”

Other associated policies

The Subcommittee determined that the other policies associated with Policy 709 did not need revision at this time.

Military Equipment

709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The Berkeley City Council.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

Military Equipment

709.2 POLICY

It is the policy of the Berkeley Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

709.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Berkeley Police Department (Government Code § 7071).
- (e) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).

709.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM Single Launcher
- Milkor LTL Multi-Launcher
- FN 303 Launcher & FN Pava Impact Projectile
- Oleoresin Capsicum Spray
- Chlorobenzylidene Malononitrile and Oleoresin capsicum
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/Sound Diversionary Device
- Long Range Acoustic Device
- Mobile Command Vehicle
- Barret Model 99

Military Equipment

709.4.1 BERKELEY POLICE DEPARTMENT'S INVENTORY

Rifles and Associated Ammunitions

Rifle:

M4 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Colt M-4 patterned rifle, which fires the .223 Remington cartridge

Quantity: The Berkeley Department currently owns and maintains 96 rifles

Capabilities: The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

Lifespan: Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Manufacturer's Description: This specially designed law enforcement weapon system features many of the combat proven advantages of the military Colt M4. With the 4-position buttstock fully retracted, the Colt Law Enforcement Carbine is less than 32inch length and weighs only 6.9 lb - ideal for tactical deployment and traditional patrol.

PURPOSE and AUTHORIZED USE:

Purpose: The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. [Use of the firearm must comply with section 607.3, Risk Assessment, of Policy 607, Operations, Planning, and Deconfliction.](#)

FISCAL IMPACT:

Initial Cost: Exact costs unknown. Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000

Military Equipment

and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

Annual cost: Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

Training costs: Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Maintenance costs: Vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and **Lexipol** Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Remington 700 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Remington 700 rifle, which fires the .308 caliber ammunition.

Quantity: The Berkeley Department currently owns and maintains 6 rifles

Capabilities: The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

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Law Enforcement Services Manual

Military Equipment

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

Lifespan: The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

Manufacturer's Description: The Model 700 SPS Tactical is a highly maneuverable member of the family. It's built for tack-driving accuracy with a 20" heavy-contour tactical-style barrel and dual-point pillar bedding in its black synthetic stock. Hogue® overmoldings on the stock facilitate sure handling, and it has a semi-beavertail fore-end for added stability off a rest.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. Use of the firearm must comply with section 607.3, Risk Assessment, of Policy 607, Operations, Planning, and Deconfliction.

FISCAL IMPACT:

Initial Cost: The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

Annual cost: If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

Maintenance costs: Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Military Equipment

Authorized use must comply with state, federal laws, and ~~Lexipol~~-Policy 300 Use of Force. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force, Policy 354-Precision Rifle. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Barret Model 99 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle

Quantity: The Berkeley Department currently owns and maintains 1 rifle.

Capabilities: This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

Lifespan: This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

Manufacturer's Description: The Model 99 brings new levels of long-range precision shooting. Known as much for its dependability as its versatility, the Model 99 has unfailing accuracy you can rely on.

PURPOSE and AUTHORIZED USE:

Purpose: The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. Use of the firearm must comply with section 607.3, Risk Assessment, of Policy 607, Operations, Planning, and Deconfliction.

FISCAL IMPACT:

Initial Cost: The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

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Annual cost: The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

RIFLE AMMUNITION:

.223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. (Use in the Colt M4 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: .223 Remington ammunition: 55 grain FMJ (full metal jacket)

.223 Remington ammunition 62 grain soft point for duty purposes

Quantity: Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000

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round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

Capabilities: The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Product Description:

.223 Remington ammunition: 55 grain FMJ (full metal jacket)

The full metal jacket ammunition features a 55 grain weight and includes 200 rounds. The caliber is .223 Rem, and the ammunition is made in the USA.

.223 Remington ammunition 62 grain soft point

Federal TRU 223 ammo is custom made ammunition for the Urban Law Enforcement Officer in mind. It features a lead core Hi Shock Soft Point bullet which offers great stopping power and excellent penetration, a non corrosive primer and brand new never fired brass casing and nickel plated brass primer. This LE Tactical ammo can be reloaded up to 5 times for those shooters that reload their 223 ammo. Federal LE 223 Remington has a muzzle velocity of 3050 feet per second and a muzzle energy of 1281 ft lbs. This 223 Federal ammo is new production packaged in 20 round boxes and 200 rounds per case. Federal TRU ammunition is engineered using Mil-Quality specifications. Each Federal TRU cartridge is made using select mil-quality low flash powders that do not disrupt an officer's night vision. The TRU case and web are built using thicker brass, adding the extra strength needed for the high powered rifle. TRU primers are crimped for added holding ability. This virtually eliminates backed out primers that can lock-up your weapon. With TRU ammunition, potentially disastrous situations are greatly reduced. TRU bullets are specifically engineered ranging from fragmenting designs for tactical entry to deeper penetrating bullets for patrol.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of incapacitating an individual from a distance and providing greater accuracy at a distance. This ammunition is used in the M4 rifle.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

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Annual cost: The annual cost of the equipment is minimal, and is dependent on the amount of training.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Hornady .308-caliber ammunition (for the Remington 700 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Hornady .308-caliber ammunition

Quantity: The Berkeley Department currently possess approximately 1800 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of incapacitating an individual or disabling an object in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation. This ammunition is specifically designed for accuracy at distances of 500 yards.

Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Manufacturer's Description: Millions of successful hunts have proven the accuracy and deadly effect of the famous Hornady® InterLock®, SST®, InterBond® and CX™ bullets we load into Hornady® Custom™ rifle ammunition.

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Every round of Hornady® Custom™ ammunition is hand inspected before packaging to ensure the highest levels of quality control. At Hornady,® we manufacture Custom™ ammunition to give shooters and hunters the advantage of handloaded accuracy in a factory load.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of incapacitating an individual from a distance of 500 yards and providing greater accuracy at a distance. This ammunition is used in the Remington 700 rifle.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$1 dollars per bullet; \$20 for a box of 20, plus shipping and handling. We currently possess 1800 rounds of BMG ammunition, \$1800.

Annual cost: The annual cost of the equipment is minimal, and is dependent on the amount of training.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Summit Ammunition.50-caliber BNG rounds of ammunition (for the Barrett Model 99)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Summit Ammunition.50-caliber BNG rounds of ammunition

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Quantity: The Berkeley Department currently possess approximately 100 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Manufacturer's Description: This is 50 Cal. BMG Summit Ammunition 700gr. M-2 Armor Piercing Ammo. Summit Ammunition has been manufacturing 50 Cal. BMG for over 10 years and they manufacture a premium quality product. They are a fully licensed and insured manufacturer. This ammo is loaded with NEW Winchester brass, New USGI powder and Pulled Lake City M-2 AP bullets.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 per bullet; \$60 for a box of 10, and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

Annual cost: The annual cost of the equipment is minimal.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

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Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

ROBOTS:

ReconRobotics Recon Scout XT (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: ReconRobotics Recon Scout XT

Quantity: The Berkeley Police Department currently owns and maintains 2.

Capabilities: The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

Lifespan: Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

Manufacturer's Description: The Recon Scout XT is just eight inches long and weighs just 1.3 lbs., making it extremely easy to carry and throw. Moreover, deploying the Recon Scout XT takes just 5 seconds, and using it requires no special training. Simply pull the activation pin and throw the device through a doorway or over a wall, or drop it down a vertical shaft using a tether. Using a single joystick on the operator control unit (OCU), a tactical team leader or warfighter can then direct the device to move through the environment and send back real-time video. Equipped with an infrared optical system that automatically turns on when the ambient light is low, the Recon Scout XT can transmit video up to 100 feet indoors and 300 feet outdoors, day or night. The Recon Scout XT may also be specified in any of three transmitting frequencies, allowing police and military personnel to operate up to three robots in the same environment at the same time.

PURPOSE and AUTHORIZED USE:

Purpose: The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

Authorized Uses: The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

FISCAL IMPACT:

Initial Cost: The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

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Annual cost: There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

Training costs: The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

Maintenance costs: There are no annual or storage costs.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and [Lexipol Policy 708 Robot Cameras](#).

TRAINING:

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel who have familiarized themselves with the product manual, operations, procedures, and demonstrated competency in the product through hands on training, these trainings are often referred to as a train-the trainer training. The cost of training is staff time.

Andros Remotec HD-1 Hazardous Duty Robot (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Andros Remotec HD-1 Hazardous Duty Robot

Quantity: The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

Capabilities: Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- (a) A spike to break glass and access vehicles or homes with potential explosive devices inside
- (b) An X-ray mount in order to remotely X-ray suspected explosive devices.

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- (c) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- (d) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
- (e) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- (f) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

Lifespan: The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

Manufacturer's Description: The Remotec ANDROS fleet of hazardous duty unmanned vehicles is the preferred choice of first responders worldwide. The robust, mission-proven design of the ANDROS line keeps danger at a distance with:

- Simultaneous tool mounts for rapid response during dynamic missions (i.e. suits changing needs as the mission unfolds)
- A versatile array of two-way audio, video, advanced sensors, tools and controllers
- Easy maintainability for minimal downtime

Made in the USA and backed by world-class training and post-sale support, it's no wonder there are over 1,000 ANDROS robots deployed around the globe.

PURPOSE and AUTHORIZED USE:

Purpose: The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

Authorized Uses: Used to examine and possible destroy hazardous materials such as an explosive device.

FISCAL IMPACT:

Initial Cost: Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

Annual cost: There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

Training costs: Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

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Maintenance costs: Remotec offers occasional maintenance and upkeep workshops free of charge.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 708 Robot Cameras.

TRAINING:

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. All Berkeley Police Bomb Technicians are required to attend a federally mandated training that lasts approximately six weeks.

Less Lethal Launchers:

Penn Arms 40mm Single Launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Penn Arms 40mm Single Launcher

Quantity: The Berkeley Department currently owns and maintains 20.

Capabilities: The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: A 40mm compact single-shot break-open frame launcher with a rifled barrel and folding stock. Features include: Double-action trigger, trigger lock push button and hammer lock safeties.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly

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evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses:

Authorized use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

~~The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.~~

FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists

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of classroom, range qualification and scenario application if the venue allows.

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Milkor LTL Multi-launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Milkor LTL Multi-launcher

Quantity: The Berkeley Police Department currently owns and maintains 2.

Capabilities: The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

Manufacturer's Description: Developed with our partner company, Abrams Airborne Manufacturing, The 40mm Multi-Shot Less-Lethal Tactical Launcher (LTL) was manufactured with the needs of the modern tactical team at the forefront. The launcher is capable of firing a wide variety of 40mm LTL ammo.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance -- while still providing a level of control over the subject -- allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

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The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses:

Authorized use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

~~The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.~~

FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

FN 303 and FN Pava Impact Projectile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: FN 303 and FN Pava Impact Projectile

Quantity: The Berkeley Department currently owns and maintains 8 FN 303 less lethal launchers.

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Capabilities: The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to

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the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: The FN 303® Less Lethal Launcher is constructed from durable lightweight polymer with comfortable ergonomics and an easy to operate safety. The FN 303® Launcher is equipped with both flip-up iron sights and an integrated MIL-STD-1913 top mounting rail for optical or electronic sights or other accessories. The lightweight polymer magazine holds 15 projectiles and offers a clear rear cover to allow the operator to instantly verify both the payload type and the number of projectiles remaining.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses:

Authorized use must comply with local, state, federal laws, and Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

~~The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-~~

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~~escalate a potentially deadly situation.~~

FISCAL IMPACT:

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Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

Annual cost: Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

Light/sound Diversionary Devices:

CTS 7290 Diversionary Device (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: CTS 7290 Diversionary Device

Quantity: The Berkeley Department currently owns and maintains 50.

Capabilities: When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

Lifespan: The lifespan of the CTS 7290 Diversionary Device is 5 years.

Manufacturer's Description: The CTS 7290 is the standard for diversionary flash-bang devices. The 7290 produces a 165-180 db and 6-8 million candela of light output. The patented design of the 7290, incorporates a porting system that eliminates movement of the body at detonation even

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if the top or bottom of the device should be in contact with a hard surface. In addition, internal adjustments have greatly reduced smoke output.

Flash Bangs are used by special tactical units during hostage rescue and high-risk warrants. It is an ATF-controlled Class-C explosive device that emits a bright light and thunderous noise to distract potentially dangerous individuals.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

Authorized Uses: The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

FISCAL IMPACT:

Initial Cost: Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

Annual cost: See below training cost.

Training costs: Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

Maintenance costs: The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and **Lexipol** Policy 353 Diversionary Devices.

TRAINING:

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices.

Long Range Acoustic Device

The Long-Range Acoustic Device (LRAD)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Military Equipment

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: The Long Range Acoustic Device (LRAD)

Quantity: The Berkeley Department currently owns and maintains possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

Capabilities: Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

Lifespan: The lifespan for both LRADs is 25 years.

Manufacturer's Description: LRAD 100x In addition to being 20 – 30 decibels louder than bullhorns and vehicle-based P.A. systems, the LRAD 100X is also up to 6X louder and much more intelligible than other hailing devices of comparable size and weight. Live or recorded broadcasts from the portable LRAD 100X easily overcome engines, sirens and noisy crowds to ensure every message is heard and understood. The LRAD warning tone safely alerts attention to the voice messages that follow, establishes large standoff zones, and is the safer crowd control alternative to non-lethal and kinetic measures.

LRAD 450XL- The LRAD 450XL utilizes technology developed and patented* by Genasys Inc. to provide the audio output of larger acoustic hailers almost twice its size and weight, while delivering the same outstanding vocal clarity inherent in all LRAD systems. The LRAD 450XL broadcasts powerful warning tones to command attention to the highly intelligible voice messages that follow, enabling operators to change behavior and enhance response capabilities with safe, scalable escalation of force. Lightweight and designed for use on tripods or mounted on vessels, vehicles, and Remote Weapon Stations (RWS), the LRAD 450XL is a highly effective, long range communication system in use around the world for public safety, law enforcement, maritime and defense applications.

PURPOSE and AUTHORIZED USE:

Purpose: The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

Authorized Uses: The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

FISCAL IMPACT:

Initial Cost: The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

Annual cost: BPD has not incurred any additional cost to date for this equipment.

Training costs: Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

Maintenance costs: There are no maintenance or storage costs for this equipment.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 707 Long Range Acoustic Device.

TRAINING:

Training is conducted by members of the Berkeley Police Department who have extensively reviewed the product manual, become knowledgeable and familiar in the operations and procedures of the LRAD. All trainers have proven demonstrated proficiency and competency in the product through hands on training, these trainings are often referred to as a train-the-trainer training.

Mobile Command Vehicle

Mobile Command Vehicle (MCV)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

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Military Equipment

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: MCV is a 2003 Freightliner MT55

Quantity: The Berkeley Department currently owns and maintains 1 MCV, a 2003 Freightliner MT 55.

Capabilities: The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

Lifespan: This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

Manufacturer's Description: The 22' Freightliner MT55 P1200 is the biggest stepvan option for your delivery fleet, offering maximum capacity, accessibility and maneuverability. Built with a powerful Cummins 6.7L 200HP Diesel Motor, this route truck has folding lower shelves to optimize your cargo space and rear sonar for safety.

PURPOSE and AUTHORIZED USE:

Purpose: This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4th of July, critical incidents or natural disasters.

Authorized Uses: This vehicle is used as a mobile command post for large scaled events.

FISCAL IMPACT:

Initial Cost: The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

Annual cost: There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

Training costs: Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

Maintenance costs: There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~-Policy 811 Mobile Command Vehicle.

TRAINING: Training is conducted by members of the Berkeley Police Department who have extensively reviewed the product manual, become knowledgeable and familiar in the operations of the 2003 Freightliner MT 55. All trainers have proven demonstrated proficiency and competency

Military Equipment

in the product through hands on training, these trainings are often referred to as a train-the trainer training. All operators have had behind the wheel practical training, wherein the operator drives various routes through the City of Berkeley with a trainer during training.

Chlorobenzylidene Malononitrile and Oleoresin Capsicum

Chlorobenzylidene Malononitrile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Chlorobenzylidene malononitrile (CS)

Quantity: The Berkeley Department currently owns and maintains Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Capabilities: CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

Lifespan: CS and OC canisters expire in approximately 5 years.

Manufacturer's Description: Unable to locate from the manufacturer, provided by the subject matter experts. Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

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PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Tear gas may not be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. ~~Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.~~

FISCAL IMPACT:

Initial Cost: The cost for CS canisters ranges from \$20.00 to \$39.00 per unit.

Annual cost: See below cost of training.

Training costs: When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

Oleoresin Capsicum (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Oleoresin capsicum (OC)

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Inventory for OC canisters:

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Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

Capabilities: A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

Lifespan: CS and OC canisters expire in approximately 5 years.

Manufacturer's Description: Unable to locate from the manufacturer, provided by BPD subject matter experts. Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Tear gas may not be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. ~~Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.~~

FISCAL IMPACT:

Initial Cost: The cost for OC canisters ranges from \$36.00 to \$44.00 per unit.

Annual cost: See below cost of training.

Training costs: When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle.

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There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

Oleoresin Capsicum Spray (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Oleoresin capsicum (OC) spray

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Qty 23- First Defense MK-9 OC spray (13 ounces)

Capabilities: The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

Lifespan: Aerosol products eventually lose pressure over time. The lifespan the MK-9 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

Manufacturer's Description: The MK-4 is an ideal size for patrol officers to wear on a duty belt and will deliver 11-12 short bursts of OC at an effective range of 10-12 feet(18-20 for the MK9). This 1.3/% MC OC aerosol product features a 360-degree stream deliver method which allows the aerosol projector to disperse OC from any angle while providing a target specific, strong concentrated stream for greater standoff.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should

Military Equipment

not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

FISCAL IMPACT:

Initial Cost: The MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

Annual cost: See below cost of training.

Training costs: Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and ~~Lexipol~~ Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Training is conducted by selected members of the Berkeley Police Department who have completed a Peace Officer Standards and Training (POST) certified course in chemical agent training.

709.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.

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- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

709.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

709.6.1 TEMPORARY USE IN EXIGENT CIRCUMSTANCES

The Berkeley Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the acquisition requirements in BMC 2.100.040, however the Department must take the following actions:

- (a) Provide written notice of the acquisitions or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state, or federal law
- (b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and received approval, as applicable from the City Council pursuant to BMC 2.100.040
- (c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

709.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

709.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

Military Equipment

709.9 MILITARY EQUIPMENT QUESTIONS

Any member of the public may direct their questions regarding this policy and ordinance to a Sergeant in the Professional Standards Bureau at 510-981-5734 or 510-981-5974. **Concerns Questions** may also be directed to police@cityofberkeley.info. Questions will be answered in a timely manner by a member of the Berkeley Police Department.

709.9.1 MILITARY EQUIPMENT CONCERNS/COMPLAINTS

Any member of the public may direct their **concerns-complaints** regarding this policy and any of the military equipment to Internal Affairs Bureau at 510-981-5706.

709.10 ASSOCIATED EQUIPMENT USE POLICIES

The below links will direct to the respective use policies:

[300-Use of Force](#)

[303-Control Devices and Techniques](#)

[349-Tactical Rifle Operator Program](#)

[353-Flash/Sound Diversionary Devices](#)

[354-Precision Rifle Operator Program](#)

[428-First Amendment Assemblies](#)

[607-Operations, Planning, and](#)

[Deconfliction](#)

[707-Long Range Acoustical Device \(LRAD\)](#)

[708-Robot Cameras](#)

[811-Mobile Communications Vehicle \(MCV\)](#)

709.11 COMPLIANCE

The Department's Audit and Inspection Sergeant will ensure that the Department members comply with this policy. The Audit and Inspection Sergeant will conduct an annual audit with the assistance from members of the Professional Standards Bureau. Any violations will be referred to the Internal Affairs Bureau and handled in accordance with General Order P-26 (Personnel Compliant Procedures). All instances of non-compliance will be reported to the City Council via the annual military equipment report.

The City Council shall be the governing body required for this policy. The Police Accountability Board shall review and make recommendations to the City Council, with the same procedures and requirements of the Police Equipment and Community Safety Ordinance, as described in Berkeley Municipal Code section 2.100.040.

Lee, Katherine

From: NACOLE Director of Training & Education <mcellhiney@nacole.org>
Sent: Thursday, July 7, 2022 8:00 AM
To: Lee, Katherine
Subject: Register NOW for July 11th Webinar: Analyzing Body-worn Camera Video

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

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2022 NACOLE Webinar Series

REGISTER NOW FOR JULY 11TH EVENT

July 11, 2022

1:00 p.m. ET

Expand Beyond the Camera: Situating Body Worn Cameras (BWC) within Civilian Oversight

Dr. David A. Makin, Ph.D., is an Associate Professor in the Department of Criminal Justice & Criminology and is the Director of the Complex Social Interactions Lab at Washington State University. In addition to his research, statistical, and disciplinary expertise, he has completed a 40-hour POST certified Crisis Intervention Team training, a 2-year Fellowship at the Southern Police Institute at the University of Louisville and holds several awards including the President's Leadership and Engagement Awards of Distinction, President's Award for Security, and the Exceptional Professor Award for the College of Arts and Sciences at WSU. He has nearly 50 peer-reviewed publications and has received almost \$3 million dollars in

research funding, including research funded by the National Institute of Justice, National Science Foundation, and Office of Community Oriented Policing Services (COPS). As a result of engagement with industry he has received \$600,000 in technology transfers allowing for solution development to public safety problems. Dr. Makin is an expert in programmatic implementation and evaluation, technology assessments, and is among a select group of researchers actively working with police departments to integrate body-worn camera (BWC) footage into supervision, risk management, and training. Under his direction, the Complex Social Interaction Lab has processed over 25,000 hours of BWC footage for police departments on a range of projects including improving the use of procedural justice, examining differential decision-making within police community interactions, enhancing CIT training, examining the application of trauma informed practices within domestic violence contacts, and most recently projects seeking to understand the use of de-escalation and non-escalation strategies and tactics.

In his talk, Dr. Makin will highlight opportunities and innovations associated with body-worn camera programs. Specifically, pathways towards operationalizing data contained within body-worn camera footage to convert it from merely archival footage to actionable data. The guiding question framing the talk is "Now that we have BWC programs, how do we reorient away from seeing them as an expense and instead an investment in reducing risk, evaluating training, and enhancing supervision?"

REGISTER



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Our mailing address is:

National Association for Civilian Oversight of Law Enforcement

Operations Planning and Deconfliction

607.1 PURPOSE AND SCOPE

This policy provides guidelines for planning, deconfliction and execution of high-risk operations.

Additional guidance on planning and serving high-risk warrants is provided in the Warrant Service Policy.

607.1.1 DEFINITIONS

Definitions related to this policy include:

High-risk operations - Operations, including service of search and arrest warrants and sting operations, that are likely to present higher risks than are commonly faced by officers on a daily basis, including suspected fortified locations, reasonable risk of violence or confrontation with multiple persons, or reason to suspect that persons anticipate the operation.

Case officer - The officer in charge of the operation's intelligence, planning and execution.

607.2 POLICY

It is the policy of the Berkeley Police Department to properly plan and carry out high-risk operations, including participation in a regional deconfliction system, in order to provide coordination, enhance the safety of members and the public, decrease the risk of compromising investigations and prevent duplicating efforts.

607.3 RISK ASSESSMENT

607.3.1 RISK ASSESSMENT FORM PREPARATION

Officers assigned as operational leads for any operation that may qualify as a high-risk operation shall complete a risk assessment form.

When preparing the form, the officer should query all relevant and reasonably available intelligence resources for information about the subject of investigation, others who may be present and the involved location. These sources may include regional intelligence and criminal justice databases, target deconfliction systems, firearm records, commercial databases and property records. Where appropriate, the officer should also submit information to these resources.

The officer should gather available information that includes, but is not limited to:

- (a) Photographs, including aerial photographs, if available, of the involved location, neighboring yards and obstacles.
- (b) Maps of the location.
- (c) Diagrams of any property and the interior of any buildings that are involved.
- (d) Historical information about the subject of investigation (e.g., history of weapon possession or use, known mental illness, known drug use, threats against police, gang affiliation, criminal history).

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Operations Planning and Deconfliction

- (e) Historical information about others who may be present at the location (e.g., other criminals, innocent third parties, dependent adults, children, animals).
- (f) Obstacles associated with the location (e.g., fortification, booby traps, reinforced doors/windows, surveillance measures, number and type of buildings, geographic and perimeter barriers, the number and types of weapons likely to be present, information that suggests the presence of explosives, chemicals or other hazardous materials, the potential for multiple dwellings or living spaces, availability of keys/door combinations).
- (g) Other environmental factors (e.g., nearby venues such as schools and day care centers, proximity of adjacent homes or other occupied buildings, anticipated pedestrian and vehicle traffic at the time of service).
- (h) Other available options that may minimize the risk to officers and others (e.g., making an off-site arrest or detention of the subject of investigation).

607.3.1 RISK ASSESSMENT REVIEW

The case officer will present the risk assessment form and other relevant documents (such as copies of search warrants and affidavits and arrest warrants) to their supervisor.

The supervisor and case officer shall confer and determine the level of risk. Supervisors should take reasonable actions if there is a change in circumstances that elevates the risks associated with the operation.

607.3.3 HIGH-RISK OPERATIONS

If the case officer, after consultation with the involved supervisor, determines that the operation is high risk, he/she should contact the Division Captain to arrange a consultation with the Special Response Team (SRT) commander. Together, they should:

- (a) Determine what resources will be needed at the location, and contact and/or place on standby any of the following appropriate and available resources:
 - (a) The Special Response Team (SRT)_
 - (b) Additional personnel
 - (c) Outside agency assistance
 - (d) Special equipment
 - (e) Medical personnel
 - (f) Persons trained in negotiation
 - (g) Additional surveillance
 - (h) Canines
 - (i) Property and Evidence Unit or analytical personnel to assist with cataloguing seizures
 - (j) Forensic specialists
 - (k) Specialized mapping for larger or complex locations

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Operations Planning and Deconfliction

- (b) Contact the appropriate department members or other agencies as warranted to begin preparation.
- (c) Ensure that all legal documents such as search warrants are complete and have any modifications reasonably necessary to support the operation.
- (d) Coordinate the actual operation.

607.4 DECONFLICTION

Deconfliction systems are designed to identify persons and locations associated with investigations or law enforcement operations and alert participating agencies when others are planning or conducting operations in close proximity or time or are investigating the same individuals, groups or locations.

The case officer should consider entering the subject of investigation and operations information into an applicable deconfliction system to determine if there is reported conflicting activity.

If any conflict is discovered, the supervisor will contact the involved jurisdiction and resolve the potential conflict before proceeding.

607.5 OPERATIONS PLAN

The case officer should ensure that a written operations plan is developed for the operation.

The plan should address such issues as:

- (a) Operation goals, objectives and strategies.
- (b) Operation location and people:
 1. The subject of investigation (e.g., history of weapon possession/use, known mental illness issues, known drug use, threats against police, gang affiliation, criminal history)
 2. The location (e.g., fortification, booby traps, reinforced doors/windows, surveillance cameras and/or lookouts, number/type of buildings, geographic and perimeter barriers, the number and types of weapons likely to be present, information that suggests the presence of explosives, chemicals or other hazardous materials, the potential for multiple dwellings or living spaces, availability of keys/door combinations), including aerial photos, if available, and maps of neighboring yards and obstacles, diagrams and other visual aids
 3. Other environmental factors (e.g., nearby venues such as schools and day care centers, proximity of adjacent homes or other occupied buildings, anticipated pedestrian and vehicle traffic at the time of service)
 4. Identification of other people who may be present in or around the operation, such as other criminal suspects, innocent third parties and children
- (c) Information from the risk assessment form by attaching a completed copy in the operational plan.

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Operations Planning and Deconfliction

1. The volume or complexity of the information may indicate that the plan includes a synopsis of the information contained on the risk assessment form to ensure clarity and highlighting of critical information.
- (d) Identification of all communications channels and call-signs.
- (e) Use of force issues.
- (f) Contingencies for handling medical emergencies (e.g., services available at the location, closest hospital, closest trauma center).
- (g) Plans for detaining people who are not under arrest.
- (h) Contingencies for handling children, dependent adults, animals and other people who might be at the location in accordance with the Child Abuse, Adult Abuse, Child and Dependent Adult Safety and Animal Control policies.
- (i) Communications plan

607.5.1 OPERATIONS PLAN RETENTION

Since the operations plan contains intelligence information and descriptions of law enforcement tactics, it shall not be filed with the report. The operations plan shall be stored separately and retained in accordance with the established records retention schedule.

607.6 OPERATIONS BRIEFING

A briefing should be held prior to the commencement of any high-risk operation to allow all participants to understand the operation, see and identify each other, identify roles and responsibilities and ask questions or seek clarification as needed.

- (a) The briefing should include a verbal review of plan elements, using visual aids, to enhance the participants' understanding of the operations plan.
- (b) All participants should be provided a copy of the operations plan.
- (c) The case officer shall ensure that all participants are visually identifiable as law enforcement officers.
 1. Exceptions may be made by the case officer for officers who are conducting surveillance or working under cover. However, those members exempt from visual identification should be able to transition to a visible law enforcement indicator at the time of enforcement actions, such as entries or arrests, if necessary.
- (d) The briefing should include details of the communications plan.
 1. It is the responsibility of the case officer to ensure that the Communications Center is notified of the time and location of the operation, and to provide a copy of the operation plan prior to officers arriving at the location.
 2. If the radio channel needs to be monitored by the Communications Center, the dispatcher assigned to monitor the operation should attend the briefing, if practicable, but at a minimum should receive a copy of the operation plan.

Operations Planning and Deconfliction

3. The briefing should include a communications check to ensure that all participants are able to communicate with the available equipment on the designated radio channel.

607.7 SRT PARTICIPATION

If the Watch Commander and SRT Commander determine that SRT participation is appropriate and receive approval from the Chief of Police, the case officer and an SRT supervisor shall work together to develop a written plan. The SRT supervisor shall assume operational control until all persons at the scene are appropriately detained and it is safe to begin a search. When this occurs, the SRT supervisor shall transfer control of the scene to the handling supervisor. This transfer should be communicated to the officers present.

607.8 MEDIA ACCESS

No advance information regarding planned operations shall be released without the approval of the Chief of Police. Any media inquiries or press release after the fact shall be handled in accordance with the Media Relations Policy.

607.9 OPERATIONS DEBRIEFING

High-risk operations should be debriefed as soon as reasonably practicable. The debriefing should include as many participants as possible. This debrief may be separate from any SRT debriefing.

607.10 TRAINING

The Personnel and Training Sergeant should ensure officers and SRT members who participate in operations subject to this policy should receive periodic training including, but not limited to, topics such as legal issues, deconfliction practices, operations planning concepts and reporting requirements.

A faded, blue-tinted photograph of a police station building. The building has a sign that reads "POLICE" in large, bold letters. The image is centered and serves as a background for the title text.

Police Equipment and Community Safety Ordinance Impact Statements

ACKNOWLEDGEMENTS

Thank you to the subject matter experts for helping author this report.

Officer Corey Bold –
Patrol Officer and chemical agent instructor

Officer Semir Muratovic –
Patrol Officer and Bomb Squad Technician

Officer Derek Radey –
Patrol Officer and less lethal coordinator/instructor

Lieutenant Kevin Reece –
Special Response Team Commander

Officer Scott Salas –
Patrol officer and Special Response Team high ground team leader

Lieutenant Jennifer Tate –
Traffic Lieutenant and defensive tactics instructor

Officer Jason Tillberg –
Department trainer and Department Armorer

Officer Sean Tinney –
Department trainer and Special Response Team member

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INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.020 of the ordinance mandates an impact statement for certain equipment that the Berkeley Police Department possesses. An impact statement is defined in section 2.100.020 (C) and is a publicly released written document that includes the following details for each equipment:

- 1) Description
- 2) Purpose
- 3) Fiscal cost
- 4) Impact
- 5) Mitigation
- 6) Alternatives
- 7) Third Party Dependence

An impact statement for each of the following equipment has been authored by subject matter experts in their respective fields:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM launcher
- Milkor LTL multi-launcher
- FN 303 Launcher & FN Pava rounds
- Oleoresin capsicum (OC spray)
- Chlorobenzylidene Malononitrile and Oleoresin capsicum (tear gas)
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/sound distraction device
- Long Range Acoustic Device (LRAD)
- 36" batons
- Mobile Command Vehicle
- Barret Model 99

Impact statements were compiled in this report in a prioritized ranking for the Police Accountability Board to consider in determining the order in which to perform its review per the Police Equipment and Community Safety Ordinance.

M4 Rifle and Associated Ammunition

(1) Description:

A. **Background:**

The "M4" was developed and produced for the United States government by Colt Firearms and was based off of the original Armalite Rifle (AR) patent purchased by Colt in 1959. Although Colt owned the trademarked name of "M4", a number of other manufacturers offer M4-like firearms under various model names. The M4 and its variants fire 5.56x45mm NATO (and .223 Remington) ammunition, and are a gas-operated, magazine-fed firearm with a barrel length ranging from 11.5" to 16".

The current Berkeley Police Department (BPD) rifle ammunition used is the .223 Remington, a rimless, bottlenecked rifle cartridge. The round was developed in 1957 by Remington Arms and Fairchild Industries. The .223 Remington is considered one of the most popular cartridges and is currently used by a wide range of semi-automatic and manual-action rifles as well as handguns. While the military uses the similar 5.56x45 NATO cartridge, BPD uses the more common and often regarded civilian cartridge of .223 Remington for all training and duty uses.

Currently, BPD uses two different kinds of .223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. This is done for several reasons.

1. FMJ ammunition is cheaper to purchase. While many agencies use the same ammunition for training and duty use, the department saves a significant amount of money by using FMJ ammunition for training.
2. The observed performance between the two rounds is negligible for training purposes. Officers can use the FMJ ammunition in a training course and see no difference in operation and performance versus using 62 grain soft point duty ammunition.
3. The 62-grain soft point ammunition has been shown to have less over penetration and over travel compared to FMJ ammunition.

This means that rounds fired are less likely to hit unintended targets.

B. Quantity:

The Berkeley Department currently owns and maintains 96 rifles.

Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

C. Capability:

The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

D. Lifespan:

Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has

changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

E. Use:

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

F. How it Works:

The M4 patterned rifle works the same as a majority of all modern firearms. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. As the bullet travels down the barrel, gas from the ignited powder also escapes from the muzzle. Some of that gas is recycled back into the chamber of the firearm which causes the firearm to cycle its action and load another bullet. From there the process repeats with each pull of the trigger.

The .223 Remington cartridge is made up of several parts, primarily the primer, casing, gunpowder, and bullet. The bullet is seated into the front or opening of the casing. Gunpowder is placed between the bullet and the interior of the casing and a primer is seated in the rear part of the casing. When the trigger of a firearm is pulled, it releases the hammer, which strikes the firing pin, driving it forward. The firing pin collides with the rear of the cartridge, where the primer is seated, which ignites the primer. The spark from the primer ignites the gunpowder. Gas converted from the burning powder rapidly expands in the cartridge. The expanding gas forces the bullet out of the cartridge and down the barrel with great speed. The rifling in the barrel causes the bullet to spin as it travels out of the barrel. The bullet's speed and escaping gases produce a "bang."

After the bullet exits the barrel, the spent casing which housed the bullet, gunpowder, and primer are ejected from the firearm.

(2) Purpose:

The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally

equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

(3) Fiscal Cost:

A. Initial Cost:

Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000 and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

B. Cost of Use:

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

C. Cost of Potential Adverse Effects:

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

See section B. above, these costs are determined based on the rifle's assignment.

E. Training Costs:

Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Typical round count for such classes range between 800 rounds and 1200 rounds per student. Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by a BPD firearm instructor which constitutes an additional 500 or so rounds per officer.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. Upgrade Costs:

Upgrade costs and Maintenance cost are synonymous due to the consistent design and lack of changes of the rifle over the last 60 years. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing, those upgrade costs are unknown at this time.

(4) Impact:

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The M4 patterned rifle, which fires the .223 Remington cartridge, is a superior firearm to stop a lethal threat compared to the issued pistols to police officers, in that officers equipped with this firearm shoot less rounds, fire more accurately, and are less likely to fire errant rounds. Highly volatile and violent incidents, such as a hostage situation, can be more safely and efficiently resolved with a rifle.

The M4 patterned rifle, and the accompanying .223 Remington cartridge it fires, is intended as a tool to increase the safety and welfare of citizens and officers alike. Potential negative impacts include larger entry and exit wounds than from handgun bullets, more body tissue destruction; emotional trauma to vulnerable and/or minor bystanders; and potential litigation costs.

(5) **Mitigations:**

Per Policy 300, "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."

(6) **Alternatives:**

There are no suitable alternatives to the M4 rifle for the intended purpose. The M4 rifle is a law enforcement standard across the US and other countries due to its reliability, ease of use, ease of maintenance, and increased accuracy over other options.

There are no suitable alternatives to the .223 Remington cartridge, as the current BPD M4 rifle is designed for that particular cartridge. The .223 Remington cartridge is a law enforcement standard across the US and other countries due to its reliability, availability, and increased accuracy over other options.

(7) **Third Party Dependence:**

Berkeley Police Department armorers are trained and capable to handle any and all issues related to the maintenance or repair of the M4 rifles. Additionally, BPD firearm instructors are fully certified by state and private training institutes to fully educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

All ammunition purchased by BPD, like all equipment, is dependent on Third Party vendors. Vendor stock and availability is outside BPD control or management. Once ammunition is purchased and in BPD custody there is no additional need for Third Party assistance.

Penn Arms 40mm Single Launcher

(1) **Description:**

A. **Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge bean bag round designs had somewhat unpredictable flight patterns and could

cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Penn Arms L-140 single shot launcher.

B. Quantity:

The Berkeley Police Department currently owns and maintains 20 Penn Arms less lethal launchers.

C. Capability:

The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

D. Lifespan:

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

E. Use:

The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles shall not be used to disperse any assembly, protest, or demonstration except as provided below.

Kinetic energy projectiles shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

F. How it works:

The Penn Arms 40mm single launcher is a double action, break open less lethal launcher. The launcher is capable of firing a single 40mm projectile. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than the FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The Penn Arms single launcher is a basic design making it easy to operate and maintain.

(2) Purpose:

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting

instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will almost always resolve a violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) Fiscal Cost:

A. Initial Cost:

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

B. Cost of Use:

Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. Cost of Potential Adverse Effects:

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. Annual and Ongoing Costs:

See section B above

E. Training Costs:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

G. Upgrade Costs:

There are no foreseeable upgrade costs. The Penn Arms single launcher has few working parts and is of a simple design.

(4) Impact:

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but hopefully the minimal amount of force needed to safely resolve the incident.

The Penn Arms single launcher, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. This tool does not require officers to overcome a hostile crowd to stop a violent assault.

Potential adverse impacts, especially from close-range use or injuries to the head or neck, include permanent injury and death.¹

¹ 1 Haar RJ, Iacopino V, Ranadive N, et al, Death, injury and disability from kinetic impact projectiles in crowd control settings: a systematic review, *BMJ Open* 2017;7:e018154. doi: 10.1136/bmjopen-2017-018154

(5) Mitigation:

Per Policy 300, "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." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

(6) Alternative:

The Penn Arms single launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile

while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) Third Party Dependence:

The Berkeley Police Department armorers are trained and capable of handling all issues related to the repair or maintenance of the Penn Arms single launcher. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

Milkor LTL Multi-launcher

(1) Description:

A. Background:

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Milkor LTL multi-shot launcher.

B. Quantity:

The Berkeley Police Department currently owns and maintains 2 Milkor LTL less lethal launchers. One Milkor launcher is assigned to the Berkeley Special Response Team.

C. Capability:

The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

D. Lifespan:

The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

E. Use:

The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles shall not be used to disperse any assembly, protest, or demonstration except as provided below.

Kinetic energy projectiles shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

F. How it works:

The Milkor LTL multi-shot launcher utilizes a spring actuated cylinder allowing it to fire 6 individual 40mm projectiles. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the

projectile will tumble when exiting the barrel. The spring assisted cylinder automatically turns and loads the next projectile.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The benefit to the Milkor LTL is its ability to provide a quick follow up less lethal application, if necessary. The Milkor holds 6 projectiles while the Penn Arms launcher only holds one. Reloading the Penn Arms single launcher can be time consuming and requires the officer to briefly change focus from the suspect to the reload procedure. The Milkor LTL on the other hand, allows the officer to maintain focus on the suspect and assess whether a follow up application is necessary. This ability is significant when the suspect is advancing, attempting to flee, or demonstrates a high pain compliance threshold.

(2) Purpose:

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will generally resolve the violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) Fiscal Cost:

A. Initial Cost:

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

B. Cost of Use:

Cost for the Milkor LTL launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. Cost of Potential Adverse Effects:

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. Annual and Ongoing Costs:

See section B above

E. Training Costs:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use.

G. Upgrade Costs:

There are no foreseeable upgrade costs.

(4) Impact:

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The Milkor LTL launcher, with its high level of accuracy and 6 projectile capacity, can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

Potential adverse impacts, especially from close-range use or injuries to the head or neck, include permanent injury and death.²

(5) Mitigation:

Per Policy 300, "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." All uses of force require

² Haar RJ, Iacopino V, Ranadive N, et al, Death, injury and disability from kinetic impact projectiles in crowd control settings: a systematic review, *BMJ Open* 2017;7:e018154. doi: 10.1136/bmjopen-2017-018154

documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

(6) Alternative:

The Milkor LTL multi-launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles

used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) Third Party Dependence:

The Berkeley Police Department armorers are trained and capable of handling most issues related to the repair or maintenance of the Milkor LTL launcher. In the event of a catastrophic malfunction, the Milkor LTL will need to be sent to the manufacturer for repair. To date, there have been no significant repairs needed to the Milkor LTL. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for regular maintenance, repair, or instruction.

FN 303 and FN Pava Impact Projectile

(1) Description:

A. Background:

The FN 303 was developed in 2003 by Fabrique Nationale de Herstal as a less lethal option. The FN 303 is based on a concept developed by Monterey Bay Corporation. The development team consisted of designers and researchers from two paintball related companies. The FN 303 uses compressed air to propel a .68 caliber projectile similar to that of most manufactured paintball guns.

B. Quantity:

The Berkeley Police Department currently owns and maintains 8 FN 303 less lethal launchers.

C. Capability:

The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large

muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

D. Lifespan:

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

E. Use:

The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles and chemical agents shall not be used by BPD to disperse any assembly, protest, or demonstration except as provided below.

Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

F. How it works:

An air reservoir attaches to the FN 303 through an air hose coupler and provides pressure through compressed air. When fired, the compressed air drives a piston that pushes the .68 caliber projectile through the barrel at approximately 280 feet per second. For comparison, the FN projectile is the size of a paintball and the velocity is the same as a commercially manufactured paintball gun.

The projectiles are 8.5 grams in weight and utilize a polystyrene fin stabilized body with a non-toxic forward payload to aid in stability and accuracy. The projectile will deliver approximately 24-foot pounds of kinetic energy at the muzzle which is about double the kinetic energy of most paintball guns. Most paintballs have a mass of 3 grams while the FN 303 projectile has a mass of 8.5 grams which increases the kinetic energy produced.

Available projectiles are impact, impact + non-permanent marking, impact + permanent marking, and impact + PAVA (0.5% PAVA/Oleoresin Capsicum).

The impact + PAVA projectile is intended to be direct fired at an individual. In addition to delivering pain through kinetic energy upon impact, the PAVA projectile will deliver a secondary chemical irritant, which is the Oleoresin Capsicum (O.C.) payload. Oleoresin Capsicum generally causes irritation/burning at the application site, irritation to the eyes, and coughing. According to the National Institute of Health, the effects of O.C. power exposure tend to resolve on their own within 30 minutes.

Pain is highly subjective and other circumstances, such as heavy clothing, may render the impact ineffective. The application of a secondary chemical irritant may assist in gaining compliance and successfully resolving a potentially violent incident with the minimal amount of force necessary.

(2) Purpose:

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) Fiscal Cost:

A. Initial Cost:

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

B. Cost of Use:

Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. Cost of Potential Adverse Effects:

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death. Only trained officers are authorized to use the FN 303.

D. Annual and Ongoing Costs:

See section B above

E. Training Costs:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer’s hourly wage, range fees, and projectile costs which all vary.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

G. Upgrade Costs:

The overall design of the FN 303 has changed little since its initial release in the early 2000s thus anticipated upgrade costs will be minimal.

(4) Impact:

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The FN 303, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

Potential adverse impacts, especially from close-range use or injuries to the head or neck, include permanent injury and death.³

(5) Mitigation:

Per Policy 300, "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." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons

³ Haar RJ, Iacopino V, Ranadive N, et al, Death, injury and disability from kinetic impact projectiles in crowd control settings: a systematic review, *BMJ Open* 2017;7:e018154. doi: 10.1136/bmjopen-2017-018154

and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

(6) Alternative:

The FN303 launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have

no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) Third Party Dependence:

The Berkeley Police Department armorers are trained and capable of handling regular maintenance and most repairs. In the event of a catastrophic failure, the device will be sent to the manufacturer for repair. To date there have been 2 devices that required manufacturer repair, both of which were under warranty.

Additionally, department firearm instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, most repairs, or instruction.

OC (oleoresin capsicum) Spray

(1) Description:

A. Background:

For the purposes of this portion of the Impact Statement, OC (Oleoresin capsicum) will be referred to in the spray form as opposed to the aerosol canister form. First Defense manufactures different sizes of OC sprays. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. Besides being effective on humans, OC based chemical agents usually work on animals as well. In a liquid form, OC can appear as a clear, amber, or heavy dark red solution depending on the manufacturer. It is mixed with several types of solutions which act as carriers.

B. Quantity:

Qty 23 – First Defense MK-9 OC spray (13- ounces)

Qty 178 – First Defense MK-3 OC spray (3 ounces)

Most of the MK-3 OC sprays are issued to and maintained by individual officers; however, a small amount of these sprays is stored in a secured equipment room as spares in case of damage or new personnel issue.

C. Capability:

The First Defense MK-3 OC sprays are standard issued to all police officers and are worn on the police officers' belt. It has an effective range of 10-12 feet. The

larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

D. Lifespan:

Aerosol products eventually lose pressure over time. The lifespan of both the MK-9 and MK-3 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

E. Use:

OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

As per City Council resolution (June 9, 2020), 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.

Pursuant to Cal. Pen. Code § 13652, chemical agents shall not be used to disperse any assembly, protest, or demonstration except as provided below.

Chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

- (1) De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
- (2) Repeated, audible announcements are made announcing the intent to use chemical agents and the type to be used, when objectively reasonable to do

so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and chemical agents are targeted toward those individuals engaged in violent acts.

(5) Chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Chemical agents shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

F. How it Works:

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, burning/stinging skin sensation, redness of the skin, irritation and burning of the nose, runny nose, salivation and burning sensation of the mouth, cough, gagging sensation, shortness of breath, temporary paralysis of the larynx (person unable to speak) and nausea (caused by shock, not the OC itself). A person may also feel disorientated, anxiety, and/or panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

(2) Purpose:

There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control (except as limited by the June 9, 2020 Council policy), barricade or hostage situations and dealing with dangerous animals.

(3) Fiscal Cost:

A. Initial Cost:

The MK-3 OC spray cost approx. \$19 per unit and the MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

B. Cost of Use:

The cost of each usage is unpredictable due to the unknown nature of crime, timelines of dangerous situations, and number of applications.

C. Cost of Potential Adverse Effects:

Adverse effects of improper use of OC spray are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

See below cost of training.

E. Training Cost:

Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

F. Maintenance and Storage Costs:

The majority of the MK-3 OC sprays are either stored within the Police Department or with each sworn police officer while they conduct official duties. All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

G. Upgrade Costs:

No upgrades exist for this equipment as of this report.

(4) Impact:

The physical effects of being subjected to OC may significantly reduce an individual's aggressive behavior. Reports have shown that the use of OC can reduce the amount of officer and arrestee injuries due to its effectiveness. Chemists assigned to the FBI Forensic Science Research and Training Center report no long-term health risks associated with the use of OC. The use of the MK-3 or MK-9 OC spray can render a dangerous and violent situation safe without using a higher level of force.

Potential negative impacts include serious bodily injury and litigation costs associated with them.

(5) Mitigations:

Law Enforcement Officers attend a Police Officer Standard Training (POST) approved academy before they enter into a Field Training Program and continue their training. During this academy they are taught about OC, how to deploy it, its effects, and the decontamination process. They are also subjected to OC to physically feel the effects themselves. After the academy, each officer is issued a MK-3 OC spray which they are to keep on their person while on duty. If deployed and when practical, medical personnel should be summoned for the affected person(s) per policy 303.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) Alternatives:

Alternatives to utilizing OC sprays are tools such as expandable batons, less lethal launchers, and/or physical body weapons. The rationale to use OC spray depends on the circumstances of each individual incident and the individual officer involved in the incident. As mentioned above, reports have shown that OC spray may significantly reduce an individual's aggressive behavior which can minimize the amount of force necessary to apprehend that subject. Per our Use of Force policy (Lexipol 300), we shall use the minimal amount of force possible during each incident, thus making OC spray a valuable option.

(7) Third Party Dependence:

There is no third-party dependence for the First Defense OC spray. Once they are purchased, they are secured in their designated locations within the Police Department or with sworn police officers while they conduct official duties.

Chlorobenzylidene Malononitrile and Oleoresin Capsicum

(1) Description:

A. Background:

Chlorobenzylidene malononitrile (CS):

Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

Oleoresin capsicum (OC):

For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

B. Quantity:

Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

C. Capability:

CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

D. Lifespan:

CS and OC canisters expire in approximately 5 years.

E. Use:

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.

Pursuant to Cal. Pen. Code § 13652, kinetic energy projectiles and chemical agents shall not be used to disperse any assembly, protest, or demonstration except as provided below.

Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and 37 | Page objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by BPD solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

(11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

(2) **Purpose:**

There are a variety of situations where peace officers may in the past have used chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals. Such uses of tear gas are now prohibited by Berkeley law.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The cost for CS canisters ranges from \$20.00 to \$39.00 per unit. The cost for OC canisters ranges from \$36.00 to \$44.00 per unit. The Berkeley Police Department prefers the use of the Combined Tactical Systems (CTS) chemical agents and we purchase them from LC Action Police Supply.

B. **Cost of Use:**

The cost of each proposed use is unpredictable due to the demand, unknown nature and timelines of dangerous crowd/riots situations, dangerous barricade situations, and hostage situations.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC and CS are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See below cost of training.

E. **Training Cost:**

When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

F. Maintenance and Storage Costs:

The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

G. Upgrade Costs:

No upgrades exist for this equipment as of this report.

(4) Impact:

BPD is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Law Enforcement, under Penal Code 12403.1, is able to lawfully purchase, possess, or use chemical agents in the discharge of their duties. CS and/or OC canisters have been prominently used to resolve dangerous barricaded suspect situations and violent crowd control/riot situations.

Berkeley Police officers are trained to utilize time and distance to de-escalate dangerous barricaded situations in order to resolve each incident with minimal the use of force (per Use of Force Policy 300). In some circumstances when all other options are exhausted, CS and/or OC can be inserted into the structure in which the barricaded suspect is, denying access to certain areas inside. Unless exigent circumstances arise, all attempts to evacuate the structure are made prior to any deployment. When CS and/or OC are deployed into a structure the suspect may be forced outside allowing the situation to resolve safely with no use further use of force.

CS and/or OC chemical agents can be utilized to create order in dangerous crowd control/riot situations that have demonstrated violence or destruction. During these incidents, typically a clear and direct warning has been given to the crowd to disperse before the chemical agents are deployed. The ability to disperse crowds from a distance limits injury to Police Officers as well as damage to critical structures.

Severe injuries occur not infrequently from the use of CS and PC chemical agents, including to multiple body systems, with the majority to the skin, eyes, and cardiopulmonary system and may result in significant psychological symptoms and long-term disability.⁴

⁴ Rohini J. Haar, MD, MPH, and Vincent Iacopino, MD, PhD, Lethal in Disguise: The Health Consequences of Crowd Control Weapons, Physicians for Social Responsibility, 2016, p. 44.

(5) Mitigations:

Regarding the already mentioned impacts, the decision to utilize chemical agents (unless there are exigent circumstances) flows through the chain of command and ultimately makes its way to the Chief of Police and the City Manager. If there are exigent circumstances, the Field Commander makes the decision and then advises the Chief of Police as soon as practical. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

With these procedures incorporated in BPD's policies, this mitigates many potential negative impacts. Per Policy 428 – First Amendment Assemblies - The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agents, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed. Less-than-lethal munitions (40 mm CS impact rounds), chemical agents (including OC spray), and/or smoke shall only be deployed in crowd control situations as outlined in the Use of Force Policy. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

In addition to the mitigations in place, the Berkeley Police Special Response Team also receives annual training on the use of chemical agents, the effects, and the decontamination process. Per policy 303, when practical, medical personnel should be summoned for the affected person(s).

(6) Alternatives:

There are no direct alternatives for CS and OC. They are the industry's leading way to resolve barricaded suspects while reducing the likelihood of injury to the subject, community, and officers. Additionally, it is one of the only tools that allows officers to stop acts of violence or regain order during crowd control/riot situations. They are very distinct in nature and have direct purposes. The rationale to use CS or OC depends on the circumstances of each incident. The Berkeley Police Department shall use the minimal amount of force per our Use of Force Policy 300. The use of CS or OC allows the police personnel to maintain distance, giving officers more time to react and avoid a potential need for a higher level of force to safely resolve the situation.

(7) **Third Party Dependence:**

There is no third-party dependence for CS and OC chemical agents. Once they are purchased, they are secured in their designated areas and stay there until they are either used during incidents or training.

Remington 700 Rifle

(1) **Description:**

A. **Background:**

The Remington 700 is a series of bolt-action rifles designed in 1962 by the Remington Arms Company. The "700" designator is the generic name for multiple models of rifles with various parts, barrel lengths, stocks, etc. The Remington 700 rifle has long been used by law enforcement agencies and continues to be an industry standard for issued equipment. The Berkeley Police Department utilizes a custom Remington 700 action, chambered in the common .308-caliber round, with a 20" barrel and an Accuracy International chassis/stock. The rifle also includes a Nightforce 3-15x magnified optic and bipod.

BPD utilizes Hornady .308-caliber ammunition. This particular ammunition is specially designed for law enforcement applications due to its increased and consistent accuracy and performance.

B. **Quantity:**

The Berkeley Police Department Special Response Team (SRT) currently possesses six Remington 700 rifles, all configured in the same manner.

Currently, BPD has approximately 1,800 Hornady .308-caliber rounds. That quantity of ammunition fluctuates depending on supply from distributors and training schedules of those trained officers.

C. **Capability:**

The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

D. Lifespan:

The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

E. Use:

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

F. How it Works:

The Remington 700 is a manually operated rifle. It requires the officer to physically maneuver a handle to expel a spent cartridge and to load another unspent round of ammunition in order to fire a second round. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The officer must then pull a handle attached to the bolt to the rear, ejecting the spent cartridge. The officer then pushes the bolt forward, which picks up another bullet from the magazine, and closes the chamber, making the rifle ready to fire again.

(2) Purpose:

This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

(3) Fiscal Cost:

A. Initial Cost:

The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

B. Cost of Use:

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on training.

C. Cost of Adverse Effects:

Adverse effects and improper usage of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

E. Training Costs:

The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. Upgrade Costs:

Upgrade costs and maintenance cost are synonymous due to the consistent design. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

(4) Impact:

The primary purpose of this rifle is to further SRT's goal of adding time and distance when dealing with a violent and dangerous individual(s). The rifle may allow SRT additional time by increasing the distance between law enforcement and the specific individual, thereby increasing the likelihood of a more peaceful resolution. Like all tools, it has a time and place for its intended operational efficacy.

(5) **Mitigations:**

Mitigating impacts from this tool's primary purpose is done through regular training. The training includes accuracy, decision making, scenarios, and various other training points. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The Remington 700 rifle is an industry standard tool used to deliver precision accuracy on an intended target. This tool can deliver accuracy and predictability through intermediate barriers like glass windows. It can be used at distances greater than any other tool currently possessed or authorized. No alternate tool or method would accomplish the same goal.

(7) **Third Party Dependence:**

These rifles are fairly simple in their design and operation. They do require regular maintenance which is commonly performed by each individual member. BPD Armorers are also capable of performing additional maintenance. If an issue arises which is beyond the scope of our Armorers we would seek professional assistance from the manufacturer. However, the need for this is very rare.

ReconRobotics Recon Scout XT

(1) **Description:**

A. **Background:**

The Recon Scout XT is a throwable micro-robot manufactured by ReconRobotics for use in law enforcement applications. The Recon Scout XT enables officers to obtain instantaneous video footage and audio within indoor or outdoor environments. Designed to withstand repeated drops onto concrete, the Recon Scout XT robot can be thrown into hazardous situations (hostage rescue, barricaded subjects, natural disasters, etc.) in order to allow officers to quickly and safely make informed decisions when seconds count.

B. **Quantity:**

The Berkeley Police Department has two Recon Scout XT throwable robots, both purchased in 2010.

C. Capability:

The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

D. Lifespan:

Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

E. Use:

The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

F. How it Works:

The Recon Scout XT robot has a cylindrical body with a finned-wheel at either end of its body, and is stabilized by a rubber "tail". It measures approximately 6 ½" wide, and each wheel is about 5" in diameter (fin to fin) and weights just over one pound (1.2 lbs.). The Recon Scout XT robot sends digital video and audio back to an Operator Control Unit (OCU; controller with a screen and joystick), which allows the officer to control the robot, which provides a live feedback containing audio and visual feeds. The Recon Scout XT robot does not record audio or video footage; there is no data storage capability.

(2) Purpose:

The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

(3) Fiscal Cost:

A. Initial cost:

The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

B. Cost of Use:

There is no “per use” cost of this equipment. The Recon Scout XT is powered by a rechargeable battery.

C. Cost of Potential Adverse Impacts:

The likelihood of adverse impacts due to the use of the Recon Scout XT robot is low – it is small, lightweight and is not likely to injure persons or damage personal property when deployed; however, there is a small chance that the Recon Scout XT robot might cause damage to personal property when deployed (thrown) into a structure. Due caution is used when it becomes necessary to throw, rather than place, the robot into a structure.

D. Annual and Ongoing Cost:

There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot’s batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

E. Training Cost:

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

F. Maintenance and Storage Costs:

There are no annual or storage costs.

G. Upgrade Costs:

There are no upgrades available at the time of this report.

(4) Impact:

The Recon Scout XT robot is used to safely gather information in situations where it may be dangerous to expose an officer, or officers, to gather the same information. Putting officers in such unknown, tense situations has the potential to create violent encounters, or otherwise place officers in unnecessary peril and danger that might

otherwise be avoided by the use of a tool like the Recon Scout XT robot. The Recon Scout XT robot is not likely to have a negative impact on the welfare or safety of the public as its role is to gather real-time information during high-risk incidents such as hostage or potentially life-threatening situations. The Recon Scout XT robot is likely to improve the welfare and increase the safety of the public through its ability to gather real-time information and feed it back to police officers. The Recon Scout XT robot does not have the capability to record or store data.

(5) Mitigations:

The use of the Recon Scout XT robot is limited to sworn police officers, and guided by field supervisors (Lieutenants and Sergeants). Procedurally, the Recon Scout XT robot is used when exigent circumstances exist (hostage situation, barricaded subject, natural disaster necessitating rescue, etc.) and real-time information is necessary to safely and effectively resolve the situation. The robot does not record or store data.

(6) Alternatives:

Unmanned aerial vehicles (UAV) are an alternative to robots such as the Recon Scout XT robot. However, the Berkeley City Council has prohibited the Berkeley Police Department from using UAVs. They are not constrained by obstacles on the ground and provide far superior perspective and situational awareness; at times, obstacles halt the Recon Scout XT robot's movement. There are several other robots on the market, however, the Recon Scout XT robot is compact, lightweight (weighing in at just over a pound), very maneuverable, and can easily be carried by an officer. It can also be introduced into structures by throwing it through any opening – an option not possible with other robot models.

(7) Third Party Dependence:

The Recon Scout XT robot does not currently rely on a third-party company or vendor for its use or maintenance. Should maintenance or parts be required beyond the scope of the members of the Berkeley Police Department, the robot would be sent to ReconRobotics for service.

Andros Remotec HD-1 Hazardous Duty Robot

(1) Description:

A. Background:

The Andros Remotec HD-1 Hazardous Duty Robot, hereinafter referred to as Remotec HD-1 robot, was designed to support a wide range of missions in demanding environments. The Remotec HD-1 robot is capable of lifting up to 125

pounds, tracked articulators stair climbing, and has an integrated Talisman radio system for a stronger radio wave connection between the controller and the robot.

Remotec has served explosive ordinance disposal units, hazardous materials units, and other first responders as a provider of mobile robotic systems for application into a variety of undesirable, hazardous and potentially life-threatening environments. The Remotec HD-1 robot allows individuals to approach hazardous devices to examine and manipulate the device without putting people in harm's way.

B. Quantity:

The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

C. Capability:

Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- 1) A spike to break glass and access vehicles or homes with potential explosive devices inside
- 2) An X-ray mount in order to remotely X-ray suspected explosive devices.
- 3) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- 4) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
- 5) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- 6) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

D. Lifespan:

The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

E. Use:

Used to examine and possible destroy hazardous materials such as an explosive device.

F. How it Works:

The Remotec HD-1 robot is piloted by a bomb technician into a hazardous area to locate, examine, and render suspicious packages and explosive devices safe by utilizing a variety of attachable tools.

(2) Purpose:

The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

(3) Fiscal Cost:

A. Initial Cost:

Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

B. Cost of Use:

None. The robot is electric and operated through the City's electricity for charging.

C. Cost of Potential Adverse Effects:

The Remotec HD-1 robot interacts with inanimate objects. However, should it encounter a package that explodes, it could potentially destroy the robot and damage other property.

D. Annual and Ongoing Costs:

There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

E. Training Costs:

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

F. Maintenance and Storage Costs:

Remotec offers occasional maintenance and upkeep workshops free of charge.

G. Upgrade Costs:

There are no costs for upgrades as the company has stopped manufacturing the robot and any applicable upgrades.

(4) Impact:

The Remotec HD-1 robot is used by the Berkeley Police Department Bomb Squad as a means to examine a potentially explosive device in order to keep the community safe. Since April 2020, the Berkeley Police Department Bomb Squad has responded to 14 incidents. The impact of the Remotec HD-1 robot has been to reduce and minimize the danger posed by calls of possible explosive devices to the Berkeley Police Department's Bomb Technicians.

(5) Mitigations:

The Remotec HD-1 robot is used in situations where a hazardous device exists. In these situations, the area is always evacuated in order to ensure community safety.

(6) Alternatives:

The Remotec HD-1 robot is 13 years old and there has been significant development in technology. There are several alternatives that are far superior than our current Remotec HD-1; Mark V-A1 robot developed by Remotec Andros, Caliber Flex developed by ICOR Technology, Digital Vanguard-S developed by Med-Eng and T7 and T4 developed by L3Harris Technologies. These are alternatives that have newer and better technology and capabilities than the Remotec HD-1 robot.

(7) Third Party Dependence:

Remotec representatives are the only ones used to diagnose and maintain complex issues on the robot that cannot be done in-house. Since it is proprietary technology, Remotec may void warranties on any repairs made by outside vendors or by untrained personnel. Therefore, all complex issues with the Remotec HD-1 robot must be repaired by Remotec.

Light/Sound Diversionary Device

(1) Description:

A. **Background:**

Light/Sound Diversionary devices also known as distraction device, flashbang, light/sound and noise/flash devices have been available for approximately 40 years and are a safe and effective tool for Law Enforcement (LE) to use during challenging tactical incidents. The device will be referred to a diversionary device throughout this document.

B. **Quantity:**

Qty 50 - CTS 7290 Diversionary Device

C. **Capability:**

When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

D. **Lifespan:**

The lifespan of the CTS 7290 Diversionary Device is 5 years.

E. **Use:**

The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

F. **How it Works:**

The main charge of a modern diversionary device typically contains flash powder which is sometimes called photoflash powder. Upon initiation, this chemical compound causes the device to deflagrate (not detonate). The powder mixture is rapidly changed into gases that expand outward reaching upwards to 3,800 times the original volume of the charge itself. This process releases the desired effects of loud noise, bright light and the feeling of atmospheric pressure. Flash powder is typically made up of an oxidizer and some type of fuel. The oxidizer is needed to initiate and sustain the flash powder's rapid combustion. This is required since sufficient oxygen cannot be obtained from just the surrounding air.

(2) **Purpose:**

The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

B. **Cost of Use:**

The cost of each proposed use is unpredictable due to the unknown nature and timelines of dangerous barricade situations, critical incident, and hostage situations. The devices may be stored inside of the Police Department, in the Special Response Team Vehicle, or in the rescue vehicle. There are no additional storage costs. There are no associated costs for transporting, maintenance, training, or upgrades.

C. **Cost of Potential Advert Effects:**

Adverse effects of improper use of a diversionary device are not calculable. It could result in serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See below training cost.

E. **Training Cost:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

F. Maintenance and Storage Costs:

The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

G. Upgrade Costs:

No upgrades exist for this equipment as of this report.

(4) Impact:

The Berkeley Police Department is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Diversionary Devices may be utilized in many situations to include potentially dangerous barricaded subject situations, hostage situations, and critical incidents. Some criteria considered prior to a deployment is dependent upon whether the suspect is a dangerous felon, causes a life-threatening situation and/or other unique incidents where it appears to be a reasonable method in which to resolve the situation. When deployed appropriately these devices can assist in safely apprehending suspects and resolving high risk critical incidents with minimal or no injuries to suspects and/or officers.

(5) Mitigations:

Since Diversionary Devices are considered low explosives, there are several protocols in place to mitigate possible negative results (i.e. minor or major injuries).

Only trained and qualified personnel are permitted to deploy diversionary devices; typically, members of the Special Response Team who receive constant training regarding the deployment, effects, and post deployment protocols.

Pre-deployment concerns are typically gathered and evaluated, such as:

- The number of people at a location and the individual location of suspects within the structure.
- Evaluation if there are children or elderly people present
- An evaluation of the suspect's mental and physical conditioning
- Evaluation of the building/room layout

- Possible combustible/flammable substances present
- Lighting conditions

When a diversionary device is deployed, the officer shall utilize a helmet, hearing protection, eye protection, body armor, and nomex (fire resistive) gloves.

If a diversionary device is used, a supervisor shall be notified, medical treatment/screening is conducted, and a collection of the deflagrated device is completed. Documentation utilizing the device serial number is recorded.

Per Policy 351 - Except in extreme emergencies (i.e., life-threatening situations), flash/sound diversionary devices shall not be used without prior authorization of the incident commander/on-scene supervisor. Whenever diversionary devices are carried by personnel in an actual situation or incident, that fact shall be noted in the after-action report or police report. In the event devices are deployed, the circumstances surrounding their deployment shall be fully described. The Chief of Police or his or her designee shall be responsible for reviewing any deployment of diversionary devices to ensure that policy was followed. Diversionary devices are registered by serial number with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Typically, the police department's purchase of new devices is reported directly (by case-lot serial numbers) to ATF by the device manufacturer via ATF Form 5. The National Firearms Act requires the police department to notify ATF upon the use/expenditure of diversionary devices. A Special Response Team member shall be responsible for submitting written notification to ATF when all devices listed on a single ATF form 5 have been used/expended.

(6) Alternatives:

A possible alternative to a diversionary device (flashbang) is the Tactical Electronic Distraction Device (T.E.D.D.) which emits 2600 lumen light and high pitched 120 decibel sound to disorientate subjects. This could be a good tool as it is not a low explosive however it has its negative aspects as well:

- There is no feeling of atmospheric pressure, limiting the desired momentary physiological effect.
- A suspect could pick up and throw the device at potential victims and at police officers. The currently used diversionary devices are too hot to attempt this.

- In certain circumstances, a suspect could potentially steal the device during an escape.
- The individual cost per unit is approx. \$200 which is much more than a diversionary device
- This device is significantly less effective in disorienting subjects compared to a diversionary device.

(7) Third Party Dependence:

There is no third-party dependence for Diversionary Devices with the exception of communication with ATF of the purchase. Once they are purchased, they are secured within their designated locations where they are stored until they are either used during incidents or training.

Long Range Acoustic Device (LRAD)

(1) Description:

A. Background:

The Long-Range Acoustic Device (LRAD) is a high intensity directional acoustical array for long range, crystal clear notification system. The use of the LRAD is for communications,

B. Quantity:

The Berkeley Police Department possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

C. Capability:

Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

D. Lifespan:

The lifespan for both LRADs is 25 years.

E. Use:

The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

F. How it Works:

The LRADs are essentially a long-range speaker or long-range megaphone and operates as such.

(2) Purpose:

The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

(3) Fiscal Cost:

A. Initial Cost:

The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

B. Cost of Use:

There is no cost associated with each use of the LRADs. The systems run on batteries or can plug into a vehicle.

C. Cost of Potential Adverse Effects:

Adverse effects of improper use of the LRADs are not calculable. It could lead to hearing loss. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

BPD has not incurred any additional cost to date for this equipment.

E. Training Costs:

Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

F. Maintenance and Storage Costs:

There are no maintenance or storage costs for this equipment.

G. Upgrade Costs:

No upgrades exist for this equipment as of this report.

(4) Impact:

The Berkeley Police Department is committed to ensuring the safety of our community. Having the ability to communicate efficiently and effectively in different situations is crucial in providing potentially life-saving information to the public. The LRAD provides BPD personnel the ability to communicate long distances to people that are in a given area, inside structures, or barricaded inside a structure. The LRAD is very effective any situation involving communicating information to large crowds, or entire communities.

Over shorter distances, LRAD signals are loud enough to cause pain in the ears of people in their path. If used improperly they can cause permanent hearing damage,

including tinnitus or hyperacusis, to intended targets, bystanders, and police officers.⁵ Improper use may also result in litigation costs.

(5) **Mitigations:**

LRAD are capable of producing a high pitched “deterrent tone” that is designed to disperse a potential threat. This “deterrent tone” does have the ability to cause hearing damage. BPD Policy 707 strictly prohibits any member of BPD from using the LRAD as a weapon. Additionally, the LRAD can only be deployed at the direction of a Watch Commander or Incident Commander and may only be used by personnel specifically trained in the use of the LRAD.

(6) **Alternatives:**

BPD is not aware of any other sound speakers that are able to clearly communicate over long distances of up to 1 mile.

(7) **Third Party Dependence:**

To date, BPD has not depended on any third party for the use or maintenance of this equipment.

36” Baton

(1) **Description:**

A. **Background:**

The Berkeley Police Department issues a knurled grip, polycarbonate, fixed-length straight baton for crowd control purposes. The baton is 36” long and 1.25” in diameter and weighs about 1.64 pounds. Polycarbonate is a thermoplastic, which means it is durable, resistant to splintering and heat.

B. **Quantity:**

In 2017, BPD purchased 175 polycarbonate 36” batons to replace aging wood batons of the same purpose. Additional polycarbonate batons were purchased over the past four years to ensure all sworn police officers as well as trained reserve police officers are equipped with the 36” baton. BPD possesses approximately 195 - 36” polycarbonate batons. Most of these batons are issued to and maintained by individuals. However, a small amount of these batons is stored in a secure equipment room as spares in case of damage or new personnel issue.

⁵ Tyler Tracy, “Long Range Acoustic Devices (LRAD) and Public Safety,” Acentech, August 10, 2020, at <https://www.acentech.com/resources/2020/08/long-range-acoustic-devices-lrad-and-public-safety/>.

C. Capabilities:

The 36" baton is carried in a "baton ring" on an officer's belt just as any other baton. It is used as a safety tool and is a means for officers to defend themselves in certain crowd control or riot situations. Trained officers may employ particular applications of force with their 36" batons when directed by their chain of command. The 36" baton is the desirable baton in a crowd control situation as it is 7" longer than the standard 29" baton. The longer baton creates more distance between the officer and others, which is critical when dealing with violent or aggressive crowds.

D. Lifespan:

The manufacturer provides a lifetime repair or replacement guarantee.

E. Use:

The 36" baton is a less-lethal force tool and is intended to be used in crowd control situations in close quarters, where officers may defend an attack, or when engaging in physical contact with combative or aggressive crowd members. The 36" baton is only used for crowd situations.

F. How it Works:

There are a number of appropriate blocking or striking techniques an officer may use when force is justified and the decision is made to use the 36" baton to effectively gain control of a person or situation. The use of the baton requires the officer to continually monitor and assess effectiveness of any delivered strikes. The reason this type of force is administered is to stop a person's attack, threat or resistance, with the goal to place them under lawful arrest for their actions.

(2) Purpose:

The 36" baton is a less-lethal tool that may be used when a crowd becomes aggressive, hostile or violent. It is the most effective individual tool of choice when officers are in formation and engaged in crowd control duties.

When officers are deployed to maintain, disperse, or protect others from a violent crowd or civil disobedience, it is imperative that they have an adequate safety zone to protect themselves or others. The 36" baton provides officers additional distance from a potential threat than the standard issue 29" baton.

When the baton is used to strike a subject, kinetic energy transfer occurs. Kinetic energy is the energy of motion. The amount of translational kinetic energy which an object has depends upon two variables: the mass of the object and the speed of the

object. The desired effect is for the officer to apply a baton strike with the necessary energy to stop the threat as quickly and safely as possible. By targeting the large muscle areas of the arms or legs with sufficient kinetic energy, motor and sensory nerves can be affected. When the nerves are affected this will create momentary muscle dysfunction or pain, which will allow the officer the ability to gain control of the subject, while minimizing the possibility of long-term injury to the subject.

The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person as outlined in policy 303 and 300.

(3) Fiscal Cost:

A. Initial Cost:

The cost of the Monadnock MP36 2004 36" polycarbonate baton with knurled grip was \$53.00 per baton in September 2017. After tax, \$10,132.94 was spent for the purchase of 175 batons. The department placed an additional order for 20 batons in December 2019. It is anticipated that the cost of the baton will fluctuate a few dollars based on supply and demand over time.

B. Cost of Use:

The only cost associated with use that of ongoing departmental training to ensure officers are proficient in authorized baton techniques.

C. Costs of Potential Adverse Impacts:

Adverse effects from improper use of the 36" baton cannot be anticipated. Improper use could lead to serious bodily injury or death. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

There is no additional annual or ongoing cost associated with the 36" baton.

E. Training costs:

Training on the applications of the batons are conducted at the police academy. Police Office Standard Training (POST) requires "arrest and control" training every 2 years which includes portions of baton training. This training is conducted in-house by POST certified defensive tactics instructors.

F. Maintenance and Storage Costs:

There are no associated costs to transporting, maintenance, or upgrades.

G. Upgrade Costs:

No upgrades exist for this equipment as of this report.

(4) Impact:

Per Policy 300, "The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. The Department is committed to accomplishing this mission with respect and minimal reliance of the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force."

At times, it may become necessary for police officers to use force in crowd control situations to move a crowd, stop violent behavior, overcome resistance or make a lawful arrest. Officers have been trained that they must do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public. When deemed necessary, use of the 36" baton may be used as a tool to strike a person, create a barrier or used in formation in order to move a crowd in a certain direction. The use of the baton may cause discomfort, pain, blunt trauma and has the potential to cause serious injury. Their use is subject to the totality of the circumstances, proper training, department policy, as well as federal and state law.

Officers who use the 36" baton are trained to continuously assess each situation where force is used and only use the force that is reasonably necessary and proportional to respond to the threat or resistance to effectively and safely resolve the incident.

(5) Mitigations:

Per Policy 300, "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."

Per Policy 303, "Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device. Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices. When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets."

Every officer who carries a 36" baton has been trained how to properly carry the equipment, it's intended use, target areas and non-target areas. Large muscle groups such as the upper legs or lower abdomen are approved target areas and areas to be avoided at the groin and head. When a baton strike is directed at an intended target area and the subject moves simultaneously, it is possible for the officer to unintentionally strike a non-target area. Officers are trained to consider the placement of baton strikes, and to immediately render medical aid to the subject as soon as it is safe to do so.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) Alternatives:

The alternatives to the 36" crowd control baton are the 29" standard issue baton and collapsible 26" Rapid Containment Baton (RCB). The standard issue baton and RCB are shorter in length and require officers to be closer to the person they are engaging, thereby increasing the risk of injury to the officer and the person. A longer baton provides an officer with more distance which creates a small safety zone and allows the officer time to react and assess the situation before making use of force decisions.

(7) Third Party Dependence:

There is no requirement for a third-party service provider to issue the 36" crowd control baton. Berkeley Police Department Defensive Tactics Instructors provide in-house training on the proper use of the baton.

Mobile Command Vehicle

(1) Description:

A. Background

The Berkeley Police Department owns one Mobile Command Vehicle (MCV). Our MCV is a 2003 Freightliner MT55. This vehicle's most common use is as a commercial delivery vehicle. Our 2003 Freightliner MT55 was converted into a MCV by adding desktop work stations, additional police radios and emergency lighting. The MCV is 30' long and has a gross vehicle weight (GVW) of approximately 23,000 pounds.

B. Quantity:

The Berkeley Police Department owns 1 MCV.

C. Capability:

The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

D. Lifespan:

This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

E. Use:

This vehicle is used as a mobile command post for large scaled events.

F. How it Works:

This vehicle operates and drives like other vehicles.

(2) Purpose:

This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4th of July, critical incidents or natural disasters.

(3) Fiscal Cost:

A. Initial cost:

The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

B. Cost of Use:

The cost of use is the cost of fuel from the City Corporation Yard.

C. Cost of Potential Adverse Effects:

Adverse effects of improper use of the MCV are not calculable, but is the same as improper use of any vehicles. The improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

E. Training Costs:

Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

F. Maintenance and Storage Costs:

There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

G. Upgrade Cost:

The MCV is almost 20 years old and upgrades would involve replacing different parts of the vehicle. This work would be conducted by the City of Berkeley's Corporation Yard. The cost would be staff time plus the cost of any necessary parts.

(4) Impact:

The MCV is used as a command post for any large scaled event. It works as a mobile central location where resources can stage and be deployed from. It provides the police department with on-site command, supplying a control and communications hub that is needed for large community events, or critical incidents such as natural disasters in order to maintain public safety. The deployment or appearance of certain armored vehicles may escalate tension, provoke fear, prevent clear communication, or increase distrust.

(5) Mitigations:

The MCV shall only be operated by trained personnel that have demonstrated proficiency in the operations of this vehicle per Berkeley Police Department Policy 811.

(6) Alternatives:

The MCV is almost 20 years old. Current MCV from other agencies are large mobile homes converted into MCVs.

(7) Third Party Dependence:

All maintenance is completed through the Cities Corp Yard so there is no dependence on a third party.

Barrett Model 99 Rifle

(1) Description:

A. **Background:**

The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle first introduced in 1999. It is intended to be used in emergency situations where there is a high potential for violence.

B. **Quantity:**

Berkeley Police Department Special Response Team (SRT) currently possess 1 (one) of these rifles and is not looking to purchase any others.

Currently BPD has approximately 100 Summit Ammunition .50-caliber BNG rounds.

C. **Capability:**

This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

D. **Lifespan:**

This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

E. **Use:**

This rifle is used primarily in emergency situations where a life-threatening situation exists, necessitating a vehicle to be disabled.

F. **How it Works:**

This is a bolt-action rifle that fires one round at a time and needs to be reloaded by hand after each round. The Barrett Model 99 rifle works similar to all modern bolt-action rifles. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The operator pulls the bolt back, ejecting the spent cartridge. The operator then loads another bullet into the breach, pushes the bolt forward, and closes the chamber, making the rifle ready to fired again.

(2) **Purpose:**

The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

B. **Cost of Use:**

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

E. **Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. Upgrade Costs:

Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

(4) Impact:

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The Barrett rifle is a firearm the department would primarily use to stop a vehicle which poses a lethal threat to the public or used to disable a vehicle that presents a threat to the safety of another person(s) by its continued use.

The Barrett rifle is intended as a tool to increase the safety and welfare of community members and officers alike.

The Barrett rifle has minimal or no impact on civil rights or civil liberties as it will only be deployed in very specific situations, by very select members of the SRT. This is not a piece of equipment that is carried by an officer on routine patrol, and is highly unlikely that any members of our community would ever see this equipment due to its very selective use in the most critical of instances.

(5) Mitigations:

Only four BPD members are authorized to utilize this rifle. Authorized members are trained in its use as well as the very specific and limited circumstances where this equipment would be utilized.

(6) Alternatives:

There is no other alternative tool or asset available that could accomplish the same goal of this rifle. An alternative rifle to the Barrett model 99 is a different rifle of equal capability, such as a Lapua .338 caliber rifle.

(7) Third Party Dependence:

These rifles are simple in their design and operation. They do require regular maintenance which is performed by an SRT Team Leader. If an issue arises which is

beyond the scope of our Armorers we would seek manufacturer assistance. However, the need for this is expected to be very rare.

Appendix:

Applicable Lexipol Policies Respective to Each Equipment

Policies are hyperlinked to the Berkeley Police Department Lexipol policy website.

M4 rifle/Patrol Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 349 \(Tactical Rifle Operator Program\)](#)

Penn Arms 40MM launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

Milkor LTL multi-launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

FN 303 Launcher & FN Pava rounds

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

Remington 700 Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)

ReconRobotics Recon Scout XT Robots & Andros Remotec HD-1 Hazardous Duty Robot

- [Policy 708 \(Robot Cameras\)](#)

Light/Sound Diversionary Device

- [Policy 353 \(Diversionary Device\)](#)

Long Range Acoustic Device

- [Policy 707 \(Long Range Acoustical Device\)](#)

36" batons

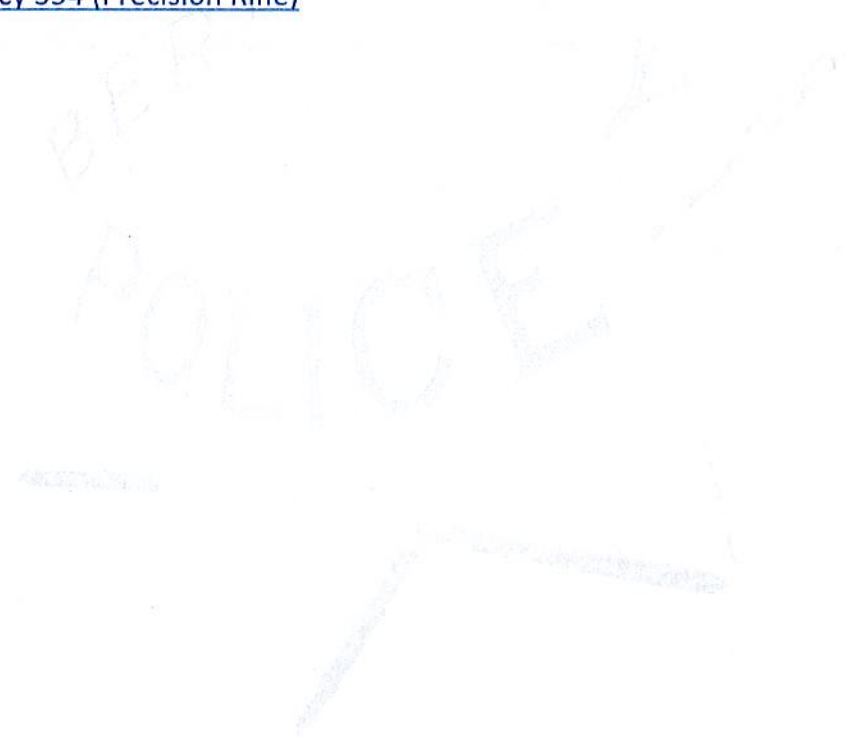
- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

Mobile Command Vehicle

- [Policy 811 \(Mobile Command Vehicle \(MCV\)\)](#)

Barret Model 99

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)



Control Devices and Techniques

303.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and maintenance of control devices that are described herein.

303.2 POLICY

In order to control subjects who are violent or who demonstrate the intent to be violent, the Berkeley Police Department authorizes officers to use control devices and techniques in accordance with the guidelines in this policy and the Use of Force Policy.

303.3 ISSUING, CARRYING AND USING CONTROL DEVICES

Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police, or his/her designee.

Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device.

Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices.

When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

Except as otherwise provided in Section 303.9, kinetic energy projectiles and chemical agents shall not be used to disperse any assembly, protest, or demonstration (Penal Code 13652).

303.4 RESPONSIBILITIES

303.4.1 WATCH COMMANDER RESPONSIBILITIES

The Watch Commander may authorize the use of a control device by selected personnel or members of specialized units who have successfully completed the required training.

303.4.2 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

The Personnel and Training Sergeant, or designated instructor, shall control the inventory and issuance of all control devices and shall ensure that all damaged, inoperative, outdated or expended control devices or projectiles are properly disposed of, repaired or replaced.

Every control device will be periodically inspected by the Personnel and Training Sergeant or the designated instructor for a particular control device. The inspection shall be documented.

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303.4.3 USER RESPONSIBILITIES

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices.

Any damaged, inoperative, outdated or expended control devices or projectiles, along with documentation explaining the cause of the damage, shall be returned to the Personnel and Training Sergeant for disposition. Damage to City Property forms shall also be prepared and forwarded through the chain of command, when appropriate, explaining the cause of damage.

303.5 BATON AND COLLAPSIBLE BATON GUIDELINES

The need to immediately control a suspect must be weighed against the risk of causing serious injury. The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

When carrying a baton, including a collapsible baton, uniformed personnel shall carry the baton in its authorized holder on the equipment belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

303.6 OLEORESIN CAPSICUM (OC) SPRAY GUIDELINES

As with other control devices, OC spray (aka pepper spray) and pepper projectiles may be considered for use to bring under control an individual or groups of individuals who are engaging in, or are about to engage in violent behavior. Pepper projectiles and OC spray should not, however, be used against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

303.6.1 OC SPRAY

Uniformed personnel carrying OC spray shall carry the device in its holster on the equipment belt or external vest carrier. Plainclothes and non-field personnel may carry OC spray as authorized, in accordance with the needs of their assignment or at the direction of their supervisor.

303.6.2 PEPPER PROJECTILE SYSTEMS

Pepper projectiles (aka "Pava" rounds) are plastic spheres that are filled with a derivative of OC powder. Because the compressed gas launcher (aka "less lethal" launcher) delivers the projectiles with enough force to burst the projectiles on impact and release the OC powder, the potential exists for the projectiles to inflict injury if they strike the head, neck, spine or groin. Therefore, personnel using a launcher should not intentionally target those areas, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

Officers encountering a situation that warrants the use of a launcher shall notify a supervisor as soon as practicable. A supervisor shall respond to all incidents where the suspect has been hit or

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exposed to the chemical agent. The supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

303.6.3 TREATMENT FOR OC SPRAY EXPOSURE

Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

303.7 POST-APPLICATION NOTICE

Whenever OC has been introduced into a residence, building interior, vehicle or other enclosed area, officers should provide the owners or available occupants with notice of the possible presence of residue that could result in irritation or injury if the area is not properly cleaned. Such notice should include advisement that clean up will be at the owner's expense. Information regarding the method of notice and the individuals notified should be included in related reports.

303.8 LESS LETHAL PROJECTILE GUIDELINES

This department is committed to reducing the potential for violent confrontations. "Less lethal" projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

303.8.1 DEPLOYMENT AND USE

Only department-approved projectiles shall be carried and deployed. Approved projectiles may be used to compel an individual to cease his/her actions when such projectiles present a reasonable option.

Approved projectiles include:

- (a) "Less Lethal" rounds: impact projectiles
- (b) "Pava" rounds: impact projectiles containing OC/pepper spray
- (c) "Marking" rounds: impact projectiles containing paint

Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

- (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles.
- (b) The suspect has made credible threats to harm him/herself or others.
- (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

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303.8.2 DEPLOYMENT CONSIDERATIONS

Before discharging projectiles, the officer should consider such factors as:

- (a) Distance and angle to target.
- (b) Type of projectiles employed.
- (c) Type and thickness of subject's clothing.
- (d) The subject's proximity to others.
- (e) The location of the subject.
- (f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

303.8.3 SAFETY PROCEDURES

Officers will inspect the launcher and projectiles at the beginning of each shift to ensure that the launcher is in proper working order and the projectiles are of the approved type and appear to be free from defects.

When it is not deployed, the launcher will be unloaded and properly and securely stored.

303.9 CROWD CONTROL REQUIREMENTS

Pursuant to California Penal Code 13652, kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

- (a) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
- (b) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively

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reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

- (c) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
- (d) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
- (e) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
- (f) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.
- (g) An objectively reasonable effort has been made to extract individuals in distress.
- (h) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
- (i) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
- (j) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:
 - 1. A violation of an imposed curfew.
 - 2. A verbal threat.
 - 3. Noncompliance with a law enforcement directive.

As per City Council resolution (June 9, 2020), pepper spray 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.

303.10 TRAINING FOR CONTROL DEVICES

The Personnel and Training Sergeant shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

- (a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.
- (b) All training and proficiency for control devices will be documented in the officer's training file.
- (c) Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot

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demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

303.11 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to California Penal Code 13652.1 and the Berkeley Use of Force Policy.

Lee, Katherine

From: Lee, Katherine
Sent: Thursday, June 30, 2022 5:37 PM
To: council@cityofberkeley.info
Cc: Williams-Ridley, Dee; Louis, Jennifer A.
Subject: Police Accountability Board commendations of BPD personnel
Attachments: PAB commendations BPD 2022-06-30.pdf

Dear Mayor and City Councilmembers,

Please see the attached letters of commendation for Berkeley Police Department personnel from the Police Accountability Board.

Sincerely,
Kathy

Katherine J. Lee
Interim Director of Police Accountability
City of Berkeley
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OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

June 30, 2022

To: Honorable Mayor and Members of the City Council
From: Michael Chang, Chairperson, Police Accountability Board *M.C.*
Re: Commendation of Berkeley Police Department

Twice a year, the Berkeley Police Department forwards to the Police Accountability Board a group of letters and emails from members of the public and from other departmental employees thanking and praising members of our Police Department for a wide variety of excellent police work. The Board reviewed two batches of commendations from 2021 at its May 11 and May 25, 2022 meetings, and singled out three incidents meriting an additional appreciation, and which are the subject of separate letters of commendation.

Beyond that, as a general matter, the Board observed that the letters and emails of commendation collectively described a high level of professionalism on the part of BPD employees, especially the sworn officers. The Board was impressed with example after example of officers being responsive and sensitive to members of the public, showing empathy and compassion, while also performing skillfully as they responded to dynamic and dangerous situations and performed thorough and diligent detective work.

Therefore, the Police Accountability Board voted to commend the entire Police Department for the notable actions of its members described in the letters and emails of commendation in 2021. The Board thanks and expresses its appreciation to the officers and other Police Department employees for this exemplary work and service to our community.

cc: Jennifer Louis, Interim Police Chief
Police Accountability Board Members



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

June 30, 2022

To: Honorable Mayor and Members of the City Council
From: Michael Chang, ^{MMC}Chairperson, Police Accountability Board
Re: Commendation for Sergeant Samantha Speelman, Officer Jaylon DeBruin, and Officer Geoffrey Mitchell

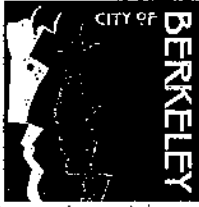
At its May 11, 2022 meeting, the Police Accountability Board reviewed a group of letters and emails from members of the public and from other departmental employees thanking and praising members of our Police Department for a wide variety of excellent work. The Board members identified several incidents in which BPD employees acted in such an exceptional manner that additional recognition was merited.

One such incident occurred on March 6, 2021, when officers were called to the Sather Gate Garage because a man in crisis was threatening to jump off the roof. Officers DeBruin and Mitchell, the initial responders, engaged the subject to keep him calm, and did so with kindness and compassion. They were joined by Sergeant Samantha Speelman, a trained Crisis Intervention Team officer and former Special Response Team negotiator, who took over communicating with the man.

As described by her superior, Sergeant Speelman gained the man's trust by listening to his concerns, showing empathy, and assuring him he had a say in the outcome of the situation. Eventually, the man came off the ledge, walked to Sergeant Speelman, and broke down sobbing. The three officers continued to talk to the man, reassuring him that he was a good person and had made the right decision. Even when the immediate threat of danger had subsided, the officers patiently continued engaging with him, encouraging the man to talk through his emotions.

The Police Accountability Board voted to commend Sergeant Speelman, Officer DeBruin and Officer Mitchell for several reasons: the officers displayed superior handling of a difficult situation, engaged in actions above and beyond typical duties, and showed extraordinary compassion, empathy and kindness. Their outstanding professionalism resulted in the best possible outcome – a life saved.

cc: Jennifer Louis, Interim Police Chief
Police Accountability Board Members



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

June 30, 2022

To: Honorable Mayor and Members of the City Council
From: Michael Chang, Chairperson, Police Accountability Board
Re: Commendation for Officers Dillon Armistead, Wesley Grover, Tyler Moore, Madison Albrandt, Noor Abdoulmawla, Veron Legall, Zackery Nash, and Semir Muratovic; and Community Service Officer Dorin Lee

At its May 11, 2022 meeting, the Police Accountability Board reviewed a group of letters and emails from members of the public and from other departmental employees thanking and praising members of our Police Department for a wide variety of excellent police work. The Board members identified several incidents in which BPD employees acted in such an exceptional manner that additional recognition was merited.

Two incidents occurring almost simultaneously in the early morning hours of March 6, 2021, stood out to the Board. In the first one, officers responded to a report of an assault and found a victim with a knife in his back. Officers rendered aid and, in the ensuing search for the assailant, an officer saw an assault in progress, with a second stab wound victim. While officers provided medical aid to the second victim, including application of two tourniquets, other officers worked to subdue the suspect. That was highly challenging because the suspect was erratic and initially refused officers' command to drop the knife being wielded, but eventually the suspect relented. Soon after that, the suspect in the first assault was located in Oakland; that suspect admitted to the stabbing and was arrested.

It was later determined that the two assaults, which took place in the same area at around the same time, were unrelated. Officers continued to gather evidence in both cases, coordinating with the U.C. and Oakland Police Departments, interviewing the suspects, and obtaining search warrants. Four days later, both suspects were charged; one for felony assault and the other for attempted murder, each with felony enhancements.

The Police Accountability Board voted to commend Officers Armistead, Grover, Moore, Albrandt, Abdoulmawla, Legall, Nash, and Muratovic; and CSO D. Lee for their teamwork and professionalism in these cases, which went above and beyond their typical duties. Both scenes were chaotic and dynamic, and required rendering medical aid to the victims, perhaps saving the life of the second victim. The officers showed great restraint when detaining the violent and armed suspect in the second case. And, their investigative work resulted in charges being brought against both suspects. Overall, officers displayed excellence in many facets of police work in these cases.

cc: Jennifer Louis, Interim Police Chief
Police Accountability Board Members



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

June 30, 2022

To: Honorable Mayor and Members of the City Council
From: Michael Chang, Chairperson, Police Accountability Board
Re: Commendation for Officers Devin Hogan, Shira Warren, Rush Jackson, and Matthew Valle

At its May 11, 2022 meeting, the Police Accountability Board reviewed a group of letters and emails from members of the public and from other departmental employees thanking and praising members of our Police Department for a wide variety of excellent police work. The Board members identified several incidents in which BPD employees acted in such an exceptional manner that additional recognition was merited.

An incident that occurred on October 18, 2021, is one example of this outstanding work. On that date, Officer Warren responded to a report of two men in a vehicle with one appearing "dead." She determined that the man was unconscious but breathing. Officers Hogan, Jackson, and Valle soon arrived, and determined the unconscious man might be suffering from an opioid overdose. Officer Hogan administered Narcan, but the man stopped breathing after about 30 seconds. The three officers then pulled the man out of the car and Officer Hogan administered a second dose of Narcan. He then began chest compressions, and continued doing so as the man was foaming at the mouth and turning blue; during this time, BFD arrived and began their assessment. BFD took over treatment, and the man started breathing on his own as he was being wheeled into the ambulance.

The man fully recovered and wrote to the officers, "I wish to extend my heartfelt thanks to the Berkeley Police and specifically Officer Warren for saving my life. My family and I cannot thank her enough for her valiant service. God bless Officer Warren and the Berkeley Police."

The Police Accountability Board voted to commend Officers Hogan, Warren, Jackson, and Valle for their superior handling of a difficult situation – a rapidly unfolding and life-threatening event that tested the officers' skills in working under pressure. The officers met this challenge well.

cc: Jennifer Louis, Interim Police Chief
Police Accountability Board Members



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

June 30, 2022

To: Honorable Mayor and Members of the City Council
From: Michael Chang, Chairperson, Police Accountability Board
Re: Commendation for Reserve Officers of Berkeley Police Department

At its May 11 and May 25, 2022 meetings, the Police Accountability Board reviewed a group of letters and emails from members of the public and from other departmental employees thanking and praising members of our Police Department for a wide variety of excellent police work.

This commendation was prompted by a letter in appreciation of several of our Reserve Officers who serve on the BPD's Fleet Team, coordinating maintenance, repair, and cleaning of patrol vehicles. Upon inquiring with the BPD, the Board learned that many Reserve Officers have a lengthy history of service to our Police Department, and that two of them have worked in the Reserve Officer Program for more than 50 years!

We understand that Reserve Officers complement the work of regular sworn officers in many ways. In addition to the Fleet Team, Reserve Officers work patrol shifts, staff special events, work in the Warrant Bureau and the Property Room, conduct background investigations, and more. Collectively, these officers work days, nights, and weekends. At a time when recruitment and retention of regular sworn officers is a challenge, the hours that Reserve Officers devote to police work is no doubt of great value to the BPD's operations.

The Police Accountability Board wishes to recognize the dedication, commitment, and longevity of our Reserve Officers: Kevin Fong, Marianne Jamison, Martin Magee, Michael Levitch, Mitchell Richman, Danny Lam, John Jones, Roosevelt Brown, Steven Lathrop, David Coons, Heather Haney, Victor Martinez, Martin Heist, and Larry Parker. Ultimately, their service to the BPD is a service to the community, and for that the Board is grateful.

cc: Jennifer Louis, Interim Police Chief
Police Accountability Board Members

Lee, Katherine

From: Lee, Katherine
Sent: Thursday, June 30, 2022 5:38 PM
To: Louis, Jennifer A.
Subject: PAB commendation letters
Attachments: PAB general commendation 2022-06-30.pdf; PAB commend SgtSpeelman et al 2022-06-30.pdf; PAB commend OfcArmistead et al 2022-06-30.pdf; PAB commend OfcHogan et al 2022-06-30.pdf; PAB commend ReserveOfcs 2022-06-30.pdf

Dear Chief Louis,

You have been cc'd on my email to the City Council attaching letters of commendation for personnel in your department.

I am attaching the letters here as separate documents, and ask, for all but the first general letter of commendation, that you please place the appropriate letter in each commended employee's personnel file.

You will see that these reflect the PAB's review of commendations for 2021. It was a challenge finding space on their agenda, in light of the numerous matters they have been considering during their first year of operation. This office has received from your department another set for the first part of 2022, and I hope that the PAB will have a chance to review them relatively soon.

Finally, I'd like to take this opportunity to echo the sentiments of the PAB in being impressed by the collection of commendations, which reflect so well on work of your employees, carried out with empathy and compassion.

Sincerely,
Kathy

Katherine J. Lee
Interim Director of Police Accountability
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Commissioner Attendance Report

For the period January 1 through June 30, 2022

Police Accountability Board

Katherine J. Lee

Commission Name:

Secretary Name:

Commissioner Last Name	12-Jan	26-Jan	9-Feb	23-Feb	9-Mar	23-Mar	13-Apr	26-Apr	11-May	25-May	8-Jun	22-Jun
1. Calavita	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
2. Chang	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
3. Harris	Attended	Attended	Attended	Leave of Absence	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Leave of Absence
4. Leftwich	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
5. Levine	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
6. Mizell	Attended	Attended	Attended	Attended	Attended	Leave of Absence	Attended	Attended	Attended	Leave of Absence	Attended	Attended
7. Moore	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
8. Owens	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
9. Ramsey	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Leave of Absence	Attended

Instructions for Completing this Form

This report tracks attendance of *current commissioners* at REGULAR commission meetings. Special meetings and subcommittee meetings are not included.

1. Gather your 2022 REGULAR meeting dates and roster of current commissioners.
2. Enter the **dates** of each REGULAR meeting for each month. Add columns as needed if you had more than one REGULAR meeting in a month.
3. Enter the names of your **current** commissioners in the column provided. Add rows if needed for commissions with more than 9 members.
4. For each meeting, select from the dropdown options to indicate whether the commissioner attended the meeting, had an approved leave of absence/excused absence, or was absent.
5. For meetings prior to the commissioner's appointment, choose "N/A"
6. Return this form via email to commission@cityofberkeley.info by the deadline. Call us at x6908 or email us with any questions about completing the form.

