

**POLICE ACCOUNTABILITY BOARD  
REGULAR MEETING AGENDA  
Wednesday, February 7, 2024<sup>1</sup>  
6:30 P.M.**

Board Members

John Moore III (Chair)  
Kitty Calavita  
Julie Leftwich  
Joshua Cayetano

Leah Wilson (Vice-Chair)  
Regina Harris  
Brent Blackaby  
Alexander Mozes

**MEETING LOCATION**

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

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<sup>1</sup> The PAB regular meeting originally scheduled for February 14th, 2024, was canceled and rescheduled for February 7, 2024, by the PAB at their January 24, 2024, Regular Meeting.

<b>11.b</b>	Excerpt from the January 30 <sup>th</sup> City Council directive to the City Manager to engage with the PAB on the proposal for additional security cameras.	81
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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

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## **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.

# February 2, 2024 Regular Meeting Agenda



**POLICE ACCOUNTABILITY BOARD**  
REGULAR MEETING AGENDA  
**WEDNESDAY, FEBRUARY 7, 2024**  
**6:30 P.M.**

Board Members

John Moore III (Chair)  
Kitty Calavita  
Julie Leftwich  
Joshua Cayetano

Leah Wilson (Vice-Chair)  
Regina Harris  
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** (25 MINUTES)

Announcements, updates, and other items.

- Presentation by Tony Rice II, CEO/Co-Founder of Sivil, on Oversight by Sivil, the ODPA's new case management software.

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 Law<sup>1</sup>
- City of Berkeley Ordinances<sup>2</sup>
- BPD Lexipol Policies<sup>3</sup>

## **10. OLD BUSINESS (Discussion and Action) (15 MINUTES)**

- a. Presentation of new ODPA Policy Complaint No. 2024-PR-0001 (ODPA) (15 MINUTES)

## **11. NEW BUSINESS (Discussion and Action) (1 HOUR 10 MINUTES)**

- a. Presentation of new ODPA Policy Complaint No. 2024-PR-0002 (ODPA) (15 MINUTES)
- b. Discussion and action regarding the City Council's directive to the City Manager to engage with the PAB on the proposal for additional security cameras, seeking feedback<sup>4</sup> (BLACKABY) (15 MINUTES)
- c. Review and Approval of BPD Officer Commendations (BLACKABY) – (10 MINUTES)

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

<sup>2</sup> <https://berkeley.municipal.codes/>

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

<sup>4</sup> [2024-01-30 Annotated Agenda - Council.pdf \(berkeleyca.gov\)](#)

- d. Discussion regarding the City Manager's implementation of the City Council's directive to revise the Early Intervention System Policy of the Berkeley Police Department.(CAYETANO) – (15 MINUTES)

**12. 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.*

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

**END OF CLOSED SESSION**


**14. ANNOUNCEMENT OF CLOSED SESSION ACTIONS (1 MINUTE)**

**15. 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.

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

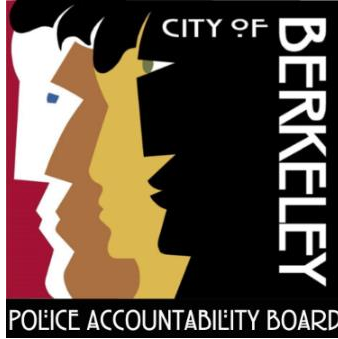
1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA 94704

TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955

Website: <https://berkeleyca.gov/safety-health/police-accountability>

Email: [dpa@berkeleyca.gov](mailto:dpa@berkeleyca.gov)

January 24, 2024 Regular Meeting Draft  
Minutes



**POLICE ACCOUNTABILITY BOARD  
REGULAR MEETING MINUTES  
Wednesday, January 24, 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/g8ChkKjQfPs?si=TvIcT283-moUg52i>

Minutes

**1. CALL TO ORDER AND ROLL CALL AT 6:31 PM**

- Present:** Board Member John Moore (Chair)<sup>1</sup>  
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

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<sup>1</sup> Participated remotely on a just cause provision.

Jose Murillo, Program Analyst  
Keegan Horton, Investigator  
Michelle Verger, Policy Analyst  
**BPD Staff:** Jen Tate, BPD Captain  
**CAO Staff:** James Chang, Deputy City Attorney  
**CMO Staff:** Carianna Arredondo, Assistant to the City Manager

## 2. APPROVAL OF AGENDA

### **Motion to approve the agenda with Item 10.e. tabled.**

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

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

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

## 3. PUBLIC COMMENT

2 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 (Wilson/Mozes) Motion Carries.

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

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

## 5. ODPa STAFF REPORT

Director Aguilar shares information about staffing changes, updates regarding the new office relocation, and upcoming conference opportunities with the Board. Carianna Arredondo, Assistant to the City Manager, provides an update on the Reimaging Public Safety presentation provided to Council on January 23<sup>rd</sup>, 2023.

## 6. CHAIR AND BOARD MEMBERS' REPORTS

Chair Moore thanks all of the participants in the 50<sup>th</sup> Anniversary of Civilian Oversight in Berkeley that was held on January 12<sup>th</sup>.

## 7. CHIEF OF POLICE'S REPORT

Captain Tate 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. Staff fields questions from the Board Members.

**10. NEW BUSINESS**

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

**ELECTION RESULTS FOR THE ROLE OF CHAIR OF THE PAB.**

<u>Nominee</u>	<u>Number of Votes</u>	<u>Board Member Votes</u>
John Moore	-	Vote by Acclamation

**ELECTION RESULTS FOR THE ROLE OF VICE-CHAIR OF THE PAB.**

<u>Nominee</u>	<u>Number of Votes</u>	<u>Board Member Votes</u>
Brent Blackaby	Three (3)	Blackaby; Leftwich; and Moore
Leah Wilson	Five (5)	Calavita; Cayetano; Harris; Mozes; and Wilson.

- b. Recap of the 50<sup>th</sup> Anniversary of Civilian Oversight in Berkeley Celebration and adoption of resolutions recognizing Barbara Attard, Jim Chanin, and Maria Tungohan for their efforts and preparations leading up to the event.

**Motion to adopt the resolutions recognizing Barbara Attard, Jim Chanin, and Maria Tungohan for their efforts and preparations leading up to the event.**

Moved/Second (Wilson/Mozes) Motion Carries.

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

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

- c. Discussion and action regarding the 2024 PAB Strategic Planning Session Agenda

Board members discuss the proposed agenda and provide feedback to the Strategic Planning Subcommittee.

- d. Report on Policy Complaint Number 2023-PR-0009

**Motion to reach out to the BPD to coordinate the annual review of BPD Policy 300 “Use of Force” per BPD Policy Section 300.13 “Policy Review and Updates”**

Moved/Second (Mozes/ Wilson) Motion Carries.

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

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

- e. Presentation of New ODPa Policy Complaint No. 2024-PR-0001

Item 10.e. was tabled during Item 2 “Approval of the Agenda.”

- f. Discussion and action regarding the Berkeley Police Department’s Memorandums of Understanding (MOUs) with other agencies.

**Motion to allow the Chair and Director of Police Accountability to write a memo requesting the Berkeley Police Department’s memorandum of understanding citing the Berkeley City Charter Section 125(3)(a)(2)<sup>2</sup>**

Moved/Second (Calavita/Cayetano) Motion Carries.

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

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

**Motion to request a memorandum from the ODPa outlining the PAB’s Charter Mandates and Powers.**

Moved/Second (Cayetano/Wilson) Motion Carries.

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

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

- g. Request to reschedule the PAB’s February 14<sup>th</sup> Regular Meeting

**Motion to reschedule the February 14<sup>th</sup> Regular Meeting to a future date.**

Moved/Second (Wilson/Calavita) Motion Carries.

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

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

**11. PUBLIC COMMENT**

1 Physically present speakers.

1 Virtually present speakers.

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<sup>2</sup> [https://berkeley.municipal.codes/Charter/125\(3\)\(a\)](https://berkeley.municipal.codes/Charter/125(3)(a))



**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.1 – 12.a.14:

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

**Motion to accept the findings of the Director of Police Accountability ODPa Complaint No. 2023-CI-0011**

Moved/Second (Wilson/Calavita)

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

Noes: None. 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.**

(Wilson/Calavita) The meeting was adjourned at 10:15 P.M by unanimous consent.

Minutes Approved on: \_\_\_\_\_

Hansel Aguilar, Commission Secretary: \_\_\_\_\_

List of current PAB Subcommittees



**SUBCOMMITTEES LIST**  
As of 2/2/2024

Subcommittee	Board Members	Chair	BPD Reps	Subcommittee Reports
<b>Regulations</b> Formed 7-7-21 Renewed 6-7-2023	Calavita Leftwich  <u>Public members:</u> Kitt Saginor	N/A	Lt. Dan Montgomery	Report on Subcommittee Activities. Future reports will be presented within this column.
<b>Fair &amp; Impartial Policing Implementation</b> Formed 8-4-21 Renewed 6-7-2023	Calavita Wilson  <u>Public members:</u> George Lippman	Calavita	Sgt. Peter Lee	Report on Subcommittee Activities. Future reports will be presented within this column.
<b>Surveillance Technology Policy</b> Formed 6-7-2023	Calavita Moore	N/A	N/A	Report on Subcommittee Activities. Future reports will be presented within this column.

<b>Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations</b> Formed 11-15-22	Calavita Moore	Calavita	N/A	Report on Subcommittee Activities. Future reports will be presented within this column.
<b>Body-Worn Camera Policy</b> Formed 03-15-23	Harris Leftwich	Harris	N/A	Report on Subcommittee Activities. Future reports will be presented within this column.
<b>Conflict of Interest</b> Formed 03-29-23	Leftwich Harris Wilson	Leftwich	N/A	Report on Subcommittee Activities. Future reports will be presented within this column.
<b>Lexipol Policy Review</b> Formed 11-08-2023	Leftwich Cayetano Mozes  <u>Public members:</u> Kitt Saginor	Leftwich	N/A	Report on Subcommittee Activities. Future reports will be presented within this column.
<b>Budget Review</b> Formed 11-08-2023	Wilson Blackaby	N/A	N/A	Report on Subcommittee Activities. Future reports will be presented within this column.
<b>Commendations</b> Formed 11-08-2023	Moore Blackaby Harris	N/A	N/A	Report on Subcommittee Activities. Future reports will be presented within this column.
<b>Off-Duty Conduct</b>	Cayetano Harris	N/A	Lt. Rittenhouse	Report on Subcommittee Activities. Future reports will be presented within this column.

<p><b>2024 PAB Strategic Planning Retreat</b></p>	<p>Leftwich Mozes</p>	<p>N/A</p>	<p>N/A</p>	<p>Report on Subcommittee Activities. Future reports will be presented within this column.</p>
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## Legislative and Policy Update Materials

Public



## Legislative Update

Legislation Tied to Board Activity and Interest

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

MEETING

**FEBRUARY 7, 2024**

Public

## State Legislative Updates

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No new state legislative updates.

**COMING SOON**

Public

## Lexipol Updates

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**1017.1 Lactation Break Policy:** Changing “employee” to “members”

**207.6 Issued Firearm Permits:** Removing Chief of Police restrictions on license to carry a firearm

**502.8 Tows for Drivers License Violations:** Vehicle code citation removed

**606.7 Warrant Preparation:** Giving the restriction of no-knock entries a subsection

**606.12 Documentation:** Adding a Documentation Subsection that states documentation should be in accordance with established records retention schedule

Public

## City of Berkeley Legislative Update

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The City Council approved the additional cameras

Councilmember Harrison resignation

Councilmembers Humbert and Bartlett modified their proposal to include language directing the CM to work with the PAB before implementation

Locations:

Shattuck & Allston, District 4	5 <sup>th</sup> St. & Gilman, District 1
Shattuck & Bancroft, District 4	Shattuck & University, District 4
4 <sup>th</sup> Street & Hearst, District 4	4 <sup>th</sup> Street & Virginia, District 2
Shattuck & Vine, District 4	8 <sup>th</sup> Street & Harrison, District 2
2 <sup>nd</sup> Street & Page, District 2	University & Sacramento, District 1
Cedar Street & Eastshore Hwy., District 2	San Pablo Avenue & Gilman, District 1
Telegraph and Dwight, District 7	



Public

## City of Berkeley Updates Con.

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### Item 12 on February 13, 2024 Consent Calendar

- Develop plans to implement public safety crime prevention programs to address the current rising crime against women, particularly older women.
  - Establish a safety escort program
  - Empower BPD to lead a community forum with participation by *other safety-related community resources* to address safety for older, vulnerable women.
    - The PAB may consider itself a safety-related community resource
  - BPD is to provide information identifying geographic locations which are high priority for safety escorts, where and when women are most at safety risk, other recommendations.
  - Attempts to address preventative safety measures beyond police response after the fact.

Public

## City of Berkeley Lobbyist

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### PAB-related lobbying efforts

- Criminal justice reform
- Support efforts to increase police accountability and provide a means of decertifying police officers who engage in serious misconduct
- Support funding opportunities for alternative traffic enforcement efforts
- Support funding opportunities for violence prevention services
- Support funding for law enforcement engagement and community-centered collaborative approaches in support of reimagining public safety efforts (Specialized Care Unit)

Public

## 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>

### Another Berkeley City Council member abruptly resigns

<https://www.sfchronicle.com/bayarea/article/another-berkeley-city-council-member-abruptly-18638915.php>

### Berkeley City Council Regular Meeting Agenda Packet February 13, 2024

<https://www.dropbox.com/scl/fi/s9dc2yym6669h2swa64r9/2024-02-13-Agenda-Packet-Council.pdf?rlkey=9a4s2ltqvlbnkqgiw6g2vc1&dl=0>

### Berkeley City Council Budget & Finance Committee Regular Meeting Thursday January 25, 2024

#### **AGENDA:**

<https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2024-01-25%20Agenda%20Packet%20-%20BUDGET.pdf>

#### **MINUTES:**

<https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2024-01-25%20Annotated%20Agenda%20-%20BUDGET.pdf>

Public

# Thank You!



Materials for ODPA Policy Complaint No. 2024-  
PR-0001



## MEMORANDUM

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

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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 rules<sup>1</sup>.

### 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?"

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<sup>1</sup> [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 arrest<sup>2</sup> and patrol on Telegraph Avenue<sup>3</sup>.

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 action<sup>4</sup>, 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.

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<sup>2</sup> Video 1: <https://www.instagram.com/p/C1s-AjfLcOQ/>

<sup>3</sup> Video 2: <https://drive.google.com/file/d/19PYFnQ358YMfv7lwHmirQKxpaJH6dbHg/view>

<sup>4</sup> 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)<sup>5</sup>. 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)<sup>6</sup>. 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 6<sup>th</sup>, 2023<sup>7</sup>.

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

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

<sup>7</sup> 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](http://www.cityofberkeley.info/dpa)

E-mail: [dpa@cityofberkeley.info](mailto: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.

Materials for ODPA Policy Complaint No. 2024-  
PR-0002



## MEMORANDUM

**Date:** February 2, 2024  
**To:** Honorable Members of the Police Accountability Board  
**From:** Hansel A. Aguilar, Director of Police Accountability *HA*  
Jose Murillo, Program Analyst *JM*  
**Subject:** Notice of Policy Complaint No. 2024-PR-0002

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The purpose of this memorandum is to introduce Policy Complaint Number 2024-PR-0002 to the Police Accountability Board (PAB) as required by Section G of the PAB's standing rules<sup>1</sup>.

### Background:

On Tuesday, January 21, 2024, the Office of the Director of Police Accountability (ODPA) received Policy Complaint No. 2024-PR-0002 via email correspondence (See Attachment 1). The complaint raises three questions regarding the duty of the BPD and Berkeley Fire Department to identify:

- "I would like the PAB to examine whether employees of the Berkeley Fire Department are required to be identified by a badge or number when working under the authority of the BPD."
- "I would like clarity on whether an officer is in violation of policy if they have an accurate name displayed on their uniform but an inaccurate or misleading number displayed with it."

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<sup>1</sup> [Section G. "Policy Complaints and Reviews" of the PAB's Standing Rules](https://berkeleyca.gov/sites/default/files/2022-02/PoliceAccountabilityBoard_StandingRules.pdf)  
[https://berkeleyca.gov/sites/default/files/2022-02/PoliceAccountabilityBoard\\_StandingRules.pdf](https://berkeleyca.gov/sites/default/files/2022-02/PoliceAccountabilityBoard_StandingRules.pdf)

- "Are officers' numbers changed or allowed to be changed even when that change does not represent a change in rank?"

(See Attachment 1, Page 1). The inquiry stems from a video recording that shows BPD officers and BFD personnel being asked for identifying information<sup>2</sup>.

**Potential Area(s) of Review:**

Under Section 125 of the City Charter, the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) are vested with the authority not only to conduct investigations of complaints brought by members of the public against sworn employees of the Berkeley Police Department but also possess the mandate to engage in the review of Police Department policies, practices, and procedures. This dual capacity allows for a comprehensive oversight mechanism that encompasses individual conduct as well as systemic operations within the Berkeley Police Department (BPD). In the case of the present policy complaint, the focus of the complainant is distinct from the investigation of conduct by sworn employees of the BPD or other City of Berkeley Departments. Instead, the complainant seeks a thorough examination of BPD's overarching policies, practices, and procedures, aiming to ensure they align with legal standards, ethical considerations, and community expectations.

BPD Policy 321 "Standards of Conduct" provides guidance regarding officers providing identifying information. In particular, Section 321.5.9.o. specifies:

"Failure to Identify – Employees on official business shall identify themselves as Berkeley Police employees or officers. When requested, employees shall promptly state their name, rank and badge number, except when disclosure of identity could compromise safety and/or an investigation (i.e., riot situations, undercover operations, etc.)."

(See Attachment 2).

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<sup>2</sup> [Video Recording 1 - 2024-PR-0002](https://drive.google.com/file/d/11872lk-PWJODaOHB95Dqh0gc-VIXjipL/view)  
<https://drive.google.com/file/d/11872lk-PWJODaOHB95Dqh0gc-VIXjipL/view>



Additional instructions are given in Policy 428, titled "First Amendment Assemblies." In Section 428.9.a., it is specified that "[BPD] employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn." (See Attachment 3).

**Recommendation:**

Upon receiving a policy complaint, the Board can choose from several potential courses of action<sup>3</sup>, 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.
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.

The ODPA recommends that the PAB contemplate accepting this policy complaint and decide whether to delegate the review to ODPA staff or assign it to a Board member.

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<sup>3</sup> [Section G. "Policy Complaints and Reviews" of the PAB's Standing Rules](https://berkeleyca.gov/sites/default/files/2022-02/PoliceAccountabilityBoard_StandingRules.pdf)  
[https://berkeleyca.gov/sites/default/files/2022-02/PoliceAccountabilityBoard\\_StandingRules.pdf](https://berkeleyca.gov/sites/default/files/2022-02/PoliceAccountabilityBoard_StandingRules.pdf)

# 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](http://www.cityofberkeley.info/dpa)  
E-mail: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)  
Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received: 01/26/2024

DPA Case # 2024-PR-0002

## 1. Name of Complainant: Last First Middle

Andrea Prichett

Mailing Address: Street City State Zip

[REDACTED]

Primary Phone: ([REDACTED])

Alt Phone: ( )

E-mail address: [REDACTED]

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.

- a) I would like the PAB to examine whether employees of the Berkeley Fire Department are required to be identified by a badge or number when working under the authority of the BPD.
- b) I would like clarity on whether an officer is in violation of policy if they have an accurate name displayed on their uniform but an inaccurate or misleading number displayed with it.
- c) Are officers' numbers changed or allowed to be changed even when that change does not represent a change in rank?

3 Location of Incident (if applicable)

Telegraph Ave. near Dwight Way

Date & Time of Incident (if applicable)

Jan. 4th 2024

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.

The video provides the factual description of what happened.

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

1. It can require/clarify that firefighters are required to be identified by a name and/or number according to the departmental roster
2. It can require that officers are prohibited from wearing ANY identifying information that is misleading or incorrect or knowingly false
3. It can require that an officer will have the same badge number for as long as they have that particular rank and that they are only provided with a new badge number when they have changed their rank.

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.)

[Link to Video Footage](#)

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

Signature of Complainant

Date

*Andrea Prichett*

*1/20/24*

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

# ATTACHMENT 2

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## Standards of Conduct

### 321.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Berkeley Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

### 321.2 POLICY

The continued employment or appointment of every member of the Berkeley Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

### 321.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

#### 321.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

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The person countermanding the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

#### **321.3.2 SUPERVISOR RESPONSIBILITIES**

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

- (a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
- (b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
- (c) Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.
- (d) The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

#### **321.4 GENERAL STANDARDS**

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Employees shall at all times be courteous and civil to the public and to one another. They shall be quiet, orderly, attentive and respectful and shall exercise patience and discretion in the performance of their duties.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

#### **321.5 CAUSES FOR DISCIPLINE**

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

##### **321.5.1 LAWS, RULES AND ORDERS**

- (a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.

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- (b) Disobedience of any legal directive or order issued by any department member of a higher rank.
- (c) Violation of federal, state, local or administrative laws, rules or regulations.

#### 321.5.2 ETHICS

- (a) Using or disclosing one's status as a member of the Berkeley Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.

#### 321.5.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM

Discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful.

#### 321.5.4 RELATIONSHIPS

- (a) Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- (b) Engaging in on-duty sexual activity, including but not limited to sexual intercourse, excessive displays of public affection, or other sexual contact.
- (c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect, or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (d) Associating with or joining a criminal gang, organized crime, and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- (e) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member



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knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.

- (f) Participation in a law enforcement gang as defined by Penal Code § 13670. Participation is grounds for termination (Penal Code § 13670).

#### 321.5.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.
- (e) Failure to sign in/out for duty on the timesheet, unless specifically authorized by a supervisor.

#### 321.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.
  - 1. Members of this department shall not disclose the name, address or image of any victim of human trafficking except as authorized by law (Penal Code § 293).
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away or appropriating any Berkeley Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.
- (e) Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

#### 321.5.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing or destroying defective or incompetent work.

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- (d) Unauthorized sleeping during on-duty time or assignments.
- (e) Failure to notify the Department within 72 hours of any change in name, residence address or contact telephone number(s).

#### 321.5.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.
- (c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.
- (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
- (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
  - (a) While on department premises.
  - (b) At any work site, while on-duty or while in uniform, or while using any department equipment or system.
  - (c) Gambling activity undertaken as part of an officer official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (g) Entering any place of amusement while on duty, except when necessary in the performance of duty or periodic inspection.
- (h) Improper political activity including:
  - (a) Unauthorized attendance while on-duty at official legislative or political sessions.
  - (b) Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
- (i) Engaging in political activities during assigned working hours except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.

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- (j) Joining or participating in any employee organization except an employee organization which is composed solely of peace officers which concerns itself solely and exclusively with the wages, hours, working conditions, welfare and advancement of academic and vocational training in furtherance of the police profession and which is not subordinate to any other organization.
- (k) Failure to secure the permission of a Commanding Officer before placing any material on a Departmental bulletin board.
- (l) Using departmental business cards for anything other than official business.
- (m) Any act on- or off-duty that brings discredit to this department.

#### 321.5.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency that may result in criminal prosecution or discipline under this policy.
- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.
- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- (e) Engaging in horseplay that reasonably could result in injury or property damage.
- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
- (g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
- (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
- (i) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.
- (j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
- (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
- (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.

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- (m) Incurring unauthorized expense - Employees shall not knowingly and intentionally incur any unauthorized Departmental expense or liability without approval of a superior officer or supervisor when necessary under emergency conditions.
- (n) Failure to provide information to citizens - Employees shall comply whenever possible with requests by citizens for public information. If necessary, they shall direct such persons to the nearest location where information may be obtained.
- (o) Failure to Identify - Employees on official business shall identify themselves as Berkeley Police employees or officers. When requested, employees shall promptly state their name, rank and badge number, except when disclosure of identity could compromise safety and/or an investigation (i.e., riot situations, undercover operations, etc.).
- (p) Failure to maintain communication, when on duty or officially on call - Employees who are on duty or officially on call shall be directly available by normal communication or shall keep their office, supervisor, or commanding officer informed of the means by which they may be reached when not immediately available.
- (q) Any other on-- or off--duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

#### 321.5.10 SAFETY

- (a) Failure to observe or violating department safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
- (e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
- (f) Unsafe or improper driving habits or actions in the course of employment or appointment.
- (g) Any personal action contributing to a preventable traffic collision in the course of employment or appointment.
- (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

#### 321.5.11 INTOXICANTS

- (a) Reporting for work:
  - 1. Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.

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- (b) Possession:
  - 1. Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.
  - 2. Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.
- (c) Intoxicants on-duty:
  - 1. Use of Intoxicants. Except as necessary in the performance of an official assignment, having the odor of an alcoholic beverage on the person, clothing, or breath, being under the influence of alcohol or other intoxicants, or the consumption of alcohol or other intoxicants while on duty is strictly prohibited.
  - 2. A Command Officer must give prior approval for any use of alcohol in the performance of an official assignment.
- (d) Prescription medication:
  - 1. Employees may use prescription medications, except medical marijuana, while on duty pursuant to the specific instructions of a physician who has advised the employee that the prescribed medication in the amount actually ingested does not adversely affect the employee's ability to safely perform their duties, including tasks that require physical coordination, mental alertness and sound judgment, such as, operating office equipment and driving a vehicle, or, in the case of sworn officers, making detentions/arrests and handling weapons.
- (e) Use of marijuana:
  - 1. Possession of marijuana, including medical marijuana, or being under the influence of marijuana on duty is prohibited and may lead to disciplinary action.
- (f) Intoxicants in uniform:
  - 1. No employee off duty and in uniform, or in any part of uniform dress, shall:
    - i. Consume any alcoholic beverage or other intoxicant in public view or in any place accessible to the public;
    - ii. Be in public with the odor of an alcoholic beverage on the person, clothing, or breath; or
    - iii. Be under the influence of alcohol or other intoxicants.
- (g) Intoxicants off-duty:
  - 1. No off-duty employee shall consume any alcoholic beverage or other intoxicant to an extent which renders one unfit to report for one's next regular tour of duty (including having the odor of an alcoholic beverage on the person), which results in the of violation of any law, or which results in the commission of an obnoxious or offensive act which might tend to discredit the Department.

# ATTACHMENT 3

## First Amendment Assemblies

### 428.1 PURPOSE

The purpose of this policy is to provide policy and procedural guidance to Berkeley Police Department personnel involved in the planning, response and/or deployment of police personnel for crowd situations.

### 428.2 MISSION STATEMENT

The mission of the Berkeley Police Department in crowd situations is to facilitate free expression, de-escalate violence and resolve conflict peacefully with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly.

- (a) Appropriate action will be determined by the Incident Commander in the field, and will be based on the behavior of the people in the crowd.
- (b) Police action shall be reasonable, intended to prevent lawlessness or restore order, and may include responses ranging from no police action to full crowd control tactics.

### 428.3 POLICY

In the event a crowd situation is determined to be a peaceful protest or demonstration, wherein participants are exercising their rights to free speech in a lawful manner, the policy of the Berkeley Police Department shall be to facilitate the event to the extent possible.

The Department shall make it a priority to establish lines of communication with the demonstrators both before and during the crowd situation. The Department shall consider social media as one means of communication.

In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of criminal behavior and violence, the Berkeley Police Department will take steps to restore order.

- (a) Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes or a dispersal order.
- (b) Prior to issuing a dispersal order, BPD shall make efforts to safely arrest those committing crimes while preserving the rights of citizens to demonstrate.
- (c) Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.

### 428.4 USE OF FORCE

Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in the Use of Force Policy.

- (a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons and chemical agents should not be used on persons participating in a crowd

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situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.

1. Verbal commands to stand followed by control holds (e.g., wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.
  2. If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.
  3. Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.
- (b) Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)
- (c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a "rake" or "jab") as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.
1. Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine or groin except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person.
  2. Officers on a skirmish line shall not use batons to collectively push a crowd in a particular direction prior to dispersal orders being given unless exigent circumstances exist. This requirement does not apply to officers on a skirmish line who are using force in compliance with *Graham v. Conner*.
- (d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).
- (e) Less-lethal munitions shall only be fired at a specific target and officers shall be mindful of the increased risk of hitting an unintended target due to unexpected movement of members of the crowd. Officers may never use less-lethal munitions indiscriminately against a crowd or group of people.

Personnel deployments during demonstrations should include clear and specific objectives.

In squad or team movement, the type and scope of force used shall be at the discretion of the Incident Commander, Field Commander, Squad or Team Leader.

De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed prior to the use of any force, consistent with the Department's Use of Force policy.

Kinetic energy projectiles and chemical agents for crowd control purposes shall only be deployed by officers who have received POST training for crowd control if the use is objectively reasonable



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to defend against a threat to life or serious bodily injury to any individual, including an officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control (Penal Code 13652).

Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

- A violation of an imposed curfew.
- A verbal threat.
- Noncompliance with a law enforcement directive.

For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agent, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed.

#### **428.5 USE OF VEHICLES**

BPD shall enhance mobility and flexibility by using police vehicles such as trained bicycle officers and motorcycle officers, in addition to foot patrols, to maintain peaceful crowd management. Parking Enforcement Officers will only be used for traffic control purposes.

Specialized police vehicles (e.g., police motorcycles, off-road motorcycles, parking enforcement vehicles, mobile command vehicles, etc.) may be used in crowd situations at the discretion of the Incident Commander.

- (a) Specialized police vehicles shall not be used to contact demonstrators for the purpose of physically pushing people back or forcibly dispersing them from an area.
- (b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.

#### **428.6 DEFINITIONS**

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.).

Counter Demonstration: An assembly of persons in conflict with a different demonstration at the same location.

Crowd Control: Law enforcement response to a pre-planned event or spontaneous event, activity or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd. These strategies include but are not limited to skirmish lines, mobile field force techniques, targeted and mass arrests and the use of force generally.

Crowd Management: Strategies and tactics employed before, during and after a gathering for the purpose of maintaining the event's lawful activities. These strategies include, but are not limited to:

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communication with leaders before and during the event, police presence and event participation, blocking traffic to facilitate a march, and bicycle officers monitoring the crowd.

Demonstration: A public assembly of persons to exhibit thoughts, ideas or opinions.

Incident Commander: A sworn officer, usually a lieutenant or captain, responsible for all personnel assigned to an event.

During the initial stages of a spontaneous event, the Incident Commander will be the highest ranking or senior officer available to take charge, until relieved of responsibilities by a higher ranking officer.

Mobile Field Force (MFF): A statewide tactical concept that utilizes groups of trained officers with standard marked police vehicles and equipment, who have the capability to respond to crowd events that are highly mobile or that break up and quickly reform in other locations.

Non-Permitted Event: Any demonstration, whether spontaneous or planned, wherein organizers have not obtained permits or licenses that are lawfully required under the circumstances.

Operations Commander: A sworn officer, usually a lieutenant or sergeant, responsible for the movement and actions of a platoon, squad, or other identified group of officers at the scene of an event.

Pain Compliance Technique: Any technique designed to inflict pain for the purpose of motivating a person to comply with verbal commands (e.g., buckle nerve, gum nerve, sternum rub).

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

Persons who lock arms, use lockdown devices, or physically resist officers in any other way are not considered "passive".

Permitted Event: Any demonstration or event wherein organizers have obtained all applicable permits or licenses.

Platoon: Any group of officers, usually 36 or more in number, organized into 3 or more squads. Each platoon will have a commander, usually a lieutenant, who is responsible for the actions of the platoon in the field.

Protected First Amendment Activity: Various forms of expression including, but not limited to, speech, assembly, marching, holding signs, street theater, distribution of literature, or displaying banners.

- (a) Freedom of speech and assembly are rights protected by the First Amendment of the United States Constitution, and Article 1 Sections 2 & 3 of the California Constitution subject to reasonable time, place and manner regulations, such as, compliance with lawful permit requirements and traffic regulations.

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Riot: Any group of two or more people, acting together, who use force, violence, or the threat of force or violence, to disturb the public peace (Penal Code § 405).

Riot Gear: Police equipment visible to the public and generally associated with crowd control, such as, helmets, batons, flex-cuffs, special uniforms, specialized vehicles, etc.

Spontaneous Event: Any unplanned event that develops, usually as a result of some catalyst, such as sporting events, parties, concerts, court rulings, festivals, major political events, major news events, or any combination thereof.

Squad: A group of sworn officers, usually 12 in number, with an identified squad leader responsible for the actions of the squad.

Squad Leader: A sworn officer, usually a sergeant, responsible for the movement and actions of a squad.

Team: A group of four sworn officers within a squad, inclusive of an identified leader responsible for the actions of the team.

Team Leader: A sworn officer, sometimes a sergeant, responsible for the movement and actions of a team of officers within a squad.

Time, Place or Manner Restrictions: Reasonable restrictions on protected activity imposed by law (e.g., an applicable permit) intended to serve a specific governmental interest (e.g., public safety), with regard to the time, location, or manner in which protected activity is to be conducted.

Unlawful assembly: Two or more persons, assembled together to commit an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner (Penal Code § 407).

The prohibition in Penal Code § 407 against persons in an assembly doing a lawful act in a violent, boisterous or tumultuous manner is limited only to situations where the conduct poses a clear and present danger of imminent violence ((1973) 9 Cal. 3d 612, 623).

#### **428.7 PLANNED EVENTS**

- (a) At such time as a special event or crowd situation comes to the attention of police department personnel, the Operations Division Captain or Watch Commander shall be notified, and forwarded all information regarding the event.
- (b) The Incident Command System (ICS) shall be used for managing all crowd situations. ICS should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.
- (c) The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.
  1. Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.

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- i. Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.
  - ii. If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.
- (d) Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.
1. Initial assessment may include on-duty personnel in the Operations Division and other divisions within the Department.
  2. If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies.
- (e) Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Captains to secure their participation.
- (f) Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.
1. An Operations Plan shall contain sufficient detail to allow an uninvolved party who reads it to understand the nature of the event, department policy involved, planned response and the department resources dedicated to it.
  2. The Operations Plan shall include specific guidelines and priorities to consider when making deployment decisions and shall reflect the department's commitment to crowd management.
  3. Upon approval by the Operations Captain and signed by the Chief of Police, the original Operations Plan shall be **scanned into the Professional Standards folder (within the Department's internal GDrive)** and copies distributed to all appropriate personnel.

#### **428.8 SPONTANEOUS EVENTS**

- (a) Sworn officers shall respond to a reported spontaneous crowd situation to assess immediate hazards to public safety.
- (b) The ranking sworn officer, or senior officer, shall assume the role and responsibilities of Incident Commander, and take the following immediate actions:
  1. Broadcast the type of event, if known, and estimated number of participants.
  2. Report known or imminent public safety hazards.
  3. Request sufficient on-duty personnel resources to address life-threatening public safety emergencies.

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- (c) The on-duty Watch Commander, or if absent or unavailable, the senior Patrol Sergeant, shall respond to the event scene and take the following actions:
  - 1. Assume the role and responsibilities of Incident Commander.
  - 2. Assess the potential risks to public safety.
  - 3. Assess whether or not a static event has the potential to go mobile, either on foot in the form of a march, or in vehicles.
  - 4. Assess the number of officers and type of equipment required to maintain order and their manner of response.
  - 5. Assess the potential need for outside resources:
    - i. On-duty personnel from other police agencies.
    - ii. Fire Department personnel and resources.
    - iii. Media relations personnel.
  - 6. Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.
- (d) The Incident Commander should consider the following factors when making decisions regarding the police response:
  - 1. The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
  - 2. The level of disruption to those not involved in, but impacted by the event.
  - 3. The level of vehicular traffic.
  - 4. The number of people involved in the event and their behavior.
  - 5. The personnel and equipment available for the task.
- (e) The Incident Commander may use on-duty personnel from other divisions or units to assist in the police response to a spontaneous event.
- (f) The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:
  - 1. Assign personnel to monitor the event only.
  - 2. Use personnel to maintain order at the event and/or divert uninvolved, affected traffic away from the area.
- (g) If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:
  - 1. Let the group proceed with no police presence.
  - 2. Assign officers to facilitate the mobile event by providing traffic control.
  - 3. Attempt to direct the path of the mobile event by denying access to certain roadways.

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4. Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.
  5. Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.
- (h) There is no required order of response; the Incident Commander shall be responsible for continually assessing the event and adjusting the response strategies and tactics accordingly. Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.
- (i) The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished to another officer who officially assumes the responsibility.
1. Any change of command shall be broadcast on the radio frequency used to manage the police response.

#### **428.9 GENERAL EVENT PROCEDURES**

- (a) Employees dispatched or pre-assigned to a crowd situation shall be in a department-approved uniform appropriate for their assignment.
1. Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.
- (b) Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment, (i.e., helmet, chemical agent mask, etc.).
- (c) Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander. The Incident Commander shall be responsible for assuring that there is an inventory of less-lethal munitions, CS gas, and/or smoke prior to deployment, including any outside agencies assisting BPD. Absent exigent circumstances, such less-lethal munitions, CS gas and smoke shall not be deployed prior to determination of an accurate inventory.
- (d) The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.
1. Information communicated in an operational briefing shall include, at minimum:
    - (a) The nature of the event.
    - (b) The mission and operational goal(s) of the department.
    - (c) The chain of command managing the event.
    - (d) The individual's assignment and any special equipment he/she may require to accomplish it.

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- (e) When possible, the identity and appearance of all undercover personnel involved in the police response.
  - Undercover personnel should be present at operational briefings for planned events.
- (e) Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.
- (f) Verbal requests or commands should be used before and when advancing on a crowd.
  1. Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step back!" or "Move onto the sidewalk!")
- (g) Employees in a crowd situation shall conduct themselves in a professional and courteous manner, answering questions when appropriate.
- (h) When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating the law.
  1. Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.
- (i) Visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.
  1. Activities that should be documented via visual recording device include, but are not limited to:
    - i. Criminal activity (misdemeanor or felony);
    - ii. Violation of a Permit condition, City Ordinance, or traffic violation.
    - iii. Use of force by officers.
    - iv. Arrests by officers.
    - v. Any person who, by words or action, is inciting violence.
    - vi. Dispersal orders issued by police.
- (j) Employees shall adhere to information release and media liaison protocols set forth in the Records Maintenance and Release policy and the Media Relations policy, respectively.
  1. The Incident Commander shall ensure legitimate "credentialed" members of the media are provided access to areas available to them by law.
  2. A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be treated like any other citizen with regard to event area access.
- (k) In any first amendment assembly, if feasible the Field Commander should ensure that medical resources are available. An objectively reasonable effort should be made to extract individuals that appear to be in distress. Medical assistance should be promptly



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provided, if properly trained personnel are present, or requested, for injured persons, when it is reasonably safe to do so.

#### **428.10 DISPERSAL ORDERS**

- (a) The Incident Commander at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.
- (b) Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:
  - 1. "I am () () with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at () to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal projectiles, baton strikes, or use of tear gas, which may pose a risk of serious injury. The following routes of dispersal are available: () You have () to leave the area."
- (c) Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.
- (d) The Incident Commander, or his/her designee, shall issue a dispersal order:
  - 1. As close to the crowd as practical;
  - 2. In a manner clearly audible to persons in the crowd;
    - i. Use sound amplification systems when necessary;
    - ii. When practical, shall record the dispersal order to establish that the orders were audible to the crowd.
    - iii. When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.
  - 3. In more than one language if possible, depending on the needs of the crowd.
- (e) Additional dispersal orders may be given following a reasonable period of time to allow for crowd dispersal. Ongoing dispersal orders should be avoided.
- (f) If after a dispersal order is given, a crowd is discovered in a different location, the new location should be evaluated to determine if it is an ongoing unlawful assembly.

#### **428.11 MASS ARRESTS**

- (a) When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:
  - 1. Resource Availability: Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.



# Berkeley Police Department

## Law Enforcement Services Manual

### *First Amendment Assemblies*

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2. In-Field Arrest Processing: Equipment and logistics should be available to facilitate in-field processing of mass arrests.
3. Transportation: In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.
4. Booking/Jail Capacity: The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of persons not released on citation.
5. Documentation: Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.

#### **428.12 MUTUAL AID**

- (a) An official request for mutual aid resources shall adhere to procedures set forth the Mutual Aid Policy.
  1. Emergency requests for immediate assistance may be made directly to local agencies.
- (b) The Chief of Police or his/her designee shall contact the liaison from the Alameda County Sheriff's Department to coordinate a plan for mutual aid resources and response.
  1. This plan should include the number of officers potentially needed, any special equipment requested, and an expected response time if called out.
  2. Absent exigent circumstances, responding mutual aid personnel shall be briefed prior to deployment and should be given clear and specific objectives.
- (c) In preparation for mutual aid forces, the Incident Commander shall ensure that liaison officers from BPD are assigned to work with the outside agency to assist with response routes into the staging area, parking vehicles, checking in with the staging area supervisor, communications and response to event location.
- (d) MFF organization should be employed when integrating mutual aid personnel into local crowd event response, or when responding to another jurisdiction as a mutual aid unit.
  1. Personnel should be formed into squads or teams that are easily integrated into squads and platoons.
- (e) When responding to another jurisdiction as a mutual aid unit, personnel will have with them enough vehicles and equipment to allow the deployed team or squad to patrol a designated area, use less-than-lethal munitions or authorized chemical agents, if necessary, and have enough food and water to last for a reasonable operational period until relieved.

# Berkeley Police Department

## Law Enforcement Services Manual

### *First Amendment Assemblies*

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#### **428.13 MEDIA ACCESS**

If officers close the immediate area surrounding any emergency field command post or any other command post, or establish a police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged in a protected activity pursuant to the First Amendment, officers shall comply with the requirements of Penal Code § 409.7 relating to media access (i.e., access to recently closed areas) (Penal Code § 409.7).

#### **428.14 POST-EVENT**

Once a normal work schedule has resumed, the Incident Commander shall ensure that an After Action Report is prepared within 72 hours after the resumption of the Incident Commander's normal work schedule. Should an extension be necessary in order to properly and fully complete the report, such a request may be made to the Chief of Police.

- (a) An After Action Report shall document arrests, injuries, property damage, personnel costs, inventories of less lethal munitions, CS gas and smoke, and an overall critique of the police preparation and response.
- (b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.
- (c) The Operations Division Captain or the authorized designee should ensure that a summary of each deployment of kinetic energy projectiles or chemical agents for crowd control purposes is prepared and published on the department website within 60 days of each incident. The time frame may be extended for another 30 days where just cause is demonstrated, but no longer than 90 days from the time of the incident. The summary shall be limited to the information known to the Department at the time of the report and include the information required in Penal Code 13652.1.

#### **428.15 TRAINING**

When possible, training in crowd management and crowd control shall be incorporated into general departmental in-service training.

When possible prior to a major pre-planned event, updated training should be provided to all assigned officers.

Excerpt from the January 30<sup>th</sup> City Council directive to the City Manager to engage with the PAB on the proposal for additional security cameras.

## Council Action Items

### 29. Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime

**From: Councilmember Humbert (Author), Councilmember Bartlett (Co-Sponsor)**

**Recommendation:** In order to deter violent crime and obtain evidence to solve criminal investigations, adopt the following recommendations:

1. Authorize the City Manager to install additional security cameras, prominent signage, and increased lighting in the public right-of-way at intersections experiencing a rise in violent crime and/or which include arterial streets offering entry/exit points for Berkeley.

2. Refer costs for security cameras and lighting to the next budget process.

Security camera footage would be used solely for the purpose of solving criminal investigations. The cameras are not intended and would not be used for continuous surveillance purposes. Cameras should ideally be compatible with those already in use at San Pablo Park under Contract Nos. 31900080 and 31900205 and those deployed at other intersections throughout the city.

Priority intersections for security camera installation would include: -Alcatraz and College; -Woolsey and Telegraph; -Woolsey and Shattuck; -Alcatraz and Adeline; and -Alcatraz and Sacramento.

**Financial Implications:** See report

Contact: Mark Humbert, Councilmember, District 8, (510) 981-7180

**Action:** M/S/Failed (Arreguin/Humbert) to accept revised material from Councilmember Humbert on Item 29.

**Vote:** Ayes – Bartlett, Harrison, Hahn, Humbert, Arreguin; Noes – Kesarwani, Taplin; Abstain – None; Absent – Wengraf.

**Action:** M/S/Carried (Arreguin/Hahn) to suspend the rules and allow for a 30-minute public comment period on Item 29.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Hahn, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Harrison, Wengraf.

Councilmember Harrison absent at 8:54 p.m.

**Action:** 21 speakers. M/S/C (Arreguin/Bartlett) to:

1. Pursuant to Berkeley Police Department Policy Numbers 351 and 1304, the City Council approves the following additional locations for the installation of External Fixed Video Surveillance Cameras, signage and increased lighting at the following locations, and refer the costs for acquisition of cameras and lighting to the FY 2025 Budget process:

- Alcatraz and College
- Woolsey and Telegraph
- Woolsey and Shattuck
- Alcatraz and Adeline

## Council Action Items

- Alcatraz and Sacramento
- San Pablo Ave. and Gilman

Additional camera locations to be considered for potential future installation include:

- Telegraph and Dwight
- 5<sup>th</sup> Street and Gilman
- 4<sup>th</sup> Street and Hearst
- Cedar St. and Eastshore Hwy
- 4<sup>th</sup> Street and Virginia
- 8<sup>th</sup> Street and Harrison
- 2<sup>nd</sup> Street and Page
- University and San Pablo

The costs for installation and maintenance of cameras at additional authorized locations would be determined and approved separately during future budget processes.

2. Direct the City Manager to engage with the Police Accountability Board on this proposal and request their feedback to Council within 30 days of submission. The Council will take its comments into consideration during subsequent steps for final approval for purchase and installation of cameras at approved locations.
3. Direct the City Manager to prepare targeted amendments to various pertinent surveillance technology reports and policies in order to provide extra transparency beyond what is explicitly required by the Berkeley Municipal Code and Berkeley Police Department Law Enforcement Manual.

Security camera footage would be used solely in a manner consistent/compliant with existing ordinances and the Berkeley Police Department's existing use policies, as enumerated in the Berkeley Municipal Code, the Berkeley Police Department Law Enforcement Manual. The cameras are not intended and would not be used for continuous surveillance purposes. Cameras should ideally be compatible with those already in use at San Pablo Park under Contract Nos. 31900080 and 31900205 and those deployed at other intersections throughout the city.

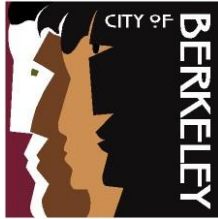
**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Humbert, Arreguin; Noes – None; Abstain – Hahn; Absent – Harrison, Wengraf.

## Information Reports

30. **\*\*\*Removed from Agenda by City Manager\*\*\* Bay Area Housing Finance Authority and 2024 Regional Affordable Housing Bond**  
**From: City Manager**

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400





Mark Humbert  
Councilmember District 8  
Ben Bartlett  
Councilmember District 3

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** January 30, 2024

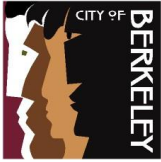
**Item Number:** 29

**Item Description:** **Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime**

**Submitted by:** **Councilmember Humbert, Councilmember Bartlett**

**Changes to Item:**

- Revised list of priority camera locations and updated cost estimate
- Added list of pre-approved camera locations for potential future budget referrals
- Expanded discussion demonstrating how referral complies with the Surveillance Technology ordinance, existing Berkeley Police Department Law Enforcement Manual, and pertinent previously approved surveillance technology reports
- For extra transparency/review beyond that which is required by ordinance/policy:
  - Refers surveillance technology report/policy updates to City Manager
  - Refers item to Police Accountability Board for 30-day review



**Berkeley City Councilmembers**  
**Mark Humbert, District 8**  
**Ben Bartlett, District 3**  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 mhumbert@berkeleyca.gov  
 bbartlett@berkeleyca.gov

CONSENT CALENDAR  
 January 30, 2024

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Humbert (Author), Councilmember Bartlett (Co-Author)  
 Subject: Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime

RECOMMENDATION

In order to deter violent crime and obtain evidence to solve criminal investigations, adopt the following recommendations:

1. Authorize the City Manager to install additional security cameras, prominent signage, and increased lighting in the public right-of-way at intersections or in public areas that have experienced a rise in violent crime and/or which include arterial streets offering entry/exit points for Berkeley.
2. Refer costs for security cameras and lighting to the next budget process.
- 2-3. Direct the City Manager to prepare targeted amendments to various pertinent surveillance technology reports and policies in order to provide extra transparency beyond what is explicitly required by the Berkeley Municipal Code and Berkeley Police Department Law Enforcement Manual.

Security camera footage would be used ~~solely for the purpose of solving criminal investigations~~ in a manner consistent/compliant with existing ordinances and the Berkeley Police Department's existing use policies, as enumerated in the Berkeley Municipal Code the Berkeley Police Department Law Enforcement Manual. The cameras are not intended and would not be used for continuous surveillance purposes. Cameras should ideally be compatible with those already in use at San Pablo Park under Contract Nos. 31900080 and 31900205 and those deployed at other intersections throughout the city.

▲ Priority intersections for security camera installation ~~would~~ include:

- Alcatraz and College
- Woolsey and Telegraph
- Woolsey and Shattuck
- Alcatraz and Adeline
- Alcatraz and Sacramento
- Cedar St. & Eastshore Hwy
- San Pablo Ave & Gilman
- Telegraph and Dwight

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Additional camera locations that would be explicitly pre-authorized for potential future installation include:

- [Shattuck & Allston](#)
- [5th Street & Gilman](#)
- [Shattuck & Bancroft](#)
- [Shattuck & University](#)
- [4th Street & Hearst](#)
- [4th Street & Virginia](#)
- [Shattuck & Vine](#)
- [8<sup>th</sup> Street & Harrison](#)
- [2nd Street & Page](#)
- [University & Sacramento](#)

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### FINANCIAL IMPLICATIONS

Estimated one-time costs to install cameras, signage and lighting at priority intersections are likely to range from \$83,000 to \$167,000 per intersection, plus \$44,000 annually for data, software and maintenance. Total costs would vary based on the number of intersections selected. Specifically, total one-time costs for prioritizing the ~~five~~ six intersections recommended by the authors would be ~~\$415,498,000~~ to ~~\$835,1,002,000~~ plus ongoing data, software and maintenance costs of ~~\$220,264,000~~.

The costs for installation and maintenance of cameras at additional authorized locations would be determined and approved separately during future budget processes.

### CURRENT SITUATION AND ITS EFFECTS

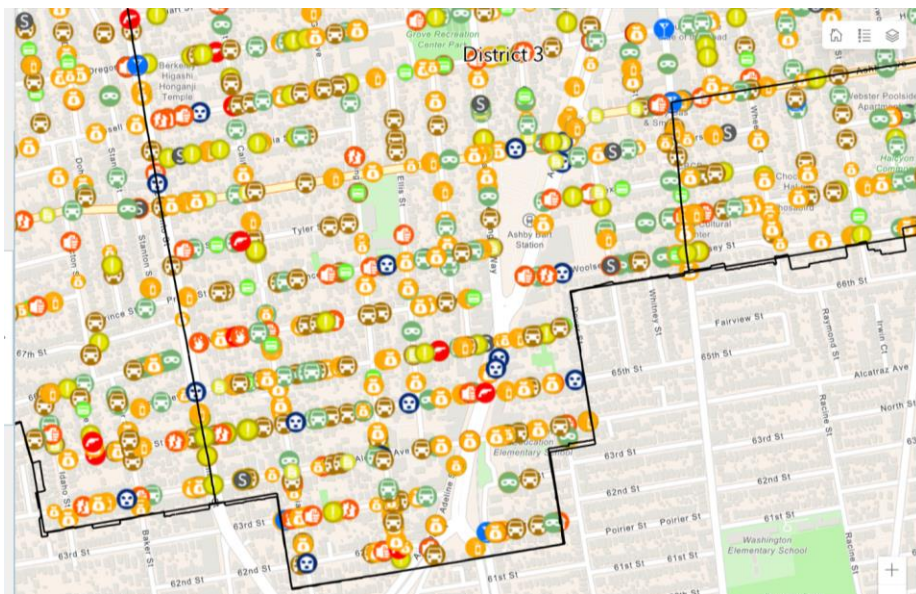
According to data from the Berkeley Police Department (BPD), 2023 saw 357 robberies in Berkeley, a 31 percent increase from 2022.<sup>1</sup> A considerable number of these robberies targeted elderly victims with violent attacks, such as the one that took place in December 2023 near College and Alcatraz.<sup>2</sup> In this particular case, a private security camera recorded the suspect subsequently stealing a car, and the footage proved instrumental in their later apprehension.<sup>3</sup> Violent muggings of elders and women have also recently taken place in the vicinity of the Ashby BART station.

High-quality images of suspects and their vehicles would provide valuable investigative leads to assist efforts to bring accountability for violent gun crimes. Shootings often involve suspects who flee the area of the crime in their vehicles. Police investigating the crime often rely on private security cameras owned by residents and/or businesses to obtain video evidence. For these reasons, the City Council already approved funding for and installation of multiple security cameras across the city. Installing additional high-quality cameras at major arterials would expand access to video and allow investigators to check the footage for suspects fleeing the crime area in their vehicle.

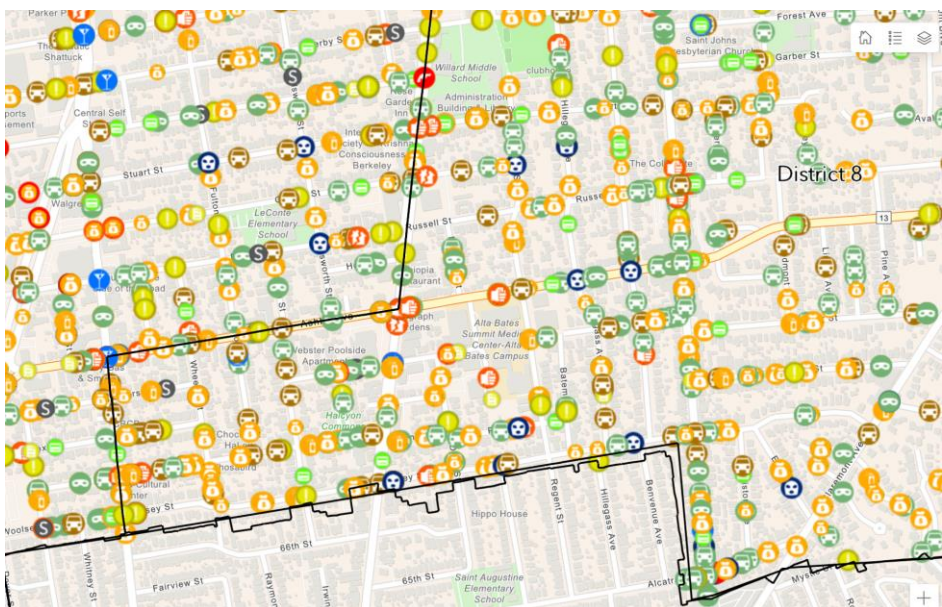
<sup>1</sup> Gecan, Alex N. (2023), *Catalytic converter thefts went down in Berkeley this year, but robberies went up*, Berkeleyside, <https://www.berkeleyside.org/2023/12/29/berkeley-crime-data-2023>

<sup>2</sup> NBC Bay Area (2023), *Berkeley woman speaks out after being mugged, car stolen by thieves*, <https://www.youtube.com/watch?v=skMisXDQTJk>

<sup>3</sup> Raguso, Emilie (2023), *Berkeley robbery suspect facing new charges after car theft*, <https://www.berkeleyscanner.com/2023/12/27/arrests/berkeley-robbery-suspect-new-charges/>



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



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

The City already urges private property owners with security cameras to register their cameras with BPD to assist in criminal investigations, and property owners readily avail themselves of this resource. According to the Department, as of 2021 a total of 283 security cameras owned by private citizens and businesses are currently registered with BPD. Valuable public safety resources should not be delegated entirely to the voluntary cooperation of private entities, particularly when violent gunfire has occurred in many public spaces including parks and major intersections.

Strategically placed cameras should be of sufficient quality to capture high resolution video. Cameras would *not* be equipped with Automated License Plate Readers (ALPR) and would not be continuously monitored. The recordings would be an investigative resource which officers could access while investigating specific crimes and could assist in a reduction of crime. This would be an additional element of our Police Department's crime prevention strategies.

~~“Stationary security cameras affixed to City property or facilities” are not regulated under the Surveillance Technology Ordinance (BMC Section 2.99.020.1.i). As a result, stationary camera installation at major thoroughfares would be exempt from the requirements of BMC Chapter 2.99.~~

Providing security cameras in the public right-of-way is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

Under the Surveillance Technology Ordinance and the Berkeley Police Department's Law Enforcement Manual, the City Council is the deciding body empowered to make decisions about surveillance technology. BMC Chapter 2.99 Acquisition and Use of Surveillance Technology, Section 2.99.010 Purposes, Subsection F reads:

*F. Decisions regarding whether and how Surveillance Technologies should be funded, acquired, or used should be governed by the City Council as the elected representatives of the City.*

The Berkeley Police Department Law Enforcement Manual, Section 351 External Fixed Video Surveillance Cameras, Subsection 351.3.1 Placement Review and Monitoring reads, in part:

*Camera placement includes existing cameras such as those located at San Pablo Park, the Berkeley Marina, and cameras placed in Council identified and approved intersections throughout the City, **and potential future camera locations as approved by City Council.*** [emphasis added]

Together, these ordinance and policy sections mean that the City Council has ultimate authority to make decisions regarding the acquisition, funding, placement, and use of surveillance technology.

The explicit inclusion of "and potential future camera locations as approved by City Council" in the BPD policy manual means that the City Council is already empowered under existing policy to approve additional security camera locations without amendment to the BPD policy manual.

BMC Chapter 2.99 Acquisition and Use of Surveillance Technology, Section 2.99.020 Definitions, Subsection 3 reads:

3. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent Circumstances pursuant to Section 2.99.040 (2), of a **type** of Surveillance Technology that includes the following...[emphasis added]

This subsection explicitly states that Surveillance Acquisition Reports must be produced prior to acquisition of a **type** of surveillance technology. This reporting requirement therefore applies specifically when new **types** of surveillance technology would be acquired, but not when Council directs the acquisition of additional individual devices covered by a previously considered and reported-on surveillance technology type.

BMC Chapter 2.99 Acquisition and Use of Surveillance Technology, Section 2.99.030 City Council Approval Requirement, Subsection 2 reads, in part:

The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology.

BMC Chapter 2.99 Acquisition and Use of Surveillance Technology, Section 2.99.020 Definitions, Subsection 4 defines "Surveillance Use Policy" in part thusly:

"Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of each **type** of the Surveillance Technology that shall reflect the Surveillance Acquisition Report produced for that Surveillance Technology... [emphasis added]

The BMC thus makes clear that the reporting requirements relating to both a Surveillance Use Policy and a Surveillance Acquisition Report apply to new **types** of surveillance technology.

BMC Chapter 2.99 Acquisition and Use of Surveillance Technology, Section 2.99.030 City Council Approval Requirement, Subsection 1.c reads, in part:

*Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council;*

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This item does not propose to use security cameras for a purpose or in a manner that was not previously approved by the City Council. The additional locations included in this item would not involve a different purpose or manner of use than those previously approved. The fact that the BPD Law Enforcement manual explicitly includes the possibility for additional locations to be approved by Council reinforces the notion that the addition of cameras does not represent a change to purpose or manner of use.

Because the security cameras recommended in this item are a technology type that has already been reported on and approved by the City Council, these reporting requirements would therefore not apply and there is no explicit requirement for the Police Accountability Board to revisit the previously reviewed and approved reports. To reiterate, the BMC and the BPD Law Enforcement manual already recognize City Council as the deciding body and the City Council's ability to approve additional locations for security cameras.

The Berkeley Police Department Law Enforcement Manual, Section 1304 Surveillance Use Policy-External Fixed Video Surveillance Cameras governs the overall use of surveillance cameras and regulates, among other things, who has access to the camera recordings, under what circumstances the recordings can be accessed/used, and potential data sharing. The cameras proposed in this item would be subject to these requirements. However, since the proposed cameras would be the same as those previously considered and approved, no amendments to this section should be necessary.

Additionally, previous reporting has already examined the issues surrounding the efficacy and cost-efficiency of security cameras as a general approach to crime solving and deterrence and found them justified.

Nevertheless, for the sake of extra transparency, this item directs the City Manager and BPD to engage with the Police Accountability Board on this proposal. Should the Police Accountability Board provide feedback on this proposal within the 30-day window prescribed by the Municipal Code, the Council will take its response into consideration during subsequent steps for the final approval of purchase and acquisition.

#### **BACKGROUND**

A 2011 report<sup>4</sup> from The Urban Institute's Justice Policy Center noted that cameras can be an effective tool for preventing crimes and supporting investigations. These tools appear fiscally prudent both as tools for investigations, and with the installation and maintenance of security cameras being less costly than the costs associated with

<sup>4</sup> La Vigne, N. G., et al. (2011). Evaluating the use of public surveillance cameras for crime control and prevention. Washington, DC: US Department of Justice, Office of Community Oriented Policing Services. Urban Institute, Justice Policy Center, 1-152.



crimes that may take place without them. Moreover, an experiment conducted at the University of Twente in the Netherlands finds evidence that the presence of security cameras can encourage “prosocial” and “helping behavior” among bystanders.<sup>5</sup>

Berkeley’s Police Department has been conducting Crime Prevention Through Environmental Design (CPTED) assessments for neighborhoods throughout the City over the past several years. These assessments include recommendations such as: increased lighting, maintenance of properties, landscaping and signage that can be used to deter criminal behavior.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

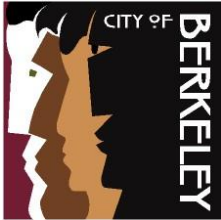
None.

CONTACT PERSON

Councilmember Mark Humbert	Council District 8	510-981-7180
Councilmember Ben Bartlett	Council District 3	510-981-7130

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<sup>5</sup>Van Rompay, T. J., et al. (2009). The eye of the camera: Effects of security cameras on prosocial behavior. *Environment and Behavior*, 41(1), 60-74. Retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.844.4026&rep=rep1&type=pdf>



Sophie Hahn  
Councilmember District 5

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** January 30, 2024

**Item Number:** 29

**Item Description:** **Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime**

**Submitted by:** Councilmember Sophie Hahn

Proposing an alternative Recommendation that allows the item to move forward in full conformance with BMC 2.99 and all other applicable rules, reports, regulations, and legal standards.



Sophie Hahn  
Councilmember, District 5  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA, 94704  
(510) 981-7150 | [shahn@berkeleyca.gov](mailto:shahn@berkeleyca.gov)

Internal  
CONSENT CALENDAR  
January 30, 2024  
Item 29 - Supplemental 2

This item has a laudable purpose - to deter and obtain evidence to solve crimes.

To move forward consideration of placement of additional surveillance cameras throughout the City of Berkeley, as the item seeks to authorize, including but not limited to consideration of placing cameras at the intersections listed in the item's Recommendation, the City is required to follow all rules, regulations, codes, policies, procedures, opinions, and legal requirements applicable to such an expansion and to promulgation of associated rules and regulations.

In addition, the Recommendation appears to create new standards for use of such cameras, specifying that they will "solely be used for the purpose of solving criminal investigations" and "would not be used for continuous surveillance purposes," and requiring a specific type of signage. Promulgation of policies related to use of Surveillance Equipment must follow the City's mandated processes for creating Use Policies related to surveillance equipment.

Further, on Page 3 of the memorandum accompanying the Recommendation, an assertion is made that these surveillance cameras would not be regulated under the City's Surveillance Technology Ordinance because they would be "Stationary security cameras affixed to City property or facilities," a matter that has been previously settled in a manner contrary to this assertion.

Surveillance cameras such as those proposed to be expanded throughout the City of Berkeley do fall under the purview of the Surveillance Technology Ordinance, and as such can only be deployed, if at all, in accordance with BMC 2.99 and all applicable rules, regulations, policies, procedures, and legal requirements.

To carry forward the intention of this item in a manner that conforms with BMC Section 2.99, the following revised Recommendation is proposed for adoption:

**RECOMMENDATION:**

*Refer to the City Manager to initiate required studies and processes to consider installation of additional security cameras in the public right-of-way at intersections experiencing a rise in violent crime and/or which include arterial streets offering exit/entry points from Berkeley, in accordance with BMC 2.99 and all applicable rules, regulations and legal standards. Request that the City Manager consider on a priority basis whether installation of cameras at the intersections of Alcatraz and College, Woolsey and Telegraph, Woolsey and Shattuck, Alcatraz and Adeline, and Alcatraz and Sacramento would be appropriate locations for such cameras.*



Internal

*Refer to the City Manager to study the potential to add lighting to any intersections recommended for addition of security cameras.*

*Request that the City Manager refer any funding which may be required for such security cameras and/or lighting to the FY2025 Budget Process.*

*Refer to the City Manager and City Attorney to ensure additional security cameras recommended, if any, are brought forward and, if deployed, are placed and operated in conformance with BMC Section 2.99 and all applicable laws, rules, regulations, codes, policies, procedures, opinions, and legal requirements.*

**Benado, Tony**

---

**From:** kelly hammargren <kellyhammargren@gmail.com>  
**Sent:** Wednesday, January 24, 2024 10:44 PM  
**To:** Humbert, Mark; All Council; BPD Webmail; Wong, Jenny  
**Subject:** January 30, 2024 Regular City Council meeting at 6 pm item 29 Security Cameras

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

Dear Councilmember Humbert, Mayor, Full Council, Police Chief Louis and Auditor J Wong,

From the reading I have done, security cameras placed at intersections as recommended in Councilmember Humbert's item 29 are little more than a placebo. To actually reduce crime, security cameras need to be continuously monitored. That is not what is proposed.

Before the cameras are installed there should be a plan in place to evaluate the effectiveness of each of the camera locations.

The annual crime report to City Council should include a section on the effectiveness of the surveillance cameras with crime incidence before camera placement and crime incidence after placement and the percentage of crimes solved before and after camera placement.

kelly hammargren

**Benado, Tony**

---

**From:** Kenneth Peterson <kenpeterson45@att.net>  
**Sent:** Wednesday, January 24, 2024 8:12 PM  
**To:** All Council; Kenneth Peterson  
**Subject:** Support Item 29 (Cameras) on the Jan 30 Agenda

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

Dear Members of the Berkeley City Council, I am writing you to please urge you to support Item 29 from Councilmembers Humbert and Bartlett on the January 30, 2024 agenda to fund and install additional security cameras. These additional cameras would be limited to the Districts represented by CMs Humbert and Bartlett and would provide crucial evidence and deterrence to address ongoing violent crime in Berkeley. Please support this item so that it may move forward to the broader budget process. Sincerely,

Ken Peterson  
2321 Prospect Street  
Berkeley CA 94704

**Benado, Tony**

---

**From:** david lerman <415justice@att.net>  
**Sent:** Wednesday, January 24, 2024 11:05 PM  
**To:** Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Harrison, Kate; Hahn, Sophie; Wengraf, Susan; Humbert, Mark; Arreguin, Jesse L.; All.Council; Manager, C; BPD Webmail  
**Subject:** Support Item 29 (Cameras) on the Jan 30 Agenda

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

Dear Members of the Berkeley City Council, City Manager and Police Dept:

I am writing you to please urge you to support Item 29 from Councilmembers Humbert and Bartlett on the January 30, 2024 agenda to fund and install additional security cameras. These additional cameras would be limited to the Districts represented by CMS Humbert and Bartlett and would provide crucial evidence and deterrence to address ongoing violent crime in Berkeley. Please support this item so that it may move forward to the broader budget process. Sincerely, David Lerman

Note: This good idea should be in ALL districts in Berkeley, not just Humbert and Bartlett's districts! We need to fight crime in every section of the city.

-David Lerman

**Benado, Tony**

---

**From:** Office of the Director of Public Accountability  
**Sent:** Friday, January 26, 2024 3:24 PM  
**To:** All Council  
**Cc:** Williams-Ridley, Dee; Louis, Jennifer A.; Brown, Farimah F.; Numainville, Mark L.; Aguilar, Hansel  
**Subject:** Observations and Considerations for the Council Regarding Item 29, "Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime"  
**Attachments:** 2024-01-26 DPA Ltr to City Council\_Proposal for Additional Surveillance Cameras.Final.pdf

Internal

Honorable Mayor and Members of the City Council,

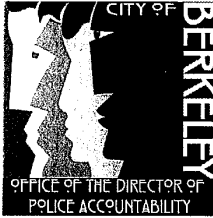
Enclosed with this communication, you will find a letter from Hansel A. Aguilar, Director of Police Accountability, regarding Item 29: "Budget Referral - Additional Security Cameras at Intersections Experiencing Increased Violent Crime," scheduled for the January 30th Council Agenda. Your careful consideration of this matter is appreciated. Should you have any questions or concerns, please feel free to reach out to our office.

Best regards,

Office of the Director of Police Accountability  
 1947 Center St. – 5<sup>th</sup> floor  
 Berkeley, CA 94704  
 (510) 981-4950

*\*The Police Accountability Board and the Director of Police Accountability replaced the Police Review Commission as of July 1, 2021.*

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Hansel Alejandro Aguilar  
Director of Police Accountability  
[haguilar@cityofberkeley.info](mailto:haguilar@cityofberkeley.info)

January 26, 2024

VIA ELECTRONIC MAIL

HONORABLE MAYOR ARREGUIN AND MEMBERS OF CITY COUNCIL  
CITY OF BERKELEY, CA

**Re: Observations and Considerations for the Council Regarding Item 29, "Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime"**

Dear Honorable Mayor Arreguin and Members of the City Council,

I am writing to you regarding the recent proposal<sup>1</sup> to authorize the City Manager to install additional security cameras in five priority intersections<sup>2</sup> within our city. As part of our Charter-mandated<sup>3</sup> effort to support the Police Accountability Board (PAB), the Office of the Director of Police Accountability (ODPA) is proactively monitoring City Council meetings for matters that may relate to public safety and policing. On January 11, 2024, our office became aware of a proposed budget referral marked as a Consent Calendar item for January 30, 2024, "Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime authored by Council Members Humbert and Bartlett to be placed on the Consent Calendar for January 30, 2024". Considering its subject matter, our office flagged it as an item to bring to the Board's attention and to provide a preliminary analysis. To that end, on January 19, 2024, our office agendized the presentation of this item for Board consideration at the Board's January 24, 2024 meeting<sup>4</sup>.

<sup>1</sup> Currently, this item is agendized for the Action Calendar for the Tuesday, January 30, 2024 Berkeley City Council Meeting: [2024-01-30 Agenda Packet - Council.pdf](https://www.berkeleyca.gov/sites/default/files/2024-01-30_Agenda_Packet_-_Council.pdf) ([berkeleyca.gov](https://www.berkeleyca.gov))

<sup>2</sup> The Budget Referral identifies the priority intersections as:

- Alcatraz and College (District 8);
- Woolsey and Telegraph (District 8);
- Woolsey and Shattuck (District 8);
- Alcatraz and Adeline (District 3);
- Alcatraz and Sacramento (District 3)

<sup>3</sup> Section 125(1) of the City Charter indicates, in part, that "*The Director of Police Accountability may also serve as the Secretary to the Police Accountability Board and assist the Board in carrying out the duties prescribed herein.*"

<sup>4</sup> See PAB Agenda Packet (pgs. 22-23): <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2024-01-24%20PAB%20Regular%20Meeting%20Agenda%20Packet.pdf>. A recording of the meeting can be found at: <https://www.youtube.com/watch?v=g8ChkKjQIPs>. The relevant discussion can be found at [1:20:00-1:35:00].

Ahead of the meeting, our office submitted to the Board a memo titled, Observations and Considerations for the PAB's review of Council Item 29, "Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime" (see Attachment 1). In the memo, we highlighted four areas of interest for the Board's purview: 1) A potential circumvention of the Acquisition and Use of Surveillance Technology ordinance (BMC 2.99<sup>5</sup>) procedures and BPD Policies<sup>6</sup>; 2) Lack of Data-Driven Justification; 3) Legal implications<sup>7</sup>; and 4) Statistical Analysis required to assess this crime intervention measure. After the ODPa's presentation to the Board on this proposal, the members engaged in a discussion about this item.

During the discussion, Board Members noted that the authors of the budget referral in question potentially overstated the findings of the 2011 report from The Urban Institute Justice Policy Center<sup>8</sup>. Specifically, the Councilmembers stated that "*The cameras are not intended and would not be used for continuous surveillance purposes*, but later supported their proposal by stating, "*that cameras can be an effective tool for preventing crimes and supporting investigations.*" (citing the 2011 report). ODPa agrees with the Board Members' observation and specifically directs the Council's attention to pg. 87 of the 2011 report:

*"Analysis results indicate that cameras, **when actively monitored**, have a cost-beneficial impact on crime with no statistically significant evidence of displacement to neighboring areas. However, in some contexts and locations these crime reduction benefits are not realized.*

*Two possible explanations for the lack of the surveillance technology's impact on crime in certain study areas are that the cameras are not actively monitored on a routine basis and that the no-impact areas had relatively low concentrations of cameras with fewer overlapping viewsheds and thus a reduced ability to capture crimes in progress. These are critical factors that both current and future investors of surveillance technology should consider when expanding or implementing camera systems." (emphasis added)*

In concluding their deliberations, the PAB unanimously agreed to direct our office to communicate the ODPa's observations from our preliminary analysis and the PAB's subsequent discussion for the Council's consideration of this item ahead of the January 30, 2024 meeting.

As the Director of Police Accountability, I wish to clarify that at this time, neither the ODPa nor the PAB has taken an official stance on whether this proposal to expand the City's

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<sup>5</sup>The surveillance ordinance can be found at: <https://berkeley.municipal.codes/BMC/2.99>

<sup>6</sup> BPD Police 351.3 OPERATIONAL GUIDELINES indicates, "*The City Manager shall obtain Council approval of any proposed additional locations for the placement and use of video surveillance technology.*" There is no reference to direct Council action on additional locations.

<sup>7</sup> The ODPa has communicated with the City of Berkeley City Attorney's Office (CAO) to flag any potential legal implications and will defer to any legal assessment they provide on the matter. On January 24, 2024 at the regular PAB Meeting, a representative from the CAO's office confirmed they are actively conducting a review.

<sup>8</sup> La Vigne, N. G., et al. (2011). Evaluating the use of public surveillance cameras for crime control and prevention. Washington, DC: US Department of Justice, Office of Community Oriented Policing Services. Urban Institute, Justice Policy Center, 1-152. <https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-w0614-pub.pdf>

surveillance program will meet the intended outcomes. Instead, our focus has been on evaluating the process through which this proposal has been made, particularly in relation to Berkeley Municipal Code (BMC) 2.99 (Surveillance Technology Ordinance) and Berkeley Police Department (BPD) Policies 351 and 1304. While the ODP and the PAB recognize the importance of exploring various strategies to enhance public safety, it is imperative that any implemented initiative, such as the addition of surveillance cameras, is evidence-based and in line with the public safety frameworks of the City of Berkeley<sup>9</sup>, BMC 2.99<sup>10</sup> and BPD Policies 351 & 1304.

We are committed to collaborating with the City Council and other stakeholders to ensure that our efforts in this regard are both effective and aligned with the principles of transparency, accountability, and respect for civil liberties. Our office is currently conducting statistical reviews to evaluate patterns and trends in the intersections in question and the potential impact of existing surveillance cameras on crime rates and crime solving, as well as researching the effectiveness of similar initiatives in other jurisdictions. At the referenced Board meeting, the BPD reported<sup>11</sup> that, *“The fixed cameras have only been installed in one location and that is at sixth and university. We’re still working through the installation process right now with all the other locations. So that work has not yet been done.”* This response was made into a PAB inquiry about the evidence collected to this point about the efficacy and effectiveness of the fixed cameras for crime solving and crime prevention.

Equally important to emphasize from the 2011 report from The Urban Institute Justice Policy Center is the discussion found in Chapter 3. Research Design and Methods.<sup>12</sup> In that section, the Urban Institute notes:

*The process evaluation component of the present study is based upon qualitative data and is organized around the following research questions:*

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<sup>9</sup> To include:

Reimagining Public Safety

<https://berkeleyca.gov/your-government/boards-commissions/reimagining-public-safety-task-force>

Fair and Impartial Policing

[https://berkeleyca.gov/sites/default/files/documents/2021-02-](https://berkeleyca.gov/sites/default/files/documents/2021-02-23%20Special%20Item%201%20Report%20and%20Recommendations%20-%20Pres%20Mayor.pdf)

[23%20Special%20Item%201%20Report%20and%20Recommendations%20-%20Pres%20Mayor.pdf](https://berkeleyca.gov/sites/default/files/documents/2021-02-23%20Special%20Item%201%20Report%20and%20Recommendations%20-%20Pres%20Mayor.pdf)

<sup>10</sup> As articulated in BMC 2.99, the Council should ensure:

- .... a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City’s interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members. 2.99.010(A);
- Transparency... 2.99.010(B);
- A balance of: privacy and civil liberties 2.99.010(C);
- ...strong consideration of the impact such technologies may have on civil rights and civil liberties, as with all rights guaranteed by the California and United States Constitutions. 2.99.010(D);
- It thoroughly evaluates: all costs associated with the procurement, installation, use and maintenance of the technology 2.99.010(E);
- It adheres to the principles that: robust transparency, oversight, and accountability measures, are important in the protection of civil rights and civil liberties 2.99.010(G) and;
- The importance that: Data reporting measures will enable the City Council and public to confirm that mandated civil rights and civil liberties safeguards have been strictly observed. 2.99.010(H)

<sup>11</sup> The discussion can be heard at: <https://www.youtube.com/watch?v=g8ChkKjQfPs> [35:00-36:00]

<sup>12</sup> The discussion begins on Pg. 9: La Vigne, N. G., et al. (2011). Evaluating the use of public surveillance cameras for crime control and prevention. Washington, DC: US Department of Justice, Office of Community Oriented Policing Services. Urban Institute, Justice Policy Center, 1-152.

<https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-w0614-pub.pdf>



- *Why do cities choose to invest in public surveillance technology for public surveillance purposes? What do they hope to gain from their investment?*
- *What factors play a role in decisions about the types of cameras that are purchased and how they are deployed and monitored?*
- *How is the public involved in decisions to invest in and use public surveillance cameras?*
- *How are cameras used to support real-time arrests, and how are they used for investigative purposes?*
- *What are the advantages and limitations to using public surveillance cameras for prosecution purposes?*

In this discussion, it is clear the authors intended to explore motives for the investment of this technology and assess the factors in decision-making to include public involvement and engagement. Furthermore, in that chapter, the authors discuss the survey instrument used for the study and the topics discussed: planning, acquisition, installation, monitoring, and policies and procedures (see Attachment 2). We believe the City can benefit from deploying that survey instrument or designing a similar one to ensure we are meeting the expected public safety outcomes.

Thank you for considering these important aspects as you deliberate on this proposal. We look forward to engaging in further discussions on this matter.

Sincerely,



Hansel Aguilar  
 Director of Police Accountability  
 Officer of the Director of Police Accountability

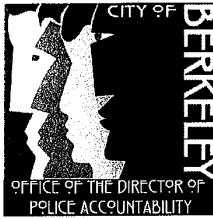
cc: **Via Email Only**

- Honorable Members of the Police Accountability Board
- Bedwendolyn Deshawn Williams-Ridley, City Manager
- Jennifer Louis, Chief of Police
- Farimah Brown, City Attorney
- Mark Numainville, City Clerk

**ATTACHMENTS:**

- 1) ODPa Memo: Observations and Considerations for the PAB's review of Council Item 29, "Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime
- 2) Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention Appendix A. Sample Interview Protocols

# ATTACHMENT 1



## MEMORANDUM

To: Honorable Members of the Police Accountability Board (PAB)  
From: Hansel Aguilar, Director of Police Accountability (HA)  
Date: January 23, 2024  
Subject: Observations and Considerations for the PAB's review of Council Item 29, "Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime"

The purpose of this memorandum is to inform the PAB about Council Item 29, "Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime," which is scheduled for consideration by the Council on January 30th, 2024 (see attached). The Office of the Director of Police Accountability (ODPA) has been reviewing this item. Our preliminary analysis has identified several key areas of interest:

1. **Circumvention of Surveillance Technology Ordinance:** The item is being presented directly by Council members, which may bypass the intent or spirit of the surveillance technology ordinance (BMC 2.99). This ordinance mandates Board review for new surveillance technology acquisitions or use modifications. However, the current presentation format does not require PAB review.:
  - a. Section 2.99.030(1) of the BMC states:

*"The City Manager must obtain City Council approval, except in Exigent Circumstances, by placing an item on the Action Calendar at a duly noticed meeting of the City Council prior to any of the following:*

*...Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council...2.99.030(1)(c)*
2. **Lack of Data-Driven Justification:** While there is empirical support for CCTV's role in crime prevention and resolution (see ODPA Memo dated March 27, 2023), the proposal

implementation. This amendment would ensure community input and compliance with the ordinance.

- **Review Process for Council-Initiated Items:** We advise the PAB consider recommending to Council to seek PAB input in the same manner the City Manager would seek it as outlined in the ordinance for items proposed directly by Council members. This approach would reinforce transparency and public engagement in surveillance technology decisions.

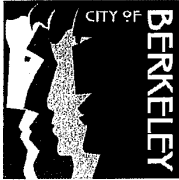
The ODPa is committed to providing a comprehensive report upon the completion of our analysis. The PAB's insights and guidance are invaluable as we navigate these complex issues.

**Attachments:**

1. Council Item 29, "Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime," which is scheduled for consideration by the Council on January 30th, 2024
2. BMC 2.99
3. ODPa Memo dated March 27, 2023\_ Berkeley Police Department Surveillance Ordinance Policies Related to Fixed Surveillance Cameras (Policy 351, Policy 1304, and Related Surveillance Acquisition Report)
4. Secure Justice v. City of Berkeley
5. BPD Policy 351
6. BPD Policy 1304

ATTACHMENT 1.

Council Item 29, "Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime," which is scheduled for consideration by the Council on January 30th, 2024



**Berkeley City Councilmembers**  
**Mark Humbert, District 8**  
**Ben Bartlett, District 3**  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704  
mhumbert@berkeleyca.gov  
bbartlett@berkeleyca.gov

ACTION CALENDAR  
January 30, 2024

To: Honorable Mayor and Members of the City Council  
From: Councilmember Humbert (Author), Councilmember Bartlett (Co-Author)  
Subject: Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime

RECOMMENDATION

In order to deter violent crime and obtain evidence to solve criminal investigations, adopt the following recommendations:

1. Authorize the City Manager to install additional security cameras, prominent signage, and increased lighting in the public right-of-way at intersections experiencing a rise in violent crime and/or which include arterial streets offering entry/exit points for Berkeley.
2. Refer costs for security cameras and lighting to the next budget process.

Security camera footage would be used solely for the purpose of solving criminal investigations. The cameras are not intended and would not be used for continuous surveillance purposes. Cameras should ideally be compatible with those already in use at San Pablo Park under Contract Nos. 31900080 and 31900205 and those deployed at other intersections throughout the city.

Priority intersections for security camera installation would include:

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

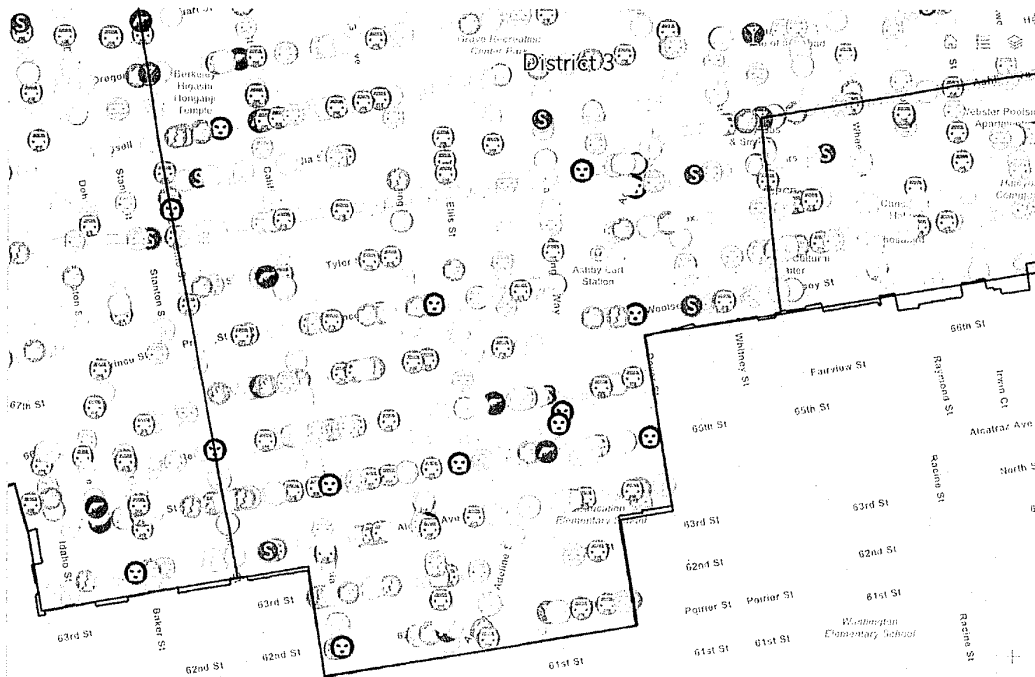
FINANCIAL IMPLICATIONS

Estimated one-time costs to install cameras, signage and lighting are likely to range from \$83,000 to \$167,000 per intersection, plus \$44,000 annually for data, software and maintenance. Total costs would vary based on the number of intersections selected. Specifically, total one-time costs for prioritizing the five intersections recommended by the authors would be \$415,000 to \$835,000 plus ongoing data, software and maintenance costs of \$220,000.

CURRENT SITUATION AND ITS EFFECTS

According to data from the Berkeley Police Department (BPD), 2023 saw 357 robberies in Berkeley, a 31 percent increase from 2022.<sup>1</sup> A considerable number of these robberies targeted elderly victims with violent attacks, such as the one that took place in December 2023 near College and Alcatraz.<sup>2</sup> In this particular case, a private security camera recorded the suspect subsequently stealing a car, and the footage proved instrumental in their later apprehension.<sup>3</sup> Violent muggings of elders and women have also recently taken place in the vicinity of the Ashby BART station.

High-quality images of suspects and their vehicles would provide valuable investigative leads to assist efforts to bring accountability for violent gun crimes. Shootings often involve suspects who flee the area of the crime in their vehicles. Police investigating the crime often rely on private security cameras owned by residents and/or businesses to obtain video evidence. For these reasons, the City Council already approved funding for and installation of multiple security cameras across the city. Installing additional high-quality cameras at major arterials would expand access to video and allow investigators to check the footage for suspects fleeing the crime area in their vehicle.

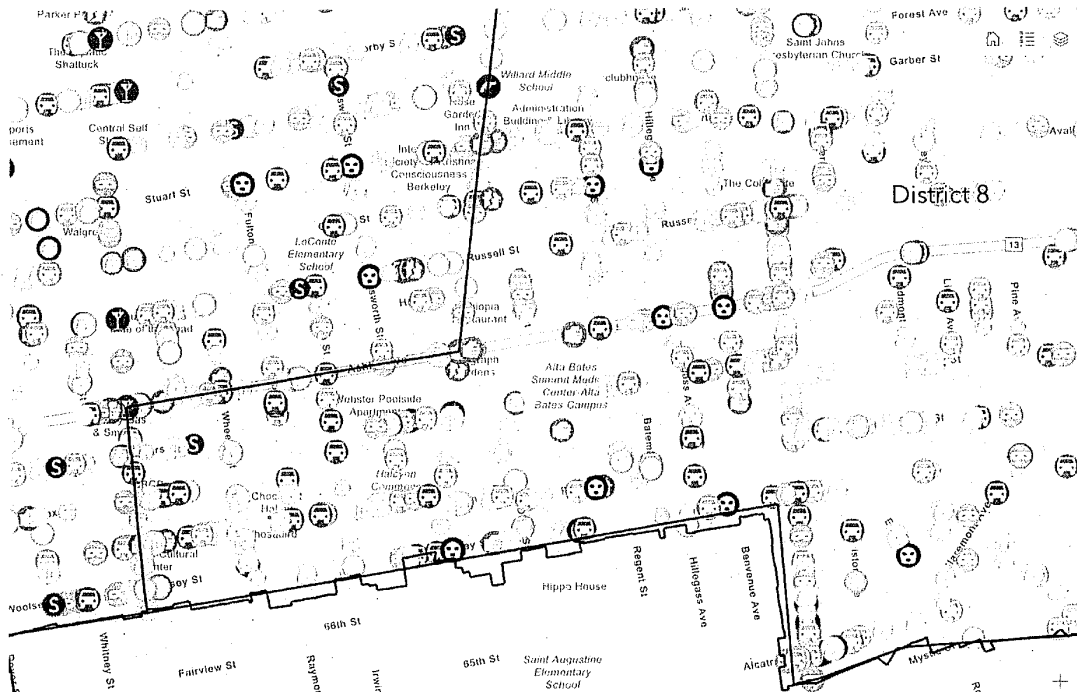


Map showing 1-year of crime data in vicinity of southern District 3. (From BPD Transparency Hub)

<sup>1</sup> Gecan, Alex N. (2023), *Catalytic converter thefts went down in Berkeley this year, but robberies went up*, Berkeleyside, <https://www.berkeleyside.org/2023/12/29/berkeley-crime-data-2023>

<sup>2</sup> NBC Bay Area (2023), *Berkeley woman speaks out after being mugged, car stolen by thieves*, <https://www.youtube.com/watch?v=skMisXDQTJk>

<sup>3</sup> Raguso, Emilie (2023), *Berkeley robbery suspect facing new charges after car theft*, <https://www.berkeleyscanner.com/2023/12/27/arrests/berkeley-robbery-suspect-new-charges/>



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

The City already urges private property owners with security cameras to register their cameras with BPD to assist in criminal investigations, and property owners readily avail themselves of this resource. According to the Department, as of 2021 a total of 283 security cameras owned by private citizens and businesses are currently registered with BPD. Valuable public safety resources should not be delegated entirely to the voluntary cooperation of private entities, particularly when violent gunfire has occurred in many public spaces including parks and major intersections.

Strategically placed cameras should be of sufficient quality to capture high resolution video. Cameras would *not* be equipped with Automated License Plate Readers (ALPR) and would not be continuously monitored. The recordings would be an investigative resource which officers could access while investigating specific crimes and could assist in a reduction of crime. This would be an additional element of our Police Department's crime prevention strategies.

"Stationary security cameras affixed to City property or facilities" are not regulated under the Surveillance Technology Ordinance (BMC Section 2.99.020.1.i). As a result, stationary camera installation at major thoroughfares would be exempt from the requirements of BMC Chapter 2.99.

Providing security cameras in the public right-of-way is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.



BACKGROUND

A 2011 report<sup>4</sup> from The Urban Institute’s Justice Policy Center noted that cameras can be an effective tool for preventing crimes and supporting investigations. These tools appear fiscally prudent both as tools for investigations, and with the installation and maintenance of security cameras being less costly than the costs associated with crimes that may take place without them. Moreover, an experiment conducted at the University of Twente in the Netherlands finds evidence that the presence of security cameras can encourage “prosocial” and “helping behavior” among bystanders.<sup>5</sup>

Berkeley’s Police Department has been conducting Crime Prevention Through Environmental Design (CPTED) assessments for neighborhoods throughout the City over the past several years. These assessments include recommendations such as: increased lighting, maintenance of properties, landscaping and signage that can be used to deter criminal behavior.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Mark Humbert	Council District 8	510-981-7180
Councilmember Ben Bartlett	Council District 3	510-981-7130

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<sup>4</sup> La Vigne, N. G., et al. (2011). Evaluating the use of public surveillance cameras for crime control and prevention. *Washington, DC: US Department of Justice, Office of Community Oriented Policing Services. Urban Institute, Justice Policy Center, 1-152.*

<sup>5</sup>Van Rompay, T. J., et al. (2009). The eye of the camera: Effects of security cameras on prosocial behavior. *Environment and Behavior, 41(1), 60-74.* Retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.844.4026&rep=rep1&type=pdf>

ATTACHMENT 2

BMC Chapter 2.99

ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

## **Chapter 2.99**

### **ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY**

Sections:

- 2.99.010 Purposes.**
- 2.99.020 Definitions.**
- 2.99.030 City Council Approval Requirement.**
- 2.99.040 Temporary Acquisition and Use of Surveillance Equipment.**
- 2.99.050 Compliance for Existing Surveillance Technology.**
- 2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns.**
- 2.99.070 Oversight Following City Council Approval.**
- 2.99.080 Public Access to Surveillance Technology Contracts.**
- 2.99.090 Enforcement.**
- 2.99.100 Whistleblower Protections.**
- 2.99.110 Severability.**

#### **2.99.010 Purposes.**

- A. Through the enactment of this Chapter, the City seeks to establish a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City's interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members.
- B. Transparency is essential when the City is considering procurement and use of Surveillance Technology.
- C. Although such technology may be beneficial to public order and safety, it has the potential to put both privacy and civil liberties at risk.
- D. Decisions relating to Surveillance Technology should occur with strong consideration of the impact such technologies may have on civil rights and civil liberties, as with all rights guaranteed by the California and United States Constitutions.
- E. Surveillance Technology may involve immediate, as well as ongoing, financial costs. Before the City acquires any Surveillance Technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.
- F. Decisions regarding whether and how Surveillance Technologies should be funded, acquired, or used should be governed by the City Council as the elected representatives of the City.

G. In addition to applicable local, state, and federal law, legally enforceable safeguards, including robust transparency, oversight, and accountability measures, are important in the protection of civil rights and civil liberties.

H. Data reporting measures will enable the City Council and public to confirm that mandated civil rights and civil liberties safeguards have been strictly observed. (Ord. 7592-NS § 2 (part), 2018)

## **2.99.020 Definitions.**

The following definitions apply to this Chapter:

1. "Surveillance Technology" means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 1(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

"Surveillance Technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in Section 1 (above):

- a. Routine office hardware, such as televisions, computers and printers, that is in widespread public use and will not be used for any surveillance functions;
- b. Handheld Parking Citation Devices, that do not automatically read license plates;
- c. Manually-operated, portable digital cameras, audio recorders, and video recorders that are not to be used remotely and whose functionality is limited to manually capturing, viewing, editing and downloading video and/or audio recordings, but not including body worn cameras;
- d. Devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles or thermal imaging cameras used for fire operations, search and rescue operations and missing person searches, and equipment used in active searches for wanted suspects;
- e. Manually-operated technological devices that are not designed and will not be used to surreptitiously collect surveillance data, such as two-way radios, email systems and city-issued cell phones;
- f. Municipal agency databases;
- g. Medical equipment used to diagnose, treat, or prevent disease or injury, including electrocardiogram machines;

- h. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity;
  - i. Stationary security cameras affixed to City property or facilities.
  - j. Personal communication device, which means a cellular telephone, a personal digital assistant, a wireless capable tablet or similar wireless two-way communications and/or portable Internet accessing device, that has not been modified beyond stock manufacturer capabilities, whether procured or subsidized by a City entity or personally owned, that is used in the regular course of conducting City business.
2. "Surveillance Technology Report" means an annual written report by the City Manager covering all of the City of Berkeley's Surveillance Technologies that includes all of the following information with regard to each type of Surveillance Technology:
- a. Description: A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing;
  - b. Geographic Deployment: Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically;
  - c. Complaints: A summary of each complaint, if any, received by the City about the Surveillance Technology;
  - d. Audits and Violations: The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;
  - e. Data Breaches: Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;
  - f. Effectiveness: Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes;
  - g. Costs: Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.
3. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent Circumstances pursuant to Section 2.99.040 (2), of a type of Surveillance Technology that includes the following:
- a. Description: Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;

- b. Purpose: Information on the proposed purpose(s) for the Surveillance Technology;
  - c. Location: The general location(s) it may be deployed and reasons for deployment;
  - d. Impact: An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;
  - e. Mitigation: Information regarding technical and procedural measures that can be implemented to appropriately safeguard the public from any impacts identified in subsection (d);
  - f. Data Types and Sources: A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including "open source" data;
  - g. Data Security: Information about the steps that can be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure;
  - h. Fiscal Cost: The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, including to the extent practicable costs associated with compliance with this and other reporting and oversight requirements, as well as any current or potential sources of funding;
  - i. Third Party Dependence and Access: Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats;
  - j. Alternatives: A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology; and
  - k. Experience of Other Entities: To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities.
4. "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of each type of the Surveillance Technology that shall reflect the Surveillance Acquisition Report produced for that Surveillance Technology and that at a minimum specifies the following:
- a. Purpose: The specific purpose(s) that the Surveillance Technology is intended to advance;
  - b. Authorized Use: The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;
  - c. Data Collection: Information collection that is allowed and prohibited. Where applicable, list any data sources the technology will rely upon, including "open source" data;
  - d. Data Access: A general description of the title and position of the employees and entities authorized to access or use the collected information, and the rules and processes required prior to access or use of the

information, and a description of any and all of the vendor's rights to access and use, sell or otherwise share information for any purpose;

e. Data Protection: A general description of the safeguards that protect information from unauthorized access, including encryption and access control mechanisms, and safeguards that exist to protect data at the vendor level;

f. Civil Liberties and Rights Protection: A general description of the safeguards that protect against the use of the Surveillance Technology and any data resulting from its use in a way that violates or infringes on civil rights and liberties, including but not limited to potential disparate or adverse impacts on any communities or groups;

g. Data Retention: The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond such period;

h. Public Access: How collected information may be accessed or used by members of the public;

i. Third Party Data Sharing: If and how other City or non-City Entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;

j. Training: Training required for any employee authorized to use the Surveillance Technology or to access information collected;

k. Auditing and Oversight: Mechanisms to ensure that the Surveillance Use Policy is followed, technical measures to monitor for misuse, and the legally enforceable sanctions for intentional violations of the policy; and

l. Maintenance: The mechanisms and procedures to ensure maintenance of the security and integrity of the Surveillance Technology and collected information.

5. "Exigent Circumstances" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.

6. "Face Recognition Technology" means an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face. (Ord. 7676-NS § 1, 2019; Ord. 7592-NS § 2 (part), 2018)

### **2.99.030 City Council Approval Requirement.**

1. The City Manager must obtain City Council approval, except in Exigent Circumstances, by placing an item on the Action Calendar at a duly noticed meeting of the City Council prior to any of the following:

- a. Seeking, soliciting, or accepting grant funds for the purchase of, or in-kind or other donations of, Surveillance Technology;
  - b. Acquiring new Surveillance Technology, including but not limited to procuring such technology without the exchange of monies or consideration;
  - c. Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council; or
  - d. Entering into an agreement with a non-City entity to acquire, share or otherwise use Surveillance Technology or the information it provides, or expanding a vendor's permission to share or otherwise use Surveillance Technology or the information it provides.
2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology. No later than 30 days after receiving a Surveillance Use Policy for review, the Police Review Commission must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of such a policy, nor failure by the Police Review Commission to act, shall prohibit the City Manager from proceeding with its own review and potential adoption.
3. The City Manager must submit for review a Surveillance Acquisition Report and obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsections (1) (a)-(d).
4. Evidence received relating to the investigation of a specific crime that may have been generated from Face Recognition Technology but was not intentionally solicited shall not be a violation of this ordinance.
5. Notwithstanding any other provision of this Chapter, it shall be a violation of this ordinance for the City Manager or any person acting on the City Manager's behalf to obtain, retain, request, access, or use: i) any Face Recognition Technology; or ii) any information obtained from Face Recognition Technology, except for personal communication devices as defined by Section 2.99.020 or section 2.99.030(4). The inadvertent or unintentional receipt, access to, or use of any information obtained from Face Recognition Technology shall not be a violation of this subsection provided that the City Manager or any person acting on the City Manager's behalf does not request or solicit the receipt, access to, or use of such information, and all copies of the information are promptly destroyed upon discovery of the information, and the information is not used for any purpose.

The City Manager shall log the receipt, access to, or use of any such information in its Annual Surveillance Technology Report. The Surveillance Technology Report shall identify measures taken by the City to prevent the further transmission or use of any information inadvertently or unintentionally obtained through the use of Face Recognition Technology; provided, however, that nothing in this Chapter shall limit the ability to use such information in connection with a criminal investigation. (Ord. 7676-NS § 2, 2019; Ord. 7592-NS § 2 (part), 2018)



**2.99.040 Temporary Acquisition and Use of Surveillance Equipment.**

Notwithstanding the provisions of this Chapter, the City Manager may borrow, acquire and/or temporarily use Surveillance Technology in Exigent Circumstances without following the requirements in Sections 2.99.030 and 2.99.040. However, if the City Manager borrows, acquires or temporarily uses Surveillance Technology in Exigent Circumstances they must take all of the following actions:

1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged;
2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Surveillance Acquisition Report and Surveillance Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Sections 2.99.030 and 2.99.040; and
3. Include the Surveillance Technology in the City Manager's next annual Surveillance Technology Report. (Ord. 7592-NS § 2 (part), 2018)

**2.99.050 Compliance for Existing Surveillance Technology.**

The City Manager shall submit to the Action Calendar for the first City Council meeting in November of 2018 a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each Surveillance Technology possessed or used prior to the effective date of the ordinance codified in this Chapter. (Ord. 7592-NS § 2 (part), 2018)

**2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns.**

The City Council shall only approve any action described in Section 2.99.030, 2.99.040, or Section 2.99.050 of this Chapter after making a determination that the benefits to the community of the Surveillance Technology, used according to its Surveillance Use Policy, outweigh the costs; that the proposal will appropriately safeguard civil liberties and civil rights to the maximum extent possible while serving its intended purposes; and that, in the City Council's judgment, no feasible alternative with similar utility and a lesser impact on civil rights or civil liberties could be implemented. (Ord. 7592-NS § 2 (part), 2018)

**2.99.070 Oversight Following City Council Approval.**

The City Manager must submit to the Council Action Calendar a written Surveillance Technology Report, covering all of the City's Surveillance Technologies, annually at the first regular Council meeting in November. After review

of the Surveillance Technology Report, Council may make modifications to Surveillance Use Policies. (Ord. 7592-NS § 2 (part), 2018)

### **2.99.080 Public Access to Surveillance Technology Contracts.**

To the extent permitted by law, the City shall continue to make available to the public all of its surveillance-related contracts, including related non-disclosure agreements, if any. (Ord. 7592-NS § 2 (part), 2018)

### **2.99.090 Enforcement.**

This Chapter does not confer any rights upon any person or entity other than the City Council to cancel or suspend a contract for a Surveillance Technology. The Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if they are personally obligated to pay such fees. (Ord. 7592-NS § 2 (part), 2018)

### **2.99.100 Whistleblower Protections.**

All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016 and including any updates or replacements thereto, shall apply. (Ord. 7592-NS § 2 (part), 2018)

### **2.99.110 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance, is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional. (Ord. 7592-NS § 2 (part), 2018)

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**The Berkeley Municipal Code is current through Ordinance 7891-NS, passed December 12, 2023.**

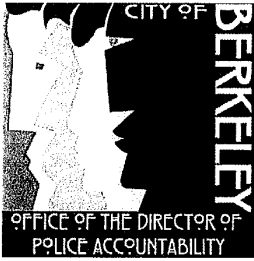
Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: [www.berkeleyca.gov](http://www.berkeleyca.gov)

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ATTACHMENT 3

ODPA Memo dated March 27, 2023\_ Berkeley Police  
Department Surveillance Ordinance Policies Related to Fixed  
Surveillance Cameras (Policy 351, Policy 1304, and Related  
Surveillance Acquisition Report)



## SUPPLEMENTAL INFORMATION REPORT

**Date:** Monday, March 27, 2023  
**To:** Police Accountability Board (PAB)  
**From:** Hansel Aguilar, Director of Police Accountability (DPA) *HA*  
Jose Murillo, Policy Analyst (ODPA) *JM*  
**Cc:**  
**Subject:** Berkeley Police Department Surveillance Ordinance Policies Related to Fixed Surveillance Cameras (Policy 351, Policy 1304, and Related Surveillance Acquisition Report)

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### Background:

The Police Accountability Board (PAB) made recommendations on BPD policies 351, 1304, and the related surveillance acquisition report for fixed camera surveillance systems to Interim Chief Louis and the Honorable members of the City Council on Friday, March 10, 2023. The PAB noted several inconsistencies between what was perceived to be the Council's original intent and the proposed policies. The PAB also sought clarity as to why two different policies were drafted for the same technology and why "exigent circumstances" were not defined within the policies.

On March 20, 2023, the Public Safety Policy Committee (hereinafter the "Committee") convened a meeting to discuss the proposed policies and review the PAB's recommendations, to determine any further actions necessary for the BPD or PAB. Jose Murillo, ODPA Policy Analyst, was virtually present at the meeting. During the meeting, the committee requested additional information from the PAB on the following matters:

1. What is the PAB's stance on the use of fixed camera surveillance systems for oversight activities and traffic investigations?

2. Does the PAB have any further information on the effectiveness of fixed video camera surveillance in reducing crime and deterring criminal activity?

The purpose of this memorandum is to present to the PAB additional information to assist the members in answering the Committee's inquiries.

**Response:**

The PAB may wish to consider the following when responding to the questions posed by the Committee:

- 1. The PAB's Stance on the Use of Fixed Camera Surveillance Systems for Oversight Activities and Traffic Investigations**

In reviewing these policies, the PAB did not take a formal stance on whether or not additional fixed video camera surveillance systems should be implemented. Instead, it chose to flag the sections of the policy that were inconsistent with the original proposal of the Council and provide resources that the Council could use to make a research-driven decision. As such, the PAB recommended that the BPD revise these policies to reflect the original proposal. Additionally, the PAB notes that further research may be required to be able to make an informed decision as it relates to the effectiveness of the proposed technology and its implementation.

At the Committee's March 20, 2023, the PAB was asked for their stance on the potential use of fixed video surveillance cameras as an oversight tool. Given the information provided and the PAB's research, the ODPA believes the PAB should maintain its stance that further research is required before a decision is made on the impacts of surveillance cameras for oversight activity. In posing this question to the PAB, the Committee referenced the tragic death of Tyre Nichols as an example of how fixed video surveillance cameras could be used for oversight purposes. The claim is that through the implementation of this technology, an additional oversight tool could be made available to the PAB. However, the ODPA notes that the context behind the fixed video camera incident was, to an extent, a coincidence. The video of this tragic and horrendous incident was only captured because an operator at a 24/7 surveillance center adjusted the camera to capture the incident, otherwise, the angle at which the camera was originally placed would have not captured the incident (Neus, 2023). Memphis has spent over 10 million dollars buying and installing more than 2,100 cameras and related

technologies—not including the staff that monitors them (Stoud, 2023). Despite this investment, violent crime rates in Memphis have risen consistently during the past decade (Stoud, 2023).

Additionally, the Committee sought the perspective of the PAB on the potential for surveillance cameras to assist in fatal traffic investigations. At this time, the ODPa does not have enough information to determine how effective they would be in helping traffic investigations in the City. Without this data, it is difficult to weigh in on whether the fiscal and social costs of implementing such technology are outweighed by the hypothetical benefits. However, the BPD’s most recent annual report provided historical data on fatal collisions in the City of Berkeley (see Figure 1). It is unclear why the BPD or the City would make an investment of this magnitude to address a public safety issue that has historically not been a top concern (i.e. fatal collisions have accounted for less than 1% of the total annual collisions).

The following provides historical data on fatal collisions in the City of Berkeley:

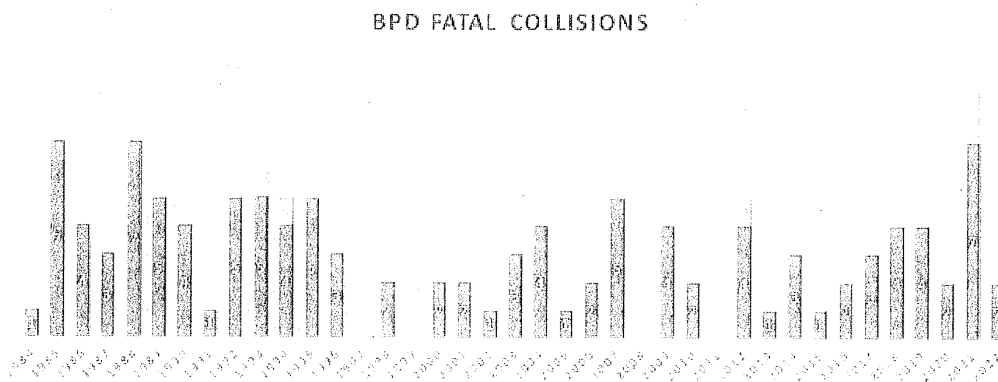


Figure 1 FATAL COLLISIONS IN THE CITY OF BERKELEY  
Source: BPD (2023)

The PAB should consider maintaining the position that, as an advisory body, it would be inconsistent and antithetical to its work, to take a stance on an issue without conclusive evidence or research to justify the effectiveness of a technology. Further studies are needed to gain a better understanding of the technology’s potential benefits

within the City of Berkeley. In their report, the PAB provided additional studies on the matter, which are summarized in the following section.

**2. Effectiveness of Fixed Video Camera Surveillance in Reducing Crime and Detering Criminal Activity: Further Information by the PAB**

The PAB's March 10th report referenced a research study by the Urban Institute titled "Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention," which analyzed the public surveillance systems in Baltimore, Chicago, and Washington D.C. The study evaluated the selection and implementation of each system, as well as their effectiveness in achieving their intended purposes. According to the report, Baltimore and Chicago experienced a varied decrease in crime, while Washington D.C. did not. The report also highlighted that the jurisdictions with reduced crime rates monitored the cameras in real-time and had a wide range of coverage across the city—drastically increasing their expenditure (La Vigne et al., Page xii). In addition to citing the Urban Institute's research report, the PAB provided five additional analyses and reports on the subject matter.

***Piza, E. L., Welsh, B. C., Farrington, D. P., & Thomas, A. L. (2019). "CCTV surveillance for crime prevention: A 40-year systematic review with meta-analysis." *Criminology & public policy*, 18(1), 135-159.***

This report, which analyzed 40 years of evaluation, supports the ongoing use of CCTV for preventing crime. The findings specifically underscore the importance of targeting CCTV towards vehicle crime and property crime, rather than relying on it as a sole crime prevention measure. CCTV was found to have a substantial impact on reducing both vehicle crime and property crime but did not demonstrate significant effects on violent crime. The findings suggest that public safety agencies that are dealing with violent crime issues may need to reevaluate their resource allocation and consider other crime prevention measures.

For jurisdictions that already have CCTV systems in place, the research found that public safety agencies may need to modify their existing strategies to more effectively combat violence such as the introduction of live monitoring cameras. One advantage identified by the study was that live monitoring CCTV cameras were the ability to identify



incidents of concern in real-time and dispatch officers to the scene before the situation escalates into serious violence. However, it is noted that actively-monitored CCTV systems require a greater commitment of resources than less effective passive systems. **Piza, E.L. (2018). "The crime prevention effect of CCTV in public places: A propensity score analysis." *Journal of Crime and Justice*, 41(1), 14-30.**

This text discusses the effectiveness of closed-circuit television (CCTV) as a crime prevention strategy, particularly in relation to motor vehicle crime in Newark, New Jersey. The research indicates that CCTV works best in preventing motor vehicle crime, with the current study finding an exclusive reduction in auto theft. However, the CCTV's effect on auto theft in the current study is classified as extremely modest, and the alternate calculations of the odds ratio only approach statistical significance. CCTV seems like a more promising strategy to combat auto theft than theft violent crime. The research suggests that CCTV works best when integrated alongside other crime control strategies and when camera coverage is high. CCTV has not consistently reduced street-level crime in public places, but it can be cost-beneficial to society as a whole. The study's findings have implications for criminological theory, and CCTV is commonly considered a situational crime prevention strategy that seeks to increase the risk of offending by strengthening formal surveillance and place management. However, the largely null effects reported in the current study suggest that CCTV may not significantly influence offender decision-making without ensuring the participation of capable human agents who can effectively respond to criminal behavior observed on camera.

**National Academies of Sciences, Engineering, and Medicine. (2018). "Proactive policing: Effects on crime and communities." *National Academic Press*.**

This review discusses the use of CCTV as a technology to enhance police capacity for proactive intervention at specific locations. CCTV can be utilized either passively or proactively. Although the studies examining the introduction of CCTV camera schemes have shown mixed results, passive monitoring approaches tend to have modest outcomes in reducing property crimes at high-crime places. However, there is inadequate evidence to conclude the impact of proactive CCTV use on crime and disorder reduction.

**Alexandrie, G. (2017) "Surveillance cameras and crime: a review of randomized and natural experiments." *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 18(2), 210-222.**

In this review, the effectiveness of surveillance cameras in reducing crime was examined based on several studies. The studies found that surveillance cameras can lead to a reduction in overall crime rates by 24-28% in public street settings and urban subway stations, but not in commuter parking facilities or suburban subway stations. The review also showed that surveillance cameras were particularly effective in reducing property crimes such as theft or pickpocketing. Additionally, some studies indicated that surveillance cameras can reduce certain types of violent crime, including unruly spectator behavior and robbery. However, no significant effects were found in aggregate violent crime, homicide, assault, or sexual offenses. It should be noted that the statistical significance of the results varied across different model specifications.

**Lum, C., Koper, C.S., & Willis, J. (2017). *Understanding the limits of technology's impact on police effectiveness. Police Quarterly*, 20(2), 135-163.**

The article discusses how technology can impact police effectiveness and efficiency, but there are complex linkages between the acquisition, implementation, and uses of technology and desired outcomes. The organizational and technological frames mediate the relationship between the adoption, implementation, and use of technology, and the outcomes sought. The reactive standard model of policing that dominates law enforcement practice creates strong organizational and technological frames, which powerfully mediate the effects of technology on discretion, efficiency, and effectiveness. Police officers' views on technology are strongly shaped by the value they place on technical efficiency, which is a dominant technological frame. This explains why commanders, supervisors, and detectives who use records management and report writing systems less were more positive about technology's cost benefits than patrol officers who had to struggle with laborious data entry processes. The study found that the absence of a clear and consistent relationship between technological advances and improved performance in policing is due to various factors such as the incongruence of technological frames across ranks or units within an agency, and the resistance of officers to use technologies that they do not consider efficient. The article also suggests that the

success of technological innovation depends on factors such as ease of use, familiarity with technology, and management practices.

Figure 1 FATAL COLLISIONS IN THE CITY OF BERKELEY ..... 3

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ATTACHMENT 4

Secure Justice v. City of Berkeley

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6  
7 **SUPERIOR COURT OF CALIFORNIA**  
8 **IN AND FOR THE COUNTY OF ALAMEDA**

9 SECURE JUSTICE,  
10                   Petitioner,  
11           v.  
12 CITY OF BERKELEY  
13                   Respondent.

Case No.: 21CV003630

**VERIFIED COMPLAINT AND  
PETITION FOR WRIT OF MANDATE  
(CCP §1085), DECLARATORY RELIEF  
(CCP §1060) AND INJUNCTIVE  
RELIEF (CCP §§525 et seq.)**

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**INTRODUCTION**

1. On March 13, 2018, the City of Berkeley (“Berkeley”) enacted Ordinance 7,592-N.S., and subsequently amended the ordinance on July 27, 2019.<sup>1</sup> This Acquisition and Use of Surveillance Technology Ordinance was chaptered in the Berkeley Municipal Code (“B.M.C.”) at 2.99 et seq. (“the Ordinance”). A true and correct copy of the Ordinance is attached to this complaint as **Exhibit A** and incorporated fully herein by reference. The Ordinance is in full force and effect.
2. Petitioner seeks a declaratory judgment that Respondent violated the Ordinance by doing the following – the administration installed and is using surveillance technology without first going through the vetting framework established by the Ordinance twice – for the “San Pablo Park Cameras” installation, and the “Transfer Station Cameras” installation. In addition, Petitioner seeks a writ of mandate requiring the City to provide the required impact analysis (Acquisition Report) and proposed use policy for both projects, and a temporary injunction to enjoin their use until City Council approval is possibly obtained, after proper vetting via the Ordinance. Petitioner has no plain, speedy, or adequate legal remedy at law.
3. The Ordinance requires that a) prior to acquiring surveillance technology, b) prior to using surveillance technology without City Council approval, or c) prior to entering into an agreement with a non-City entity to acquire or use surveillance technology, that staff must first present an acquisition report and proposed use policy for vetting – allowing for meaningful public input and notice and city council deliberation as to appropriate and inappropriate uses, and the establishment of guardrails to protect our civil liberties.
4. Prior to exercising the private right of action, the Ordinance provides for a “right to cure” which allows Respondent up to ninety (90) days to cure an alleged violation. Petitioner submitted the

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<sup>1</sup> At the time the contracts at issue were executed, the Ordinance did not prohibit the acquisition and use of facial recognition – but such technology was required to be vetted before possible acquisition and use.

1 required notices on July 16, 2019 (San Pablo Cameras) and August 1, 2019 (Transfer Station  
2 Cameras), and no corrective action has been taken to cure the violations.

3 5. Berkeley has significant problems with racial profiling, infringement upon First Amendment  
4 protected activity, and use of surveillance technology specifically.

5 6. In 2017-2018, as then-President Donald Trump escalated his white supremacist agenda, the City  
6 of Berkeley became a focal point for far-right white supremacist groups like the Proud Boys to  
7 come to Berkeley and protest. Counter-protestors also showed up, and as the two sides clashed,  
8 the Berkeley Police Department specifically targeted anti-fascist protestors by arresting and  
9 “doxxing” them – a practice of publicly revealing personal information such as names, photos,  
10 address, and so on that causes the subject to become a target of online and in-person hate speech  
11 and hate crimes. The Appeal reported that of all the photos published by Berkeley Police, none  
12 were white supremacists, only anti-fascist counter protestors, and the photos were published  
13 prior to any charges being filed. The Appeal could not find examples of other police  
14 departments doing the same behavior<sup>2</sup>. This chilling effect caused protestors to have to spend  
15 time in jail awaiting release, forcing them to expend thousands of dollars to defend themselves,  
16 only to have all charges dismissed. The doxxed anti-fascist counter-protestors were either never  
17 charged, or they had all charges dismissed in Court – demonstrating that they were not a true  
18 public safety threat and rather were being targeted for their ideology, a clear First Amendment  
19 violation. Several of these individuals and their attorneys were threatened by white supremacists  
20 with physical violence and were subject to online harassment.

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25 <sup>2</sup> <https://theappeal.org/doxxed-by-berkeley-police/>

- 1 7. Berkeley Police have also been guilty of racial profiling for years. Whether compared to the  
2 racial demographics of the city, rates of contraband found, individuals placed in handcuffs or  
3 actually arrested, a clear bias against Black individuals is apparent across all categories<sup>3</sup>.
- 4 8. Historically, surveillance has always been used against certain communities more than others,  
5 including Black groups like the Black Panthers, and Black leaders like Dr. Martin Luther King,  
6 Jr. and Malcolm X.
- 7 9. The Berkeley City Council was aware of these concerns at the time of enactment of the  
8 Ordinance, and expressly covered such technologies that are known to have a disparate impact  
9 like facial recognition (subsequently completely banned by amendment in 2019), which has a  
10 widely known accuracy problem with darker skin tones and different genders – as the  
11 algorithms are trained on mostly white male faces, researchers have discovered that Black  
12 women were misidentified at a 34% higher error rate than white men<sup>4</sup>.
- 13 10. The foundation of the Ordinance is that prior to releasing powerful and invasive surveillance  
14 technology into public spaces, possible appropriate uses be distinguished from possible  
15 inappropriate uses. After a thorough public review and meaningful input into policy guardrails  
16 sufficient to defend civil liberties, ideally the benefits of the technology would be received  
17 without the negative impacts. By completely avoiding the vetting process here with the San  
18 Pablo Park Cameras and Transit Station Cameras, the public has been robbed of any input into  
19 the policy rule making process, and the City Council was not even given the opportunity to  
20 make an informed decision as no acquisition report (impact analysis) had been provided to them  
21 prior to use of the technology. No guardrails are in place that would have likely become  
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24 <sup>3</sup> <https://www.dailycal.org/2020/07/23/racial-disparities-in-berkeley-police-stop-data-may-indicate-racial-bias/>

25 <sup>4</sup> <http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>



1 established as a result of public input into the policy making. There are no restrictions on use or  
2 third-party data sharing.

3 11. An actual controversy has arisen and now exists between the parties, and Petitioner has  
4 exhausted all administrative remedies. Petitioner contends that Respondent has a duty to ensure  
5 compliance and to schedule and submit the required impact analysis and use policies as alleged  
6 and to obtain City Council approval before taking these actions. Petitioner infers from  
7 Respondent's lack of response to the right to cure notices that Respondent contends they have  
8 no such duty to perform.

9 **JURISDICTION AND VENUE**

10 12. This Court has jurisdiction under article VI, section 10 of the California Constitution and  
11 California Code of Civil Procedure §§ 410.10, 525 et seq., 1085, and 1060.

12 13. Venue in this court is proper because Petitioner's claims arose in and around the City of  
13 Berkeley, and because this is an action against Respondent. Code Civ. Proc. § 394.

14 **PARTIES**

15 14. Petitioner Secure Justice is and was at all relevant times an IRS registered non-profit  
16 organization located in Oakland, Alameda County, and organized under the laws of the State of  
17 California, which advocates against state abuse of power, and for reduction in government and  
18 corporate over-reach. Petitioner targets change in government contracting and corporate  
19 complicity with government policies, including practices that harm immigrants. Petitioner is  
20 affected by Berkeley's violation of the Ordinance, as Petitioner's ability to hold Berkeley  
21 accountable, like the general public's ability, is impaired.

22 15. Secure Justice is directly affected by Respondent's misconduct. It opens them and their  
23 members to unwarranted surveillance and conflicts with their right to privacy. *See* California  
24 Constitution, Article I, section 1. Their misconduct interferes with Secure Justice's mission to  
25 ensure that the transparency and public participation goals of the oversight framework are being

1 met and that the privacy interests and civil liberties of Berkeley residents and visitors to  
2 Berkeley are being protected.

3 16. Respondent City of Berkeley is and was at all relevant times a political subdivision of the State  
4 of California and Alameda County that can be sued in its own name.

5 ***Background***

6 17. On October 16, 2018, the Berkeley City Manager attempted to unlawfully declare “exigent  
7 circumstances” were present and therefore allowed the acquisition and use of surveillance  
8 technology without City Council approval for the San Pablo Park Cameras. Although true that  
9 the ordinance would allow such action if such circumstances were present, there was no  
10 exigency.

11 18. The Ordinance defines exigent circumstances as “the City Manager’s good faith belief that an  
12 emergency involving imminent danger of death or serious physical injury to any person, or  
13 imminent danger of significant property damage, requires use of the Surveillance Technology or  
14 the information it provides.” See B.M.C. 2.99.020 #5 Definitions. However, the fact pattern  
15 presented was solely based on two shootings that had occurred in the past: August 18 and  
16 September 21, 2018, and there were no allegations of retaliatory action or any specific present  
17 or future threat. Clearly there was no “imminent” threat, as the City Manager took the time to  
18 seek out a vendor, research competitors, schedule an item for City Council approval (completely  
19 unnecessary if exigent circumstances were present), and the technology itself was not acquired  
20 or installed until the spring of 2019. The City Manager was attempting to avoid the vetting  
21 framework and public scrutiny required by the Ordinance.

22 19. There is no mention in the October 2018 report from the City Manager of analytics, remote  
23 accessibility, audio recording or any other information that would indicate whether the specific  
24 technology to be acquired was covered or exempt under the Ordinance. Strangely, the City  
25

1 Manager or one of her staff appeared to recognize that this is covered technology – her report  
2 indicates that use beyond 90 days (the exigent circumstances reporting window) will require a  
3 return to City Council for the approval part of the Ordinance that she initially avoided. See  
4 B.M.C. 2.99.040 2. A true and correct copy of her October 16, 2018, report is attached to the  
5 Declaration of Brian Hofer as **Exhibit D**. Use continues today. Internal emails acquired by  
6 Secure Justice via public record requests further confirm that administrative staff had drafted a  
7 Resolution and were aware that this was covered technology and thus City Council approval  
8 was required.

9 *Covered Technology or Exempt*

10 20. The question before this Court is whether or not an exemption applies to these particular  
11 surveillance technologies. If they are exempt, petitioner concedes that this claim for relief is  
12 moot.

13 21. The ordinance defines surveillance technology, and also expressly exempts certain categories of  
14 surveillance technology where the administrative burden is believed to outweigh the potential  
15 negative civil liberties, thereby warranting exemption. As is evident, the definition of  
16 surveillance technology is broad, and intended to be future proof to address technologies which  
17 we may not yet be aware of.

18 22. As defined, "Surveillance Technology" does not include the following devices or hardware,  
19 **unless they have been equipped with, or are modified to become or include**, a Surveillance  
20 Technology as defined in Section 1 (above) (emphasis added):

- 21 i. Stationary security cameras affixed to City property or facilities.

22 23. Section 1 defines "Surveillance Technology" as an electronic device, system utilizing an  
23 electronic device, or similar technological tool used, designed, or primarily intended to collect  
24 **audio**, electronic, visual, **location**, **thermal**, olfactory, **biometric**, or **similar information**

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1 **specifically associated with, or capable of being associated with, any individual or group.**  
2 Examples of covered Surveillance Technology **include but are not limited to:** cell site  
3 simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors  
4 (ShotSpotter); **facial recognition software**; thermal imaging systems, except as allowed under  
5 Section 1(d); social media analytics software; **gait analysis software**; and **video cameras that**  
6 **record audio or video and can remotely transmit or can be remotely accessed.** (emphasis  
7 added)

8 24. Secure Justice executive Director Brian Hofer worked with ordinance sponsors Mayor Arreguin,  
9 Council Members Kriss Worthington and Kate Harrison, the Police Review Commission (which  
10 initially drafted the ordinance with Mr. Hofer’s help; he was appointed as a public member to  
11 the ad hoc group that crafted the language), and many community organizations. During the  
12 deliberative process, some administrators and electeds desired to make exempt the traditional  
13 cameras already in place on city buildings – cameras that did not contain any analytics such as  
14 facial recognition, license plate readers, or gait analysis, were hard wired to local hard drives  
15 and not remotely accessible, fixed location and not movable, and not recording audio. Those  
16 cameras are what was exempted by the Ordinance. These types of cameras are less intrusive  
17 than the upgraded cameras at issue in this action. It was never the intent to exempt cameras  
18 regardless of future upgrades and added features – this would fly in the face of a future proofed  
19 definition of “surveillance technology” – and the language in Section 1 above – **“unless they**  
20 **have been equipped with, or are modified to become or include...”** Cameras that are  
21 remotely accessible may increase public safety due to the ease of access, but they also increase  
22 the potential negative privacy and civil liberties impact because a police officer would no longer  
23 have to travel to a specific camera hard drive and download the video footage – they can just  
24 click a button, apply analytics, and when commingled with the many other data points and

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1 databases (both free to members of the public, and those available to law enforcement) easily  
2 “identify any individual or group.” As Berkeley has previously demonstrated its practice of  
3 targeting anti-fascist counter-protestors, and with a police department guilty of racial profiling,  
4 this is a clear First Amendment concern and a potential civil liberties disaster.

5 25. Such technology would *not* be exempt if it “became equipped with...or modified to become”  
6 surveillance technology as defined in Section 1 – mobile/movable, remotely accessible, capable  
7 of capturing biometric information and audio that could be used to identify an individual or  
8 affixed to non-city owned property. See B.M.C. 2.99.020 Definitions.

9 26. It is clear by the other exemptions for cameras that manual devices not capable of being  
10 remotely accessed, not capable of remote downloading and viewing, are exempt – those with  
11 features allowing such actions are not.

12 27. As revealed by many public record documents in the possession of Petitioner, including the  
13 contract documents and staff correspondence, both the San Pablo Park Cameras and Transfer  
14 Station Cameras, made by vendor Avigilon, are pan-tilt-zoom (movable), capture audio, and  
15 both the cameras and server come preloaded with analytics capable of capturing biometric  
16 information such as face detection, gait analysis, and object detection as further explained in the  
17 attached declaration of Secure Justice’s Hofer. In addition, the San Pablo Park Cameras were  
18 also installed on privately owned utility poles across the street from the park. Thus, these two  
19 surveillance technology installations are not exempt from the Ordinance.

20 28. Public record requests submitted to Berkeley have revealed documents confirming that  
21 Avigilon’s Control Center (ACC) and H4 cameras come pre-loaded with various analytics, such  
22 as “Appearance Search”, which according to Avigilon “is a sophisticated AI search engine for  
23 video data that incorporates the characteristics of a person’s face. It sorts through hours of  
24 footage with ease to quickly locate...people...even if their clothing change over time...Avigilon

25

1 Appearance Search technology permits users to initiate a search for a person by selecting certain  
2 specific physical descriptions” including hair color, clothing, and gender. The marketing  
3 materials are rife with references to analytics that can be used to identify “any individual or  
4 group” which meets the definition of surveillance technology in the Ordinance. As further  
5 identified in Mr. Hofer’s attached declaration which is fully incorporated here by reference,  
6 emails between Avigilon representatives and Berkeley administrative staff frequently discuss  
7 the use of artificial intelligence, analytics, and algorithmic data models and data sets – features  
8 that allow for the identification of individuals or groups because of the data collected and  
9 analytics that could be applied to such data.

10 29. In addition, contract documents and emails further discuss the remote viewing capabilities  
11 (login credentials were also provided to third parties like the Northern California Regional  
12 Intelligence Center, a federal fusion center located in San Francisco), audio recording and  
13 licenses were obtained to record audio (at least 24), and as a potential ban on facial recognition  
14 technology was being proposed by Council Member Harrison, administrative staff reached out  
15 to her office via email requesting an exemption for the San Pablo Park Cameras, further  
16 confirmation that an agreement was entered into with a non-city entity to acquire and use  
17 analytics capable of identifying an “individual or group.” Avigilon representatives emailed staff  
18 to coordinate a response to the facial recognition ban, mentioning that they had just had similar  
19 conversations in San Francisco, the first city in the country to ban such technology in May 2019.

20 30. As Secure Justice publicly voiced its concerns, on July 16, 2019, Mayor Arreguin emailed City  
21 Manager Williams-Ridley, stating that he was not aware of the analytics components of the San  
22 Pablo Park Cameras, demonstrating that the City Council had not been fully informed in  
23 October 2018 of the true nature of the camera proposal submitted by the City Manager.

24  
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1 CAUSE OF ACTION

2 **City of Berkeley's Failure to Obtain City Council Approval**  
3 **in Violation of Berkeley Municipal Code §2.99.030**

4 31. Petitioner incorporates by reference the allegations of the above paragraphs as though fully set  
5 forth herein.

6 32. The Ordinance requires that prior to "acquiring new surveillance technology...", "using new  
7 surveillance technology...", or "entering into an agreement with a non-City entity to  
8 acquire...surveillance technology", the City Manager must obtain City Council approval. See  
9 B.M.C. §2.99.030.

10 33. The City Manager must first provide the proposed use policy to the Police Commission for its  
11 review for the San Pablo Park Cameras and Transfer Station Cameras installations. This did not  
12 occur.

13 34. The City Manager must submit an acquisition report for review and obtain City Council  
14 approval of a proposed use policy prior to engaging in one of the three categories of action  
15 above, for both the San Pablo Park Cameras and Transfer Station Cameras installations. Neither  
16 of these occurred.

17 35. Respondent has failed to comply with the Ordinance as alleged herein.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner requests that this Court:

20 A. Enter a declaratory judgment stating that the City of Berkeley violated the Ordinance  
21 because the City Manager failed to first obtain City Council approval, after review of an  
22 Acquisition Report and adoption of a Use Policy, prior to acquiring, using, and entering into an  
23 agreement with a non-City Entity for the San Pablo Park Cameras and Transfer Stations Cameras  
24 installations.

25 B. Issue a writ of mandate directing the City of Berkeley's City Manager to schedule

1 and submit the required documents for review and possible adoption for the San Pablo Park  
2 Cameras and Transfer Station Cameras installations.

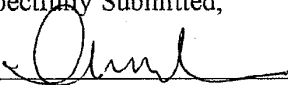
3 C. Enter a temporary injunction restraining the City of Berkeley from using the San  
4 Pablo Park Cameras and Transfer Station Cameras surveillance technologies, until such time as they  
5 may receive City Council approval.

6 D. Enter an order requiring the City of Berkeley to pay Petitioner's attorneys' fees and  
7 costs under Berkeley Municipal Code § 2.99.090, Code of Civil Procedure § 1021.5, and any other  
8 applicable statutes.

9 E. Grant Petitioner any further relief the Court deems just and proper.

10  
11 Dated: November 30, 2021

Respectfully Submitted,

12 By:   
13 Justina G. Mignea  
14 Attorney for Petitioner, Secure Justice

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ATTACHMENT 5

BPD Policy 351

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## External Fixed Video Surveillance Cameras

### 351.1 PURPOSE AND SCOPE

This policy provides guidance for the placement and monitoring of City of Berkeley external fixed video surveillance cameras by the Berkeley Police Department (BPD).

This policy only applies to fixed, overt, marked external video surveillance systems utilized by the BPD. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department, as authorized by the City Council for use by other City Departments. BPD Personnel shall adhere to the requirements for External Fixed Video Surveillance Cameras covered in this policy as well as the corresponding Surveillance Use Policy -1304.

### 351.2 POLICY

The Berkeley Police Department utilizes a video surveillance system to enhance its anti-crime strategy, to effectively allocate and deploy personnel, and to enhance safety and security in public areas. As specified by this policy, cameras may be placed in strategic locations throughout the City to record, deter, and solve crimes, to help the City safeguard against potential threats to the public, and to help manage emergency response situations during natural and human-made disasters, among other uses specified in Section 351.3.1.

Video surveillance in public areas will be conducted in a legal and ethical manner while recognizing and protecting constitutional standards of privacy.

### 351.3 OPERATIONAL GUIDELINES

Only City Council-approved video surveillance equipment shall be utilized. BPD members authorized to review video surveillance may only record and review public areas and public activities where no reasonable expectation of privacy exists and pursuant to Section 351.3.1. The City Manager shall obtain Council approval of any proposed additional locations for the placement and use of video surveillance technology.

#### 351.3.1 PLACEMENT REVIEW AND MONITORING

Camera placement will only occur in locations approved by the City Council and will be guided by this policy and the underlying purpose or strategy associated with the overall video surveillance plan. As appropriate, the Chief of Police should confer with other affected City departments when evaluating camera placement. Environmental factors, including lighting, location of buildings, presence of vegetation or other obstructions, should also be evaluated when determining placement.

Camera placement includes existing cameras such as those located at San Pablo Park, the Berkeley Marina, and cameras placed in Council identified and approved intersections throughout the City, and potential future camera locations as approved by City Council.

Current City Council approved locations:

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- 6<sup>th</sup> Street at University Avenue
- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7<sup>th</sup> Street at Ashby Avenue
- San Pablo Avenue at Ashby Avenue
- Sacramento Street at Ashby Avenue
- College Avenue at Ashby Avenue
- Claremont Avenue at Ashby Avenue
- 62<sup>nd</sup> Street at King Street

The cameras shall only record video images and not sound. Recorded images pursuant to Section 351.5 may be accessed, reviewed, and used for specific criminal or BPD administrative investigations and video surveillance may be accessed and reviewed by authorized BPD personnel for the following purposes:

- (a) To support specific and active criminal investigations.
- (b) To support serious traffic-related investigations.
- (c) To support police misconduct investigations, and
- (d) To respond to and review critical incidents or natural disasters.

Unauthorized recording, viewing, reproduction, dissemination, or retention of video footage is prohibited.

#### 351.3.2 FIXED CAMERA MARKINGS

All public areas monitored by video surveillance equipment shall be marked in a conspicuous manner with unobstructed signs to inform the public that the area is under police surveillance.

#### 351.3.3 INTEGRATION WITH OTHER TECHNOLOGY

The Department is prohibited from integrating or accessing system capabilities of the video surveillance system with other systems, such as gunshot detection, automated license plate recognition, facial recognition and other video-based analytical systems.

#### 351.4 VIDEO SUPERVISION

Access to video surveillance camera data shall be limited to Berkeley Police Department (BPD) personnel utilizing the camera database for uses authorized above, with technical assistance from Public Works Department and Department of Information Technology personnel. Information may be shared in accordance with Sections 351.6 or 1304.9 below. BPD members seeking access to the camera system shall obtain the approval of the Investigations Division Captain, or their designee.

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Supervisors should monitor video surveillance access and usage to ensure BPD members are complying with this policy, other applicable department policy, and applicable laws. Supervisors should ensure such use and access is appropriately documented.

##### **351.4.1 VIDEO LOG**

No one without authorization will be allowed to login and view the recordings. Access to the data must be obtained through the Public Works Department according to this policy and published regulations that limit access and use of data by Public Works and other City Departments and personnel. All system access including system log-in, access duration, and data access points is accessible and reportable and shall be documented by the Public Works Department's authorized administrator. Those who are authorized and login should automatically trigger the audit trail function to ensure compliance with the guidelines and policy. This is further outlined in Section 1304.4 of the Surveillance Use Policy.

##### **351.4.2 PROHIBITED ACTIVITY**

Video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.

Video surveillance systems shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.

Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.

Video surveillance systems and recordings are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

##### **351.5 STORAGE AND RETENTION OF MEDIA**

Video surveillance recordings are not government records pursuant to California Government Code 34090 in and of themselves. Except as otherwise permitted in this section, video surveillance recordings shall be purged within one hundred and eighty (180) days of recording. Recordings of incidents involving use of force by a police officer or involving, detentions, arrests, or recordings relevant to a formal or informal complaint against a sworn police officer shall be retained for a minimum of two years and one month. Recordings relating to court cases and complaints against BPD sworn officers that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to a police misconduct investigation shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Any recordings needed as evidence in a criminal or police misconduct proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures.

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##### **351.5.1 EVIDENTIARY INTEGRITY**

All media downloaded and retained pursuant to this Policy shall be treated in the same manner as other evidence. Media shall be accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, digital masking of innocent or uninvolved individuals to preserve anonymity, authenticity certificates and date and time stamping, shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.

##### **351.6 RELEASE OF VIDEO IMAGES**

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law, also referenced in Policy 1304.8.

Requests for recorded video images from the public or the media shall be processed in the same manner as requests for department public records pursuant to Policy 804.

Requests for recorded video from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with this policy and must be related to a specific active criminal investigation.

Requests for recorded video from the Office of Director of Police Accountability and Police Accountability Board shall be referred to the Investigations Division Captain, or their designee, for release in accordance with Charter Article XVIII, Section 25, Subdivision (20)(a).

Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process.

##### **351.7 VIDEO SURVEILLANCE AUDIT**

The video surveillance software generates a site log each time the system is accessed. The site log is broken down by server, device, user or general access. The site log is kept on the server for two years and is exportable for reporting. System audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biennial.

BPD will enforce against prohibited uses of the cameras pursuant to Policy 1010, Personnel Complaints or other applicable law or policy. The City Manager shall enforce against any prohibited use of cameras and/or access to data by other City of Berkeley personnel.

The audit shall be documented in the form an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be published on the City of Berkeley website in an appropriate location, and retained within the Professional Standards Bureau.

##### **351.8 TRAINING**

All department members authorized to operate or access video surveillance systems shall receive appropriate training. Training should include guidance on the use of cameras, associated software,

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#### *External Fixed Video Surveillance Cameras*

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and review of relevant policies and procedures, including this policy, as well as review of relevant City of Berkeley laws and regulations. Training should also address state and federal law related to the use of video surveillance equipment and privacy. All relevant recordings that are utilized will be collected pursuant to Policy 802, Property and Evidence, and retained pursuant to Policy 804 Records and Maintenance.

#### **351.9 MAINTENANCE**

It shall be the responsibility of the Public Works Director to facilitate and coordinate any updates and required maintenance, with access limited to that detailed in the City Manager's promulgated policies.

ATTACHMENT 6

BPD POLICY 1304

## Surveillance Use Policy-External Fixed Video Surveillance Cameras

### 1304.1 PURPOSE

This policy provides guidance for the use of City of Berkeley external fixed video surveillance cameras by the Berkeley Police Department (BPD).

This policy only applies to fixed, overt, marked external video surveillance systems utilized by BPD. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department. Department personnel shall adhere to the requirements for External Fixed Video Surveillance Cameras covered in this policy as well as the corresponding Use Policy-351.

This Surveillance Use Policy is legally-enforceable pursuant to BMC 2.99.

### 1304.2 AUTHORIZED USE

Only BPD members who receive training on this policy, who are then granted access by an administrator may access the data from the video surveillance cameras. This data may only be accessed to further a legitimate law enforcement purpose, as listed in this Policy. Members must follow the necessary logging mechanisms, such as case number and case type when querying the database.

The cameras shall only record video images and not sound. Recorded images pursuant to Section 351.5 may be accessed, reviewed, and used for specific criminal or BPD administrative investigations and video surveillance may be accessed and reviewed by authorized BPD personnel for the following purposes:

- (a) To support specific and active criminal investigations.
- (b) To support serious traffic-related investigations.
- (c) To support police misconduct investigations, and
- (d) To respond to and review critical incidents or natural disasters.

Unauthorized recording, viewing, reproduction, dissemination, or retention of video footage is prohibited.

The following are prohibited uses of the video surveillance system:

- (a) Unauthorized recording, viewing, reproduction, dissemination, or retention of video footage is prohibited.
- (b) Video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.
- (c) Video surveillance systems shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.



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### Surveillance Use Policy-External Fixed Video Surveillance Cameras

- (d) Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.
- (e) Video surveillance systems and recordings are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

#### **1304.3 DATA COLLECTION**

The cameras will film and store video on City of Berkeley encrypted servers. License plate and facial recognition data hardware is not installed on the cameras and may not be installed or used unless approved by the City council. Audio is a standard feature of the camera, but is deactivated by the system administrator and may not be activated or used unless approved by the City Council. The cameras and storage devices shall be wholly owned and operated/maintained by the City of Berkeley.

#### **1304.4 DATA ACCESS**

Access to video surveillance cameras data shall be limited to BPD personnel utilizing the camera database for uses described above and pursuant to Use Policy 351, with technical assistance from Public Works Department and Department of Information Technology personnel. Information may be shared in accordance with 1304.9 below. BPD members seeking access to the video surveillance system shall obtain the approval of the Investigations Division Captain, or their designee.

Supervisors should monitor camera access and usage to ensure BPD members are complying with this policy, other applicable department policy, and applicable laws. Supervisors should ensure such use and access is appropriately documented.

#### **1304.5 DATA PROTECTION**

All data transferred from the cameras and the servers shall be encrypted. Access to the data must be obtained through the Public Works Department according to this policy and published regulations that limit access and use of data by Public Works and other City Departments and personnel. All system access including system log-in, access duration, and data access points is accessible and reportable and shall be documented by the Public Works Department's authorized administrator. All relevant recordings that are utilized will be collected pursuant to Policy 802, Property and Evidence, and retained pursuant to Policy 804 Records and Maintenance.

#### **1304.6 CIVIL LIBERTIES AND RIGHTS PROTECTION**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1304.4 Data Access, 1304.5 Data Protection, 1304.7 Data Retention, 1304.8 Public Access and 1304.9 Third Party Data Sharing serve to protect against any unauthorized use of video surveillance camera data. License plate and facial recognition data hardware is not installed on the cameras. Audio is a standard feature of the camera, but is deactivated by the system administrator.

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#### *Surveillance Use Policy-External Fixed Video Surveillance Cameras*

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These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

#### **1304.7 DATA RETENTION**

Video surveillance recordings are not government records pursuant to California Government Code 34090 in and of themselves. Except as otherwise permitted in this section, video surveillance recordings shall be purged within one hundred and eighty (180) days of recording. Recordings of incidents involving use of force by a police officer or involving detentions, arrests, or recordings relevant to a formal or informal complaint against a police officer shall be retained for a minimum of two years and one month. Recordings relating to court cases and complaints against BPD sworn officers that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to BPD administrative proceedings pursuant to this section shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court. All data will automatically delete after the aforementioned retention period by the System Administrator from Public Works.

Any recordings needed as evidence in a criminal or police misconduct proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures.

#### **1304.8 PUBLIC ACCESS**

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

Requests for recorded video images from the public or the media shall be processed in the same manner as requests for department public records pursuant to Policy 804.

Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process.

#### **1304.9 THIRD-PARTY DATA-SHARING**

Requests for recorded video from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with this policy, and must be related to a specific active criminal investigation.

Data collected from the video surveillance system may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process

# Berkeley Police Department

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### Surveillance Use Policy-External Fixed Video Surveillance Cameras

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Requests for recorded video from the Office of Director of Police Accountability and Police Accountability Board shall be referred to the Investigations Division Captain, or their designee, for release in accordance with Charter Article XVIII, Section 125, Subdivision (20)(a).

#### **1304.10 TRAINING**

All BPD members authorized to operate or access video surveillance systems shall receive appropriate training. Training should include guidance on the use of cameras, associated software, and review of relevant policies and procedures, including this policy as well as review of relevant City of Berkeley laws and regulations.

Training should also address state and federal law related to the use of video surveillance equipment and privacy. All relevant recordings that are utilized will be collected pursuant to Policy 802 Property and Evidence, and retained pursuant to Policy 804 Records Maintenance.

#### **1304.11 AUDITING AND OVERSIGHT**

The video surveillance software generates a site log each time the system is accessed. The site log is broken down by server, device, user or general access. The site log is kept on the server for two years and is exportable for reporting. Video surveillance system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biennial.

BPD will enforce against prohibited uses of this policy pursuant to Policy 1010, Personnel Complaints or other applicable law or policy. The City Manager shall enforce against any prohibited use of the cameras and/or access to data by other City of Berkeley personnel.

The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained within the Professional Standards Bureau.

#### **1304.12 MAINTENANCE**

It shall be the responsibility of the Public Works Department to facilitate and coordinate any updates and required maintenance with access limited to that detailed in the City Manager's promulgated policies.

# ATTACHMENT 2

# Appendix A.

## Sample Interview Protocols

### A-1. Protocol for Stakeholder Interview:

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#### Respondent Information

1. Job title:

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2. Brief description of job:

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3. Were you involved in the initial decision to implement CCTV?

Yes       No

3.1 If yes, who were the key decision-makers?

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3.2 If yes, why were they interested in implementing CCTV?

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---

3.3 If yes, were your views on the reasons for CCTV investment the same as other key decision-makers?

Yes       No

3.3.1. If yes, how so?

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---

3.3.2. If no, how did they vary?

---

---

**Planning**

4. Why were you interested in using CCTV?

---

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5. What were your reasons for wanting CCTV? (e.g., safety, crime prevention)

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6. What were you hoping to gain through the use of CCTV?

---

---

7. Who was involved in the decision to use CCTV technology?

---

---

8. Did the community have input in the planning process?

Yes       No

8.1 If yes, which groups? What were their roles? (Describe the process/type of input)

---

---

8.2 If no, why not?

---

---

9. What type of planning took place before any purchases were made?

---

---

9.1. How long did this process take?

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---

10. Did you consult any other cities using CCTV during your planning process?

Yes       No

10.1 If yes, which ones? Why? Was the information useful?

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---

11. Did you consult any publications or written literature on CCTV?

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---

12. What was your initial expectation for hardware costs and operational costs of using CCTV?  
Where did these estimates come from?

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13. How did you begin to identify or raise funds for CCTV use?

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14. Was legal counsel consulted during the implementation of CCTV?

Yes       No

14.1 If yes, what was discussed?

---

---

14.2 If no, why not?

---

---

15. Was legal counsel involved in the development of policy?

Yes       No

15.1 If yes, how so?

---

---

15.2 If no, why not?

---

---

16. What challenges did you face during the planning stage? (e.g., financial, logistical, community concerns)

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16.1 How were those challenges overcome?

---

---

16.2 How long did it take to overcome these challenges?

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17. (If installed already) When was the first set of cameras installed?

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17.1 Have there been any discussions about adding/moving cameras?

Yes       No

17.1.1 If yes, please describe:

---

---

17.2 Have any of the cameras been moved?

Yes       No

17.2.1 If yes, why?

---

---

### Acquisition

18. What process was used to choose a camera vendor (or vendors)?

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---

19. Why was this vendor(s) selected?

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20. What funding mechanisms were tapped for camera purchases? (e.g., private, public, partnership)

---

---

21. Who was involved in the acquisition/funding process? (e.g., city council, community groups)

---

---

22. What types of cameras (i.e., fixed, pan & zoom, active, passive) were purchased and why?

---

---

23. Who was involved in the purchasing decisions?

---

---

24. How many cameras were purchased? Which agency did the purchasing?

---

---

25. Are the cameras intended for overt, semi-covert, or covert use? Or a combination?

- Overt                       Semi-covert                       Covert

Explain:

---

---

26. What challenges are you aware of that occurred during the acquisition stage of the process?

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26.1 How were those challenges overcome? How long did they take to overcome?

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---

**Installation**

27. How many cameras were installed?

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28. Where are cameras installed?

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29. How were camera locations selected?

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30. What physical aspects of the location(s) were considered? (e.g., lighting, buildings, aesthetics, environmental concerns)

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31. Do you have signage and/or flashing lights "advertising" the cameras?

Yes       No

31.1 If yes, please describe:

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---

**Monitoring**

32. Are cameras being actively or passively monitored?

Actively       Passively       Combination

Explain:

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33. If cameras are actively monitored, is there constant supervision for the operation?

Yes       No

33.1 If no, why not:

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---

34. If cameras are actively monitored, are they monitored 24-hours a day?

Yes       No

34.1 If no, why not:

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35. Are all cameras linked to a central control room or are there cameras that operate independently of the system?

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36. Who is responsible for monitoring cameras? (i.e., which agencies?)

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36.1 Do they undergo any formal training?

Yes       No

36.2 If yes, please describe:

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36.3 If yes, is the training documented?

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---

36.4 If they do not undergo formal training, why not?

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---

37. If the cameras are monitored by police do they use sworn or civilian personnel?

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---

38. What types of incidents are reported?

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39. To whom do the monitors report incidents (e.g., crime, tampering) to?

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40. What is the protocol for reporting incidents?

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41. To what medium is camera footage recorded (i.e., tape, digital)?

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42. Who has access to the recorded images?

---

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43. How long is camera footage saved? Where is it stored?

---

---

**Policies/Procedures**

44. Were any legal or civil rights considered prior to CCTV implementation?

Yes       No

44.1 If yes, please describe:

---

---

45. Did camera installation result in any civil liberties or other challenges being raised?

Yes       No

45.1 If yes, please describe:

---

---

45.2 If yes, were they by organized groups, community groups, individuals?

---

---

45.3 If yes, how were the civil liberty challenges addressed?

---

---

46. Are there established/written operation CCTV guidelines or policies?

Yes       No

46.1 If yes, please describe:

---

---

46.2 If no, why not?

---

---

47. Are there any written policies to prevent the misuse of CCTV images/footage?

Yes       No

47.1 If yes, please describe:

---

---

47.2 If no, why not?

---

---

48. Who has access to these guidelines and are they publicly available?

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49. What is the policy for the release of CCTV images?

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---

50. Are there any state or local laws regulating CCTV operation?

Yes       No

50.1 If yes, please describe:

---

---

51. Have any complaints been lodged regarding the agency's use of CCTV?

Yes       No

51.1 If yes, please describe:

---

---

52. Have there been any violations of the agency's CCTV policy?

Yes       No

52.1 If yes, please describe:

---

---

53. Has anyone been disciplined for misuse of CCTV?

Yes       No

53.1 If yes, please describe:

---

---

54. Have any studies (internally or externally) been conducted to evaluate your agencies' use of CCTV?

Yes       No

54.1 If yes, by who and what were the findings?

---

---

**Other**

55. Do you believe CCTVs have had an impact on crime?

Yes       No

55.1 If yes, how so and for what types of crime?

---

---

56. Do you believe CCTV images have been used successfully in investigations?

Yes       No

56.1 If yes, please describe:

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---

57. Do you believe CCTV images have been used successfully in prosecutions?

Yes       No

57.1 If yes, please describe:

---

---

## A-2. Protocol for Interviews with Monitoring Room Staff

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1. What did you do for work prior to becoming a CCTV monitor?

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2. Have you had any prior:

2.1 Law enforcement experience?

Yes       No

2.2 Private security experience?

Yes       No

2.3 Relevant job experience?

Yes       No

Please describe

---

---

3. How long have you been working as a CCTV monitor?

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4. How did you find out about this job?

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5. Do you work the same hours every day or do you rotate shifts?

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6. Do different shifts have different numbers of monitors on duty?

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---

7. What sort of training have you had to become a CCTV monitor?

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8. Who conducted this training?

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---

9. What is your daily schedule for monitoring the CCTVs? (e.g., breaks, shift changes)

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10. What sort of incidents are you looking for?

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11. Who do you report these incidents to?

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12. How do you keep track of the time when incidents occur for later review?

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13. How is the tape archived?

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14. How is the tape later retrieved for review?

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### A-3. Protocol for Interviews with Investigators

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1. Have you used CCTV in criminal investigations?

Yes       No

1.1 If yes, please explain:

---

---

1.2 If no, why not? (If no, end survey)

---

---

2. Have your job responsibilities changed in relation to CCTV use?

Yes       No

2.1 If yes, please describe?

---

---

3. Have you received any formal training on using CCTV to support investigations?

Yes       No

3.1 If yes, what was the content of that training? How long was the training? Where did it take place?  
Who conducted it?

---

---

3.2 If no, what training would have been useful?

---

---

4. What are the advantages of CCTV evidence in supporting investigations?

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---

5. What are the disadvantages of CCTV evidence in supporting investigations?

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6. How do you become aware if a case has CCTV evidence?

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6.1 Does the incident reporting form have a check box for CCTV?

Yes       No

7. Do you know the locations of the CCTV cameras and the areas they cover?

Yes       No

7.1 If no, who would you ask to find out?

---



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8. If you suspected that images recorded by a CCTV camera might assist in a criminal investigation, how would you request the images?

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9. How is CCTV evidence extracted and documented? What is the chain of custody?

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---

10. Who would review the CCTV images to determine if they possess video that could assist a criminal investigation?

---



---

11. What challenges have you encountered in using CCTV evidence?

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---

12. How many hours did you typically work to investigate crimes before CCTV?

12.1 Violent crimes?

less than 1 hour       1 to 3 hours       4 to 10 hours       11 to 24 hours

12.2 Property crimes?

less than 1 hour       1 to 3 hours       4 to 10 hours       11 to 24 hours

12.3 Drug offenses?

less than 1 hour       1 to 3 hours       4 to 10 hours       11 to 24 hours

12.4 Other misdemeanors?

- less than 1 hour     1 to 3 hours     4 to 10 hours     11 to 24 hours

13. Has CCTV use changed the amount of hours you spend on a case (cases that involve CCTV evidence)?

- Yes     No

13.1 Violent crimes?

- less than 1 hour     1 to 3 hours     4 to 10 hours     11 to 24 hours

13.2 Property crimes?

- less than 1 hour     1 to 3 hours     4 to 10 hours     11 to 24 hours

13.3 Drug offenses?

- less than 1 hour     1 to 3 hours     4 to 10 hours     11 to 24 hours

13.4 Other misdemeanors?

- less than 1 hour     1 to 3 hours     4 to 10 hours     11 to 24 hours

14. Has CCTV changed how you investigate a case?

- Yes     No

14.1 If yes, how so?

---

---

14.2 In no, why not?

---

---

15. How is CCTV used in conjunction with other evidence to support an investigation?

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16. When putting a case together for prosecution (warrant), is CCTV evidence alone enough? (Enough alone, Useable only in conjunction with other evidence, Depends on case)

Explain:

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17. Has CCTV reduced the number of cases that are returned from the prosecutor's office?

- Yes     No

17.1. Please explain:

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---

18. How useful is CCTV evidence for:

18.1 Investigations?

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18.2 Interviews?

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18.3 Interrogations?

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19. What suggestions or lessons would you want to share with other detectives looking to use CCTV evidence?

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20. Are there any other comments you would like to make about your experiences with using CCTV?

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21. Do you know any investigators who have used CCTV images during a criminal investigation? (If yes, who?)

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---

**Benado, Tony**

---

**From:** Madeline Feingold <mlfeingold@gmail.com>  
**Sent:** Saturday, January 27, 2024 11:06 AM  
**To:** All Council  
**Subject:** Support Item 29 (Cameras) on the Jan 30 Agenda

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

Dear Members of the Berkeley City Council,

I am writing to ask you to please support Item 29 from Councilmembers Humbert and Bartlett on the January 30, 2024 agenda to fund and install additional security cameras.

These additional cameras would be limited to the Districts represented by Councilmembers Humbert and Bartlett and would provide crucial evidence and deterrence to address ongoing violent crime in Berkeley.

Please support this item so that it may move forward to the broader budget process.

Thank you for your consideration of this item.

Respectfully,  
Madeline Feingold  
16 Hazel Road  
Berkeley, CA 9475

**Benado, Tony**

---

**From:** Chesa Boudin <chesa@berkeley.edu>  
**Sent:** Monday, January 29, 2024 11:24 AM  
**To:** citycouncil@berkeleyca.gov  
**Cc:** Berkeley Mayor's Office; Hahn, Sophie; Kesarwani, Rashi; Wengraf, Susan; Taplin, Terry; Humbert, Mark; Bartlett, Ben; City Clerk; Harrison, Kate; All Council  
**Subject:** Item 29 on the January 30th action agenda, titled: "Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime."  
**Attachments:** Surveillance camera letter, Berkeley Criminal Law and Justice Center.pdf

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

Dear City Council,

Please see attached letter urging the City Council to review its procedures to see whether the current legal process is sufficient given the potential threat to civil rights, privacy, and due process that the expanded use of surveillance cameras poses.

Thank you for your consideration,

**Chesa Boudin**

Executive Director  
Criminal Law & Justice Center  
University of California, Berkeley, School of Law

Jan 24, 2024

Re: Request to comply with Municipal Code § 2.99

Dear Berkeley City Councilmembers,

As members of the Berkeley community and experts in relevant fields, we write to express our concern regarding item 29 on the January 30th action agenda, titled “Budget Referral: Additional Security Cameras at Intersections Experiencing Increased Violent Crime.” We urge you to follow the Council’s own rules and submit these cameras to the mandated process Berkeley Municipal Code § 2.99.

Item 29 seeks to authorize an unspecified number of new surveillance cameras at Berkeley traffic intersections, but circumvents the legal process for deploying police surveillance technology. Berkeley Municipal Code § 2.99, adopted in 2018, outlines the process by which City Council acquires and evaluates surveillance technology. Section 2.99 requires detailed and transparent information regarding the reason to adopt the proposed technology and how data privacy and civil rights will be protected in its use. It also creates opportunities for public comment, questions and amendments from members of City Council, and for input from the Police Accountability Board. This process applies to new instances or uses of previously approved types of technology per § 2.99.030(1)(c).

Contrary to counterarguments, the § 2.99 process controls the new surveillance camera expansion proposal. Item 29 shoe-horns the new cameras into a narrow carve-out in the ordinance which excludes cameras affixed to city property from the general process, *unless such technology otherwise meets the definition of surveillance technology*. Here, the proposal would place surveillance cameras at intersections in response to crime. This expansion meets § 2.99.020’s definition of surveillance technology because the cameras are an electronic system designed to capture visual information capable of being associated with individuals. The plain language of the ordinance makes clear that each individual instance of technology that meets that definition must follow the process the ordinance lays out. Thus, the City Council must follow the proper, established legal process for deploying surveillance technology in the case of the proposed cameras.

# Berkeley Law | Criminal Law & Justice Center

We take no position on the merits of expanding the use of surveillance cameras: an informed position depends on the public process and detailed information that the ordinance requires. We urge the City Council to follow the procedures established in § 2.99 here, and for future acquisition and deployment of surveillance technology. Subverting or sidestepping the established legal process to expand police surveillance threatens civil rights, privacy, and due process.

We share concerns about crime in our community and appreciate the benefits of using appropriate technology to advance public safety. However, process is a critical component of the rule of law. We appreciate your attention to this matter, and trust that you will follow the legal process the City Council created with § 2.99 as you decide whether and how to expand police surveillance in Berkeley.

Thank you for your consideration.

Sincerely,

**Chesa Boudin**, executive director Criminal Law and Justice Center, Berkeley School of Law

**Erwin Chemerinsky**, Dean of UC Berkeley School of Law and Jesse H. Choper Distinguished Professor of Law

**Andrea Roth**, Professor of Law and Barry Tarlow Chancellor's Chair in Criminal Justice

**Denise Herd**, Professor, Head of Community Health Sciences Division, and Director of Health and Social Behavior Program at Berkeley School of Public Health

**Elisabeth Semel**, Chancellor's Clinical Professor of Law and Co-Director, Berkeley Law Death Penalty Clinic

**Jeffrey Selbin**, Chancellor's Clinical Professor of Law, Berkeley Law

**David J. Harding, Professor**, Chair of Berkeley Department of Sociology, and Co-Director of the Computational Social Science Training Program

**Richard Perry**, Lecturer-in-Residence and Senior Fellow in Legal Studies, Berkeley Law



# Berkeley Law | Criminal Law & Justice Center

**Jonathan Glater**, Professor of Law and Associate Dean, J.D. Curriculum and Teaching

**Mridula Raman**, Interim Deputy Director, Berkeley Law Death Penalty Clinic

**Jonathan Simon**, Lance Robbins Professor of Criminal Justice Law, Berkeley School of Law

**Kyla Bourne**, Data Science Research Scholar (Criminal Justice), Berkeley Institute for Data Science

**Azadeh Zohrabi**, Executive Director, UC Berkeley Underground Scholars

**Stephanie Campos-Bui**, Assistant Clinical Professor of Law

CC: Mayor Jesse Arreguín  
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