



**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
Wednesday, January 24, 2023
6:30 P.M.**

Board Members

John Moore III (Chair)
Kitty Calavita
Leah Wilson
Joshua Cayetano

Regina Harris (Vice-Chair)
Julie Leftwich
Brent Blackaby
Alexander Mozes

MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709
([Click here for Directions](#))

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HEALTH AND SAFETY PROTOCOLS FOR IN-PERSON MEETINGS OF
BERKELEY BOARDS AND COMMISSIONS

Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

The policy below applies to in-person meetings of Berkeley Boards and Commissioners held in accordance with the Government Code (Brown Act) after the end of the State-declared emergency on February 28, 2023.

Issued By: City Manager's Office

Date: February 14, 2023

I. Vaccination Status

All attendees are encouraged to be fully up to date on their vaccinations, including any boosters for which they are eligible.

II. Health Status Precautions

For members of the public who are feeling sick, including but not limited to cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, it is recommended that they do not attend the meeting in-person as a public health precaution. In these cases, the public may submit comments in writing in lieu of attending in-person.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they are advised to wear a well-fitting mask (N95s, KN95s, KF94s are best), test for COVID-19 3-5 days from last exposure, and consider submitting comments in writing in lieu of attending in-person.

Close contact is defined as someone sharing the same indoor airspace, e.g., home, clinic waiting room, airplane, etc., for a cumulative total of 15 minutes or more over a 24-hour period within 2 days before symptoms of the infected person appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign-in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

Members of City Commissions are encouraged to take a rapid COVID-19 test on the day of the meeting.

Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

III. Face Coverings/Mask

Face coverings or masks that cover both the nose and mouth are encouraged for all commissioners, staff, and attendees at an in-person City Commission meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of Commissions, city staff, and the public are encouraged to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium, although masking is encouraged even when speaking.

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. Capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons that need to distance for personal health reasons.

Distancing will be implemented for the dais as space allows.

V. Protocols for Teleconference Participation by Commissioners

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for Commissioners participating remotely due to an approved ADA accommodation. For Commissioners participating remotely, the agenda must be posted at the remote location, the remote location must be accessible to the public, and the public must be able to participate and give public comment from the remote location.

- A Commissioner at a remote location will follow the same health and safety protocols as in-person meetings.
- A Commissioner at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

Hand sanitizing stations are available at the meeting locations. The bathrooms have soap and water for handwashing.

VII. Air Flow/Circulation/Sanitizing

Air filtration devices are used at all meeting locations. Window ventilation may be used if weather conditions allow.

JANUARY 24, 2024 REGULAR MEETING AGENDA



**POLICE ACCOUNTABILITY BOARD
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Wednesday, January 24, 2024
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Kitty Calavita
Leah Wilson
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Julie Leftwich
Brent Blackaby
Alexander Mozes

MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709
([Click here for Directions](#))

PUBLIC NOTICE

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82653396072>. 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 **826 5339 6072**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

LAND ACKNOWLEDGMENT

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Chochen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.

AGENDA

1. **CALL TO ORDER AND ROLL CALL** (2 MINUTES)
2. **APPROVAL OF AGENDA** (2 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.

4. **APPROVAL OF MINUTES** (5 MINUTES)
 - a. Minutes for the Regular Meeting of January 10, 2024
5. **ODPA STAFF REPORT** (10 MINUTES)

Announcements, updates, and other items.

6. **CHAIR AND BOARD MEMBERS' REPORTS** (10 MINUTES)

Announcements, updates, and 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 (10 MINUTES)

Report of activities and meeting schedule for all subcommittees, possible appointment or reassignment of members to subcommittees, and additional discussion and action as warranted for the subcommittees listed on the PAB's Subcommittee List included in the agenda packet.

9. LEGISLATIVE AND POLICY UPDATES (15 MINUTES)

Report on any pertinent legislative updates or policy changes concerning civilian oversight and/or policing practice, covering:

- California Legislation/Case Law¹
- City of Berkeley Ordinances²
- BPD Lexipol Policies³

10. NEW BUSINESS (Discussion and Action) (1 HOUR 15 MINUTES)

- a. Election for the positions of Chair and Vice-Chair for the 2024 Calendar Year as outlined in Sections 1(a) to Section 1(c) of Section I "Elections" of the Standing Rules of the Police Accountability Board. (15 MINUTES)
- b. Recap of the 50th Anniversary of Civilian Oversight in Berkeley Celebration⁴ and adoption of resolutions recognizing Barbara Attard, Jim Chanin, and Maria Tungohan for their efforts and preparations leading up to the event (ODPA) (5 MINUTES)
- c. Discussion and action regarding the 2024 PAB Strategic Planning Session Agenda (LEFTWICH & MOZES) (10 MINUTES)
- d. Report on Policy Complaint Number 2023-PR-0009 (CALAVITA) (10 MINUTES)
- e. Presentation of new ODPA Policy Complaint No. 2024-PR-0001 (ODPA) (15 MINUTES)

¹ <https://leginfo.legislature.ca.gov/>

² <https://berkeley.municipal.codes/>

³ <https://berkeleyca.gov/safety-health/police/policy-training-materials>

⁴ 50th Anniversary of Civilian Oversight in Berkeley Photo Album: <https://adobe.ly/3tW3IIA>

- f. Discussion and action regarding the Berkeley Police Department's Memorandums of Understanding (MOUs) with other agencies (MOORE) (15 MINUTES)
- g. Request to reschedule the PAB's February 14th Regular Meeting (WILSON) (5 MINUTES)

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 any matter within the Board's jurisdiction at this time.

12. CLOSED SESSION

CLOSED SESSION ITEMS

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002-057569, the Board will recess into closed session to discuss and act on the following matter(s):

a. Case Updates Regarding Complaints Received by the ODPa:

- | | |
|-----------------|-------------------|
| 1. 2023-CI-0004 | 8. 2023-CI- 0014 |
| 2. 2023-CI-0006 | 9. 2023-CI- 0015 |
| 3. 2023-CI-0009 | 10. 2023-CI- 0016 |
| 4. 2023-CI-0010 | 11. 2023-CI- 0017 |
| 5. 2023-CI-0011 | 12. 2023-CI- 0018 |
| 6. 2023-CI-0012 | 13. 2023-CI- 0019 |
| 7. 2023-CI-0013 | 14. 2024-CI- 0001 |

END OF CLOSED SESSION

13. ANNOUNCEMENT OF CLOSED SESSION ACTIONS (1 MINUTE)

14. ADJOURNMENT (1 MINUTE)

Communications Disclaimer

Communications to the Police Accountability Board, like all communications to Berkeley boards, commissions, or committees, are public records 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.

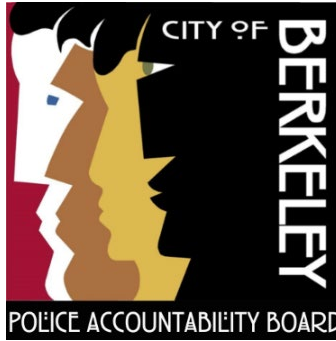
Contact the Director of Police Accountability (Board Secretary) at:

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

JANUARY 10, 2024 REGULAR MEETING DRAFT MINUTES



**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING MINUTES
Wednesday, January 10, 2024
6:30 P.M.**

Board Members

John Moore III. (Chair)
Kitty Calavita
Brent Blackaby

Julie Leftwich
Joshua Cayetano

Regina Harris (Vice-Chair)
Leah Wilson
Alexander Mozes

MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709
([Click here for Directions](#))

Meeting Recording: https://youtu.be/u6eGPCW_D38

Minutes

1. CALL TO ORDER AND ROLL CALL AT 6:30 PM

Present: Board Member John Moore (Chair)
Board Member Regina Harris (Vice-Chair)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Leah Wilson
Board Member Brent Blackaby
Board Member Joshua Cayetano
Board Member Alexander Mozes

Absent: None.

ODPA Staff: Hansel Aguilar, Director of Police Accountability
Jayson Wechter, Investigator
Jose Murillo, Program Analyst
Keegan Horton, Investigator

BPD Staff: Michelle Verger, Policy Analyst
CAO Staff: Jenifer Louis, Chief of Police
CMO Staff: Stephen Hylas, Deputy City Attorney
Carianna Arredondo, Assistant to the City Manager
Rex Brown, DEI¹ Officer

2. APPROVAL OF AGENDA

Motion to approve the agenda.

Moved/Second (Calavita/Leftwich) Approved by unanimous consent.

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, and Wilson.

Noes: None. Abstain: None. Absent: None.

3. PUBLIC COMMENT

0 Physically Present Speakers

0 Virtually Present Speakers

4. APPROVAL OF MINUTES

Motion to approve the meeting minutes for the regular meeting of January 10, 2024

Moved/Second (Mozes/Harris) Motion Carries.

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, Mozes, and Wilson.

Noes: None. Abstain: None. Absent: None.

5. ODPa STAFF REPORT

Director Aguilar introduces Rex Brown the inaugural Diversity, Equity, and Inclusion Officer for the City of Berkeley. Director Brown introduces himself to the Board and answers questions. Director Aguilar updates the board on the annual report and 50th-anniversary celebration.

6. CHAIR AND BOARD MEMBERS' REPORTS

Chair Moore encourages the Board to attend the 50th anniversary celebration. Board member Leftwich gives an update on the 2024 PAB Strategic Planning Session/Retreat.

7. CHIEF OF POLICE'S REPORT

¹ Diversity, Equity, and Inclusion Officer

Chief Louis reports on community-relevant cases, provides staffing updates and recruitment/retention, and addresses updates related to PAB requests. She fields questions from Board Members.

8. SUBCOMMITTEE REPORTS

All Subcommittees provide status reports on their ongoing activities.

9. LEGISLATIVE AND POLICY UPDATES

Investigator Horton and Policy Analyst Verger provide an update on state legislation related to police oversight.

10. NEW BUSINESS

- a. Nomination of candidates for the position of Chair and Vice-Chair for the 2024 Calendar Year as outlined in Section 1(a) to Section 1(c) of the Standing Rules of the Police Accountability Board.

The following nominations were made:

Nominee	Role	Nominated by	Nomination Seconded by
Moore	Chair	Calavita	Leftwich
Wilson	Vice-Chair	Harris	Mozes
Blackaby	Vice-Chair	Leftwich	Harris

- b. Presentation of New Policy Complaint Number 2023-PR-0009

Motion to accept Policy Complaint Number 2023-PR-0009 and assign Board Member Calavita to undertake the review.

Motion/Second (Calavita/Mozes) Motion Carries.

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, Mozes, and Wilson.

Noes: None. Abstain: None. Absent: None.

11. PUBLIC COMMENT

0 Physically present speakers.

0 Virtually present speakers.

12. CLOSED SESSION at 9:10 PM

CLOSED SESSION ITEMS

Pursuant to the Court’s order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002-057569, the Board will recess into closed session to discuss and act on the following matter(s):

Case Updates Regarding Complaints Received by the ODPa

Regarding Items 12.a. – 12.j.:

Director Aguilar provides case updates to the Board including the presentation of findings and newly accepted complaints.

Motion to accept the PAB findings report with friendly amendments for ODPa Complaint No. 2023-CI-0007.

Moved/Second (Wilson/Blackaby) Motion Carries.

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, Mozes, and Wilson.

Noes: None. Abstain: None. Absent: None.

Motion to accept the findings of the Director of Police Accountability ODPa Complaint No. 2023-CI-0008

Moved/Second (Harris/Calavita)

Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Moore, and Wilson.

Noes: Mozes. Abstain: None. Absent: None.

END OF CLOSED SESSION

13. ANNOUNCEMENT OF CLOSED SESSION ACTIONS

Chair Moore announces the closed-session actions.

14. ADJOURNMENT

Motion to adjourn.

(Leftwich/Blackaby) The meeting was adjourned at 9:11 P.M by unanimous consent.

Minutes Approved on: _____

Hansel Aguilar, Commission Secretary: _____

LIST OF CURRENT PAB SUBCOMMITTEES

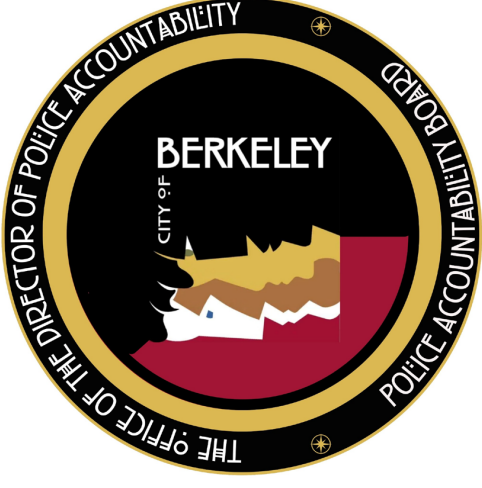


SUBCOMMITTEES LIST
As of 1/19/2024

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21 Renewed 6-7-2023	Calavita Leftwich <u>Public members:</u> Kitt Saginor	N/A	Lt. Dan Montgomery
Fair & Impartial Policing Implementation Formed 8-4-21 Renewed 6-7-2023	Calavita Wilson <u>Public members:</u> George Lippman	Calavita	Sgt. Peter Lee
Surveillance Technology Policy Formed 6-7-2023	Calavita Moore	N/A	N/A
Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations Formed 11-15-22	Calavita Moore	Calavita	N/A
Body-Worn Camera Policy Formed 03-15-23	Harris Leftwich	Harris	N/A
Conflict of Interest Formed 03-29-23	Leftwich Harris Wilson	Leftwich	N/A

Lexipol Policy Review Formed 11-08-2023	Leftwich Cayetano Mozes	Leftwich	N/A
Budget Review Formed 11-08-2023	Wilson Blackaby	N/A	N/A
Commendations Formed 11-08-2023	Moore Blackaby Harris	N/A	N/A
Off-Duty Conduct	Cayetano Harris	N/A	Lt. Rittenhouse
2024 PAB Strategic Planning Retreat	Leftwich Mozes	N/A	N/A

LEGISLATIVE AND POLICY UPDATE MATERIALS



Legislative Update

Legislation Tied to Board Activity and Interest

BY THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY (ODPA)
PRESENTED TO THE POLICE ACCOUNTABILITY BOARD (PAB)

MEETING

JANUARY 24, 2024

State Legislative Updates

SB 719: Requires agencies to ensure real-time public access to radio communications.

- Status: In Committee (Hearing 1/18/24 – At this hearing passed as amended)

AB 1299: Requires school resource law enforcement officers to report directly to the school principal.

- Passed from Committee to Full Assembly

Lexipol Updates

1601.1: Reassigning location of the Captain's Instruction

1400.3: Renumbering 1403 to 1400.3 and abbreviating California Highway Patrol

1006.4.2: Removing off-duty marijuana possession and influence restrictions

1402.1: Removing "link to guide" from hyperlinks.

City of Berkeley Legislative Update

Councilmember Humbert and Councilmember Bartlett are proposing:

Additional security cameras, lighting, and signage at the intersections of:

- Alcatraz and College
- Woolsey and Telegraph
- Woolsey and Shattuck
- Alcatraz and Adeline; and
- Alcatraz and Sacramento,

To refer costs to the next budget process,

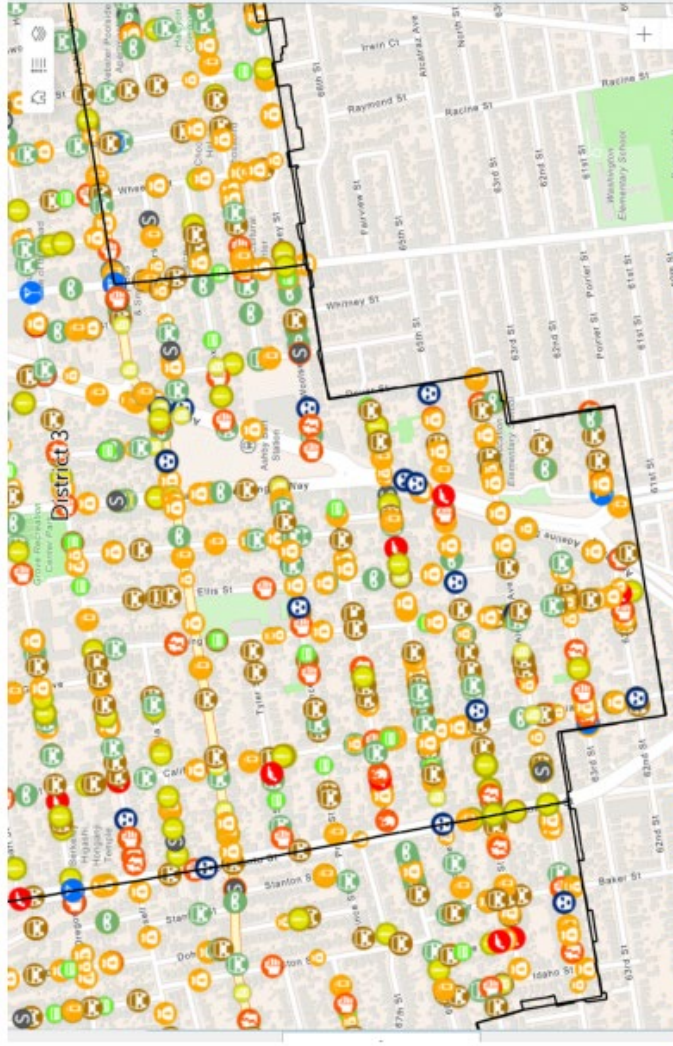
To restrict camera usage to solving criminal investigations; and

The cameras would not be intended for continuous surveillance purposes.

Marked for Consent Calendar January 30, 2024

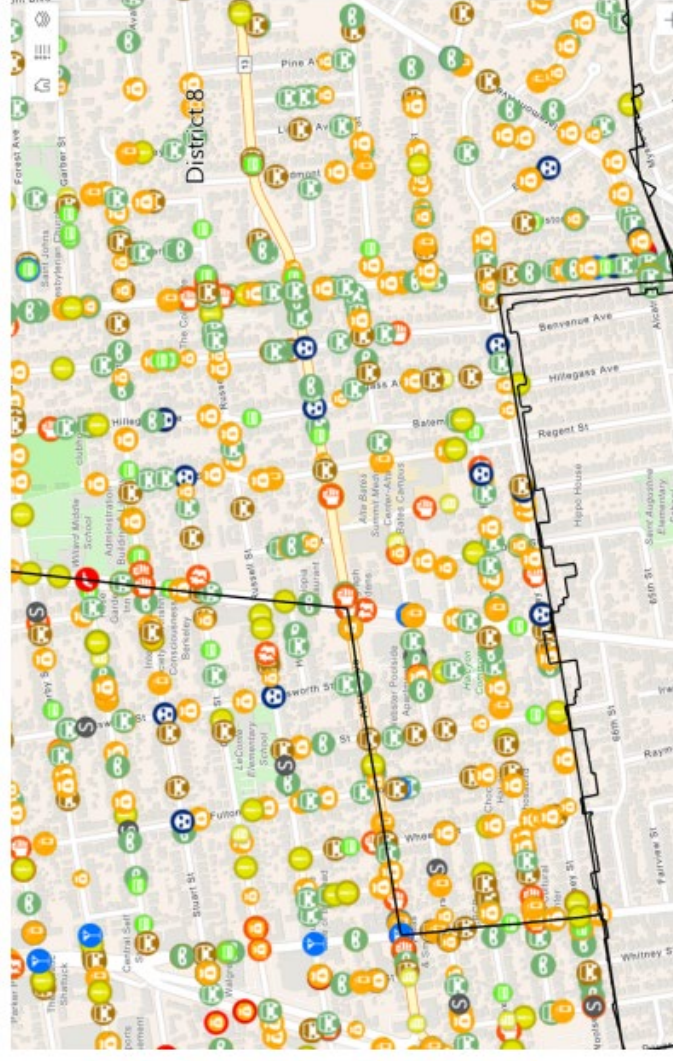
City of Berkeley Legislative Update

DISTRICT 3



Map showing 1-year of crime data in vicinity of southern District 3. (From BPD Transparency Hub)

DISTRICT 8



Map showing 1-year of crime data in vicinity of southern District 8. (From BPD Transparency Hub)

Lobbyist for City of Berkeley, CA

Berkeley City's lobbying firm is called **Townsend Public Affairs Inc.** It [has been consistently since 2013](#). Their firm lists several lobbyists. They specialize in representing cities at the state level.

[Individual Lobbyists at Townsend Public Affairs, Inc.](#)

SOURCES

State of California: Commission on Peace Officer Standards and Training. (2023, October 13). *Status of Current Legislation*. Status of current legislation. <https://post.ca.gov/Status-of-Current-Legislation>

Link to Lobbying Firm information:
<https://cal-access.sos.ca.gov/Lobbying/Firms/Detail.aspx?id=1147750&session=2023>

Link to Council Proposal: <https://berkeleyca.gov/sites/default/files/documents/2024-01-30%20Item%2029%20Budget%20Referral%20Additional%20Security.pdf>

SECTION I OF THE PAB'S STANDING RULES
& NOMINEES FOR CHAIR AND VICE-CHAIR

Internal

Nominee	Role	Nominated by	Nomination Seconded by
Moore	Chair	Calavita	Leftwich
Wilson	Vice-Chair	Harris	Mozes
Blackaby	Vice-Chair	Leftwich	Harris

SECTION I. ELECTIONS

1. Elections shall be held during the second January meeting of each year. During the Board meeting preceding the election meeting, the nomination of the Chair will precede the nomination of the Vice-Chair, and the following nomination process will be followed for each office:
 - a) The presiding Chair declares the nomination process open.
 - b) A Board member nominates another Board member or themselves. A Board member must be present in order to be nominated and may decline the nomination.
 - c) The nomination is seconded (the nomination fails if there is no second).
2. At the second January meeting of the year, the following election process will be followed for each office:
 - a) Additional nominations shall occur in accordance with section I.1.
 - b) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
 - c) Board members pose questions to each candidate.
 - d) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
 - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
 - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.
 - iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The Board secretary will assign “heads” and “tails.”
3. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

LETTER FROM NACOLE TO THE PAB AND ODPA RECOGNIZING
BERKELEY'S COMMITMENT TO THE FIELD OF CIVILIAN OVERSIGHT



January 11, 2024

Police Accountability Board
Mr. Hansel Alejandro Aguilar
Office of the Director of Police Accountability
1947 Center Street, 5th Floor
Berkeley, CA 94704

Dear Mr. Aguilar,

As civilian oversight in the City of Berkeley celebrates its 50th year, we would like to recognize the tremendous commitment that has been shown to the work of civilian oversight and the mechanisms needed to ensure that the police department is transparent, accountable, and responsive to those it serves. While both challenges and opportunities abound in the work of oversight, Berkeley has shown that perseverance can lead to beneficial outcomes and improved oversight mechanisms.

Successful oversight requires the buy-in and continued support of a broad range of individuals. Therefore, we must also acknowledge the diligent work and support of commissioners, board members, community members, and staff who have lifted you up and carried you through to this important milestone.

There are few oversight entities throughout the United States who have rounded the fifty-year mark. With that said, NACOLE feels fortunate that there are those, like yours, showing others how obstacles to effective, sustainable oversight can be overcome. We are truly grateful for your work and the example you have set as you continue your work through the next fifty years and beyond.

Sincerely,

Anthony Finnell
President
NACOLE

Cameron McElhiney
Executive Director
NACOLE

P.O. Box 20851 ♦ Indianapolis, Indiana 46220 ♦ (317)721-8133

E-mail: info@nacole.org ♦ Website: www.nacole.org

PROPOSED RESOLUTIONS



RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING BARBARA ATTARD FOR HER WORK AND COMMITMENT TO CIVILIAN OVERSIGHT IN BERKELEY AND ACROSS THE NATION.

WHEREAS, the City of Berkeley recently celebrated the 50th Anniversary of Civilian Oversight, a milestone that marks a half-century of progress and dedication to fostering transparency, accountability, and community engagement; and

WHEREAS, the success of the 50th Anniversary celebration was made possible through the tireless efforts and unwavering commitment of individuals who played pivotal roles in its organization; and

WHEREAS, Barbara Attard, an individual of exemplary commitment and dedication, devoted seven years of unwavering service to the City of Berkeley, leaving an indelible mark on the landscape of Civilian Oversight as the Director of the Police Review Commission; and

WHEREAS, in addition to her local contributions, Barbara Attard served as a member of the National Association for Civilian Oversight of Law Enforcement’s (NACOLE) Board of Directors for an impressive 11 years, demonstrating her commitment to advancing best practices and standards in civilian oversight on a national level; and

WHEREAS, Barbara Attard generously volunteered her time to share a significant part of the rich history of civilian oversight in the City of Berkeley during its 50th-anniversary celebration, contributing to the collective understanding of the community about the importance and evolution of oversight;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board and the Office of the Director of Police Accountability of the City of Berkeley to express their deepest gratitude and appreciation to Barbara Attard for seven years of unwavering commitment and dedication in service to the City of Berkeley.

BE IT FURTHER RESOLVED, that the Police Accountability Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Barbara Attard for volunteering her time to share the history of civilian oversight, contributing to the success of the 50th Anniversary celebration.

BE IT FURTHER RESOLVED, this resolution be presented to Barbara Attard as a token of our sincere appreciation and recognition for his enduring commitment to police accountability and civilian oversight in the City of Berkeley.

Adopted on: _____

RESOLUTION VOTING RESULTS

<u>Board member</u>	<u>Aye</u>	<u>No</u>	<u>Abstain</u>
Blackaby			
Calavita			
Cayetano			
Harris			
Leftwich			
Mozes			
Moore			
Wilson			
Total			

CERTIFICATION

I, John Moore, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Date

John Moore,
Chair of the Police Accountability Board

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to John Moore. I have signed this document below as a witness to the signing.

Date

Hansel A. Aguilar,
Director of Police Accountability & Secretary to
the Police Accountability Board



RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING JAMES B. CHANIN FOR THEIR WORK AND COMMITMENT TO CIVILIAN OVERSIGHT IN BERKELEY.

WHEREAS, the City of Berkeley recently celebrated the 50th Anniversary of Civilian Oversight, a milestone that marks a half-century of progress and dedication to fostering transparency, accountability, and community engagement; and

WHEREAS, the success of the 50th Anniversary celebration was made possible through the tireless efforts and unwavering commitment of individuals who played pivotal roles in its organization; and

WHEREAS, James B. Chanin, an integral figure in the establishment of the Police Review Commission (PRC) for the City of Berkeley, demonstrated extraordinary dedication to the principles of civilian oversight; and

WHEREAS, James B. Chanin served as an inaugural PRC commissioner in 1973, bringing his expertise and commitment to the cause of police accountability to the forefront; and

WHEREAS, his exemplary leadership was evident through his service in two terms as Chairperson of the PRC, during which he played a crucial role in shaping the commission's direction and policies; and

WHEREAS, James B. Chanin volunteered his time to share the rich history of civilian oversight in the City of Berkeley during its 50th-anniversary celebration, enriching the understanding of the community about the evolution and importance of oversight;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that he Police Accountability Board expresses its deepest gratitude and appreciation to James B. Chanin for his outstanding contributions to the establishment and development of civilian oversight in the City of Berkeley.



RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY IN APPRECIATION OF MARIA L. TUNGOHAN FOR HER WORK IN ORGANIZING THE 50TH ANNIVERSARY OF CIVILIAN OVERSIGHT IN BERKELEY CELEBRATION.

WHEREAS, the City of Berkeley recently celebrated the 50th Anniversary of Civilian Oversight, a milestone that marks a half-century of progress and dedication to fostering transparency, accountability, and community engagement; and

WHEREAS, the success of the 50th Anniversary celebration was made possible through the tireless efforts and unwavering commitment of individuals who played pivotal roles in its organization; and

WHEREAS, Maria L. Tungohan demonstrated exceptional dedication, leadership, and organizational skills in her role as a key organizer of the 50th Anniversary of Civilian Oversight in Berkeley celebration; and

WHEREAS, Maria L. Tungohan's hard work, attention to detail, and passion for community involvement significantly contributed to the success of the event, creating an atmosphere that brought together community members, leaders, and stakeholders to reflect on the history and impact of civilian oversight; and

WHEREAS, Maria L. Tungohan's commitment to excellence and her ability to coordinate various aspects of the celebration, including logistics, programming, and community outreach, ensured a memorable and meaningful experience for all participants; and

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board and the Office of the Director of Police Accountability extend their deepest gratitude and appreciation to Maria L. Tungohan for her outstanding contributions to the success of the 50th Anniversary of Civilian Oversight in Berkeley celebration; and

BE IT FURTHER RESOLVED, that this resolution be presented to Maria L. Tungohan as a token of our sincere thanks and recognition for her hard work, dedication, and invaluable service to our community.

Adopted on: _____

RESOLUTION VOTING RESULTS

<u>Board member</u>	<u>Aye</u>	<u>No</u>	<u>Abstain</u>
Blackaby			
Calavita			
Cayetano			
Harris			
Leftwich			
Mozes			
Moore			
Wilson			
Total			

CERTIFICATION

I, John Moore, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Date

John Moore,
Chair of the Police Accountability Board

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to John Moore. I have signed this document below as a witness to the signing.

Date

Hansel A. Aguilar,
Director of Police Accountability & Secretary to
the Police Accountability Board

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to James B. Chanin for volunteering his time to share the history of civilian oversight, contributing to the success of the 50th Anniversary celebration.

BE IT FURTHER RESOLVED, this resolution be presented to James B. Chanin as a token of our sincere appreciation and recognition for his enduring commitment to police accountability and civilian oversight in the City of Berkeley.

Adopted on: _____

RESOLUTION VOTING RESULTS

<u>Board member</u>	<u>Aye</u>	<u>No</u>	<u>Abstain</u>
Blackaby			
Calavita			
Cayetano			
Harris			
Leftwich			
Mozes			
Moore			
Wilson			
Total			

CERTIFICATION

I, John Moore, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Date

John Moore,
Chair of the Police Accountability Board

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to John Moore. I have signed this document below as a witness to the signing.

Date

Hansel A. Aguilar,
Director of Police Accountability & Secretary to
the Police Accountability Board

DRAFT AGENDA FOR THE 2024 PAB STRATEGIC PLANNING SESSION

DRAFT

Berkeley Police Accountability Board 2024 Retreat
Saturday, March 2, 9:30 AM to 4:30 PM
Judge Henry Ramsey Jr. South Berkeley Senior Center, 2939 Ellis St., Berkeley (confirm)
Facilitator: Brian Corr, Cambridge Consulting Services Group and Past President, NACOLE

AGENDA

9:30 WELCOME, INTRODUCTION AND GOALS FOR THE DAY

9:45 PAB CHALLENGES AND OPPORTUNITIES

- What are our strengths?
- What are our challenges?

10:15 PAB AND ODPA: RESPECTIVE ROLES AND RESPONSIBILITIES

- Specific duties and priorities of each, e.g., investigation vs. policy work
- Where is there overlap? What needs to be clarified?
- What systems are in place to better track deadlines, etc.?

11:00 PERFORMANCE METRICS

- What does an effective PAB look like within existing confines?
- How can we measure our performance? When should that be done?

11:45 BREAK

12:00 WORKING LUNCH AND TRAINING SESSION (TOPIC? EARLY WARNING SYSTEMS?
HOW TRAUMA IMPACTS VICTIMS, OFFICERS AND THE PUBLIC? OTHER IDEAS?)

1:10 BREAK

1:20 LOOKING AHEAD AND THINKING STRATEGICALLY: PAB'S 2024 GOALS

- Serving the Community: Increased Outreach, Education and Engagement
- Working effectively with the Police Department, Police Union, City Attorney's Office and City Council
- Legislative advocacy? Other goals?

3:00 BREAK

3:15 NEXT STEPS

- How will we get from Point A to Point B?
- What specific steps will we take to meet our goals?
- Timeline

4:15 WRAP UP

4:30 ADJOURNMENT

POLICY REVIEW REPORT RE POLICY COMPLAINT NUMBER 2023-PR-0009



MEMORANDUM

To: Honorable Members of the Police Accountability Board
From: Board Member Calavita
Date: January 19, 2024
Subject: Policy Review for Policy Complaint # 2023-PR-0009

The purpose of this memorandum is to present to the Police Accountability Board (PAB) a review of Policy Complaint Number 2023-PR-0009 and to present relevant policy recommendations where warranted. It is being brought to the PAB for input and approval.

Background

This policy complaint concerns an incident witnessed by the complainant, which occurred on October 7, 2023 at approximately 6pm. The witness reported that they saw an officer approach a White male who was cycling on the sidewalk near University Avenue and California Street in Berkeley. The witness reported that the BPD officer threw the individual's backpack and bicycle on the ground and handcuffed him. The witness also claimed that approximately five police cars soon arrived. The individual was questioned and soon released (See Attachment 1).

A further policy and budget review may be called for in the future in light of this incident which potentially involved as many six patrol vehicles and officers. However, this review is limited to the policies related to handcuffing.

Policies for Review

Policy 300 on the **Use of Force** includes in its definition of "Force" (Section 300.1.4), the following: "[Force is] The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained." (See Attachment 2)

Section 300.3.2 describes the Use of Force Continuum which involves four levels:

- *Level 1* is "Officer Presence" but "No force is used".

- *Level 2* (the first actual level of “force”) is “Verbalization” where “Force is not physical”. Officers may increase the volume of their commands.
- *Level 3* consists of “Weaponless defense” in which “Officers use bodily force to gain control of a situation.” This includes, among other things “control holds...” and “punches and kicks to restrain an individual”. Examples of control holds are provided in the definition section (300.1.4): “twist lock, rear wrist lock, finger lock, etc.” That definition explains, “A control hold can be applied without implementing pain.”
- *Level 4* involves “Less-Lethal Force Methods” such as batons, projectiles, or chemical agents.
- *Level 5* (the 4th level of actual force) is “Lethal Force.”

It is noteworthy in this progression that “force” proceeds from verbal commands to punches and kicks without mention of handcuffs which have been defined as “not a use of force”.

Section 300.3.7 on Restraint and Control Devices then stipulates, “Handcuffs, body wraps and spit hoods shall only be used consistent with Policy 302.”

Policy 302 on Handcuffing and Restraints deals specifically with the circumstances in which handcuffs may be used. Section 302.9 states, “Handcuffs, including temporary plastic cuffs, aka flex-cuffs, may be used only to restrain a person’s hands to ensure officer safety.” (See Attachment 3)

Section 302.13 emphasizes the significance of handcuffing and the limitation on the use of handcuffs only in cases of a threat to officer safety, specifying that these circumstances must be documented in detail: “If an individual is restrained and released without an arrest, the officer shall document the details of the detention and the need for handcuffs or other restraints.”

Recommendation:

Policy 302 takes seriously the use of handcuffs and stipulates that they should only be used when there is a threat to officer safety.

However, there is no place in the use of force continuum in Policy 300 for this type of restraint. Instead, the “force” continuum proceeds from “calm, nonthreatening commands” (Level 1) to “grabs, holds, joint locks” and “kicks and punches” (Level 2).

The absence of handcuffing as a “use of force”—indeed the explicit statement that handcuffing is not “force”—appears to be in contradiction to the seriousness with which handcuffing is taken in Policy 302.

Further, it makes no sense for “calm, nonthreatening commands” to constitute a use of force while handcuffing is not.

Finally, the definition of handcuffing as not a use of force belies its potential impact on the subject and could inflate its use by officers.

We therefore recommend minor modifications to Policy 300:

1. Deleting “handcuffed or restrained” from the sentence defining “force” (301.4): “It is not a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained.”
2. Adding the example of “handcuffs” to the definition of “Control Hold” (301.4).

Together these changes would mean that handcuffing is a Level 3 use of force (really the second level of force), which as the definition states “can be applied without implementing pain”.

Alternatively, a new level of force (use of handcuffs or other such restraints) could be added between “Verbalization” and “Weaponless defense”.

There would be no impact on Use of Force reporting requirements.

ATTACHMENT 1



POLICY COMPLAINT FORM

Office of the Director of Police Accountability (DPA)

1947 Center Street, 5th Floor, Berkeley, CA 94704

Web: www.cityofberkeley.info/dpa

E-mail: dpa@cityofberkeley.info

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received:

10/10/2023

DPA Case # 2023-PR-0009

1 Name of Complainant: _____
Last First Middle

Mailing Address: _____
Street City State Zip

Primary Phone: _____ Alt Phone: () _____

E-mail address: _____

Occupation: Berkeley Law School Student, Year 3 Gender: F Age: 22

Ethnicity: Asian Black/African-American Caucasian
 Latino/Hispanic Multiethnic: _____ Other: _____

2 Identify the Berkeley Police Department (BPD) policy or practice you would like the Police Accountability Board to review.

Please review the specific incident detailed below.

3 Location of Incident (*if applicable*) North side of intersection of University Ave. and California St.

Date & Time of Incident (*if applicable*) About 6:00pm on October 7th, 2023

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

Please see document attached below.

4

What changes to BPD policy, practice, or procedure do you propose?

5

Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Police Accountability Board in evaluating your complaint.)

6

CERTIFICATION

I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.

 _____
Signature of Complainant

10/09/23 _____
Date

7

How did you hear about the Director of Police Accountability or Police Accountability Board?

- Internet
- Berkeley Police Dept.
- Newspaper: _____
- Referred by: _____
- Other: Law School Community

I am concerned about an incident I witnessed on October 7th, 2023, at about 6:00pm on the north side of the intersection of University Avenue and California Street in Downtown Berkeley, CA. An individual was arrested and released within about five minutes. Other bystanders and I were astounded by the situation and would like an explanation of the incident to assuage our concerns.

I was standing at the #88 bus stop on the north side of University Avenue, just west of the intersection of University Avenue and California Avenue. There is a small parking lot on the north side of University Avenue at that spot. I was standing on the sidewalk between the parking lot and the street. A white man wearing a red shirt and a backpack who appeared to be in his 30s rode his bike out of the parking lot onto the sidewalk next to me. At exactly that moment, a Berkeley police vehicle pulled up to the man on the bicycle on the north curb on University Avenue just west of the intersection of University Avenue and California Avenue. The police officer asked the man on the bicycle to stop, which the man immediately did. The police officer got out of his car and immediately took off the man's backpack and threw it to the ground. The police officer then immediately handcuffed the man's hands behind his back and threw the bicycle to the ground. A woman on a bicycle was across the street on the south side of University Avenue and shouted, surprised, to the handcuffed man with the red shirt, asking him what was the matter. The man shouted back to her that he didn't know what was going on and that he thought maybe something happened down the street and that "they think I did something." Quickly, more police vehicles began arriving and congregating at the north side of the intersection of University Avenue and California Avenue. I think about five police vehicles in total arrived within a minute or so. The police officer walked the handcuffed man over to a police vehicle parked on the east side of California street just north of the intersection of University Avenue and California Avenue and had him stand against the vehicle with the back of his legs against the left side of the hood of the vehicle. The original police officers and several others then began questioning the handcuffed man in the red shirt for a couple of minutes. The police officers then released the man and he picked up his bicycle and backpack and rode west down University Avenue with the woman who had shouted to him and had also been waiting for him through this entire interaction. The police officers then began talking to each other. We couldn't hear what they were saying, but they appeared to be either shouting at each other or laughing. The police officers then all drove away from the scene within about two minutes.

Other bystanders and I couldn't understand why the man on the bicycle was arrested so quickly and why so many police officers arrived at the scene, suggesting that the man was a dangerous suspect, only for the man to be so quickly released and for all the police officers to leave. We would like some assurance that the police officers had probable cause for the arrest. Thank you for your review of this incident.

I took the following photo of three of the police vehicles that were present at the scene. At least two other vehicles were also present but had driven away at the point when I took the photo. The license numbers in view are, from left to right in the image, 1634860, 1636853, and 1634859.



ATTACHMENT 2

Use of Force

300.1 SANCTITY OF LIFE

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

300.1.1 PURPOSE AND SCOPE

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

300.1.2 USE OF FORCE STANDARD

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

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

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

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

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Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force.

300.1.3 CORE PRINCIPLES

A. DE-ESCALATION AND FORCE MINIMIZATION. Every officer's goal, throughout an encounter with a member of the public, shall be to de-escalate wherever possible and resolve the encounter without resorting to the use of force. Wherever possible, officers shall employ de-escalation techniques to increase the likelihood of voluntary compliance with law enforcement requests or directives and, thereby, decrease the likelihood that a use of force will become necessary during an incident. Further, in any encounters that do call for applying force, officers must always use a minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.

B. PROPORTIONALITY. When determining the appropriate level of force, at all times officers shall balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is unarmed or armed with a weapon other than a firearm.

C. MINIMIZING THE USE OF DEADLY FORCE. Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

D. DUTY TO INTERCEDE. Whenever possible, officers shall intervene when they know or have reason to know that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

E. VULNERABLE POPULATIONS. Officers should be particularly sensitive when considering the use of force against vulnerable populations, including children, elderly persons, pregnant women, people with physical and mental disabilities, and people with limited English proficiency.

F. FOSTER STRONG COMMUNITY RELATIONSHIPS. The Berkeley Police Department understands that uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. The Department is committed to fostering strong community relations by building on its historic tradition of progressive policing, ensuring accountability and transparency, and striving to increase trust with our community.

G. FAIR AND UNBIASED POLICING. Members of the Berkeley Police Department shall carry out their duties, including the use of force, in a manner that is fair and unbiased, in accordance with Policy 401, Fair and Impartial Policing.

300.1.4 DEFINITIONS

Definitions related to this policy include:

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Minimal amount necessary – The least amount of force within a range that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Control Techniques – Personal Impact Weapons and Take Downs.

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

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

Concealment - Anything which conceals a person from view.

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

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

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

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

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

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

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

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

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

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300.2 DUTY TO INTERCEDE AND DUTY TO REPORT

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

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

300.2.1 FAILURE TO INTERCEDE

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

300.3 USE OF FORCE TO EFFECT AN ARREST

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

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

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

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

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- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness.
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force. It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is objectively reasonable, objectively necessary, and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant. Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:

- Compliant – In general, when dealing with a compliant person, officers may rely on police presence and/or verbal control techniques, but should not use greater force.
- Passive resistance – In general, when dealing with a suspect involved in passive resistance, officers may rely on police presence, verbal control techniques, or control holds, but should not use greater force.
- Active resistance – In general, in dealing with a suspect involved in active resistance, in addition to the options available for passive resistance, officers may rely on pain compliance techniques or takedowns, but should not use greater force.
- Combative resistance – In general, in dealing with a suspect involved in combative resistance, officers have all use-of-force options available to them, but deadly force shall only be used in compliance with this policy as described in Section 300.4.

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300.3.2 USE OF FORCE CONTINUUM

The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions.

Continuum of Force

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
 - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
 - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not physical.**
 - Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
 - Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Weaponless defense — Officers use bodily force to gain control of a situation.**
 - Pain Compliance and control holds. Officers use grabs, holds and joint locks to restrain an individual.
 - Personal body weapons. Officers may use punches and kicks to restrain an individual.
- **Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**
 - Blunt impact. Officers may use a baton or projectile to immobilize a combative person.
 - Chemical. Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
- **Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**

300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be

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restricted. Officers are encouraged to use techniques and methods taught by the Berkeley Police Department for this specific purpose.

300.3.4 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and shall be used when it is safe to do so, De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member shall be called upon as a resource.

Officers shall gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to any levels of force. Officers should move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

- (a) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; "waiting out" subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
- (b) Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
- (c) Officers should consider a variety of options, including lesser force or no force options.
- (d) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.
- (e) A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
- (f) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use of force.

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- (g) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.
- (h) Establishing communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.
- (i) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

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

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

300.3.5 PAIN COMPLIANCE TECHNIQUES

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

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

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

300.3.6 USE OF NON-LETHAL FORCE

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

- (a) To protect themselves or another person from physical injury;

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- (b) To restrain or subdue a resistant individual; or
- (c) To bring an unlawful situation safely and effectively under control.

300.3.7 RESTRAINT AND CONTROL DEVICES

Restraint and control devices shall not be used to punish, to display authority or as a show of force. Handcuffs, body wraps and spit hoods shall only be used consistent with Policy 302. Batons, approved less-lethal projectiles, and approved chemical agents shall only be used consistent with Policy 303. As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

300.3.8 CHOKEHOLD PROHIBITION

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

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

300.3.9 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once the individual is safely secured, officers should promptly check and continuously monitor the individual's condition for signs of medical distress (Government Code § 7286.5).

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300.4 USE OF DEADLY FORCE

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

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.

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

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

300.4.1 DRAWING AND POINTING FIREARMS

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

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

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

300.4.2 DIRECTED FIRE

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

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

300.4.3 SHOOTING AT OR FROM MOVING VEHICLES

Absent exigent circumstances, officers shall not discharge firearms from a moving vehicle.

Firearms shall not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person present with deadly force. The moving vehicle alone does not presumptively constitute a threat that justifies the use of deadly force.

Officers shall not move into, remain, or otherwise position themselves in the path of a vehicle in an effort to detain or apprehend the occupants. Any officer in the path of a moving vehicle shall immediately attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants.

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

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

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

300.5 USE OF VEHICLES

Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in section 300.4 and in Policy V-6 that covers vehicle operations.

The Vehicle Containment Technique (VCT) is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal. VCT shall only to be used on vehicles that are either stationary or moving at a slow speed. This technique is designed to contain a suspect vehicle to a single stationary location, thereby

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preventing a pursuit from initiating, or a potentially violent situation (e.g. a hostage situation or person barricaded inside a vehicle) from becoming mobile.

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation.

300.6 REPORTING REQUIREMENTS

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

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

300.6.1 SUPERVISOR RESPONSIBILITY

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

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports.
- (f) Review body worn camera footage related to the incident.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.6.2 USE OF FORCE REPORTING LEVELS

Level 1

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

1. Control holds/ pain compliance techniques
2. Leverage
3. Grab
4. Bodyweight
5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.
6. Takedown

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

Level 2

- (a) No suspect injury or complaint of continuing pain due to interaction with officer.
- (b) Officer's use of force was limited to the following:
 1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual, and/or pointed at an individual. For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.
 2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

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

Level 3

- (a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.
- (b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.
- (c) The officer used any of the following force options:
 1. Chemical Agents/Munitions
 2. Impact Weapon Strikes

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3. Personal Body Weapons

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

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

Level 4

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

300.6.3 EMPLOYEE USE OF FORCE

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

- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence, such as a widespread disaster or civil disturbance, the officer shall prepare a supplemental report as soon as practical following the incident.
- (b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

300.6.4 REPORT RESTRICTIONS

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

300.6.5 PUBLIC RECORDS

Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and the Records Management and Release policy.

300.7 MEDICAL CONSIDERATIONS

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

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing

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pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed.

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

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

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

See the Medical Aid and Response Policy for additional guidelines.

300.8 USE OF FORCE ADMINISTRATIVE REVIEW

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in Policy 301 instead of utilizing Division Captain Review.

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

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

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

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

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300.9 WATCH COMMANDER RESPONSIBILITY

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

300.10 TRAINING

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

Subject to available resources, the Personnel and Training Sergeant should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include (Government Code § 7286(b)):

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- (b) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

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

300.11 USE OF FORCE ANALYSIS

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

- (a) An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.
- (b) All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2).
- (c) The identification of any trends in the use of force by members.
- (d) Training needs recommendations.
- (e) Equipment needs recommendations.
- (f) Policy revisions recommendations.

300.11.1 REPORTING FREQUENCY

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

300.12 CIVILIAN COMPLAINTS

Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police Accountability

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Board (PAB). Complaints will be investigated in compliance with the respective applicable procedures of the IAB and the PAB.

300.13 POLICY REVIEW AND UPDATES

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

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

ATTACHMENT 3

Handcuffing and Restraints

302.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

302.2 POLICY

The Berkeley Police Department authorizes the use of restraint devices in accordance with this policy, the Use of Force Policy and department training. Restraint devices shall not be used to punish, to display authority or as a show of force.

302.3 USE OF RESTRAINTS

Only members who have successfully completed Berkeley Police Department approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, officers should carefully balance officer safety concerns with factors that include, but are not limited to:

- (a) The circumstances or crime leading to the arrest
- (b) The demeanor and behavior of the arrested person
- (c) The age and health of the person
- (d) Whether the person may be pregnant
- (e) Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes
- (f) Whether the person has any other apparent disability

302.4 RESTRAINT OF DETAINEES

Situations may arise where it may be reasonable to restrain an individual who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to assure the safety of officers and others. When deciding whether to remove restraints from a detainee, officers should continuously weigh the safety interests at hand against the continuing intrusion upon the detainee.

302.5 ALTERNATIVE MEANS OF RESTRAINT

Alternative Means of Restraint include but are not limited to:

- (a) Handcuffing the person with their hands in front of their body
- (b) Handcuffing the person with multiple sets of linked handcuffs
- (c) Use of the entire WRAP system
- (d) Use of the WRAP's ankle strap

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- (e) Use of plastic handcuffs, aka flex-cuffs
- (f) Use of an ambulance gurney with five point straps

302.6 RESTRAINT OF PREGNANT PERSONS

Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety and in no event shall these persons be restrained by the use of leg irons, waist chains or handcuffs behind the body.

No person who is in labor, delivery or recovery after delivery shall be handcuffed or restrained except in extraordinary circumstances and only when a supervisor makes an individualized determination that such restraints are necessary for the safety of the arrestee, officers or others (Penal Code § 3407; Penal Code § 6030).

302.7 RESTRAINT OF JUVENILES

A juvenile under 14 years of age should not be restrained unless he/she is suspected of a dangerous felony or when the officer has a reasonable suspicion that the juvenile may resist, attempt escape, injure him/herself, injure the officer or damage property.

302.8 NOTIFICATIONS

Whenever an officer transports a person with the use of restraints other than handcuffs, the officer shall inform the jail staff upon arrival at the jail that restraints were used. This notification should include information regarding any other circumstances the officer reasonably believes would be potential safety concerns or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration) that may have occurred prior to, or during transportation to the jail.

302.9 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS

Handcuffs, including temporary plastic cuffs, aka flex-cuffs, may be used only to restrain a person's hands to ensure officer safety.

Although recommended for most arrest situations, handcuffing is not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that regardless of the circumstances, every person should be handcuffed.

In most situations handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be applied between the base of the palm and the ulna bone of the wrist. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the individual or may cause unreasonable discomfort due to the person's size, officers should consider using alternative means of restraint.

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If the person being handcuffed is on the ground or in a prone position, officers should, as soon as possible, place the person in an upright sitting position or on their side for respiratory recovery and to mitigate the potential for positional asphyxia.

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

302.10 APPLICATION OF SPIT HOODS/MASKS/SOCKS

Spit hoods, aka spit masks or spit socks, are temporary protective devices designed to prevent the wearer from transferring or transmitting fluids (saliva and mucous) to others. As the Department recognizes that use of a spit hood may be experienced as a traumatic event to a wearer, and may cause alarm and concern to onlookers, this policy provides clear and specific guidelines for their use, in service of the safety of all parties involved.

Spit hoods may be placed upon persons in custody while the officer reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

Officers utilizing spit hoods shall ensure that the spit hood is applied properly to allow for adequate ventilation and that the restrained person can breathe normally. Officers should provide assistance during the movement of restrained individuals due to the potential for impaired or distorted vision on the part of the individual. Officers should avoid comingling individuals wearing spit hoods with other detainees.

Spit hoods shall not be used in situations where there are indications that the restrained person has a medical condition evident in the area around the mouth or nose, such as difficulty breathing or vomiting. In such cases, prompt medical care should be provided. If the person vomits while wearing a spit hood, the spit hood shall be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated including hair, head and clothing prior to application of a spit hood.

Those who have been placed in a spit hood should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods shall be discarded after each use.

302.11 APPLICATION OF THE WRAP

The WRAP is a temporary restraining device comprised of a velcro strapped leg panel, torso harness, ankle strap and backside handcuff carabiner. The device immobilizes the body into a straight-legged seated position. Used properly, it restricts a subject's ability to do harm to oneself or others. Officer safety is enhanced and the risk of injury to the subject is reduced.

In determining whether to use the WRAP, officers should consider:

- (a) Whether the officer or others could be exposed to injury due to the assaultive or resistant behavior of a suspect.

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- (b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., running away from the arresting officer while handcuffed, kicking at objects or officers).
- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).
- (d) Whether conventional methods of restraint have failed.

302.11.1 GUIDELINES FOR USE OF THE WRAP

When applying the WRAP, the following guidelines should be followed:

- (a) If practicable, officers should notify a supervisor of the intent to apply the WRAP. In all cases, a supervisor shall be notified as soon as practicable after the application of the WRAP.
- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Restraint straps should be checked frequently for tightness, and adjusted as necessary, until the WRAP is removed. The harness straps shall never be tightened to the point they interfere with the person's ability to breathe.
- (d) The restrained person should be continually monitored by an officer while the WRAP is in use. The officer should ensure that the person does not roll onto and remain on his/her stomach.
- (e) The officer should look for signs of distress such as sudden quiet or inactivity, complaints of chest pain, change in facial color, complaint of extreme heat, vomiting, and/or labored breathing, and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
- (f) Movement of the person can be accomplished in three ways, depending on the level of their cooperation; the person can be carried, allowed to stand and shuffle walk or be transported in a vehicle.
- (g) Once secured in a vehicle, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.
- (h) If in custody and transported by ambulance/paramedic unit, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

302.11.2 DEVICE REMOVAL

Based on the prisoner's combativeness or level of aggression, officers should employ appropriate control techniques and tactics when removing the WRAP.

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Handcuffing and Restraints

302.11.3 THE WRAP'S ANKLE STRAP

The ankle strap is one part of the WRAP restraint system. The ankle strap may be used alone (without the rest of the WRAP system) to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Use of the ankle strap will follow the same guidelines listed above for the WRAP.

302.12 APPLICATION OF AUXILIARY RESTRAINT DEVICES

Auxiliary restraint devices include transport belts, waist or belly chains, transportation chains, leg irons and other similar devices. Auxiliary restraint devices are intended for use during long-term restraint or transportation. They provide additional security and safety without impeding breathing, while permitting adequate movement, comfort and mobility.

Only department-authorized devices may be used. Any person in auxiliary restraints should be monitored as reasonably appears necessary.

302.13 REQUIRED DOCUMENTATION

If an individual is restrained and released without an arrest, the officer shall document the details of the detention and the need for handcuffs or other restraints.

If an individual is arrested, the use of restraints other than handcuffs shall be documented in the related report. The officer should include, as appropriate:

- (a) How the suspect was transported and the position of the suspect.
- (b) Observations of the suspect's behavior and any signs of physiological problems.
- (c) Any known or suspected drug use or other medical problems.

MATERIALS REGARDING POLICY COMPLAINT 2024-PR-0001



MEMORANDUM

Date: January 19, 2024
To: Honorable Members of the Police Accountability Board
From: Hansel A. Aguilar, Director of Police Accountability
Jose Murillo, Program Analyst *JM*
Subject: Notice of Policy Complaint No. 2024-PR-0001

The purpose of this memorandum is to introduce Policy Complaint Number 2024-PR-0001 to the Police Accountability Board (PAB) as required by Section G of the PAB's standing rules¹.

Background:

On Tuesday, January 16, 2024, the Office of the Director of Police Accountability (ODPA) received Policy Complaint No. 2024-PR-0001 via email correspondence (See Attachment 1). The complaint raises three questions regarding the use of force, specifically the deployment and use of less-lethal munitions:

- "Are officers allowed to or prohibited from pointing their less-lethal munitions at a crowd or individual at close range? What is considered unacceptable?"
- "Are officers allowed to or prohibited from pointing or displaying their less-lethal weapons at individuals from a car?"
- "Are officers allowed to or prohibited from displaying their less-lethal munitions even when there has been no violence or disturbance to justify their use?"

¹ [Section G. "Policy Complaints and Reviews" of the PAB's Standing Rules](#)

(See Attachment 1, Page 1). The inquiry stems from video recordings that depict Berkeley Police Department (BPD) officers deploying less-lethal equipment during an arrest² and patrol on Telegraph Avenue³.

Upon reviewing the complaint, the ODPa has taken note of the concerns raised by the Complainant. These concerns are particularly focused on the use of less-lethal tools in situations that, traditionally, might have involved the deployment of a baton or a standard police presence. The reported routine deployment and display of less-than-lethal munitions raise questions about whether such actions lead to the creation of Use of Force Reports. The Complainant suggests that, in the absence of such reporting, the BPD should consider implementing these reports.

The Police Review Commission (PRC), the predecessor of the PAB, oversaw the implementation of the current BPD Use of Force Policy. However, the PAB has not formally revisited this policy.

Potential Area(s) of Review:

The Complainant is requesting that the PAB review BPD Policy 300, titled "Use of Force." Specifically, the Complainant would like the PAB to review the following sections:

- Section 300.4.1 Drawing and Pointing Firearms
- Section 300.4.3 Shooting at or from Moving Vehicles.

Recommendation:

Upon receiving a policy complaint, the Board can choose from several potential courses of action⁴, which include:

1. Accepting the policy complaint and assigning a Board member to investigate.
2. Accepting the policy complaint and directing ODPa staff to carry out an investigation.

² [Video 1: https://www.instagram.com/p/C1s-AjfLcOQ/](https://www.instagram.com/p/C1s-AjfLcOQ/)

³ [Video 2: https://drive.google.com/file/d/19PYFnQ358YMfv7lwHmirQKxpaJH6dbHg/view](https://drive.google.com/file/d/19PYFnQ358YMfv7lwHmirQKxpaJH6dbHg/view)

⁴ [Section G. "Policy Complaints and Reviews" of the PAB's Standing Rules](#)

3. Accepting the policy complaint and establishing a subcommittee to investigate the matter.
4. Temporarily deferring acceptance of the policy complaint and assigning a Board member to investigate it before formal acceptance.
5. Temporarily deferring acceptance of the policy complaint and instructing ODPa staff to investigate the matter.
6. Rejecting the policy complaint.

Policy 300 underwent its latest update on January 3rd, 2024, to align with California Legislative Updates, including AB 350 (Gibson)⁵. Section 300.13, "Policy Review and Updates," of BPD's Policy 300, states that the BPD and PAB shall convene at least annually to review and update the Use of Force Policy, as mandated by SB 230 (Caballero)⁶. In considering whether to accept and review the present policy complaint, the ODPa notes that certain facts and circumstances outlined in this policy complaint relate to may also be pertinent to the ODPa's investigation of the Officer-Involved Shooting (OIS) that occurred on November 6th, 2023⁷.

⁵ [Bill Text - AB-360 Excited delirium. \(ca.gov\)](#)

⁶ [Bill Text - SB-230 Law enforcement: use of deadly force: training: policies. \(ca.gov\)](#)

⁷ Berkeley PD Critical Incident Video Grayson Street November 202: <https://youtu.be/vp567hDw3Hg>

ATTACHMENT 1

POLICY COMPLAINT

Office of the Director of Police Accountability (DPA)

1947 Center Street, 5th Floor, Berkeley, CA 94704

Web: www.cityofberkeley.info/dpa

E-mail: dpa@cityofberkeley.info

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received: _____ DPA Case # _____

Name of Complainant: Andrea Prichett

Mailing Address: _____

Primary Phone: _____

E-mail address: _____

Occupation: teacher **Gender:** F **Age:** 60 **Ethnicity:** Caucasian

[2 Identify the Berkeley Police Department \(BPD\) policy or practice you would like the Police Accountability Board to review.](#)

The policies I would like to have examined are these.

- I. Are officers allowed to or prohibited from pointing their less-lethal munitions at a crowd or individual **at close range? What is unacceptable?**
- II. Are officers allowed to or prohibited from pointing or displaying their less-lethal weapons at individuals from a car?
- III. Are officers allowed to or prohibited from **displaying their less-lethal munitions** even when there has been no violence or disturbance to justify their use?

Related to : Policy 300- Use of Force

300.4.1 DRAWING AND POINTING FIREARMS Given that individuals may perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines: (a) If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.

300.4.3 SHOOTING AT OR FROM MOVING VEHICLES Absent exigent circumstances, officers shall not discharge firearms from a moving vehicle.

3 Location of Incident (if applicable) Date & Time of Incident (if applicable)

Telegraph Ave. and Dwight way on Jan 4th around 1:15pm.

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

As the attached video links show, officers were driving up Telegraph Ave. in unmarked vans with roughly 4-5 other officers in the vehicle. They drove by several times with the door half-open and less lethal munitions in their hands and on their laps

4 What changes to BPD policy, practice, or procedure do you propose?

I would like to see policy clarified/revised to prohibit improper displays of munitions as well as the pointing of these weapons at close range. It seems that they are being used in situations that previously would have been met with a baton or mere police presence. Now, their use and display has become routine. Are these displays of less lethal munitions generating Use of Force Reports? If not, they should.

The common display of these munitions makes BPD look thuggish and scared of the public and detracts from the good relations that BPD claims to want to build.

5 Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Police Accountability Board in evaluating your complaint.)

- [Video from Instagram](#): Notice that the cops is wrestling a woman in public space WHILE he has his less-lethal munition around his neck and it is getting in his own way.
- [Video of casual display](#): Notice that the officer does not put away his less lethal weapon. The unmarked van drove off with the doors open and officers were seen throughout the day holding these weapons and seemingly looking for oportunities to use them or at least threaten people with them.

6 CERTIFICATION I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.

Andrea Prichett

1/16/24

Signature of Complainant

Date

7 How did you hear about the Director of Police Accountability or Police Accountability Board? Internet Berkeley Police Dept. Newspaper:

Referred by:

Other: Already familiar with its existence and functioning.

ATTACHMENT 2

Use of Force

300.1 SANCTITY OF LIFE

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

300.1.1 PURPOSE AND SCOPE

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

300.1.2 USE OF FORCE STANDARD

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

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

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

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

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Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force.

300.1.3 CORE PRINCIPLES

A. DE-ESCALATION AND FORCE MINIMIZATION. Every officer's goal, throughout an encounter with a member of the public, shall be to de-escalate wherever possible and resolve the encounter without resorting to the use of force. Wherever possible, officers shall employ de-escalation techniques to increase the likelihood of voluntary compliance with law enforcement requests or directives and, thereby, decrease the likelihood that a use of force will become necessary during an incident. Further, in any encounters that do call for applying force, officers must always use a minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.

B. PROPORTIONALITY. When determining the appropriate level of force, at all times officers shall balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is unarmed or armed with a weapon other than a firearm.

C. MINIMIZING THE USE OF DEADLY FORCE. Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

D. DUTY TO INTERCEDE. Whenever possible, officers shall intervene when they know or have reason to know that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

E. VULNERABLE POPULATIONS. Officers should be particularly sensitive when considering the use of force against vulnerable populations, including children, elderly persons, pregnant women, people with physical and mental disabilities, and people with limited English proficiency.

F. FOSTER STRONG COMMUNITY RELATIONSHIPS. The Berkeley Police Department understands that uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. The Department is committed to fostering strong community relations by building on its historic tradition of progressive policing, ensuring accountability and transparency, and striving to increase trust with our community.

G. FAIR AND UNBIASED POLICING. Members of the Berkeley Police Department shall carry out their duties, including the use of force, in a manner that is fair and unbiased, in accordance with Policy 401, Fair and Impartial Policing.

300.1.4 DEFINITIONS

Definitions related to this policy include:

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Minimal amount necessary – The least amount of force within a range that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Control Techniques – Personal Impact Weapons and Take Downs.

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

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

Concealment - Anything which conceals a person from view.

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

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

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

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

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

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

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

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

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

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300.2 DUTY TO INTERCEDE AND DUTY TO REPORT

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

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

300.2.1 FAILURE TO INTERCEDE

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

300.3 USE OF FORCE TO EFFECT AN ARREST

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

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

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

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

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- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness.
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force. It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is objectively reasonable, objectively necessary, and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant. Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:

- Compliant – In general, when dealing with a compliant person, officers may rely on police presence and/or verbal control techniques, but should not use greater force.
- Passive resistance – In general, when dealing with a suspect involved in passive resistance, officers may rely on police presence, verbal control techniques, or control holds, but should not use greater force.
- Active resistance – In general, in dealing with a suspect involved in active resistance, in addition to the options available for passive resistance, officers may rely on pain compliance techniques or takedowns, but should not use greater force.
- Combative resistance – In general, in dealing with a suspect involved in combative resistance, officers have all use-of-force options available to them, but deadly force shall only be used in compliance with this policy as described in Section 300.4.

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300.3.2 USE OF FORCE CONTINUUM

The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions.

Continuum of Force

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
 - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
 - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not physical.**
 - Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
 - Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Weaponless defense — Officers use bodily force to gain control of a situation.**
 - Pain Compliance and control holds. Officers use grabs, holds and joint locks to restrain an individual.
 - Personal body weapons. Officers may use punches and kicks to restrain an individual.
- **Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**
 - Blunt impact. Officers may use a baton or projectile to immobilize a combative person.
 - Chemical. Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
- **Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**

300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be

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restricted. Officers are encouraged to use techniques and methods taught by the Berkeley Police Department for this specific purpose.

300.3.4 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and shall be used when it is safe to do so, De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member shall be called upon as a resource.

Officers shall gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to any levels of force. Officers should move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

- (a) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; "waiting out" subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
- (b) Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
- (c) Officers should consider a variety of options, including lesser force or no force options.
- (d) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.
- (e) A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
- (f) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use of force.

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- (g) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.
- (h) Establishing communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.
- (i) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

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

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

300.3.5 PAIN COMPLIANCE TECHNIQUES

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

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

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

300.3.6 USE OF NON-LETHAL FORCE

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

- (a) To protect themselves or another person from physical injury;

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- (b) To restrain or subdue a resistant individual; or
- (c) To bring an unlawful situation safely and effectively under control.

300.3.7 RESTRAINT AND CONTROL DEVICES

Restraint and control devices shall not be used to punish, to display authority or as a show of force. Handcuffs, body wraps and spit hoods shall only be used consistent with Policy 302. Batons, approved less-lethal projectiles, and approved chemical agents shall only be used consistent with Policy 303. As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

300.3.8 CHOKEHOLD PROHIBITION

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

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

300.3.9 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once the individual is safely secured, officers should promptly check and continuously monitor the individual's condition for signs of medical distress (Government Code § 7286.5).

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300.4 USE OF DEADLY FORCE

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

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.

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

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

300.4.1 DRAWING AND POINTING FIREARMS

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

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

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

300.4.2 DIRECTED FIRE

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

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

300.4.3 SHOOTING AT OR FROM MOVING VEHICLES

Absent exigent circumstances, officers shall not discharge firearms from a moving vehicle.

Firearms shall not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person present with deadly force. The moving vehicle alone does not presumptively constitute a threat that justifies the use of deadly force.

Officers shall not move into, remain, or otherwise position themselves in the path of a vehicle in an effort to detain or apprehend the occupants. Any officer in the path of a moving vehicle shall immediately attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants.

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

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

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

300.5 USE OF VEHICLES

Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in section 300.4 and in Policy V-6 that covers vehicle operations.

The Vehicle Containment Technique (VCT) is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal. VCT shall only to be used on vehicles that are either stationary or moving at a slow speed. This technique is designed to contain a suspect vehicle to a single stationary location, thereby

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preventing a pursuit from initiating, or a potentially violent situation (e.g. a hostage situation or person barricaded inside a vehicle) from becoming mobile.

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation.

300.6 REPORTING REQUIREMENTS

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

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

300.6.1 SUPERVISOR RESPONSIBILITY

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

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports.
- (f) Review body worn camera footage related to the incident.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.6.2 USE OF FORCE REPORTING LEVELS

Level 1

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

1. Control holds/ pain compliance techniques
2. Leverage
3. Grab
4. Bodyweight
5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.
6. Takedown

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

Level 2

- (a) No suspect injury or complaint of continuing pain due to interaction with officer.
- (b) Officer's use of force was limited to the following:
 1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual, and/or pointed at an individual. For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.
 2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

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

Level 3

- (a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.
- (b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.
- (c) The officer used any of the following force options:
 1. Chemical Agents/Munitions
 2. Impact Weapon Strikes

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3. Personal Body Weapons

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

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

Level 4

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

300.6.3 EMPLOYEE USE OF FORCE

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

- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence, such as a widespread disaster or civil disturbance, the officer shall prepare a supplemental report as soon as practical following the incident.
- (b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

300.6.4 REPORT RESTRICTIONS

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

300.6.5 PUBLIC RECORDS

Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and the Records Management and Release policy.

300.7 MEDICAL CONSIDERATIONS

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

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing

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pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed.

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

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

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

See the Medical Aid and Response Policy for additional guidelines.

300.8 USE OF FORCE ADMINISTRATIVE REVIEW

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in Policy 301 instead of utilizing Division Captain Review.

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

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

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

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

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300.9 WATCH COMMANDER RESPONSIBILITY

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

300.10 TRAINING

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

Subject to available resources, the Personnel and Training Sergeant should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include (Government Code § 7286(b)):

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- (b) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

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

300.11 USE OF FORCE ANALYSIS

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

- (a) An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.
- (b) All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2).
- (c) The identification of any trends in the use of force by members.
- (d) Training needs recommendations.
- (e) Equipment needs recommendations.
- (f) Policy revisions recommendations.

300.11.1 REPORTING FREQUENCY

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

300.12 CIVILIAN COMPLAINTS

Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police Accountability

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Board (PAB). Complaints will be investigated in compliance with the respective applicable procedures of the IAB and the PAB.

300.13 POLICY REVIEW AND UPDATES

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

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

BERKELEY POLICE DEPARTMENT MEMORANDUMS OF UNDERSTANDING
WITH THE UNIVERSITY OF CALIFORNIA POLICE DEPARTMENT

OPERATIONAL AGREEMENT

between the

CITY OF BERKELEY POLICE DEPARTMENT

and the

UNIVERSITY OF CALIFORNIA POLICE DEPARTMENT, BERKELEY

A. PURPOSE

This Operational Agreement reflects the ongoing cooperative and professional association between the City of Berkeley Police Department (BPD) and the University of California Police Department, Berkeley (UCPD), and establishes guidelines and procedures for the exercise of concurrent policing jurisdiction. The purpose of this association has been, and continues to be, the effective and collaborative provision of public safety services and the mutual promotion of common law enforcement goals in areas of shared jurisdiction and interest. To this end, each agency adopts the jurisdictional protocols and operational procedures described in this document.

B. LEGAL AUTHORITIES AND JURISDICTION

Sworn officers employed by both agencies have peace officer authority pursuant to California Penal Code §830.1 or §830.2. Additionally, UCPD's primary jurisdiction is described in Education Code §92600. This agreement is not intended to abrogate or exceed the legal authority or jurisdiction of either agency.

Pursuant to the 2003 Jurisdictional Consent agreement of the Alameda County Chiefs of Police and Sheriff's Association, both agencies recognize the ability for police officers from either agency to exercise peace officer powers and to enforce state and local laws at any time within the jurisdiction each agency represents, to the extent allowed by law.

BPD officers do not have the authority to enforce administrative rules established by the University, but they may forward information or reports of such violations to UCPD for investigation and action.

This Operational Agreement is maintained in compliance with Education Code §67381 (The Kristin Smart Campus Safety Act of 1998).

C. DEFINITIONS

Administrative Responsibility – the duty of an agency to fulfill legal and ethical obligations including organizational oversight and internal discipline.

Geographic Responsibility – a physical location or area where an agency is identified as having operational responsibility.

Operational Responsibility – the duty of an agency to exercise jurisdictional authority as the primary provider or manager of law enforcement and public safety services in a particular area or situation.

D. ADMINISTRATIVE RESPONSIBILITIES

1. Ongoing communication and exchange of reports and statistical data

BPD and UCPD acknowledge the importance of timely, regular communication at all levels, and commit to implement procedures to ensure this continues.

BPD and UCPD will exchange copies of crime reports or reports of significant contacts with possible criminal suspects whenever such reports may be of benefit or interest to the other agency. When appropriate, immediate notification should be made to expedite the sharing of important information.

Each agency will be primarily responsible for statistical accounting and statutory reporting of criminal offenses occurring in their respective jurisdiction. Each agency will, upon request, provide the other with relevant information to facilitate accurate and comprehensive administrative tracking.

BPD and UCPD criminal investigators should confer regularly on any case, or regarding subjects, of mutual interest. The detective commanders from each agency should confer regularly (e.g., quarterly) to review statistical reports and analyze any significant trends. BPD and UCPD supervisory and command staff should confer periodically to ensure high levels of cooperation and coordination between the two agencies.

This Agreement is not intended to in any way restrict the provision of general assistance or the lawful and necessary sharing of information between agencies in the course of normal law enforcement activity, in accordance with industry standards and professional courtesy.

2. Administrative investigations

Each Chief of Police will insure their employee(s) give full cooperation, in all administrative investigations conducted by sworn staff of either department.

Allegations of misconduct arising out of joint police operations will be investigated by the agency against whose employee the allegation is made. Where no specific officers or agency are identified, the investigation will be conducted by the agency having operational responsibility for the joint activity.

E. GEOGRAPHIC RESPONSIBILITIES

Generally, UCPD has geographic responsibility in the buildings and on the grounds of the UC Berkeley campus (see CAMPUS BOUNDARIES below), and on the adjacent property occupied by the Lawrence Berkeley National Laboratory (LBNL). In addition, UCPD will have geographic responsibility for all properties and facilities as described in APPENDIX 1 and APPENDIX 2.

Generally, BPD has geographic responsibility for all other areas within the City of Berkeley, including off-campus properties and facilities owned, operated or controlled by

the University, except for those properties and facilities as described in APPENDIX 1 and APPENDIX 2.

Within these respective geographic areas, each agency will be responsible for the prevention of crime, the preservation of peace and order, the enforcement of criminal offenses, and for providing such other police services as the regulations or orders of the respective Departments may require.

Officers of both agencies may provide routine law enforcement services in either area of geographic responsibility as described, but should share information and coordinate efforts with the other agency as appropriate for the situation and as described elsewhere in this document.

F. OPERATIONAL RESPONSIBILITIES

1. Response to public safety emergencies and in-progress crimes

Reports of public safety emergencies or in-progress crimes in UCPD's area of geographic responsibility should immediately be relayed to UCPD if received by BPD.

The agency that receives the first or simultaneous report of a public safety emergency or in-progress crime near the central UC Berkeley campus should respond and take initial action as appropriate for the situation. For purposes of this agreement, "near the central UC Berkeley campus" is roughly the area bounded by Virginia Street on the north, Shattuck Avenue on the west, Dwight Way from Shattuck Avenue to Telegraph Avenue on the southwest, and Derby Street from Telegraph Avenue to Belrose Avenue on the southeast. Reports of public safety emergencies or in-progress crimes outside of this area should immediately be relayed to BPD if received by UCPD.

Regardless of location, an on-duty peace officer of either agency who on-views or discovers a public safety emergency or in-progress crime should take responsibility for the initial response to and/or investigation of the situation. If occurring in the other agency's area of geographic responsibility, the duty to manage the incident shall remain with the initiating officer/agency until officially transferred to the other agency.

2. Response to non-emergency incidents and late-reported crimes

The agency that receives the first or simultaneous report of a non-emergency incident or late-reported crime occurring within the other agency's area of geographic responsibility should relay that call or information to the other agency for response.

An on-duty peace officer of either agency who on-views or discovers a non-emergency incident or late-reported crime in the other agency's area of geographic responsibility shall either ensure prompt notification of the other department for response or take appropriate initial action to resolve, investigate and/or document the situation. In the latter case, the handling officer / agency should ensure the other agency is notified of the incident and its resolution, and should forward to the other agency a copy of any arrest, crime or incident report that results.

3. Communication during emergency events of mutual impact

Each agency's communications center should, without unnecessary delay, inform the other of any public safety emergency or in-progress crime to which the staff of that agency is responding, if that situation appears likely to affect or to require the deployment of resources from the other agency. Field supervisors, commanders and communications center staff should continue to share updated information including ongoing actions or plans and should facilitate any necessary communication and coordination between responding field units until the situation is resolved.

4. People's Park

"People's Park" is an open space area defined by the south sidewalk of Haste Street, west sidewalk of Bowditch Street, north sidewalk of Dwight Way, and east property lines of commercial parcels associated with the east side of the 2450 block of Telegraph Avenue, south side of the 2500 block of Haste Street, and north side of the 2500 block of Dwight Way. The People's Park Lease, dated March 1, 1991, made by and between the University and City of Berkeley, expired on March 20, 1996, returning geographic responsibility to UCPD.

Although UCPD has geographic responsibility for People's Park, its location is such that there is significant overlap between the public safety goals and interests of both agencies. BPD officers are encouraged to provide additional presence, initiate law enforcement services, and conduct investigations in People's Park. BPD officers should provide UCPD with sufficient advance notice of planned operations, and should include UCPD personnel whenever possible. BPD records staff should route copies of police reports involving crimes or arrests in People's Park to UCPD.

5. Response to University alarms

UCPD is responsible for any necessary response to facilities or locations in UCPD's area of geographic responsibility (including off-campus properties as described in APPENDIX 1 & APPENDIX 2) that have been equipped with an intrusion alarm or other emergency alert system. If UCPD responds to an alarm or alert and discovers that the source is in fact outside UCPD's geographic and operational responsibility, BPD is responsible for any necessary investigation or follow-up actions.

6. Response to emergency (9-1-1) telephone calls

Emergency (9-1-1) telephone routing should correspond with the division of BPD/UCPD geographic responsibility as described above (section E.), to the extent this is possible.

At an off-campus location where UCPD has partial geographic responsibility, and where 9-1-1 telephone routing cannot be divided more precisely than street address, one agency shall be selected to receive 9-1-1 calls and to route them to the other agency as appropriate, according to the descriptions in APPENDIX 1 and APPENDIX 2.

Regardless of routing status, 9-1-1 calls that require an emergency response should be handled by the receiving agency as described above (section F.1.).

7. Medical or Fire Department response to University property

BPD communications center staff should notify UCPD without delay after dispatching medical or fire personnel to a location in UCPD's area of geographic responsibility, if that call for service did not originate from the UCPD communications center.

8. Special event notifications

The agency with knowledge or information of any large public gathering, demonstration or other group act of civil disobedience, or special event planned on or occurring in their area of geographic responsibility which appears likely to affect or to require the deployment of resources from the other agency should notify the other agency at the soonest practical opportunity.

9. City or University-owned vehicle collisions

If a City of Berkeley or University-owned vehicle is involved in a traffic collision, the agency with geographic responsibility will respond, investigate and document the incident in a manner and format consistent with SWITRS procedures and that agency's report writing policy. However, if the vehicle involved is driven by an on-duty employee of UCPD or BPD in the other agency's area of geographic responsibility and the collision involves injuries or fatalities, either agency may opt to contact the California Highway Patrol for investigation and documentation assistance.

10. Ticketed or paid-admission events

On-duty employees from either agency should not enter the venue of a ticketed or paid-admission event (including sporting events, lectures, concerts and other performances) outside their area of geographic or operational responsibility unless assigned or specifically requested, or in response to an emergency or a criminal investigation in progress. Nothing in this agreement is intended to restrict the ability of an off-duty employee to enter an event venue according to the same procedures as the public.

G. JOINT POLICING OPERATIONS

1. Incident command and control

When operating jointly, the ranking officer of the Department with operational responsibility will have command and control responsibility for the incident, except as described elsewhere in this Agreement or as required by law or policy. However, incident command and control may be shared or transferred by mutual agreement of agency supervisors or managers if doing so is in the interest of public safety or law enforcement effectiveness.

During a joint operation, employees of each agency remain subject to the policies, orders and procedures established by their own Department, and shall not take action(s) that conflict with such policies, orders or procedures. Employees should notify a supervisor without delay if they anticipate or encounter such a conflict.

When responding to an "Officer Needs Help" (11-99) broadcast, the responding agency should act at the direction of the requesting agency, regardless of geography.

When a formal Incident Command Structure has been established, both agencies will participate in the incident response in accordance with standard SEMS/NIMS protocols.

2. Use of outside agency police radio channels

Employees of either department should only utilize the other agency's radio channels to directly coordinate response and share relevant information during emergencies, in-progress crimes and other urgent situations. Non-emergency and routine information should be handled via the communication center or telephone. When broadcasting on the other agency's radio channels, staff should identify themselves by department and badge number.

This provision is not intended to restrict other approved and appropriate shared use of police department or common radio channels by employees of either agency.

3. Telegraph Avenue patrol / South campus patrol

By mutual agreement on December 4, 1969, the Berkeley City Council and the University of California authorized funds for a joint UCPD/BPD Patrol in the area south of the central UC Berkeley campus, intended as a cooperative venture to reduce the high incidence of serious crime and disorder. Over the years this program evolved into Telegraph Avenue Patrol (TAP), consisting of officers from both agencies working together, exclusively dedicated to patrolling the south campus using a variety of directed patrol techniques and problem-solving methods.

TAP officers are expected to embrace the community involved policing concept, and are responsible for identifying problems and using outreach and innovation to solve them.

As staffing allows, BPD and UCPD should each designate up to four dedicated TAP officers with hours of work coordinated to meet the needs of the assignment. The primary focus of TAP should be the area bounded by Bancroft Avenue on the north, Derby Street and Willard Park on the south, Fulton Street on the west, and Warring Street on the east. In addition to their regular duties, TAP officers will patrol People's Park on a daily basis and handle calls for service there.

4. Memorial Stadium events

During football games and other large events held at Memorial Stadium, UCPD will be responsible for law enforcement and public safety services on University property inside and near the stadium. Upon request of UCPD, BPD will provide traffic, pedestrian and parking control services in support of football games and other large events at Memorial Stadium. In general, BPD will operate in areas exterior of University property, and specifically, outside of the fence-enclosed boundaries of Memorial Stadium. The particular scope of services will conform to the nature of the event and collaborative pre-event planning determinations.

In a letter to the City of Berkeley Council dated November 17, 1922 (ref. APPENDIX 3), the University affirmed its interest in cooperation regarding the management of vehicular and pedestrian traffic associated with events occurring at Memorial Stadium, and acknowledged responsibility for costs related to BPD personnel assigned and assisting with management of such an event. BPD is responsible for maintaining a detailed account of BPD personnel assigned to, and their time spent in support of, joint operations at University/Memorial Stadium events.

5. Joint crowd management activity

Each Department is responsible for response to crowd situations occurring within their respective areas of geographic responsibility. Both Departments should provide their officers with crowd management and control training of similar content and philosophy to the Alameda County standard, so to facilitate effective joint operations.

Each Department will maintain close communications with the other regarding crowd situations likely to require a police response from both Departments. Where there is advance knowledge of a potential crowd situation likely to require a joint agency response, representatives from each Department will be designated to act as liaisons.

The senior ranking officer of the agency having geographic responsibility at the scene of any crowd situation shall have overall responsibility for police action. It is expected that, whenever possible, the senior ranking officer from the lead agency will consult with the senior ranking officer from the other agency before any joint action is taken.

Where individual or organizational sponsors of events are known in advance, the lead agency will attempt to contact and work with crowd/event leaders to identify and resolve potential problems.

6. Explosive ordinance investigation and disposal

BPD and UCPD will both provide explosive ordinance investigation and disposal expertise and assistance to the other agency, as available and requested.

When a suspected explosive device is reported to either agency, the Communication Center of the agency having operational responsibility should handle the report according to department policy and procedures, and notify their Explosive Ordinance Disposal technician(s) if appropriate. Responding technicians will make a cursory examination of the device and decide if the situation requires additional technicians to resolve. If requested by the initially responding technicians, that agency's Communication Center should relay a request for assistance to the other agency. The initially responding technicians shall remain in charge of rendering safe and disposal of the suspected device unless relieved of this duty by a Commanding Officer of their Department.

Should EOD technicians from the agency having operational responsibility be unavailable for an initial response to a suspected device, that agency may request an initial response from the other agency's technicians. Under these circumstances, technicians from the responding agency shall remain in charge of rendering safe and

disposal of the suspected device unless relieved of this duty by a Commanding Officer of either Department.

When operating jointly, BPD and UCPD technicians shall share access to and use of all EOD equipment and material as may be at their disposal.

When operating jointly, each department shall be responsible for the compensation, welfare and care of their respective technicians. Neither Department shall charge the other for responding and providing assistance or for the costs of normal materials and supplies.

Should BPD Bomb Technicians need to conduct an emergency transport and counter charge operation on a suspected explosive device, they will be allowed to transport and conduct disposal operations at the University of California's Russell Research Center at 2947 Happy Valley Road in Lafayette. Per this agreement the University of California Police Department will dispatch a UCPD EOD Technician to the Russell Research Center to provide access to BPD Bomb Technicians.

Notifications prior to transport will be as follows:

- **BPD shall contact UCPD Communications for access to the Russell Research Center.**
- **BPD will be responsible for notifications to Transportation Management Center (TMC) at (510)286-6923 for CalTrans/CHP if required.**
- **BPD will be responsible for all LE jurisdiction notifications for transport route.**
- **UCPD will be responsible to notify the Russell Research Center point of contact of the disposal activity in accordance with UCPD General Order O-3.**
- **UCPD will be responsible to notify the staff at the UC Observatory at the Russell Research Center of the disposal activity in accordance with UCPD General Order O-3.**
- **UCPD will be responsible to contact Contra Costa County Sheriff's Office prior to any disposal activity and request Contra Costa County Consolidated Fire District to dispatch a fire unit to the Russell Research Center for a fire stand-by in accordance with UCPD General Order O-3. ****

7. Tactical operations

BPD and UCPD will both provide tactical operations team expertise and assistance to the other agency, as available and requested.

As time and resources permit, BPD's Barricaded Subject Hostage Negotiation Team (BSHNT) and UCPD's Negotiation and Entry Team (NET) should conduct mutual training, including the exchange of instructors as needed.

Should an incident within the area of operational responsibility of one Department result in the activation of that agency's tactical response team, and it is determined by that agency's command personnel that special operations assistance is needed from the other agency, a request will be made through the assisting agency's on-duty Watch Commander. The assisting agency will direct their tactical response team to the location indicated and will provide necessary assistance to the requesting agency.

During a joint operation, command and control of the critical incident will remain with the agency having operational responsibility, unless otherwise decided by mutual agreement of agency command personnel.

When operating jointly, BSHNT and NET shall share access to and use of all special operations equipment and material as may be at their disposal.

When operating jointly, each department shall be responsible for the compensation, welfare and care of their respective special operations team members. Neither Department shall charge the other for responding and providing assistance or for the costs of normal equipment and supplies.

H. PRISONER BOOKING AND HOUSING

In a letter from UCPD to BPD dated December 13, 1994 (ref. APPENDIX 4), both agencies entered into a services agreement regarding booking and housing UCPD prisoners in the Berkeley City Jail, according to the applicable fee schedule established by the Berkeley City Council (most recently updated in Resolution No. 62,066 dated May 20, 2003, ref. APPENDIX 5). Refer to the appendices for details.

I. OPERATIONAL/JURISDICTIONAL CONFLICT, RESOLUTION

If during the course of field activity a dispute arises between the agencies regarding administrative, geographic or operational responsibility, and it cannot be resolved by referring to the terms of this agreement, the agency with initial responsibility for the situation shall retain that responsibility. The other agency should provide reasonable cooperation and resources in support of the situation, consistent with its other policing priorities and constraints. The agency with responsibility for the situation should accommodate a request from the other agency to conduct a parallel or joint response and/or criminal investigation.

As soon as necessary, or within five (5) business days, involved personnel from each agency should communicate the issue(s) in dispute to their respective Chief of Police. At the earliest opportunity following notification, BPD and UCPD Chiefs of Police or their designated representatives shall review the disputed case to clarify responsibility for similar situations in the future.

J. CENTRAL CAMPUS BOUNDARIES

The University central campus boundaries described below are intended to be the actual boundaries for the purpose of determining geographic responsibility between BPD and UCPD on a daily basis. To facilitate identification, these boundaries are described using physical lines of demarcation (such as sidewalks, fences and curb lines) in place of precise geographic measurements.

North & east from Hearst Avenue and Highland Place	UC fence lines
Hearst Avenue south side, west from the extended east curb line of Highland Place to the east side of Gayley Road*	South curb line
<i>*BPD shall have geographic responsibility north of the extended south edge of the south sidewalk through the intersection of Hearst Avenue/Gayley Road.</i>	
Hearst Avenue south side, west from the west side of Gayley Road to the east end of the fence at 2468 Hearst Avenue (north border of University House)	South edge of sidewalk.
Hearst Avenue south side, west from the east end of the fence at 2468 Hearst Avenue (north border of University House) to 2400 Hearst Avenue	UC fence line
Hearst Avenue south side, west from the 2400 Hearst Avenue to the northwest corner of the east wing of Tolman Hall, at the line extended from sidewalk drain to curb	South curb line

Hearst Avenue south side, west from the northwest corner of east wing of Tolman Hall at the line extended from sidewalk drain to curb, to the west side of MacFarlane Lane.	Ten (10) feet south of south curb line
Hearst Avenue south side, west from the west side of MacFarlane Lane to Oxford Street.	South edge of south sidewalk
Oxford and Fulton Streets east side, south from Hearst Avenue to Bancroft Way	East edge of east sidewalk
Bancroft Way north side, east from Fulton Street to the west side of Piedmont Avenue.	North edge of north sidewalk*
<i>*Where the edge or extension of the sidewalk is not clearly defined, ten (10) feet north of the north curb line.</i>	
Piedmont Avenue west side, north from Bancroft Way to the south line of the crosswalk north of 2220 Piedmont Avenue.	West edge of west sidewalk
South edge of the south painted line of the crosswalk north of 2220 Piedmont Avenue, from Piedmont Avenue west side to Piedmont Avenue east side.	South line of crosswalk
Piedmont Avenue east side, south from the south line of the crosswalk north of 2220 Piedmont Avenue to the north side of Bancroft Way (at southwest corner of International House).	East edge of east sidewalk
Bancroft Way north side, east from Piedmont Avenue to the east side of Warring Street at the west property line of 2833 Bancroft Steps.	North edge of north sidewalk
West property line of 2833 Bancroft Steps, north from Warring Street at Bancroft Steps and along the west and then north property line of 2250 Prospect Street.*	Private property line
<i>*BPD has geographic responsibility for 2833 Bancroft Steps and 2250 Prospect Street.</i>	
Prospect Street west side, south from the extended north property line of 2250 Prospect Street to the extension of the north curb of Bancroft Way.	West curb line
Extension of & north curb of Bancroft Way, east from the west curb line of Prospect Street to Canyon Road	North curb line

West curb of Canyon Road, north from Bancroft Way to Stadium Rimway	West curb line
Extension of the north side of Canyon Road across Stadium Rimway and the north side of Canyon Road east from Stadium Rimway to the extended east property line of 55 Canyon Road.	UC property line
East end of Canyon Road	UC property line

K. CLARK KERR CAMPUS / SMYTH-FERNWALD HOUSING BOUNDARIES

The Clark Kerr Campus is the property south of Dwight Way, east of Warring Street and north of Derby Street (excluding 2951 Derby Street (Redwood Gardens senior residential facility))	Stone perimeter wall and extension thereof at points of vehicle and pedestrian access
Smyth/Fernwald Student Housing is the property east of Hillside Avenue (south of 2425 Hillside Avenue) and north of Dwight Way	Stone retaining wall, or ten (10) feet east of the east curb line (Hillside Ave.); North edge of north sidewalk (Dwight Way)
*BPD has geographic responsibility for the private homes and properties located on Dwight Way east of Fernwald Road.	

L. HISTORY & AMENDMENTS

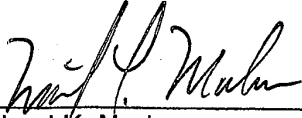
This is the 20th revision of a written jurisdictional agreement first established May 1, 1958 between the City of Berkeley Police Department and the University of California Police Department.

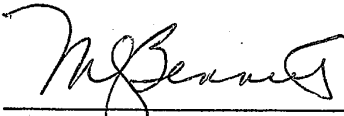
This agreement will be reviewed and amended regularly and as needed to better serve the ever-changing needs of the City and the University.

APPENDIX 1, 2 and 4 may be revised more frequently by mutual agreement of the Chiefs of Police and such changes do not require re-issuance of the full operational agreement.

M. AUTHORIZATION OF AGREEMENT

We, the undersigned, as authorized representatives of our respective agencies, do hereby approve this document on the date(s) indicated. It will remain in effect until amended, revised, or terminated by mutual agreement.


Michael K. Meehan (date) 4/24/2014
Chief of Police
Berkeley Police Department


Margo Bennett (date) 4/24/2014
Chief of Police
University of California Police Department

cc: Original #1, Berkeley Police Department
Original #2, University of California Police Department

Received by PRC
AUG 04 2016

ADDENDUM
To
OPERATIONAL AGREEMENT
between the
CITY OF BERKELEY POLICE DEPARTMENT
and the
UNIVERSITY OF CALIFORNIA POLICE DEPARTMENT, BERKELEY

A. PURPOSE

The purpose of this addendum is to meet the statutory requirements established by AB 1433 (Gatto, 2014), requiring covered institutions to adopt and implement written policies and procedures to ensure that reports of Part 1 violent crimes, hate crimes, or sexual assaults are immediately, or as soon as practicably possible, disclosed to local law enforcement.

It is further the purpose of this addendum to promote collaboration between the City of Berkeley Police Department (BPD) and the University of California Police Department, Berkeley (UCPD) to enhance the reporting, investigation, and appropriate response to sexual assault and other covered crimes.

B. REPORTING OBLIGATIONS

UCPD and BPD agree to the following procedures through which each department will transmit reports it receives to the other. These reports shall comply with the confidentiality requirements described in Section D below, and shall not identify the victim or the alleged assailant unless the victim has consented to being identified.

1. UCPD Reports to BPD

UCPD will report immediately or as soon as practicably possible to BPD all reports received by a Campus Security Authority of any Part 1 violent crime, sexual assault, or hate crime, committed on or off campus. This includes reports victims make directly to Campus Security Authorities (CSAs) as well as reports victims make to other Campus employees that are then conveyed to the CSAs. Such reports will include, where authorized:

- The name and characteristics of the victim;
- The name and characteristics of the perpetrator if known;
- Description of the incident, including location and date and time; and
- Any report number assigned to the police report documenting the investigation being conducted by the jurisdictional agency.

All such notifications to BPD will be documented in UCPD records. In addition, UCPD will maintain a public crime log documenting the "nature, date, time, and general location of each crime" and its disposition, if known. The log should be accessible to the public during normal business hours.

2. BPD Reports to UCPD

Pursuant to the Clery Act, UCPD must report aggregate data concerning certain enumerated crimes. To enable UCPD to fulfill this requirement, BPD shall provide statistics on at least an annual basis to UCPD on all crimes listed in 20 U.S.C. § 1092(f)(1)(F) for which BPD acted as a first responder or had geographic responsibility.

BPD will promptly notify UCPD when students or employees are identified as the victims or suspects of any Part I violent crime, sexual assault, or hate crime that occurs within BPD's jurisdiction, and/or when BPD acts as first responder to an incident. Such reports will include, where authorized:

- The name and characteristics of the victim;
- The name and characteristics of the perpetrator if known;
- Description of the incident, including location and date and time; and
- Any report number assigned to the police incident report documenting the investigation being conducted by the jurisdictional agency.

All such notifications to UCPD will be documented in BPD incident reports.

BPD will promptly notify UCPD if it has referred the incident to the Alameda County District Attorney (ACDA) for charges to be filed, and of any charging decisions made by ACDA.

C. CLERY WARNINGS

The Clery Act requires UCPD to issue timely warnings for Clery crimes on- and off-campus that pose a serious or continuing threat to students and employees and emergency notifications for a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees on campus.

To facilitate the issuance of Clery Act-required timely warnings and emergency notifications, UCPD and BPD agree to coordinate the sharing of information as described above. BPD acknowledges that UCPD need not obtain the approval of an outside law enforcement agency to issue any warnings/notifications, nor is UCPD required to seek preclearance of the content of any warning/notification. However, UCPD will inform BPD about such warnings as soon as practicable.

D. CONFIDENTIALITY REQUIREMENTS

UCPD and BPD will comply with applicable law and guidance regarding anonymous and confidential reporting of sexual violence, including when, how, and what information can or must be disclosed to each other.

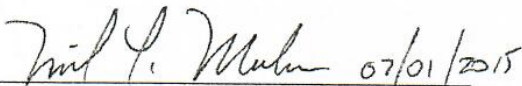
UCPD and BPD agree that if a victim requests confidentiality regarding a reportable incident, each department will take all reasonable steps to comply with the victim's request or inform the victim when the department cannot ensure confidentiality. Neither department will disclose the

name of the victim to the other unless the victim provides consent to being identified after being informed of their right to have identifying information withheld.


UCPD and BPD agree to inform the victim that they can agree to engage with law enforcement and participate in the investigation and prosecution using a pseudonym (*i.e.*, Jane or John Doe) instead of their legal name. In that case, the name of the alleged perpetrator may be disclosed to other law enforcement (if known) while protecting the identity of the victim from public disclosure.

E. COLLABORATION ON CAMPUS COMMUNITY TRAINING

UCPD and BPD agree to collaborate to provide outreach and training for the campus community about the awareness, prevention, intervention, investigation, and response to sexual assaults and other crimes of violence and to work with community or campus-based resources and experts, including victim advocates, to provide these programs.



Michael K. Meehan (date)
Chief of Police
Berkeley Police Department



July 1, 2015
Margo Bennett (date)
Chief of Police
University of California Police Department

2024 PAB REGULAR MEETING SCHEDULE

2024 PAB Meeting Schedule

Name of Commission: Police Accountability Board
Commission Secretary: Hansel A. Aguilar, Director of Police Accountability

Month	Meeting Day	Meeting Date	Time
January 2024	Wednesday	January 10	6:30 PM
	Wednesday	January 24	6:30 PM
February 2024	Wednesday	February 14	6:30 PM
	Wednesday	February 28	6:30 PM
March 2024	Wednesday	March 13	6:30 PM
	Wednesday	March 27	6:30 PM
April 2024	Wednesday	April 17	6:30 PM
May 2024	Wednesday	May 8	6:30 PM
	Wednesday	May 22	6:30 PM
June 2024	Wednesday	June 5	6:30 PM
	Wednesday	June 26	6:30 PM
July 2024	Wednesday	July 10	6:30 PM
	Wednesday	July 24	6:30 PM
August 2024	No Meeting		
September 2024	Wednesday	September 11	6:30 PM
	Wednesday	September 25	6:30 PM
October 2024	Wednesday	October 9	6:30 PM
	Wednesday	October 30	6:30 PM
November 2024	Wednesday	November 13	6:30 PM
December 2024	Wednesday	December 11	6:30 PM