

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
Wednesday, February 28, 2024
6:30 P.M.

Board Members

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

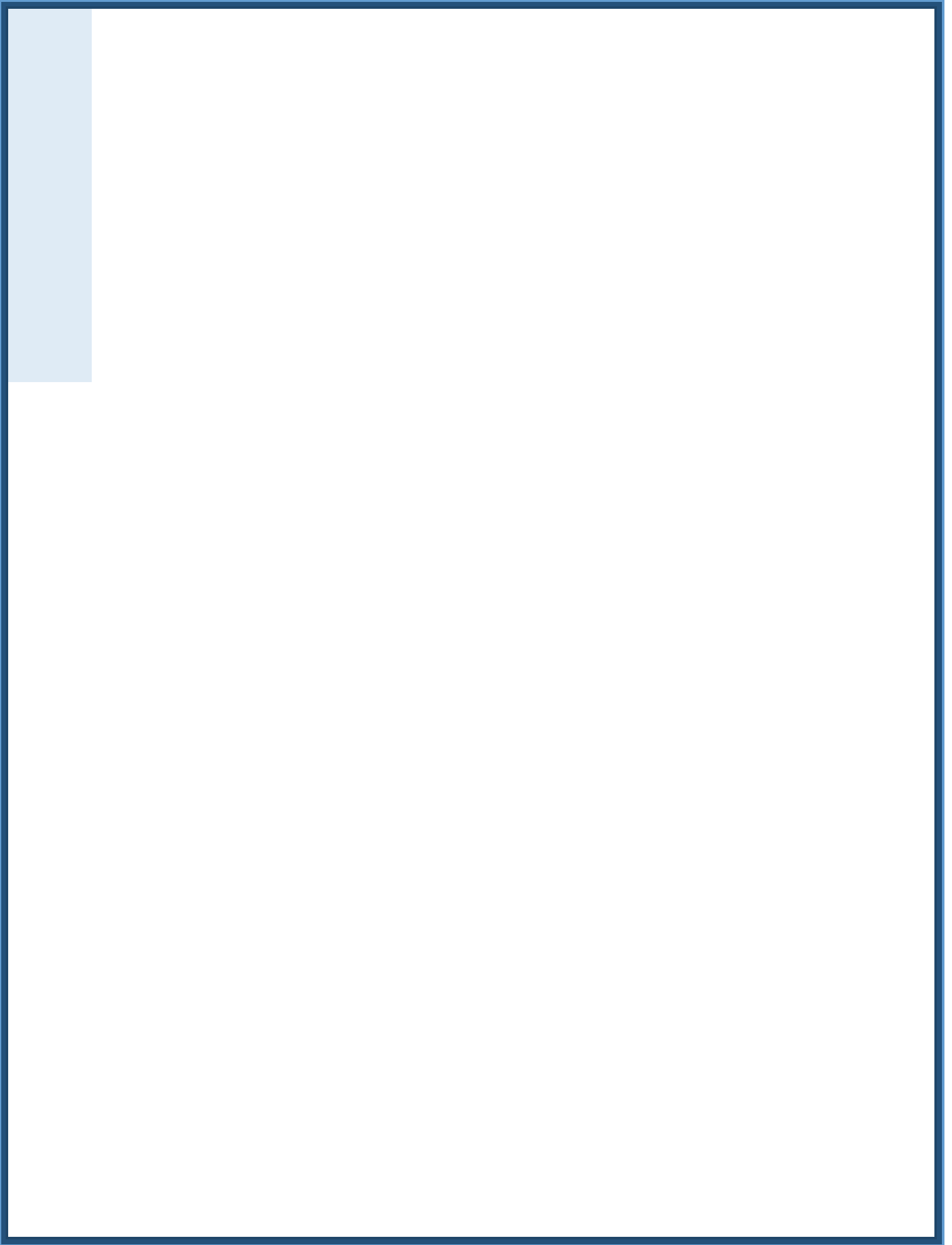
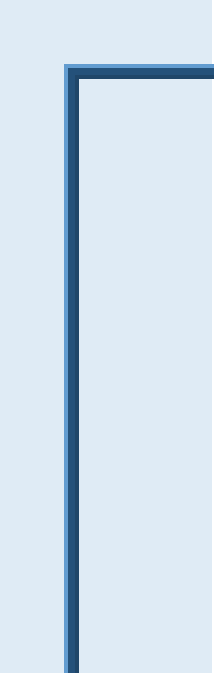
Leah Wilson (Vice-Chair)
 Regina Harris
 Brent Blackaby
 Alexander Mozes

MEETING LOCATION

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

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

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

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

Issued By: City Manager's Office

Date: February 14, 2023

I. Vaccination Status

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

II. Health Status Precautions

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

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

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

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

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

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

III. Face Coverings/Mask

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

IV. Physical Distancing

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

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

Distancing will be implemented for the dais as space allows.

V. Protocols for Teleconference Participation by Commissioners

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

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

VI. Hand Washing/Sanitizing

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

VII. Air Flow/Circulation/Sanitizing

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

Item 2. February 28, 2024 Regular Meeting Agenda



POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
WEDNESDAY, FEBRUARY 28, 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 February 7, 2024

- 5. ODPa STAFF REPORT (10 MINUTES)**

Announcements, updates, and other items.

- PAB and ODPa Participation in the 2024 Berkeley Juneteenth Festival (Sunday, June 16, 2024)

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

Announcements, updates, and other items.

- 7. CHIEF OF POLICE'S REPORT (TBD)**

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

8. 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) – (20 MINUTES)

9. SUBCOMMITTEE REPORTS (TBD)

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.

10. LEGISLATIVE AND POLICY UPDATES (25 MINUTES)

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

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

11. NEW BUSINESS (Discussion and Action) (1 HOUR 5 MINUTES)

- a. Approval of the 2024 PAB Strategic Planning Session Retreat and Agenda (LEFTWICH) – (5 MINUTES)
- b. Discussion and action regarding the PAB letter to the City Manager and Chief of Police on the proposal for additional security cameras per the City Council's directive. (ODPA) - (15 MINUTES)
- c. Discussion and action regarding the Director of Police Accountability's observations and considerations for the PAB's review of Council Item 16. "Zoning Amendments for Berkeley Business; Amending Berkeley Municipal Code Title 23" (ODPA) – (15 MINUTES)

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

² <https://berkeley.municipal.codes/>

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

- d. Discussion and action regarding the review of the BPD’s 2023 Annual Report on Police Equipment and Community Safety Ordinance as mandated by BMC 2.100.050 “Reports on the Use of Controlled Equipment” (ODPA) – (15 MINUTES)
- e. Discussion and action regarding the PAB's issuance of subpoenas for records pertinent to the completion of the “Policies and Practices relating to the Downtown Task Force and Bike Unit Allegations” subcommittee's work. (MOORE) – (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-0004 | 6. 2023-CI- 0014 |
| 2. 2023-CI-0006 | 7. 2023-CI- 0016 |
| 3. 2023-CI-0009 | 8. 2023-CI- 0017 |
| 4. 2023-CI-0012 | 9. 2023-CI- 0018 |
| 5. 2023-CI-0013 | 10. 2023-CI- 0019 |


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.

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

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

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

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

Email: dpa@berkeleyca.gov

Item 4.a February 7, 2024 Regular Meeting Draft
Minutes



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

Board Members

John Moore (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](#))

Minutes

1. CALL TO ORDER AND ROLL CALL

Present: Board Member Leah Wilson (Vice-Chair)
Board Member Regina Harris
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Brent Blackaby
Board Member Joshua Cayetano
Board Member Alexander Mozes¹

Absent: Board Member John Moore (Chair).

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

¹ Board Member Mozes joined the meeting after roll call.

BPD Staff: Michelle Verger, Policy Analyst
Chief Louis
Lt. Montgomery
CAO Staff: Stephen Hylas, Deputy City Attorney
CMO Staff: Dr. Carianna Arredondo, Assistant to the City Manager
Rex Brown, DEI Officer

2. APPROVAL OF AGENDA

Motion to approve the agenda with Item 9 and Item 11.d. tabled to the next regular meeting.

Moved/Second (Leftwich/Blackaby) Approved by unanimous consent.
Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Mozes and Wilson.
Noes: None. Abstain: None. Absent: Moore.

3. PUBLIC COMMENT

0 Physically Present Speakers
0 Virtually Present Speakers

4. APPROVAL OF MINUTES

Motion to approve the meeting minutes for the regular meeting of January 24, 2024

Moved/Second (Leftwich/ Blackaby) Motion Carries.
Ayes: Blackaby, Calavita, Cayetano, Harris, Leftwich, Mozes, and Wilson.
Noes: None. Abstain: None. Absent: Moore.

5. ODPA STAFF REPORT

Presentation by Tony Rice II, CEO/Co-Founder of Sivil, on Oversight by Sivil, the ODPA's new case management software. Director Aguilar provides a report on the receipt of Internal Affairs Reports for 2023.

6. CHAIR AND BOARD MEMBERS' REPORTS

No reports were provided.

7. CHIEF OF POLICE'S REPORT

Chief Louis provides updates on current BPD workloads, notable crimes/cases, and upcoming reports for review by the PAB.

8. SUBCOMMITTEE REPORTS

Subcommittees offer updates on the progress of their ongoing activities.

9. LEGISLATIVE AND POLICY UPDATES

Discussion on this item was postponed to the next PAB Regular Meeting.

10. OLD BUSINESS (Discussion and Action)

- a. Presentation of new ODPa Policy Complaint No. 2024-PR-0001

Motion to accept Policy Complaint Number 2023-PR-0001 and integrate it into the Use of Force Annual Review.

Moved/Second (Calavita / Wilson) Motion Carries.

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

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

11. NEW BUSINESS (Discussion and Action)

- a. Presentation of new ODPa Policy Complaint No. 2024-PR-0002 (ODPA)

Motion to reject ODPa Policy Complaint Number 2024-PR-0002.

Moved/Second (Cayetano / Leftwich) Motion Carries.

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

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

- 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 feedback²

Motion to request that the DPA draft a response to the City Council's directive to the City Manager regarding engaging with the PAB on the proposal for additional security cameras, to be reviewed by the PAB at their next meeting.

Moved/Second (Blackaby, Cayetano) Motion Carries.

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

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

- c. Review and Approval of BPD Officer Commendations (Blackaby)

Motion to approve the recommendations made by the Commendation Subcommittee.

Moved/Second (Blackaby, Harris) Motion Carries.

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

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

² [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)

Discussion on this item was postponed to the next PAB Regular Meeting.

12. PUBLIC COMMENT

0 Physically Present
0 Virtually Present

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):

Case Updates Regarding Complaints Received by the ODPa

Regarding Items 13.a.1 – 13.a.13:

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

Motion to administratively close ODPa Complaint Number 2023-CI-0015.

Moved/Second (Wilson/ Leftwich) Motion Carries

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

Noes: *None*. Abstain: None. Absent: Moore.

Motion to administratively close ODPa Complaint Number 2024-CI-0002.

Moved/Second (Calavita/ Leftwich) Motion Carries

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

Noes: *None*. Abstain: None. Absent: Moore.

Motion to accept the DPA's findings in ODPa Case Number 2023-PR-0010 concerning allegations number 1, 2, 3, 4, 5, and 7.

Moved/Second (Cayetano/ Blackaby) Motion Carries.

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

Noes: *None*. Abstain: *None*. Absent: Moore.

Motion to accept the DPA’s findings in ODPa Case Number 2023-PR-0010 concerning allegation number 6.

Moved/Second (Cayetano/ Blackaby) Motion Carries.

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

Noes: Mozes Abstain: *None*. Absent: Moore.

END OF CLOSED SESSION

14. ANNOUNCEMENT OF CLOSED SESSION ACTIONS

Vice-Chair Wilson announces the closed-session actions.

15. ADJOURNMENT

Motion to adjourn.

(Blackaby/Leftwich) The meeting was adjourned at 9:45 P.M by unanimous consent.

Minutes Approved on: _____

Hansel Aguilar, Commission Secretary: _____

Item 8. Materials for the discussion regarding the City Manager's implementation of the City Council's directive to revise the Early Intervention System (EWS) policy of the Berkeley Police Department.



MEMORANDUM

To: Honorable Members of the Police Accountability Board (PAB)
From: Board Member Joshua Cayetano
Date: February 4, 2024
Subject: Establishing an Effective Early Intervention System as Directed by the City Council

To: Police Accountability Board

From: Board Member Joshua Cayetano

Date: February 4, 2024

Re: Establishing an Effective Early Intervention System as Directed by the City Council

Dear Board Members,

On February 1, 2024, I met with Chief Louis to discuss Berkeley Police Department's (BPD) continued efforts to establish an effective Early Intervention System (EIS) as directed by the City Council nearly three years ago. It is my understanding that Chief Louis and BPD have made substantial progress in building the technological infrastructure to host an effective EIS, but the specifics of the new EIS are yet to be determined. As Berkeley's civilian oversight body tasked with overseeing BPD's practices, policies, and procedures, we have an important role to play in ensuring the new EIS is effective, equitable, and tailored to the community's interests. To that end, Chief Louis has suggested that the Police Accountability Board collaborate with the Department in several key areas. This memo details the Council's directive to establish an effective EIS and formally requests that the PAB collaborate with BPD to implement the necessary changes.

A. Berkeley Police Department must transition to an effective Early Intervention System as directed by the City Council nearly three years ago.

Three years ago, on February 23, 2021, the Berkeley City Council unanimously voted to overhaul BPD's Early Warning System (EWS) and "establish a truly effective Early Intervention System."¹ Law enforcement experts have widely considered early intervention systems to be a best practice for decades.² An EIS is a data-driven tool designed to proactively identify, support, and redirect police officers who exhibit a pattern of potential at-risk behaviors.³ By "flagging" potentially problematic behavior and intervening before it rises to the level of misconduct, an effective EIS prevents police misconduct, limits the financial liability of the City, and promotes both racial justice and public safety. It also provides officers with an opportunity to improve their

¹ Report and Recommendations From Mayor's Fair and Impartial Policing Working Group (February 23, 2021), <https://berkeleyca.gov/sites/default/files/documents/2021-02-23%20Special%20Item%20001%20Report%20and%20Recommendations.pdf>, at 13. The City Council accepted the report and recommendation. Berkeley City Council, Annotated Agenda, February 23, 2021, <https://berkeleyca.gov/sites/default/files/city-council-meetings/02-23-Special-Annotated-Agenda.pdf>, at 3. The Council then unanimously voted to refer to the City Manager to implement the procedural justice reforms contained in the FIP report, including "the creation of an Early Intervention System." *Id.* at 4-5.

² "Enhancing Cultures of Integrity: Building Law Enforcement Early Intervention Systems," San Diego Police Department (January 2011), <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-p052-pub.pdf>, at 13.

³ Zoe Russek and Dylan Fitzpatrick, "Early Intervention Systems," University of Chicago Crime Lab (January 2021), <https://urbanlabs.uchicago.edu/attachments/32d00780dcf1082f6b49c678f2afa838c9105f0c/store/b551dd26ecaa556d96398cc4b4d2ca48ce57165a1c8187b5fc0d0a2f87b0/EIS.pdf>, at 1.

policing practices through mentorship and counseling rather than through formal disciplinary mechanisms.⁴

Berkeley Police Department’s Early Warning System—established in 2004, revised in 2008, and still in effect today—relies on discretionary review by supervisors and a quarterly randomizer that selects five officers to be audited.⁵ That first-generation system was popular in the 1980s and 1990s, but is no longer accepted by law enforcement experts as an effective model.⁶ The vast majority of large police departments across America employ a second-generation, “threshold” model that flags outlier officers once they exhibit risky behaviors a certain standard deviation from their peers⁷; some innovative departments have adopted a third-generation, data-driven EIS that uses machine learning to better predict where intervention is necessary.⁸

The Council and the Mayor’s Fair and Impartial Policing Working Group (FIP) agreed that a revamped Early Intervention System should (a) incorporate Racial and Identity Profiling Act data (b) flag “outlier” officers who exhibit at-risk tendencies, and (c) include a member of the PAB in the intervention process as an “outside observer.”⁹ The Council directed the City Manager to implement these changes.

To date, the formal Early Warning Policy (Policy 1041) does not reflect every change required by the City Council’s directive. BPD agreed to incorporate RIPA data in February 2021 when Council approved the agenda item. The current Policy reflects this revision. However, the Policy does not specify by what system the Department will identify outliers nor does it capture a formal relationship between the PAB and the BPD. The FIP Working Group was clear that the incorporation of RIPA data alone “does not meet the two core components of an EIS system: 1) identify potential individual or group red flag behavior (as early as possible), and 2) intervene to redirect performance and behaviors toward organizational goals.”¹⁰ The FIP Working Group explicitly named the recommendation for an effective EIS among its top priorities, and it is this recommendation that the Council approved and adopted.¹¹

⁴ See Item 25, Referral \$100,000 to June 2023 Budget,

<https://berkeleyca.gov/sites/default/files/documents/2023-04-11%20Item%2025%20Referral%20100%2C000%20to%20the%20June%2C%202023.pdf>, at 1-2.

⁵ See Berkeley Police Department Law Enforcement Services Manual, Policy 1041, “Early Warning System.” The randomized audit was instituted in June 2022. See *infra* note 13.

⁶ See “Best Practices in Early Intervention System,” National Police Foundation (Nov. 2018), at 5-7.

⁷ Russek and Fitzpatrick, *supra* note 3, at 3; see Carton, et al., “Identifying Police Officers at Risk of Adverse Events,” 22nd ACM SIGKDD International Conference (Aug. 2016).

⁸ The Charlotte-Mecklenburg Police Department adopted the first data-driven, third-generation software in November 2017. It received widespread praise and awards from the International Association of Chiefs of Police and Laura and John Arnold Foundation. See “Early Intervention System for Reducing Adverse Police Incidents,” Data Science and Public Policy, Carnegie Mellon University, at <http://www.datasciencepublicpolicy.org/portfolio-items/early-intervention-system-for-reducing-adverse-police-incidents/>.

⁹ See FIP Report, *supra* note 1, at 16; Berkeley City Council, Annotated Agenda, February 23, 2021, at 3-4 (unanimously approving those recommendations).

¹⁰ FIP Report, *supra* note 1, at 30.

¹¹ *Id.*

On April 11, 2023, the Council recognized that their directive had not yet been implemented, and allocated \$100,000 to pay a consultant to help implement a new EIS.¹² My understanding is that BPD has been internally developing technology that will host the revamped Early Intervention System.

Even though the development of an effective Early Intervention System is still underway and Policy 1041 does not reflect the new system, the City Manager via the Department regularly reports that the progress on implementing the Council's directives is "complete."¹³ By complete, the Department means that it has modified its Early Warning System to include RIPA and stop data, in addition to randomly auditing five officers every quarter.

I maintain that the Council's directive to establish an effective Early Intervention System is not complete until the Berkeley Police Department has transitioned from an Early Warning System that randomly audits five officers to a data-driven Early Intervention System that employs a flagging-and-intervening system. Besides the fact that I could not find a Department of Justice-approved EIS that relies on random auditing, the concept of random auditing is fundamentally at odds with the purpose of an EIS, which is to identify problematic trends and intervene where necessary to prevent future adverse actions. The California Department of Water Resources does not randomly inspect five dams per quarter; it uses all the instruments at its disposal to identify (or flag) dams that need structural improvement, and then intervenes where necessary. Similarly, the Department cannot rely on a randomizer or even supervisor discretion to discover risky behavior before it becomes a disciplinary issue. It must use a data-driven method.

From my conversation with the Chief, I concluded that she agrees BPD must transition and, in fact, has been trying to for some time. The Police Accountability Board must play an essential role in that transition.

B. The Police Accountability Board must collaborate with Berkeley Police Department to develop an effective Early Intervention System.

Consistent with the Council's directive, the Board must collaborate with the Department in four key areas:

- 1) Assisting in identifying and defining the parameters, factors, and thresholds which would trigger early intervention.
- 2) Reviewing and revising Policy 1041 to reflect a data-driven system.
- 3) Nominating a Board Member to serve as an EIS observer.
- 4) Promoting the institutional adoption of an EIS as a non-disciplinary accountability measure.

Identifying and defining the parameters. The PAB should undoubtedly be interested in what factors and parameters would trigger early intervention. If thresholds are set too high or low, the system will lose its predictive power and frustrate its risk-management purpose.

¹² See Item 25, Referral \$100,000 to June 2023 Budget, *supra* note 4, at 3.

¹³ See Berkeley City Council Agenda Packet, June 14, 2022, <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-06-14%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>, at 978.

Including or eliminating certain factors can hurt or help the risk analysis. Baselines that use historic data can reproduce racial discrimination.

As a first step, I suggest that the PAB and BPD look to models in other jurisdictions to understand what works and what does not. The Department of Justice regularly requires departments subject to consent decrees to implement early intervention systems and track their effectiveness, which can provide helpful evidence:

- In 2015, the U.S. Department of Justice’s Office of Justice Programs’ Diagnostic Center released a year-long assessment of the Minneapolis Police Department’s EIS.¹⁴ It found that MPD’s EIS’ lack of automation prevented electronic tracking and flagging of behaviors of concern in a systemic manner, among other systemic deficiencies.¹⁵
- In 2017, the Department of Justice found that the Chicago Police Department was systematically violating people’s civil rights. The DOJ specifically identified that the Department lacked a meaningful early intervention system, which “exist[ed] in name only and [did] not assist supervisors in identifying or correcting problematic behavior.”¹⁶ Like BPD, the Chicago Police Department relied on an electronic dashboard and supervisors’ discretion to interpret that dashboard and determine when to intervene. The entire report regarding Chicago’s inadequate EIS is attached to this memo.
- Pursuant to a consent decree, the Seattle Police Department annually reports the findings of an independent monitor regarding the effectiveness of their EIS.¹⁷
- Pursuant to a consent decree, the Oakland Police Department administers a Personnel Assessment System (PAS) and produces regular compliance reports.¹⁸

The third-generation models implemented by the Charlotte-Mecklenburg Police Department, Metro Nashville Police Department, and even the San Francisco Police Department can serve as positive examples. A study of the third-generation model employed by CMPD showed that the new system provides a 20% reduction in false positives and a 75% increase in true positives among officers identified by the system.¹⁹ San Francisco provides a public quarterly report of its EIS that details (1) the review process by the EIS Unit, (2) what indicators are considered, (3) the aggregate number of EIS alerts by district, and (4) the aggregate number of interventions and their dispositions.²⁰

I recommend that the PAB or the Office of Department of Police Accountability investigate whether Benchmark Analytics would be a good partner in Berkeley’s development of

¹⁴ See “Department of Justice Diagnostic Center Provides Final Assessment to Minneapolis Police Department to Help Build Trust Between Police and the Community,” Press Release, U.S. Department of Justice (Jan. 28, 2015).

¹⁵ See Diagnostic Analysis of Minneapolis Police Department, MN (Jan. 2015), https://mn.gov/mdhr/assets/2015.01%20OJP%20Minneapolis%20Police%20Report_tcm1061-457047.pdf, at 20.

¹⁶ “Investigation of the Chicago Police Department,” U.S. Department of Justice (Jan. 13, 2017), at 111.

¹⁷ See “Eighth Systemic Assessment: Early Intervention System,” Seattle Police Monitor (March 2017), available at https://www.seattle.gov/Documents/Departments/Police/Compliance/Eighth_Systemic_Assessment--EIS.pdf.

¹⁸ See <https://cao-94612.s3.us-west-2.amazonaws.com/documents/OPD81Report042622.pdf>, at 24-29.

¹⁹ See Helsby, et al, “Early intervention systems: Predicting adverse interactions between police and the public,” 29 Criminal Justice Policy Review 190 (2018); Russek and Fitzpatrick, *supra* note 3, at 5.

²⁰ See <https://www.sanfranciscopolice.org/sites/default/files/2023-11/SFPDQ1EISReport20231102.pdf>.

its EIS. CMPD, SFPD, the Minneapolis Police Department, San Jose Police Department, Dallas Police Department, and the State of New Jersey all have partnered with Benchmark Analytics, a company that developed its software in partnership with University of Chicago researchers, law enforcement officials, and data scientists.²¹

These are merely suggestions. From my preliminary research, it is clear that all early intervention systems must be sufficiently localized to be effective. The PAB and the Department or Berkeley Police Association might disagree about which indicators, thresholds, and comparators should be used. What is important is that (a) the PAB develop a clear understanding of its policy priorities and (b) both sides engage in a good faith negotiation regarding the development of an effective program.

Review and Revise Policy 1041. The Policy must, at minimum, reflect the implementation of a “flagging” system that would trigger intervention. It should also institutionalize the relationship between the Board and the Department with respect to the EIS, particularly including PAB as an independent observer of the EWS. These policy changes were approved by the Council. The Policy should also capture a yearly audit—to be conducted by the Department in conjunction with the assistance of an external contractor—in order to ensure that the EIS can remain fine-tuned and effective.

Nominate a Board Member to serve as an EIS observer. The Chief suggested that the PAB nominate a board member to serve as an EIS observer. The EIS observer would be able to view an anonymized version of the EIS dashboard, and make recommendations based on their observations.

Promote the institutional adoption of EIS as a non-disciplinary accountability measure. Studies show that EIS is only effective if it gains organizational acceptance by the Department. Those studies suggest that the best way to achieve organizational acceptance is by emphasizing that the EIS is a preventative, risk-management mechanism instead of a disciplinary mechanism. The Board should be clear in its promotion of EIS that the intent of an effective EIS is to prevent misconduct from happening rather than catch officers who are engaged in misconduct. Of course, the EIS cannot and should not replace the formal disciplinary mechanisms that currently exist.

Following this report, I respectfully request that the Board:

1. Adopt a resolution acknowledging that the Council’s directive to create an Early Intervention System is not complete until (a) BPD implements a data-driven system that “flags” risky policing patterns and effectively intervenes in those instances before they rise to the level of misconduct, (b) a member of the PAB sits as an outside EIS observer, and (c) Policy 1041 is updated to reflect these changes.
2. Direct ODPA staff to create a report either affirming, modifying, or rejecting this report’s recommendation that BPA engage Benchmark Analytics to assist with the design of their

²¹ <https://www.benchmarkanalytics.com/>.

EIS. ODPA should prepare a supplemental report that details the financial impact of their recommendation.

3. Create a working group with representatives of BPA, BPD, and PAB to revise Policy 1041 to reflect the Council's directive.
4. Nominate a PAB board member at the next meeting to serve as EIS observer and liaison, who will coordinate with BPD to establish their responsibilities and set a timeline for EIS implementation.

An ineffective EIS can be just as detrimental as a nonexistent one, putting both officers and the public at risk. The Police Accountability Board should ensure that the Early Intervention System implemented by the Berkeley Police Department conforms to best practice standards and employs a data-driven model that is effective, equitable, and Berkeley-specific.

Sincerely,
Joshua Cayetano
Board Member, Police Accountability Board

Appendix to Memo from Board Member Cayetano Dated February 4, 2024.

Document 1: Policy 1041, Early Warning System

Document 2: Excerpt from Fair and Impartial Policing Report (Feb. 23, 2021)

Document 3: Excerpt from Berkeley City Council Special Meeting Annotated Agenda (Feb. 23, 2021)

Document 4: Department of Justice Report on Chicago Police Department's Early Intervention System

Document 5: San Francisco Police Department's Quarterly Early Intervention System Report

Document 6: Benchmark Analytics First Sign Early Intervention System

EARLY WARNING SYSTEM

1041.1 PURPOSE

The purpose of this Order is to establish policy and procedures for an informal performance review and intervention program, the “Early Warning System” (EWS). The program monitors employee performance that may be inconsistent with professional police conduct and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues and correction of these issues through constructive counseling sessions rather than the formal disciplinary process.

1041.2 POLICY

All employees shall participate in the EWS program and comply with the guidelines set forth in this Order.

Participation in the EWS program shall not be deemed punitive, nor a formal disciplinary process.

- (a) Notwithstanding the initiation of the EWS process, the Department retains its right and responsibilities with regard to investigation of policy violation and enforcement of employee discipline.

1041.3 PROCEDURES

Employee behavior or performance that is subject to EWS review includes, but is not limited to:

- (a) Poor attendance and/or abusive use of leave;
- (b) Multiple formal sustained or not sustained complaints;
- (c) Multiple informal complaint inquiries;
- (d) Multiple use of force incidents;
- (e) Multiple obstructing/resisting arrest incidents;
- (f) Multiple vehicle collisions; and,
- (g) Substandard conduct/performance concerns observed by a superior officer.
- (h) Irregular demographic stop data on pedestrian, bike, and vehicle enforcement, while considering the factors of the assignment (geographical area of the city the officer is working, the specific detail/assignment, and the nature of enforcement).

The Racial and Identify Protection Act (RIPA) data will be available to supervisors in the form of an electronic data dashboard. This will provide supervisors and commanders with the ability to review stop data created by officers assigned under their span of control. The individual stop data for individual officers should be considered a personnel record as it may provide supervisory guidance for specific officer stop data, if necessary. The public release of any RIPA data will remain anonymized as previously agreed upon Meet and Confer with the Berkeley Police Association and provisions of Government Code 3300 et.al.

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EARLY WARNING SYSTEM

Supervisors, commanders and managers shall monitor the activity of their subordinate employees to identify actual or perceived unprofessional behavior and/or substandard performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police via the Chain of Command.

Personnel assigned to the Internal Affairs Bureau (IAB) shall monitor all formal and informal allegations of employee misconduct received by their office for behavior or performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police.

Personnel assigned to the Support Services Division Report Review Detail shall forward to the Chief of Police copies of all reports pertaining to:

- (a) Obstruction/resisting arrests cases (i.e., Penal Code §§148, 69, etc.)

Administrative reports regarding use of force shall be forwarded to the Chief of Police as directed in Policy 300.

1041.4 MANAGEMENT OF PROGRAM RECORDS

The Office of the Chief of Police shall be responsible for aggregation and administrative management of information, data and records associated with the EWS program.

- (a) The administrative assistant assigned to the Office of the Chief of Police shall be responsible for preparing a quarterly report summarizing information and activities associated with the EWS program for use in administrative review.

Information, data and records associated with the EWS program are used for personnel purposes.

Accordingly, they are confidential personnel files and not public records.

Documents, data and records shall be maintained by the Office of the Chief of Police for a period of two (2) years.

Access to EWS records shall be restricted to the supervisor, commander and/or manager involved in the monitoring of a particular employee, subject to the approval of the Chief of Police.

- (a) An individual employee may be granted access to EWS records that pertain to him/her.

1041.5 ADMINISTRATIVE REVIEW BOARD

The Chief of Police will convene a quarterly Review Board comprised of all Division Commanders to review program records to determine if initiation of the EWS Program is recommended.

Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program.

1041.6 INITIATION OF EWS PROGRAM

Upon the direction of the Chief of Police, an informal counseling meeting will be held that may include:

- (a) The subject employee;

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- (b) The employee's supervisor;
- (c) An Internal Affairs Bureau sergeant;
- (d) The employee's Lieutenant; and,
- (e) The employee's Division Commander, who shall preside over the meeting.

Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.

- (a) If the meeting cannot be scheduled during the employee's regularly scheduled working hours, personnel participating while off-duty shall be compensated with compensatory time (minimum time as may be authorized by the employee's MOU) or, with Division Commander approval, allowed to flex an equal amount of time within that same work week.

The subject employee may have one fellow employee accompany him/her to the counseling meeting.

- (a) The accompanying employee's presence is allowed to offer general support to the subject employee, not to be an active participant in the counseling meeting.

As in general supervisor counseling meetings, the employee shall be informed of the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response.

The subject employee may be given information regarding the City of Berkeley Employee Assistance Program.

No formal document will be generated referencing this meeting, and the meeting shall not be deemed a punitive or disciplinary proceeding against the employee. There shall be no permanent record of the meeting.



ACTION CALENDAR

February 23, 2021

To: Members of the City Council

From: Mayor Jesse Arreguín and Councilmember Kate Harrison

Subject: Report and Recommendations From Mayor’s Fair and Impartial Policing Working Group

RECOMMENDATIONS

1. Accept and acknowledge the report from the Fair and Impartial Working Group (Attachment 1)
2. Direct the City Manager to implement the following recommendations summarized below and detailed in full in Attachment 1, with at minimum, quarterly progress updates to the Police Accountability Board (PAB) and/or the Working Group
 - Focus traffic stops on safety
 - Use a clear, evidence-based definition for stops of criminal suspects
 - Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
 - Eliminate stops for low-level offenses
 - Implement an Early Intervention System (EIS) and a risk-management structure
 - Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group
 - Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole
 - Require written consent for all consent searches
 - Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)
 - Fire racist police officers identified through social media and other media screens
 - Address Profiling by Proxy (Council develop & pass CAREN policy)
 - Require regular analysis of BPD stop, search, and use of force data
 - Make resources on police-civilian encounters more publicly available such as RAHEEM.org

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The Mayor’s Working Group on Fair and Impartial Policing Policy Proposals

Developing and implementing reforms that will effectively reduce existing racial disparities requires changes at several levels. The following recommendations include setting new policy, updating institutional structures, and mandating individual accountability. Their implementation and ongoing effectiveness require supportive leadership, transparency and police accountability.

Executive Summary. Mayor’s Working Group on Fair and Impartial Policing (hereafter, “the working group”) focused on reducing racial disparities in stops and searches and improving community relationships damaged by the racially disparate practices in stops and searches.

This report advances the following recommendations for BPD practices:

- Focus on public safety and eliminate stops for low-level offenses not directly impacting public safety.
- Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.
- Institute annual implicit bias training and scenario-based training for California Penal Code 13519.4, prohibiting racial or identity profiling.
- Establish a truly effective Early Intervention System and risk management process to ensure department accountability and identify officers who are outliers in stops, searches, dispositions, and outcomes.
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.
- Require written consent for consent searches.
- Include evaluations of cultural competence in hiring and promotion, and fire officers who have expressed racist attitudes and/or are identified as members of racist groups.

The report also advances these recommendations for the Berkeley City Council and/or the City of Berkeley:

- Hire a consultant to create a plan for monitoring and reporting on the implementation of these recommendations.
- Ensure the creation of a Specialized Care Unit with crisis-response field workers, as included in the recent contract for a community-process to establish an SCU.
- Ensure a robust community engagement process, including annual surveys and community forums
- Require quarterly analysis of stop, search, and use of force data by City Auditor and/or the PRC.
- Adopt and carry out the compliance and accountability system outlined in this document.

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Proposed Actions

Table 1 provides a proposed action for each recommendation in the body and appendices of this draft report.

Action	Recommendations
Direct the City Manager to implement key recommendations, with at minimum, quarterly progress reports to the PAB and/or the Working Group	<ul style="list-style-type: none"> • Focus traffic stops on safety • Use a clear, evidence-based definition for stops of criminal suspects • Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria • Eliminate stops for low-level offenses • Implement an Early Intervention System (EIS) and a risk-management structure • Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group • Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole • Require written consent for all consent searches • Address Profiling by Proxy (PAB Policy Development, Dispatcher Training) • Fire racist police officers identified through social media and other media screens • Address Profiling by Proxy (Council develop & pass CAREN policy) • Require regular analysis of BPD stop, search, and use of force data • Make resources on police-civilian encounters more publicly available such as RAHEEM.org • Adopt Compliance and Accountability Mechanisms <ul style="list-style-type: none"> a. Hire consultant to develop implementation plan • For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complain process with PAB
Refer to be included in the process to reimagine public safety	<ul style="list-style-type: none"> • The City should create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized and includes a basic report card and quarterly neighborhood check-ins • Conduct a baseline community survey.
Refer to the Police Accountability Board	<ul style="list-style-type: none"> • Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4 • Require enhanced annual implicit bias training for police • Accelerate Crisis Intervention Team (CIT) activity
Follow-up with PAB and/or Fair and Impartial Working Group	<ul style="list-style-type: none"> • Evaluate the impact of these proposals on racial disparities in stops and searches, using regular updates to stop and search data • Conduct a regular community survey and annual community forums on Police and Public Safety
Recommendations already underway	<ul style="list-style-type: none"> • Fund and implement a specialized care unit for mental health crises • Conduct a Capacity Study of police calls and responses and use of officer time outside of case work
Outstanding - No Action Recommended	<ul style="list-style-type: none"> • Include community member participation and feedback in the hiring process • Include the following for Performance Appraisal Reports

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Reducing Disparities in Vehicle, Pedestrian, and Bicycle Stops & Searches:

1. Focus traffic stops on safety

According to Dr. Frank Baumgartner's 2018 book, *Suspect Citizens*, "Safety stops are those aimed at enforcing the rules of the road to decrease the likelihood of an accident" (pg. 191). The types of stops falling into this traffic safety category may include:

- Excessive speeding¹
- Running a stop sign or stop light
- Unsafe movement
- Driving while intoxicated

2. Use a clear, evidence-based definition for stops of criminal suspects

Dr. Baumgartner's analysis² reveals that "investigatory stops" (stops that use a minor infraction as a pretext for investigating rather than to prevent or reduce dangerous behavior pgs. 53-55) allow for the most officer discretion and open the possibility of implicit bias or "reliance on cultural heuristics" (pg. 191). Based on analyses of more than 9 million stops, Baumgartner's team found that 47% were investigatory and that they added substantially to the racial disparity statistics. Thus, investigatory stops and stops of criminal suspects shall be restricted to those made because the person and/or vehicle fits a description in relation to a specific crime.³⁴

Since the Oakland Police Department (OPD) has implemented evidence-based methods, the number of African American civilians stopped by the OPD has declined. Since Oakland Police Department has implemented evidence-based methods, the number of African American civilians stopped has declined from 19,185 in 2017 to 7,346 in 2019, a drop of 62% and a stop disparity rate reduction of almost 60%,⁵ with no corresponding increase in crime (Captain Chris Bolton presentation, 7/15/2020).

3. Use race and ethnicity as relevant factors when determining law enforcement action only when provided as part of a description of a crime and suspect that is credible and relevant to the locality and timeframe of the crime and only in combination with other specific descriptive and physical characteristics.^{6,7}

Specific descriptive and physical characteristics may include, for example: the gender, age, height, weight, clothing, tattoos and piercings of the suspect, the make and model of the car, and the time and location of the crime. Simple race and ethnicity alone are not

¹ <https://www.idrivesafely.com/dmv/california/laws/traffic-tickets-and-violations/>,

<https://www.martenslawfirm.com/blog/2015/november/what-is-excessive-speeding-/>

² *Suspect Citizens*, pp. 190-192

³ Eberhardt, J. L. (2016). *Strategies for change: Research initiatives and recommendations to improve police-community relations in Oakland, Calif.* Stanford University

⁴ This definition was created by Dr. Jennifer Eberhardt in collaboration with the Oakland Police Department.

⁵ This is the percentage of African American stops within all discretionary non-intel led stops made by Police Area 2 officers fell from 76% in September 2017 to 31% in September 2018

⁶ Southern Poverty Law Center, 10 Best Practices for Writing Policies Against Racial Profiling

⁷ CA Penal Code

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satisfactory as bases for reasonable suspicion under the law, and amount to racial profiling.

4. Eliminate stops for low-level offenses

According to the presentation to the Working Group by Captain Bolton of the OPD, Oakland significantly reduced stops for these low-level, non-public safety related offenses, resulting in a reduction in the number of African Americans being stopped and a reduced stop-disparity rate, with no effect on crime rates (homicides and injury shootings went down during the same period). There is often overlap between “investigatory stops” and “stops for low-level offenses,” as the latter may be used as a pretext for investigation. The types of stops falling into these categories may include:

- Equipment violations
- Not wearing a seat belt
- Improper use of high beams
- Violating a regulation (e.g. expired license tags)
- Stop purposes recorded as “other”

5. Implement an Early Intervention System (EIS) and a risk-management structure

These measures to ensure individual accountability have operated successfully in Oakland and many other localities for some time. They involve identifying officer outliers in stops, searches, and use of force and their outcomes and examining the reasons for racial disparities. Existing software programs to assist BPD in implementing an EIS could be utilized or BPD can build its own system.

These programs operate to identify officers who are a danger either to themselves or to the public. They are referred to as “risk management” systems because they help limit the financial liability of the City and hence its taxpayers. They may address a broad range of concerns, but in this document, we only consider their use with regard to racial disparities. Elements of this process include the following steps:

- a. Evaluate and assess stop incidents for legality and enforcement yield.
- b. Analyze data to determine whether racial disparities are generalized across the force or are concentrated in a smaller subset of outlier officers or squads/groups of officers. To the extent that the problem is generalized across the department, supervisors as well as line officers should be re-trained and monitored, and department recruitment, training, and structure should be reviewed. In addition, department policy should be examined for their impacts.
- c. Where disparities are concentrated in an individual or a group of officers, with no race-neutral legitimate evidence for this behavior in specific cases, initiate an investigation to determine the cause for the disparity. Evaluate whether there are identifiable causes contributing to racially disparate stop rates and high or low rates of resulting enforcement actions exhibited by outlying officers. Determine and address any trends and patterns among officers with disparate stop rates. In the risk management process, the responsible personnel in the chain of

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command reviews and discusses the available information about the subject officer and the officer's current behavior.

- d. Absent a satisfactory explanation for racially disparate behavior, monitor the officer.. Options for the supervisor in these cases include reviewing additional body-worn camera footage, supervisor ride-alongs, and other forms of monitoring. Further escalation to intervention, if necessary, may include a higher form of supervision, with even closer oversight. If performance fails to improve, command should consider other options including breaking up departmental units, transfer of officers to other responsibilities, etc. The goal of this process is to achieve trust and better community relations between the department as a whole and all the people in Berkeley. Formal discipline is always a last resort unless there are violations of Department General Orders, in which case this becomes an IAB matter.
- e. Identify officers who may have problems affecting their ability to make appropriate judgments, and monitor and reduce time pressures, stress and fatigue on officers.
- f. An outside observer from the PRC shall sit in on the risk management and/or EIS program. Reports from these meetings, or other accurate statistical summary, can be given to the commission without identifying any officers' names.
- g. Report the results of this data analysis quarterly.

6. Immediately release the following data to the Working Group:

- a. All data given to the Center for Policing Equity (CPE) - This data includes:
 - i. Calls for Service (January 1, 2012 - December 2016)
 - ii. Use of Force Data (January 1, 2012 - December 31, 2016)
 - iii. Crime Report Data (January 1, 2012 - December 31, 2016)
- b. STOP DATA - this data shall include information on "call type," similar to the data used by the Center for Policing Equity. The timeframe would be January 1, 2012 to present.
- c. USE OF FORCE DATA - This data was used in the analysis presented in the CPE report. Along with the CPE data, it would be helpful to have more recent Use of Force data. The timeframe would be January 1, 2012 to present.
- d. DEIDENTIFIED STOP & ARREST DATA - To determine if there are any problematic patterns among certain officers, or perhaps pairs of officers, data that we can be attached to anonymized individuals. The timeframe for this data would be January 1, 2012 to present.
- e. ADDITIONAL ARREST DATA - Currently, the Open Data Portal posts arrest data from January 1, 2015. The timeframe for this data would be January 1, 2012 to present day.
- f. ADDITIONAL CALLS FOR SERVICE - Currently, Calls for Service data are posted for the last 180 days. The timeframe for this data would be January 1, 2012 to present.

**ANNOTATED AGENDA
SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL**

Tuesday, February 23, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81676274736>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **816 7627 4736**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call: 4:06 p.m.

Present: Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani

Councilmember Kesarwani present at 4:13 p.m.

Action: M/S/C (Arreguin/Wengraf) to adopt a special rule for this meeting to limit public comment to one minute per speaker, with the option to yield time up to a total of four minutes.

Vote: Ayes – Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent - Kesarwani

Action Calendar – New Business

1. **Report and Recommendations From Mayor’s Fair and Impartial Policing Working Group**
From: Mayor Arreguin (Author), Councilmember Harrison (Author)
Recommendation:
 1. Accept and acknowledge the report from the Fair and Impartial Working Group (Attachment 1).
 2. Direct the City Manager to implement the following recommendations summarized below and detailed in full in Attachment 1, with at minimum, quarterly progress updates to the Police Accountability Board (PAB) and/or the Working Group.
 - Focus traffic stops on safety
 - Use a clear, evidence-based definition for stops of criminal suspects
 - Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
 - Eliminate stops for low-level offenses
 - Implement an Early Intervention System (EIS) and a risk-management structure
 - Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group
 - Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole
 - Require written consent for all consent searches
 - Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)
 - Fire racist police officers identified through social media and other media screens
 - Address Profiling by Proxy (Council develop & pass CAREN policy)
 - Require regular analysis of BPD stop, search, and use of force data
 - Make resources on police-civilian encounters more publicly available such as RAHEEM.org
 - Adopt Compliance and Accountability Mechanisms; -Hire consultant to develop implementation plan
 - For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complaint process with PAB
 3. Refer the following recommendations summarized below and detailed in full in Attachment 1 to be included in the process to reimagine public safety:

Action Calendar – New Business

-Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins

-Conduct a baseline community survey

4. Refer the following recommendations summarized below and detailed in full in Attachment 1 to the Police Review Commission, to be taken up by the Police Accountability Board when it is established

-Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4

-Require enhanced annual implicit bias training for police

-Accelerate Crisis Intervention Team (CIT) activity

5. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway:

-Fund and implement a specialized care unit for mental health crises

-Conduct a Capacity Study of police calls and responses and use of officer time outside of case work

6. Refer \$50,000 to the FY 2022 budget process for a consultant to develop an implementation plan as described in Attachment 1 and other minor costs the Department may confer

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action: 40 speakers. M/S/C (Arreguin/Harrison) to:

1. Accept and acknowledge the report from the Mayor's Fair and Impartial Policing Working Group;
2. Acknowledge and appreciate the work already completed or underway by the City Manager's Office and Police Department to implement policing reforms including:
 - Adoption and implementation of Policy 401, Fair and Impartial Policing
 - Public reporting of stop data on the BPD Open Data Portal
 - Initiation of the Center for Policing Equity study
 - Implementation of the Body Worn Camera Program
 - Early adoption of Racial and Identity Profiling Act (RIPA) data collection and reporting
 - Updates to the Use of Force Policy, Policy 300
 - Development and passage of Measure II to create a new Police Accountability Board
 - Launching of the Public Safety Reimagining process
3. Refer to the City Manager to implement the following recommendations summarized below, with quarterly progress updates to the City Council and Police Review Commission/Police Accountability Board (when established):

Implement a new evidence-based Traffic Enforcement Model

 - Focusing the basis for traffic stops on safety and not low-level offenses;
 - Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects;
 - Reaffirming and clarifying that the Berkeley Police Department will use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
 - Minimize or de-emphasize as a lowest priority stops for low-level offenses.

Action Calendar – New Business

Implement Procedural Justice Reforms

- Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops;
- Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback;
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole;
- Address Profiling by Proxy (PAB Policy Development, Dispatcher Training);
- Fire racist police officers identified through social media and other media screens;
- Require regular analysis of BPD stop, search, and use of force data;
- Make resources on police-civilian encounters publicly available such as through RAHEEM.org;
- For any individual detained, BPD officers shall provide a business card with info on the commendation and complaint process with PAB and Berkeley Police Department.

Request that the City Manager report back at a Council Work Session in three months with budget estimates for implementation (to be considered along with the FY 22 budget process), information on legal and operational considerations, and a short-term action plan of recommendations which can be implemented without the hiring of a consultant, and those that will require the assistance of a consultant and additional resources.

Compliance and Accountability Mechanisms

- The City Manager will create an implementation plan with the assistance of a consultant that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group's policy proposal. Long-term monitoring and assessments will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
 - The implementation plan will be presented to the Berkeley City Council for approval. Once the plan is approved by the City Council, the consultant's work is finished. Long-term monitoring and assessment will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
4. Refer the following recommendations summarized below to the Reimagine Public Safety process:
 - Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins
 - Conduct a baseline community survey.
 5. Refer the following training recommendations summarized below to the Police Review Commission, to be taken up by the Police Accountability Board when it is established, and consider the resources required to implement this expanded training:
 - Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4
 - Require enhanced annual implicit bias training for police
 - Accelerate Crisis Intervention Team (CIT) activity

Action Calendar – New Business

- Refer to the PRC/PAB to consider a departmental policy on requiring written consent for person searches and report back in 6 months.
- 6. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway and have been completed:
 - BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;
 - Fund and implement a specialized care unit for mental health crises;
 - Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.
- 7. Refer \$50,000 to the FY 2022 budget process for a consultant to assist the City Manager/Police Department in the implementation of these recommendations and other minor costs the Department may confer; and also refer to the FY 2022 budget process a line item for police training for the new evidence-based stop program (costs to be determined by BPD).

Vote: All Ayes.

Adjournment

Action: M/S/C (Robinson/Taplin) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 7:07 p.m.

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #1: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group

1. Elizabeth Ferguson

Supplemental Communications and Reports 3

Item #1: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group

2. Material, submitted by Mayor Arreguin
3. Presentation, submitted by the Police Department
4. Janice Schroeder
5. Thomas Luce
6. Ben Gerhardstein, on behalf of Walk Bike Berkeley
7. Diana Bohn
8. Sivan Orr
9. Ali Lafferty

- 10. Allegra Mayer
- 11. Chimey Lee
- 12. Moni Law

Investigation of the Chicago Police Department



United States Department of Justice
Civil Rights Division
and
United States Attorney's Office
Northern District of Illinois

January 13, 2017

face, and threatened to blow up the boy's house. The sergeant refused to report the complaint to IPRA as required. The mothers filed a complaint directly with IPRA, and the officer involved in the misconduct was eventually disciplined; IPRA did not, however, sustain allegations against the sergeant for failing to report the officer's misconduct. In another IPRA investigation, a complainant said that she asked a desk sergeant how she could file a complaint of officer abuse and was told to "get the fuck out of the station." This allegation in her complaint was never investigated by IPRA. In yet another file we reviewed, the complainant stated that CPD officers pulled him over, abused him, and stole his car keys, leaving him stranded. The complainant told IPRA that he went to a district to file his complaint, but the sergeant he spoke with refused to take it down.

This evidence and the statements from officers at all ranks within CPD are consistent with the findings of the 2014 Safer Report, which noted that "discovering and addressing misconduct is too often viewed as the responsibility of IPRA and BIA, and not of the offending officer's immediate supervisor and chain of command . . . this attitude is misguided and must be changed." The Mayor's Police Accountability Task Force (PATF) report two years later found the same, explaining that "CPD has fostered a culture in which supervisors turn a blind eye to misconduct and do not provide sufficient oversight to ensure that officers perform their duties with integrity." The City's recently proposed changes to CPD's accountability system do not adequately address this important facet of CPD's culture and supervision structure. More changes are necessary to ensure that supervisors hold their subordinates accountable for misconduct, and if they fail to do so, that they will be held accountable themselves.

4. CPD's "early intervention system" exists in name only and does not assist supervisors in identifying or correcting problematic behavior

Compounding CPD's supervision problems, the Department does not use long-available supervisory tools, such as a comprehensive early intervention system (EIS), to identify patterns of concerning officer behavior and prevent patterns of misconduct and poor policing from developing or persisting. A well-designed EIS would allow CPD to track officer conduct, proactively assess risk for future problematic behavior, and intervene when necessary to improve behavior through non-disciplinary corrective action, such as additional training, counseling, or other supportive programs. Currently, despite having spent significant time and resources building an EIS, CPD does not have a functioning system. Instead, there are several semi-connected data-collection, intervention, and counseling programs, each of which suffers from inefficiencies that render them essentially useless. In a positive development, the City recently began an initiative to revamp and revise its EIS once again. However, for this initiative to have the best chance of success, the City and police unions must negotiate collective bargaining agreements that enable an EIS that is accurate, complete, and that allows for meaningful support of officers by redirecting problematic behavior.

a. *Performance Recognition System*

One CPD system, an electronic "dashboard" referred to as the Performance Recognition System (PRS), is a computer data-tracking program designed to "assist[] Department Supervisors in recognizing exceptional or adverse behavior related to job performance of members under their command." Data is entered into the system by Human Resources, and supervisors are

obligated by policy to “monitor and track, on a continual basis,” the information contained in the PRS dashboard.

During conversations with district command staff, we learned that CPD supervisors do not understand how the PRS works or how to use the information it presents. In particular, supervisors do not understand what they are supposed to do when the dashboard shows that “early performance indicators” are present for an officer assigned to their district. For each officer, the various indicators are marked in the dashboard as green, yellow, or red. These indicators include data points such as the number of Summary Punishment Action Reports (SPARs) and complaints filed against the officer; the officer’s arrest and TRR numbers; the officer’s use of medical leave; and more. The dashboard also provides two ratios: the ratio of complaints to arrests, and the ratio of TRRs to arrests. The thresholds used to determine if an indicator is green versus yellow or red is apparently set by CPD’s Human Resources Office. For the TRR ratio, for example, officers with more than a certain percentage of arrests involving force are marked in red. However, at least one commander responsible for using the dashboard did not know the threshold that would turn a TRR ratio from green to yellow or red, including whether the threshold is static or relational (i.e., whether it varies, depending upon, for example, officer assignment). He opined that a straight comparison of number of arrests to number of arrests involving force would be problematic, in that it would mark in red an officer who was involved in only one arrest, but that arrest happened to involve force. Indeed, the commander showed us one officer’s record in the PRS dashboard that marked the officer in red; the officer had been involved in two arrests, one of which involved force, meaning that the officer had used force in 50% of his arrests. The commander agreed that the ratio was artificially high because the officer had been involved in so few arrests, and intervention in that case was probably inappropriate. Yet, he noted that there is no meaningful guidance given to supervisors about when “red” indicators should trigger a response. Nor does policy dictate what that response should be. Instead, the PRS policy gives examples of potential supervisory responses to “early performance indicators” in vague terms, such as “coaching,” “counseling,” “reviewing Department training tools,” and “field monitoring,” and provides little to no guidance regarding the circumstances in which each different form of response should be adopted.

The dashboard is also underused. The command staff we spoke with reported that they rarely use the PRS. Supervisors also question whether data that they enter into the PRS is actually saved. Although supervisors are supposed to review the system regularly, most do not, and CPD does not audit supervisor adherence to this or any other aspect of the PRS policy. The problems with the PRS become cyclical: supervisors do not use it because it is inaccurate, and it is inaccurate because CPD does not use it properly or consistently. As we were told by one supervisor, “the info in the PRS is not accurate[;] . . . you got garbage going in so you got garbage going out.”

b. Non-disciplinary intervention, Behavioral Intervention System, and Personnel Concerns Program

CPD also offers three separate intervention programs to which officers can be referred on the basis of certain behavioral criteria, but each of these programs suffers from shortcomings that prevent appropriate enrollment and undermine effectiveness.

First, officers may be subject to “non-disciplinary interventions” when they engage in less-serious transgressions, such as using foul language or being disrespectful. This program triggers intervention by a supervisor after multiple incidents, and the interventions available are limited. They include, among other things, speaking with the officer, reminding the officer of available counseling programs, and instructing the officer to review training videos on courtesy and demeanor. Subsequent incidents trigger increasing interventions, including additional conversations and involvement of rank further up the chain of command.

If there are four or more incidents that would otherwise qualify for non-disciplinary intervention, or if the officer is involved in more serious allegations of misconduct, CPD can refer the officer to the Behavioral Intervention System (BIS) or Personnel Concerns Program (PCP). By policy, Human Resources recommends enrollment in BIS based on the existence of several “performance data,” including sustained misconduct charges, low performance grade, or a pre-set number of instances of other misbehaviors such as tardiness, being absent without permission, or medical roll misuse. The ultimate decision of whether to enroll a member in BIS generally rests with the member’s commander, although Human Resources may override a commander’s decision not to enroll his or her subordinate. Employees enrolled in BIS undergo a physical examination, including drug testing, but are not required to undergo a psychological evaluation. Once placed in BIS, CPD may give employees counseling services or an individual performance plan.

The final option available is the PCP. CPD places Department members into PCP when they are involved in more serious transgressions, such as sustained excessive force charges, domestic violence, or five or more sustained misconduct investigations in the last five years. CPD members who fail to comply with an individualized performance plan under BIS can also be placed in PCP. PCP is essentially the “last stop” for officers exhibiting problematic behavior to correct that behavior and remain on the force.

The BIS and PCP programs are ineffective methods for identifying and remedying patterns of negative behavior. First, policy and officers’ collective bargaining agreements prevent these systems from considering the full range of behaviors that could be indicative of a problem. Policy prohibits maintaining misconduct allegations older than five years in PRS, or in some circumstances, considering them at all. With one exception, investigations of misconduct complaints that result in a “not sustained” finding are not considered, no matter how recent, even though a finding of “not sustained” indicates that the incident could neither be proven *nor* disproven.⁴³ Given the historical failures of CPD and IPRA to properly investigate and sustain allegations of misconduct, the universe of complaint and disciplinary data entered into PRS is egregiously incomplete.

In addition to the fact that policy restrictively limits eligibility for intervention, CPD also does not consistently refer for intervention the individuals who *are* identified as eligible. Pursuant to CPD policy, an officer’s chain of command, BIA, or IPRA may refer the officer for BIS. However, there are no quality checks to ensure that the appropriate officers are actually

⁴³ The one exception is that officers with three “not sustained” excessive force complaints in one 12-month period may be referred to BIS.

being referred. A high-level official in Human Resources told us that, “if a recommendation [for intervention] is not made up the chain to HR, it falls through the cracks” and an otherwise eligible officer will never be enrolled. Another official told us that the BIS program is not getting the appropriate amount of referrals. Leadership at CPD does not enforce the BIS and PCP policies; consequently, BIA, IPRA, and the chain of command do not take seriously their obligation to identify and refer problematic officers.

Our review of CPD’s data confirms that the Department enrolls very few officers in its interventional programs, especially for a department of its size. Between January 2010 and July 2016, CPD enrolled only 38 officers in BIS. An additional 60 members were referred for enrollment, but never enrolled. Notably, 56 of those members were referred to BIS because of their alleged involvement in a domestic incident. An additional nine officers were flagged as eligible for BIS, but their command staff declined to recommend them. 28 officers were referred for enrollment, but removed from the program; the data that CPD provided us did not explain why. Finally, between March and June 2016, after the start of our investigation, CPD identified an additional 50 officers as eligible for the program, but as of mid-July, their status in the program was still listed as “pending.” In 2015, only seven officers were enrolled in BIS all year, most for having too many SPARs in a single year.

Review of CPD’s complaint data compared to the BIS enrollment program also confirms that there are a significant number of Department members with lengthy complaint histories who were never referred to or enrolled in BIS. Between January 1, 2010 and March 2016, 1,627 CPD members were the subject of five or more misconduct complaints; 350 of those had 10 or more complaints. While there may be innocuous explanations for such complaint numbers for some of these officers, these numbers are high enough to indicate that substantially more than 38 officers should have been enrolled in BIS during this time period.

CPD leadership is aware that these programs are grossly underused. As noted recently by the PATF, CPD “does not use any metrics to measure or assess the effectiveness of the programs.” CPD must commit to fixing this broken system with a solution that is well thought out, capable of easy and robust implementation, and supported by all stakeholders.

- c. The lack of a functioning early intervention system, coupled with inadequate supervision, has placed officers and members of the public at risk*

These longstanding, systemic deficiencies in CPD’s early intervention systems have prevented CPD from taking two steps that are crucial to ensuring officer safety and wellness, as well as ensuring policing that is effective and lawful. First, CPD does not adequately and accurately identify officers who are in need of corrective action; and second, CPD does not consistently or sufficiently address officer behavior even where CPD identifies negative patterns. Because of these failures, CPD officers are able to engage in problematic behaviors with impunity, which can—and do—escalate into serious misconduct. This has dramatic consequences for the public. It also impacts the health and safety of officers, who either do not get the support and services they need, or are forced to work alongside individuals who are not receiving such support.

In particular, we found that the current EIS does not adequately identify patterns or trends of misconduct related to force and domestic violence. One officer, for example, was the subject of several complaints of domestic violence over the course of just a few years that CPD did not detect or act upon for a significant period of time. After the officer's ex-wife brought four separate allegations of domestic violence and harassment between 2007 and 2008, many of which were closed for no affidavit or deemed not sustained, IPRA finally disciplined the officer for domestic violence, and gave the officer a 15-day suspension. The officer then went on to engage in domestic violence on two more occasions, which resulted in serious injuries to the officer's victims.⁴⁴ Likewise, Officer Giraldo Sierra, who killed Flint Farmer in June of 2011, was involved in *three* shootings *within one year*, and three domestic violence allegations in the years prior—yet he was not listed by CPD as an individual who was even considered for enrollment in BIS at any point in 2010-2011. Our review of use-of-force files also found two egregious examples of excessive force where, in each incident, the officers involved had extensive histories of complaints of excessive force but were not on the BIS roster. *See* Report, Section **II.B.2.** (discussing incident involving officers who used a baton and Taser on a girl at school, and incident involving the forcible removal of 12-year-old boy from his bike). One of the officers involved in the first incident had five separate complaints involving excessive force in the year prior to the incident described; the officer involved in the second incident had ten.

We also reviewed media reports describing a sergeant who was recently involved in his second fatal shooting in three years. This sergeant allegedly was the subject of a BIA investigation in 2004, prior to his promotion, for violating a rule prohibiting CPD employees from owning businesses that sell alcohol. Per CPD policy, this is a rule infraction that could potentially result in termination. *See* Employee Resource E01-11, Secondary Employment, at IV.G (noting that Department members are prohibited from engaging “directly or indirectly in the ownership . . . or operation of a tavern or retail liquor establishment,” and that “violation of this policy will result in discipline, up to and including separation.”). According to media reports, the individual went on disability leave shortly after that investigation was initiated, and the investigation went dormant as a result. The officer came off disability seven years later in 2011, but the investigation remained stagnant. CPD officials learned of the open investigation after the officer was involved in a fatal shooting of an unarmed man in 2013, but still, the original complaint remained open.⁴⁵ The officer was then promoted to sergeant through the

⁴⁴ Following the fifth and sixth separate incidents of this nature, which involved physical abuse of the officer's wife and children, CPD and IPRA sustained the complainant's allegations of domestic violence. To CPD's credit, given the severity of the misconduct, the Superintendent recommended termination from the Department. However, the Police Board reversed this recommendation and instead suspended the officer for a period of days, during which the officer was required to attend counseling and evaluation through the Employee Assistance Program. *See In re Edward Feliciano*, No. 12 PB 2824, available at https://policeboard-production.s3.amazonaws.com/uploads/case/files/12PB2824_Decision.pdf. As noted elsewhere in this Report, the counselors who work in that program have no specialized training in domestic violence, and are ill-equipped to address these issues. *See* Report, **Section IV.C.** The Police Board's ability to overturn the recommendation of the Superintendent in this case is also illustrative of how Chicago's Police Board can undermine accountability more generally. *See* Report, **Section III.H.**

⁴⁵ According to CPD's chief spokesman, in response to this revelation the Superintendent ordered an audit of why the 2004 complaint was never investigated to completion. However, the spokesman noted that the audit would be conducted by Internal Affairs—the same agency that lost track of the complaint. *See* Jeremy Gorner, *Discipline of cop involved in 2 fatal shootings fell through the cracks*, CHI. TRIB., Dec. 12, 2016, available at

merit promotion process, despite the open investigation, and later was involved in his second fatal shooting of an unarmed man. Had there been a functioning, effective EIS system in place, the open investigation could have been caught much earlier—before the officer received a merit promotion, and perhaps before he was involved in his second lethal shooting of an unarmed man.

Finally, we reviewed one investigative file that is emblematic of both supervisors' unwillingness to directly supervise their officers *and* CPD's failure to have a comprehensive EIS. In this incident, a young man was stopped by a CPD officer when he was walking through an alley. After questioning the individual, the CPD officer handcuffed the individual and placed him against the officer's vehicle. In cell-phone video capturing the incident, the officer is seen pushing the individual against the vehicle, as the individual complains repeatedly, in a calm voice, that the handcuffs are too tight and causing pain. The officer repeatedly calls the individual "motherfucker," curses at him, and threatens him, saying "make a move like that at me again, I will fucking show you exactly what I can do." The officer appears to be deliberately provoking the man to "make a move" to give the officer an excuse to use more force. When the individual says that he was not moving, that he had been previously injured in the arm, and the handcuffs were digging into his bones, the officer appears to deliberately push down on the handcuffs, causing additional pain, and continues to repeatedly use profanity while speaking to the man. The individual sought medical attention for injuries he sustained as a result of the incident. An unknown individual eventually filed a complaint with IPRA, and the cell-phone footage of this interaction was posted on Facebook. When the officer involved in the incident saw the Facebook footage, he alerted his lieutenant of the incident and the existence of the video. The lieutenant reviewed the video and, despite the aggressive nature of the interaction and overtly hostile attitude of the officer, sent a letter to his commander saying that he thought the appropriate response would be non-disciplinary intervention. The lieutenant justified this recommendation by saying that the incident did not involve "racially offensive or otherwise inflammatory language" and that the "subject makes no known complaints which are visible in the video"—two statements that are patently false.

This is a clear example of a CPD supervisor neglecting to hold an officer accountable for obvious misconduct. Moreover, if CPD had a functioning EIS at the time of this incident, the supervisor would have seen that the officer had three prior excessive force complaints, some involving similar allegations of the use of profanity and threats, in the prior year-and-a-half. The officer was a clear candidate for BIS, yet no referral was ever made. The IPRA investigation remains ongoing.

- d. The City's past reform efforts have been unsuccessful and more is needed to ensure the success of present efforts*

The City needs to take a new approach to reforming its EIS system. The City is currently making another attempt to establish a functional EIS system; this effort is described below. But without a focused, determined plan that builds on lessons learned from past unsuccessful reform attempts, it will be difficult for this new effort to succeed.

<http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-shootings-john-poulos-met-20161212-story.html>.

Previous efforts to create a data-informed, well-structured EIS within CPD have been unsuccessful. For example, in 1994, the City purchased a promising EIS software program called BrainMaker, designed to analyze data points and pick out patterns indicative of problematic behavior and identify officers at risk of being fired from the Department. Use of this program would have put CPD on the cutting edge of EIS technology nationwide. Union leadership felt this system unfairly targeted officers and subjected them to unfair, adversarial questioning from Internal Affairs. The City stopped using BrainMaker after only two years and all the data and reports it produced “went missing.”

The City chose instead to rely on the system that CPD still uses today, despite repeated warnings of its shortcomings. The current system came about following the 1997 Report of the Mayor’s Commission on Police Integrity. In that report, the Commission urged CPD to implement a meaningful EIS, noting that “small problems become big ones if left unattended.” The Commission also recommended that CPD look at unit-wide trends, rather than analyzing only individual officers, and analyzing civil liability judgments in addition to misconduct complaints. At the time, the Commission was hopeful that expanding the behavioral intervention programs would result in more officers being involved in the programs and improved outcomes. According to the PATF’s final report, following a grievance filed by the Fraternal Order of Police challenging the inclusion of certain officers in the BIS program, the City agreed to remove them from BIS, and the program was never expanded as suggested.

More recent studies of CPD’s systems reaffirmed the need for reform. A 2007 study noted that nearly 90% of individuals with multiple complaints were never flagged by the EIS, including officers who amassed more than 50 abuse complaints within five years. This study also discussed how, of the 33 officers with 30 or more complaints between 2001-2006, fewer than half had been flagged for intervention. Seven years later, the City was again informed, via the Safer Report, that CPD needed to revise its BIS and PCP programs, including updating the data collection systems to make them more user friendly. In particular, the Safer Report recommended integrating the command staff PRS with systems used by investigative agencies into a single, streamlined case management system. Doing so, according to the study’s authors, would eliminate a significant shortcoming of the current system: “the inability to track an officer’s conduct throughout her career.” Despite these repeated criticisms, the City has not successfully made the changes necessary to improve supervision and accountability in the Department. The PATF Report also highlighted these deficiencies, recommending that CPD develop a structured, tiered EIS system that utilizes appropriate data, supports supervisor training on its use, and provides for evaluation of the program’s efficacy.

The City is currently engaging in a promising effort to study and reform the system, but, despite the best intentions of all involved, there are indications that this attempt may not be any more fruitful than past attempts, unless the City lays the necessary groundwork and stays focused until the EIS is fully integrated into CPD culture. The new project is managed by researchers from the University of Chicago, who successfully developed a new EIS system for the Charlotte-Mecklenburg Police Department in North Carolina,⁴⁶ and the University of Chicago Crime Lab.

⁴⁶ University of Chicago, Center for Data Science and Public Policy, *Building Data-Driven Early Intervention Systems for Police Officers*, available at <http://dsapp.uchicago.edu/public-safety/police-eis>.

The City launched this partnership in the spring of 2016 to study CPD’s data systems and develop a comprehensive EIS tool based on predictive data unique to Chicago. The effort represents an ambitious and potentially transformative approach for the Department. However, CPD has not fully addressed concerns that prevented the success of prior reform efforts. For example, there are plans to involve union representation in the development of the system, but the project managers are taking guidance from the City on how and when to do so—and union involvement has not yet occurred. There is no evidence that the City or CPD engaged with the unions early on, before beginning this new effort, to determine whether CPD’s unions will support the new effort.

The City should commit itself to improving its supervision efforts on all fronts: in the systems and management that supports direct, front-line supervisors, and in the data collection and intervention programs that give CPD a high-level view of potential negative behavior patterns. Until both of these areas are meaningfully and permanently addressed, officer morale and efficacy will continue to suffer, and a culture of constitutional policing will never take root.

C. Officer Wellness and Safety

Policing is a high-stress profession. Law enforcement officers often are called upon to deal with violence or crises as problem solvers, and they often are witnesses to human tragedy. In Chicago, this stress is particularly acute for several reasons. CPD officers are confronted with increasing levels of gun violence in some of the neighborhoods they police. Gun violence and neighborhood conditions take their toll on both residents and officers alike. At the same time, the relationship between CPD officers and the communities they serve is strained; officers on the street are expected to prevent crime, yet they must also be the face of the Department in communities that have lost trust in the police. This makes it particularly difficult to police effectively. These stresses animate the interactions officers have with the communities that they serve—both positively and negatively. As one CPD counselor explained, it is the “stress of the job that’s the precursor to the crisis.” The President’s Task Force on 21st Century Policing put it well, noting that “the ‘bulletproof cop’ does not exist. The officers who protect us must also be protected—against incapacitating physical, mental, and emotional health problems as well as against the hazards of their job. Their wellness and safety are crucial for them, their colleagues, and their agencies, as well as the well-being of the communities they serve.”⁴⁷

All of these stressors can, and do, play out in harmful ways for CPD officers. CPD officers grapple with alcoholism and suicide, and some engage in domestic violence. And as explained elsewhere in this Report, CPD officers are part of a Department that engages in a pattern or practice of using force that is unjustified, disproportionate, and otherwise excessive. Although the pressure CPD officers are under is not an excuse for violating the constitutional rights of the citizens they serve, high levels of unaddressed stress can compromise officer well-being and impact an officer’s demeanor and judgment, which in turn impacts how that officer interacts with the public. Some officers are able to manage the stress by shifting their focus to working even harder to do their jobs well. For others, it is more difficult. As these officers

⁴⁷ FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 62 (Office of Community Oriented Policing Services, May 2015).



EARLY INTERVENTION SYSTEM

1st Quarter 2023

San Francisco Police Department

1245 3rd Street

San Francisco, Ca 94158

www.sanfranciscopolice.org





Preface

The San Francisco Police Department's Early Intervention System (EIS) is a structured system that identifies patterns of potential at-risk behaviors of individual SFPD members. An EIS alert is generated when a member reaches a specific number of Performance Indicator Points in a predefined time period. The alert generated by the EIS Unit should not be misconstrued as misconduct, but rather an indication of a potential pattern of behavior. The intent of the system is to provide **non-disciplinary intervention** to assist our members in their professional development in order to provide the highest level of service and satisfaction to the public. (Outlined in DGO 3.19.)

It is the policy of the Department to provide for the protection and confidentiality of the EIS records maintained by the Department that are peace officer personnel records under 832.7 PC.

This report is produced on a quarterly basis by the EIS Unit and presented to the Police Commission by the Assistant to the Chief of Staff. The report contains data regarding current EIS alerts and historical data for comparison.

While an officer's Use of Force (UOF) is one of several performance Indicator Points utilized by EIS, the EIS Quarterly Report is not a review of UOF, nor does it purport to be. UOF is reviewed in the 96A report, which is reported separately to the Police Commission. The data contained in the report has not undergone statistical analysis and is presented prima facie, without conclusions. However, any follow up made by supervisors or through intervention is meant to ensure members comply with department policy and is intended to break a pattern of behavior. Additional data (e.g., number of calls for service, district demographics, etc.) is presented to provide context for the report, and no correlations between the data and the EIS alert are explicitly made or should be inferred.



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EIS Alert

An **EIS Alert** is generated when a member reaches a specific number of Performance Indicator Points in a predefined time period. The Administrative Investigations Management (AIM) application generates alerts each month. After the alerts are reviewed by analysts for errors and duplicate incidents, the validated alerts are then forwarded to the EIS Sergeant every other month for review.

Within a 3-Month Period	<ul style="list-style-type: none"> • 3 or more documented Use of Force incidents
Within a 6-Month Period	<ul style="list-style-type: none"> • 5 or more Indicator Points • 3 or more Department of Police Accountability (DPA) complaints
Within a 1-Year Period	<ul style="list-style-type: none"> • 6 or more Indicator Points • 4 or more Department of Police Accountability (DPA) complaints
Automatic Alert	<ul style="list-style-type: none"> • A principal in an Officer-Involved Shooting (OIS) or Officer-Involved Discharge (OID)

Review Process by EIS Unit

Step	Process
Step 1	Alerts are generated every month and then sent out to stations and units every two months. At the end of each two-month period, alerts are verified by analysts and then forwarded to the EIS Sergeant for review. If an officer has alerts for both months in this period, the most recent alert is forwarded to the EIS Sergeant.
Step 2	The EIS Sergeant reviews each alert to determine if it should be closed administratively. The EIS Sergeant will review incident reports, Use of Force evaluations and Body-Worn Camera (BWC) footage for Use of Force Indicator Points. The EIS Sergeant also reviews documentation related to other indicator points (e.g. DPA complaints, Tort Claims). The EIS Sergeant examines the alert for patterns of at-risk behavior. (Examples of at-risk behavior include, but are not limited to: excessive force without attempts of de-escalation; unprofessional language; racial profiling, etc.) The EIS Sergeant may move to close the alert administratively if the following criteria exists: a recent EIS Alert evaluation has been already completed, there was no pattern of at-risk behavior observed, and there were minimal Indicator Points since the last EIS Alert evaluation.
Step 3	If the EIS Sergeant supports closing an alert administratively, it will be forwarded to the Officer-in-Charge (OIC) of the Legal Division. The OIC of the Legal Division will make the final determination for administratively closing an alert.
Step 4	If there is no cause to administratively close an alert, the alert, along with documentation related to the indicator points (e.g. DPA complaints, tort claims, civil suits, etc.) will be sent to the officer's supervisor for review. The officer's supervisor will conduct a Performance Review to determine if the alert indicates at-risk behavior.
Step 5	The completed Performance Review is forwarded to the EIS Unit for review. If the Performance Review determined that the alert did not show a pattern of at-risk behavior, and the EIS Sergeant concurs, the alert is forwarded to the OIC of the Legal Division for final determination to close the alert. If the Performance Review determined a pattern of at-risk behavior <i>did</i> exist, the EIS Sergeant would assist the supervisor in determining the next course of action. In the event the EIS Sergeant does not agree with the supervisor's conclusion, the EIS Sergeant would confer with the OIC of the Legal Division for additional review and action.
Step 6	If an intervention is deemed necessary, the EIS Sergeant will assist the officer's supervisor with creating an intervention plan for the officer. After the intervention is initiated, the EIS Sergeant will follow up with the supervisor at 90 days, 180 days and the 1-year mark.
Step 7	At the 1-year mark, the officer's supervisor will conduct a final Performance Review and decide if the officer completed the intervention satisfactorily. If so, the alert will be sent to the OIC of the Legal Division to determine if the alert will be closed. If the officer's supervisor determines the officer's performance was less than satisfactory in their intervention, the EIS Unit would confer with the supervisor to develop another intervention plan until the officer completes the intervention satisfactorily.



Indicator Points

Indicator Points¹ are factors tracked in EIS that are given a numerical value to allow for scoring. Each Indicator Point is one point.

Abbrev	Indicator	Description
UOF	Use of Force	Any application of a reportable Use of Force is counted as one Indicator Point. Applications of different types of force by the same officer during the same incident will only have a single Indicator Point assigned.
DPA	Department of Police Accountability	The mission of the Department of Police Accountability is to investigate complaints promptly, fairly and impartially against San Francisco police officers. An individual complaint received by DPA is assigned as one Indicator Point.
CS	Civil Lawsuit	If a member is named in a civil lawsuit filed against the City & County of San Francisco, one Indicator Point is assigned.
OIS	Officer-Involved Shooting	An officer's intentional discharge of a firearm to stop a threat — whether or not physical injury or death results — shall be investigated as an Officer-involved Shooting. A negligent discharge that results in the injury or the death of a person shall also be investigated as an officer-involved Shooting. Members involved in an OIS are automatically placed on an EIS Alert.
OID	Officer-Involved Discharge	The discharge of a firearm intended to kill an animal posing an imminent threat or an officer's unintended discharge of a firearm that does not cause injury or death to a person also falls into the classification of officer-involved discharge. Members involved in an OID are automatically placed on an EIS Alert.
ODC	On Duty Collision	If a member is involved in a vehicle collision on duty while operating a department vehicle or operating a privately owned vehicle that has been authorized for official use, the incident will be assigned one Indicator Point.
EEO	Equal Employment Opportunity	Any complaints or violations of department policy under General Order 11.07 (Discrimination and Harassment) are investigated by the EEO Unit. Each complaint received is assigned one Indicator Point.
IAD	Internal Affairs Division	If an officer is a named member in an IAD investigation, the event is assigned one Indicator Point.
TC	Tort Claim	A tort claim is a case filed with the City & County of San Francisco claiming a wrongful act by a city employee which resulted in an injury to another person or person's property. If a member is named in a tort claim, the incident is assigned one Indicator Point.
VP	Vehicle Pursuit	If an officer is the operator of a vehicle involved in a vehicle pursuit, one Indicator Point is assigned.

¹ If a member is involved in an incident where multiple points could be accrued, only one-point value will be counted. Numerical points begin from the date of the most recent indicator entry; time is calculated on a rolling basis.



Executive Summary

1. EIS Indicator Points

- a. 1st Quarter 2022: 447
- b. 1st Quarter 2023: 544

An increase of 21.7%.

2. EIS Alerts

- a. 1st Quarter 2022: 89
- b. 1st Quarter 2023: 301

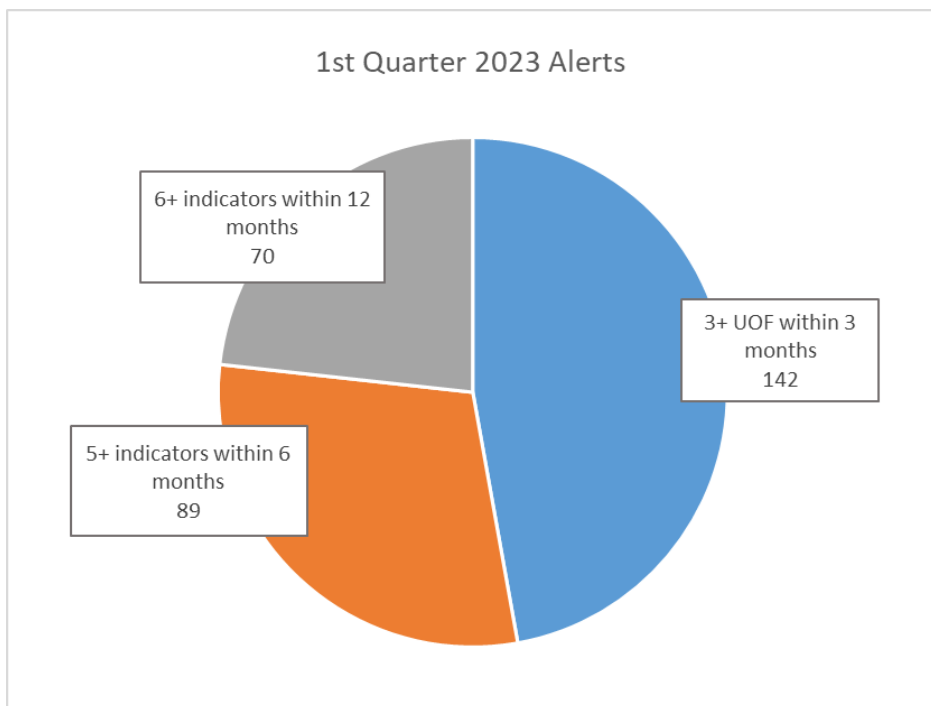
An increase of 238.2%.

- 3. In the 1st Quarter of 2023, 227 officers generated 301 alerts.
- 4. There were 1909 active sworn officers in the 1st Quarter of 2023; therefore, 12% of active sworn officers generated alerts.
- 5. This is an overall reduction of the number of members generating alerts from the 4th Quarter of 2022.
- 6. Data from the previous quarter has been updated and may not be the same as listed in the previous quarter's report.



1st Quarter 2023 Alerts

1 st Quarter 2023 Alerts	
OIS	0
OID	0
3+ UOF within 3 months	142
3+ DPA within 6 months	0
5+ indicators within 6 months	89
4+ DPA within 12 months	0
6+ indicators within 12 months	70
Total	301



227 members (11.8% of active sworn officers) generated at least one alert in Q1 2023.

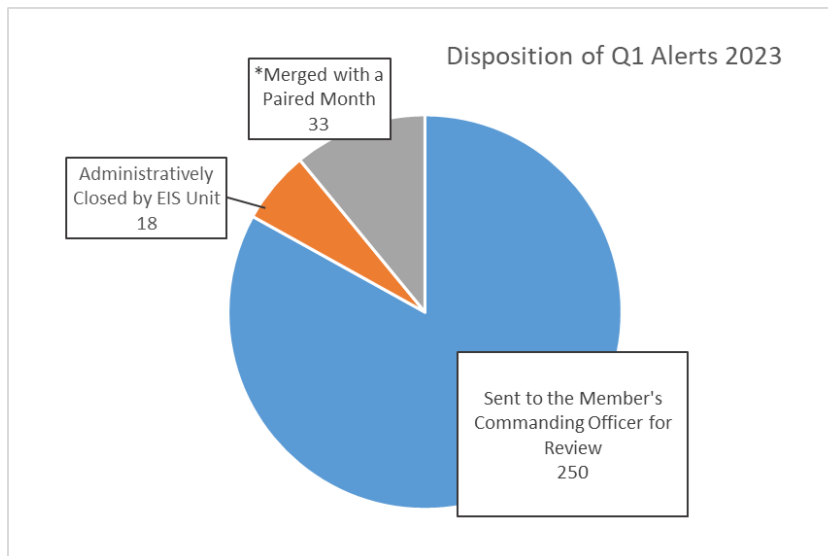
Members Receiving Alerts		
164 Members	1 Alert	164 x 1 = 164 Alerts
52 Members	2 Alerts	52 x 2 = 104 Alerts
11 Members	3 Alerts	11 x 3 = 33 Alerts
227 Members	At Least 1 Alert	301 Alerts



1st Quarter 2023 Alerts

Disposition of 1 st Quarter Alerts:	
250	Sent to the member's Commanding Officer for review
18	Administratively closed by EIS
33	*Merged with a paired month

*Alerts are generated every month and sent out to stations during the following months: February, April, June, August, October, December. Only the most recent alert is sent to the officer's unit. Please note that the EIS Unit records all generated alerts for data-tracking purposes. (e.g. Officer Smith generated an alert in January and February. February's alert would be sent to the officer's Captain or Sergeant, but February's alert would still include all the Indicator Points that triggered January's alert.)



Criteria of Administrative Closures:

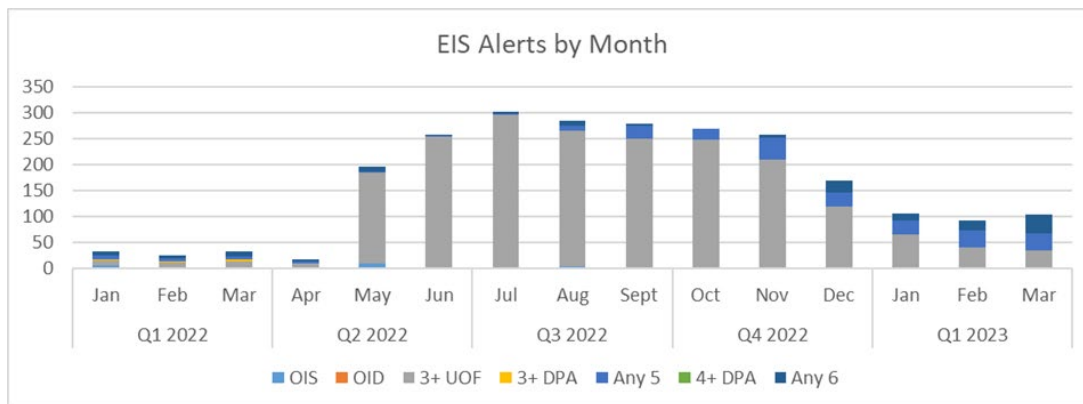
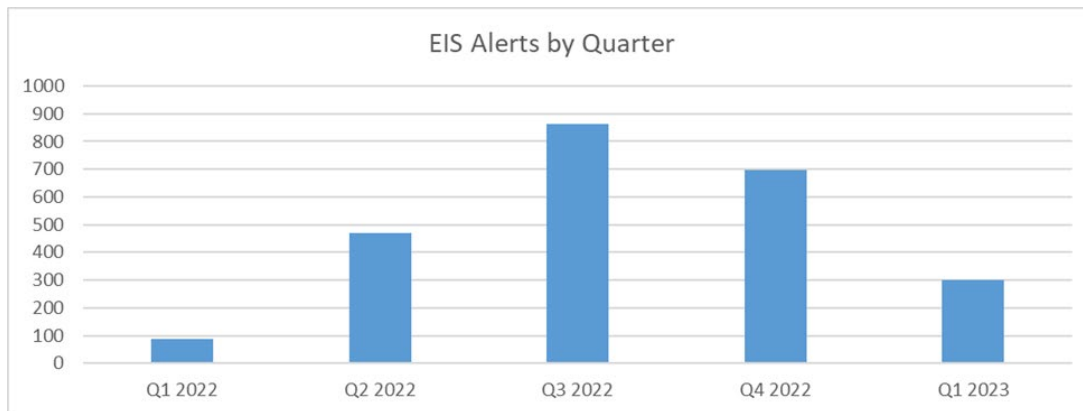
Administrative Closures are recommended by the EIS Sergeant and approved by the OIC of the Legal Division.

- 1. A member received a recent EIS Alert Evaluation**
(e.g. Nearly all the indicator points that triggered a member's alert have been evaluated by a supervisor in a recent alert.)
- 2. No pattern observed.**
(e.g. A review of the indicator points of a member's alert shows no pattern of at-risk behavior.)
- 3. Minimal Indicator Points since last evaluation**
(e.g. A member generated one Use of Force indicator point of "Pointing of a Firearm" or one Tort Claim since their last EIS alert, and the new indicator points do not show a pattern of at-risk behavior.)



EIS Alerts by Quarter										
		OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	Monthly Total	Quarterly Total
Q1 2022	Jan	6	0	10	1	8	0	8	33	89
	Feb	0	0	12	1	7	0	4	24	
	Mar	0	1	13	4	5	0	9	32	
Q2 2022	Apr	1	0	9	0	3	0	5	18	471
	May	9	0	175	0	3	0	9	196	
	Jun	0	0	254	0	1	0	2	257	
Q3 2022	Jul	0	0	295	0	2	0	4	301	864
	Aug	4	0	260	0	10	0	10	284	
	Sept	0	0	249	0	25	0	5	279	
Q4 2022	Oct	0	0	247	0	21	0	0	268	695
	Nov	0	0	210	0	41	0	7	258	
	Dec	0	0	118	0	28	0	23	169	
Q1 2023	Jan	0	0	66	0	26	0	14	106	301
	Feb	0	0	41	0	31	0	20	92	
	Mar	0	0	35	0	32	0	36	103	

There was a 56.7% decrease in number of alerts generated from Q4 2022 to Q1 2023.





Interventions

Interventions are initiated after a member's supervisor and the EIS Unit agree that action needs to be taken with a member to prevent further at-risk behavior that may lead to negative outcomes.

Active Interventions	Closed Interventions
1	0
Types of Interventions	
Counseling by an Immediate Supervisor	<ul style="list-style-type: none"> • Creating a physical and/or electronic calendar to improve time management • Scheduling in-service training offered by the Academy or outside agency • Reviewing DGOs and Department Bulletins with member
Training	<ul style="list-style-type: none"> • POST Learning Portal Class on Tactical Communication • Supervisor responds and monitors member on calls for service • One-on-one session with Defense Tactics Instructors at the Academy • One-on-one session with Academy instructors regarding de-escalation techniques
Peer Officer Support Program	<ul style="list-style-type: none"> • Supervisory or self-initiated referrals to Employee Assistance Program (EAP) or Behavioral Science Unit (BSU)
Reassignment	<ul style="list-style-type: none"> • Reassignment to another station or unit will be used only when absolutely necessary for the welfare of the member and the Department

Engagements Outside EIS

1 st Quarter 2023	
	Total
Informal Counseling	125
Formal Counseling	1
Performance Improvement Plans	0

Supervisors routinely provide officers with counseling to educate and foster open lines of communication. Informal counseling can consist of constructive critiques provided to officers by their supervisors in an informal setting that may occur throughout an officer's tour of duty. Formal counseling is a process in which a supervisor meets with a member in a non-punitive setting to discuss the member's performance and the supervisor documents the counseling session in some form (e.g. memo). A Performance Improvement Plan (PIP) is a formal, written plan handled at the station-level, specifically tailored for a member that clearly defines the supervisor's expectations and strategies to assist the member.

Formal tracking of **Engagements Outside EIS** was not uniformly reported or documented until the beginning of 2019. Commanding Officers are required to submit a monthly report to the EIS Unit documenting the number of officers formally and informally counseled, as well as how many were placed on a Performance Improvement Plan during the month. Department General Order 1.04 states *"Sergeants shall train and lead subordinates in the performance of their duties and set an example of efficiency and deportment."* The increased number of formal and informal counseling is an indication of sergeants being proactive in their duties as a supervisor.



Central Station

Part 1 Violent Crimes & Part 1 Property Crimes Trailing 12 Mo (Apr 2022 – Mar 2023)

Part 1 Violent Crimes	578
Part 1 Property Crimes	9,803
TOTAL	10,381

Citywide Calls for Service (Apr 2022 – Mar 2023)

Calls for Service	14.4%
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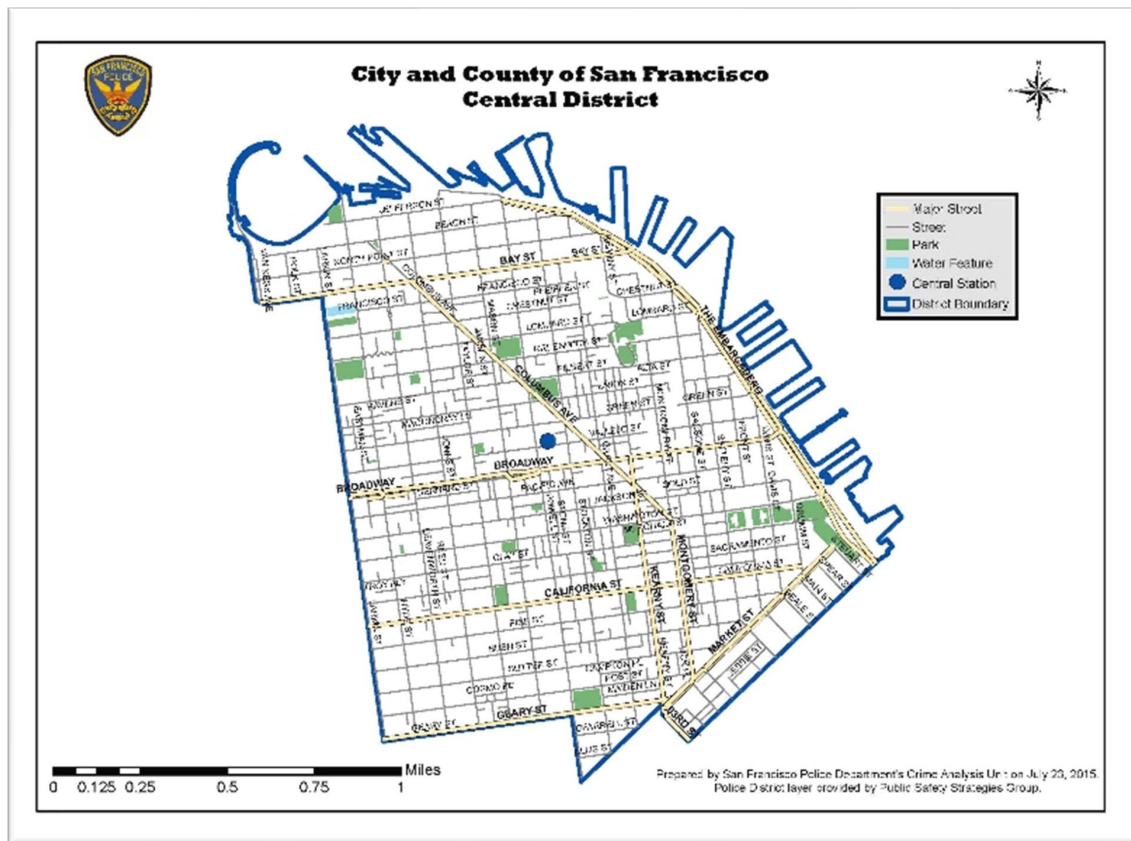
Acting Captain Doug Farmer

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	86.5	0	13.5	0	1	101
Q1 2023	0	0	10	0	11.5	0	5.5	27

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On Duty Collision	TOTAL
Q4 2022	0	0	165	0	1	0	2	3	0	0	171
Q1 2023	0	0	33	0	2	0	0	0	0	0	35





Southern Station

Part 1 Violent Crimes & Part 1 Property Crimes Trailing 12 Mo (Apr 2022 – Mar 2023)

Part 1 Violent Crimes	672
Part 1 Property Crimes	4,525
TOTAL	5,197

Citywide Calls for Service (Apr 2022 – Mar 2023)

Calls for Service	10.3%
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EIS Alerts

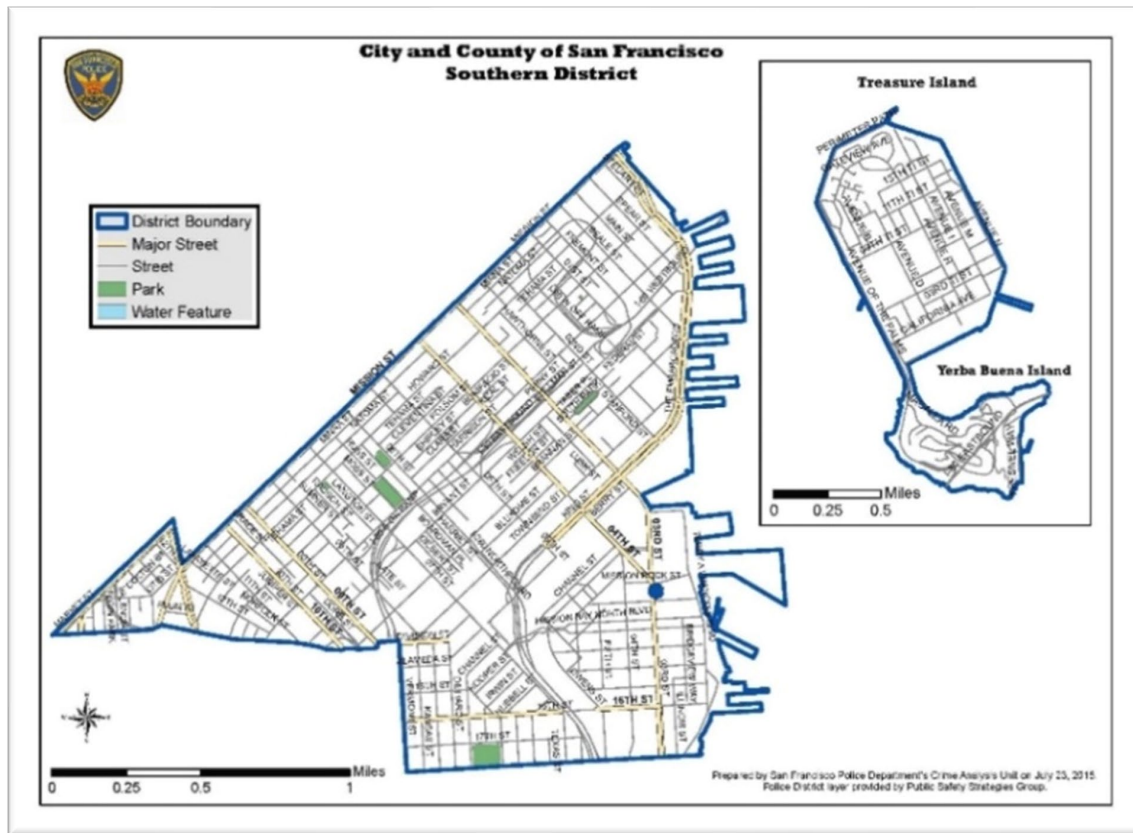
	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	62.5	0	5	0	7.33	74.83
Q1 2023	0	0	28.5	0	10.5	0	8.5	47.5



Captain Luke Martin

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On Duty Collision	TOTAL
Q4 2022	0	0	138	0	1	0	0	2	0	1	142
Q1 2023	0	0	64	0	9	0	0	1	0	0	74





Bayview Station

Part 1 Violent Crimes & Part 1 Property Crimes Trailing 12 Mo (Apr 2022 – Mar 2023)

Part 1 Violent Crimes	649
Part 1 Property Crimes	3,294
TOTAL	3,943

Citywide Calls for Service (Apr 2022 – Mar 2023)

Calls for Service	10.4%
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EIS Alerts

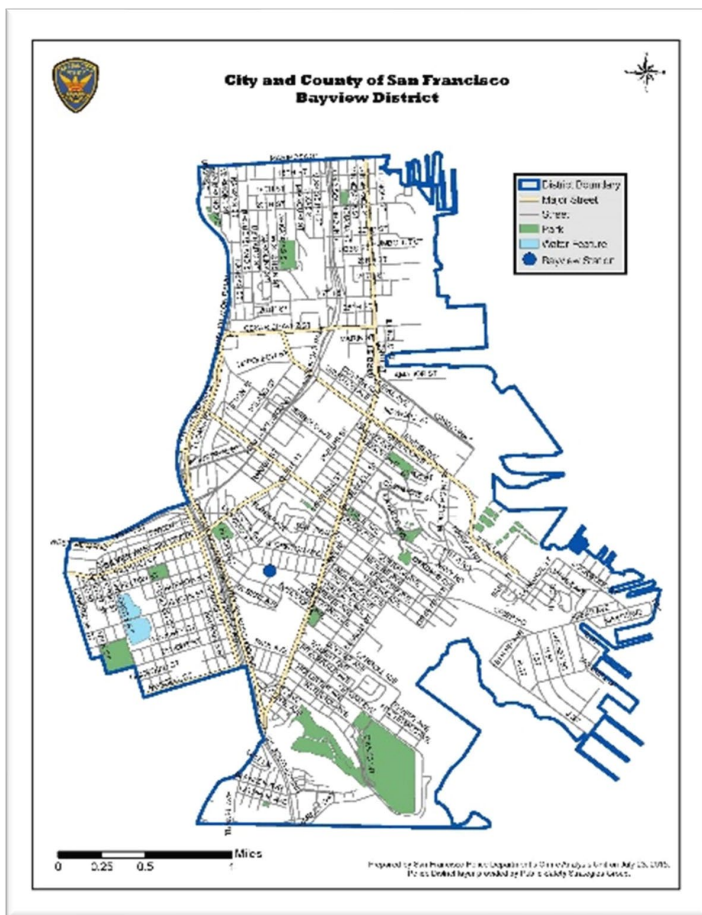
	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	53	0	8	0	3	64
Q1 2023	0	0	17.5	0	7	0	5	29.5



Captain Dave Maron

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On Duty Collision	TOTAL
Q4 2022	0	0	125	0	1	0	0	2	0	0	128
Q1 2023	0	0	54	0	5	0	0	1	0	0	60





Mission Station

Part 1 Violent Crimes & Part 1 Property Crimes Trailing 12 Mo (Apr 2022 – Mar 2023)

Part 1 Violent Crimes	649
Part 1 Property Crimes	3,294
TOTAL	3,943

Citywide Calls for Service (Apr 2022 – Mar 2023)

Calls for Service	13.4%
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EIS Alerts

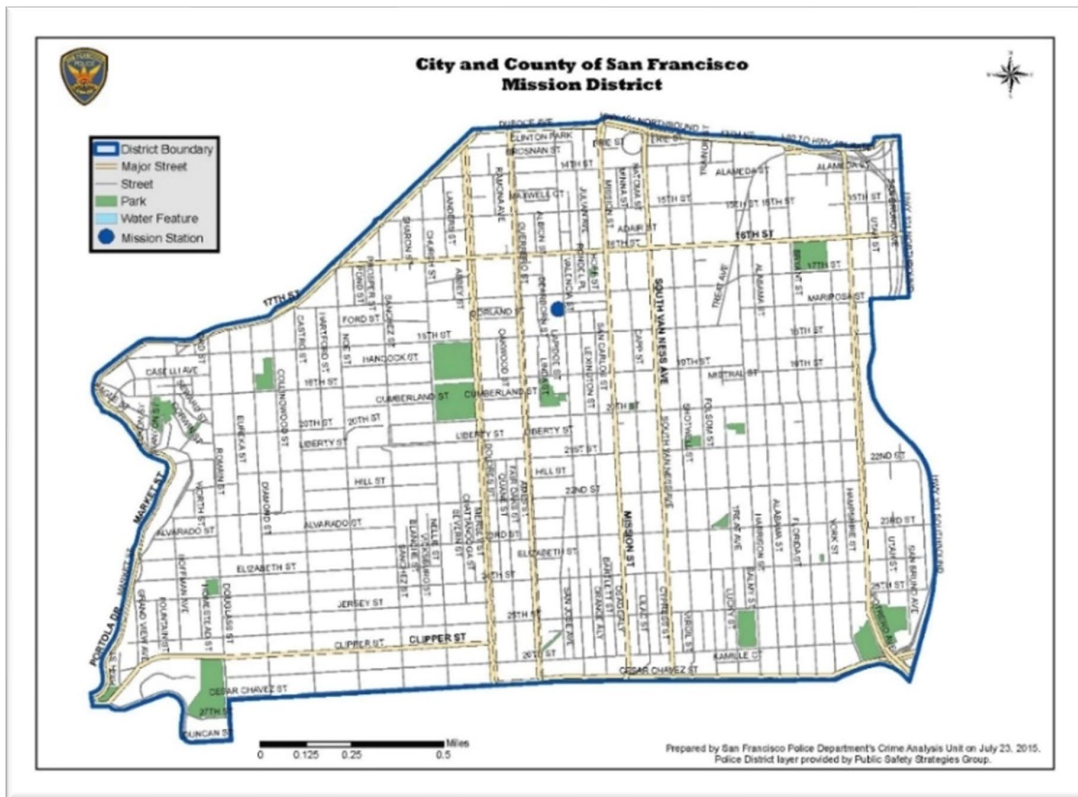
	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	91	0	14.5	0	5	110.5
Q1 2023	0	0	21.5	0	27	0	7	55.5



Captain Thomas Harvey

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On Duty Collision	TOTAL
Q4 2022	0	0	192	0	1	0	0	0	0	1	194
Q1 2023	0	0	87	0	1	0	0	2	0	0	90





Northern Station

Part 1 Violent Crimes & Part 1 Property Crimes Trailing 12 Mo (Apr 2022 – Mar 2023)

Part 1 Violent Crimes	619
Part 1 Property Crimes	6,945
TOTAL	7,564

Citywide Calls for Service (Apr 2022 – Mar 2023)

Calls for Service	11.6%
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EIS Alerts

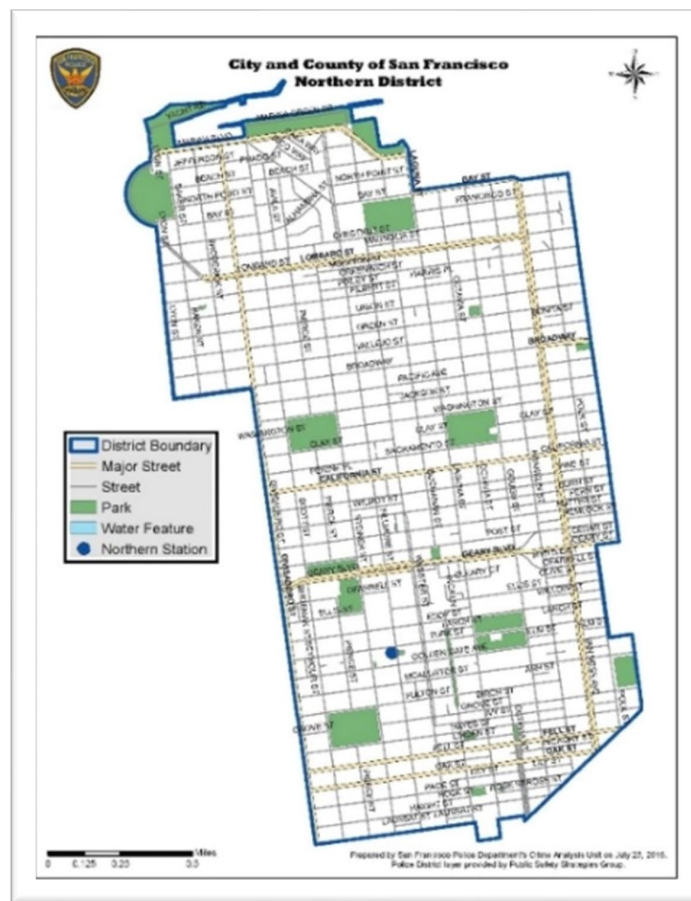
	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	43	0	7.5	0	2.83	53.33
Q1 2023	0	0	4	0	5	0	8	17



Captain Derrick Jackson

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On Duty Collision	TOTAL
Q4 2022	0	0	108	0	5	0	1	4	0	1	119
Q1 2023	0	0	35	0	3	0	0	0	0	0	38





Park Station

Part 1 Violent Crimes & Part 1 Property Crimes Trailing 12 Mo (Apr 2022 – Mar 2023)

Part 1 Violent Crimes	135
Part 1 Property Crimes	2,441
TOTAL	2,576



Citywide Calls for Service (Apr 2022 – Mar 2023)

Calls for Service	4.2%
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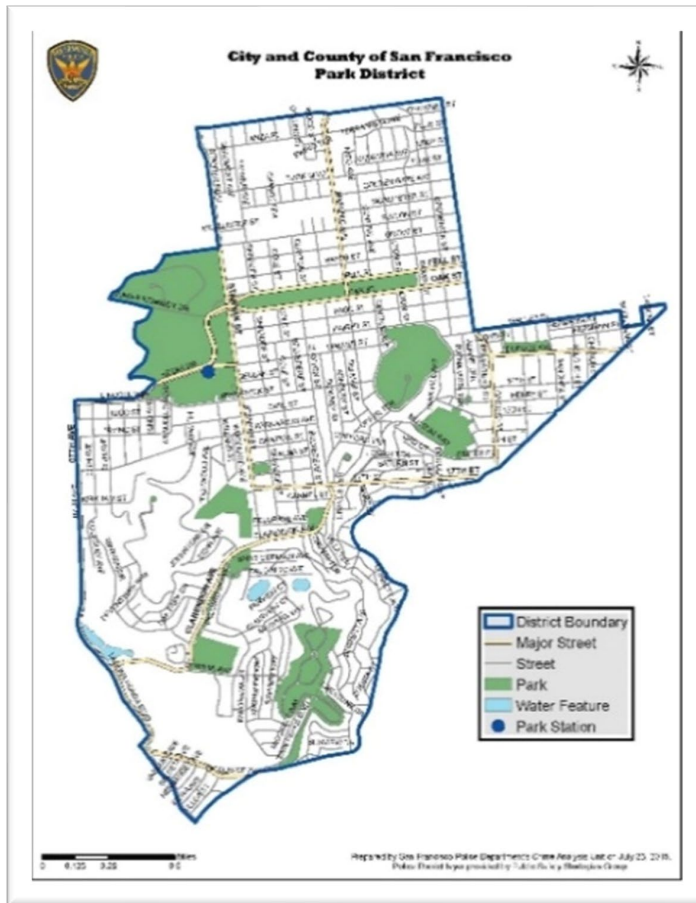
EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	4.5	0	2.5	0	0	7
Q1 2023	0	0	0.5	0	0.5	0	2	3

Captain Jack Hart

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On Duty Collision	TOTAL
Q4 2022	0	0	23	0	4	0	0	2	0	0	29
Q1 2023	0	0	10	0	1	0	0	0	0	0	11





Richmond Station

Part 1 Violent Crimes & Part 1 Property Crimes Trailing 12 Mo (Apr 2022 – Mar 2023)

Part 1 Violent Crimes	199
Part 1 Property Crimes	4,066
TOTAL	4,265

Citywide Calls for Service (Apr 2022 – Mar 2023)

Calls for Service	6.0%
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EIS Alerts

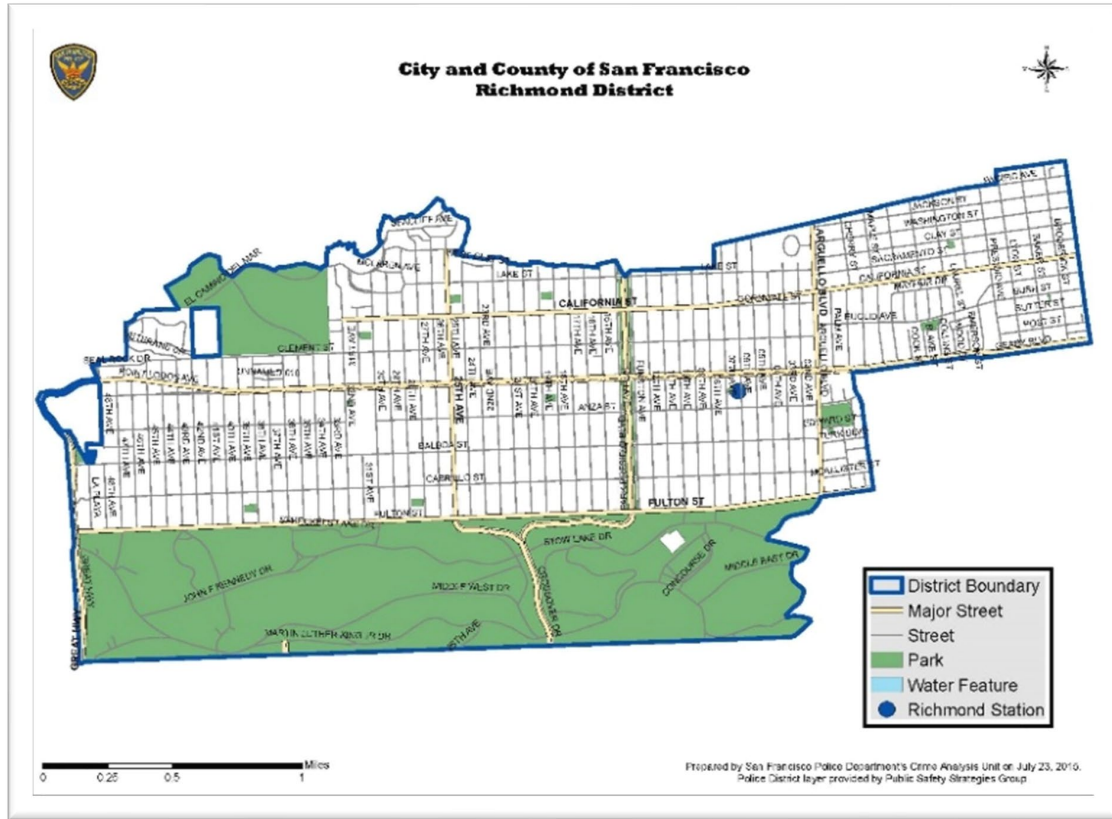
	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	21	0	2	0	1	24
Q1 2023	0	0	8	0	0.5	0	3.5	12



Captain Chris Canning

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On Duty Collision	TOTAL
Q4 2022	0	0	54	0	1	0	0	0	0	0	55
Q1 2023	0	0	24	0	0	0	0	0	0	0	24





Ingleside Station

**Part 1 Violent Crimes & Part 1 Property Crimes
Trailing 12 Mo (Apr 2022 – Mar 2023)**

Part 1 Violent Crimes	540
Part 1 Property Crimes	3,542
TOTAL	4,082

Citywide Calls for Service (Apr 2022 – Mar 2023)

Calls for Service	8.7%
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EIS Alerts

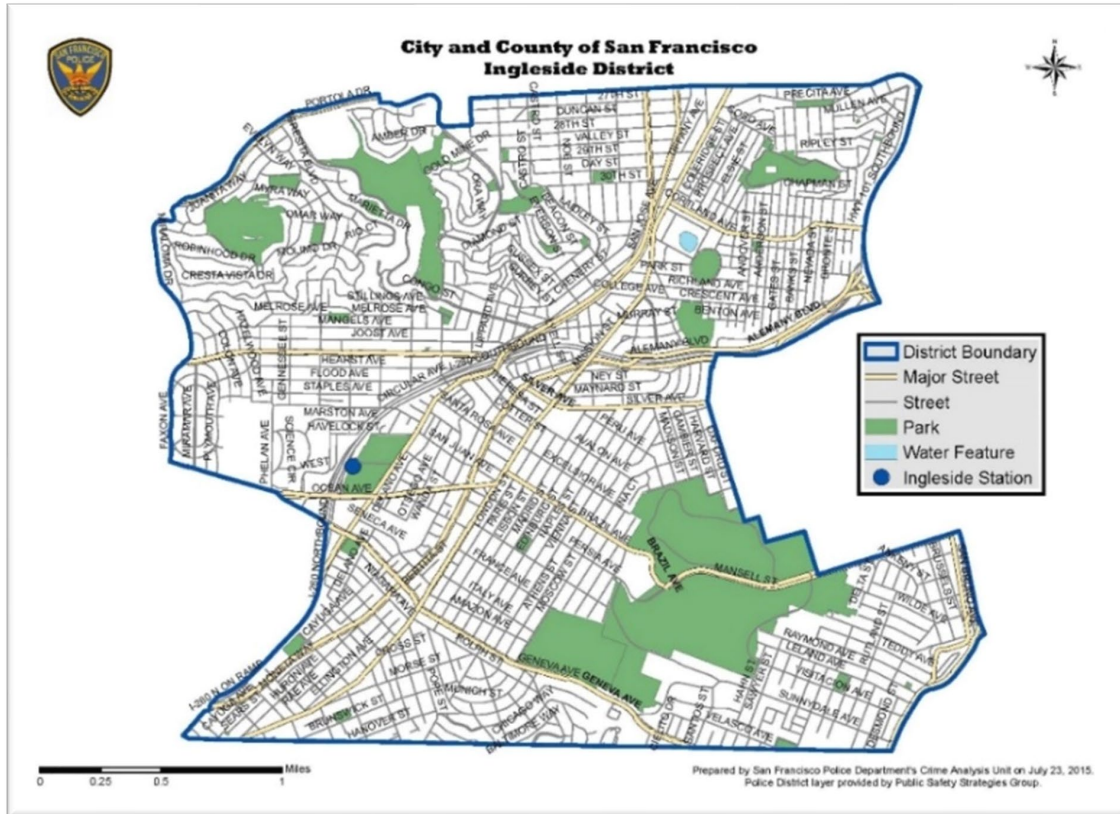
	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	60.5	0	11	0	3.5	75
Q1 2023	0	0	10.5	0	7	0	7	24.5



Captain Derrick Lew

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On Duty Collision	TOTAL
Q4 2022	0	0	139	0	0	0	0	0	0	0	139
Q1 2023	0	0	36	0	4	0	0	1	0	0	41





Taraval Station

Part 1 Violent Crimes & Part 1 Property Crimes Trailing 12 Mo (Apr 2022 – Mar 2023)

Part 1 Violent Crimes	267
Part 1 Property Crimes	3,883
TOTAL	4,150

Citywide Calls for Service (Apr 2022 – Mar 2023)

Calls for Service	7.9%
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EIS Alerts

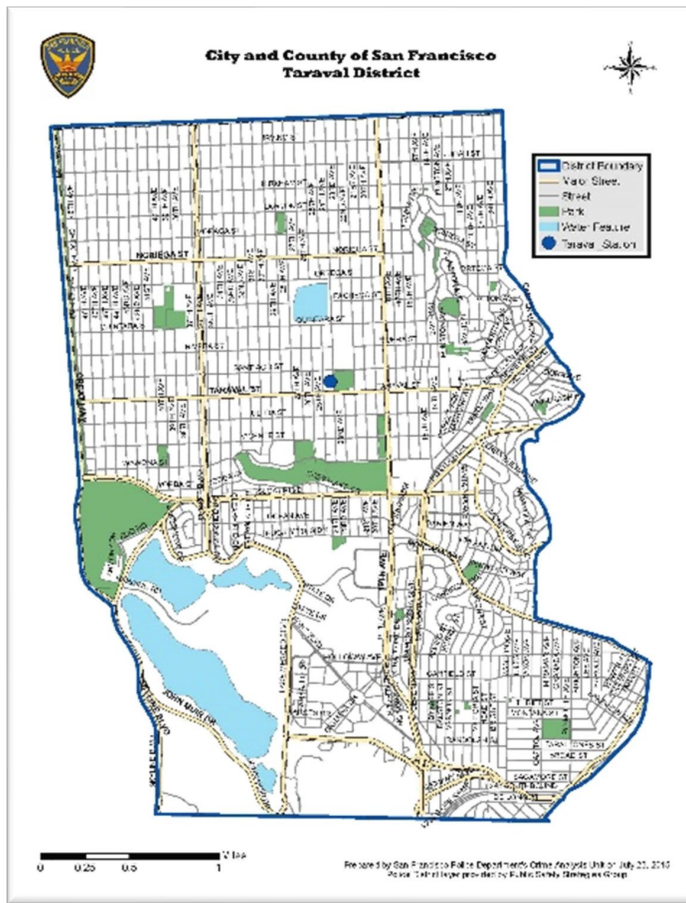
	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	22	0	4	0	2	28
Q1 2023	0	0	4	0	3.5	0	2	9.5



Captain Robert Yick

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On Duty Collision	TOTAL
Q4 2022	0	0	56	0	0	0	0	1	0	0	57
Q1 2023	0	0	15	0	1	0	0	0	0	0	16





Tenderloin Station

Part 1 Violent Crimes & Part 1 Property Crimes Trailing 12 Mo (Apr 2022 – Mar 2023)

Part 1 Violent Crimes	864
Part 1 Property Crimes	2,268
TOTAL	3,132

Citywide Calls for Service (Apr 2022 – Mar 2023)

Calls for Service	13.3%
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EIS Alerts

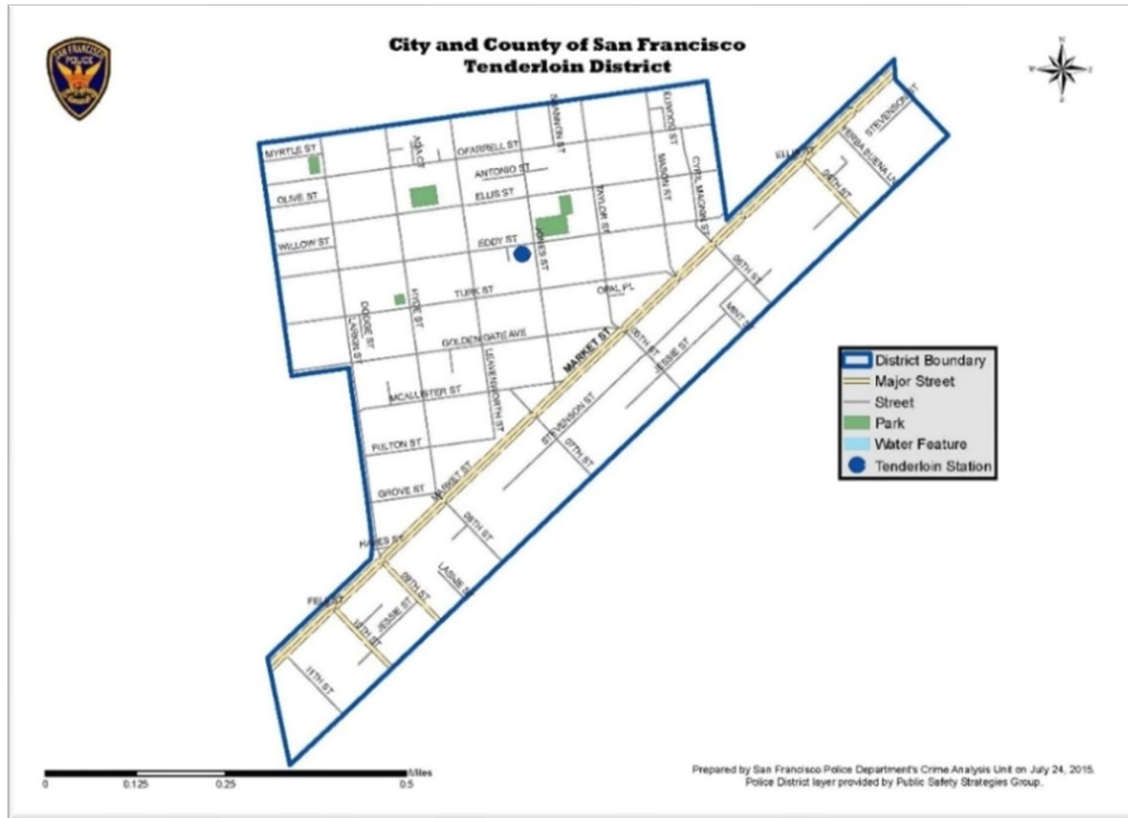
	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	107	0	16.5	0	1.83	125.33
Q1 2023	0	0	30	0	13.5	0	19.5	63



Captain Sergio Chin

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On Duty Collision	TOTAL
Q4 2022	0	0	249	0	1	0	0	2	0	1	253
Q1 2023	0	0	82	0	6	0	0	4	0	1	93





Airport Bureau



Captain Jason Sawyer
Patrol



Captain Alexa O'Brien
Traffic



Captain Timothy Falvey
Administration

AFOB Airport Field Operations

Airport Field Operations works closely with San Mateo Sheriff's Office, United States Customs and Border Patrol, Federal Bureau of Investigations, United States Secret Service, US Federal Air Marshals and other regional local, state and federal law enforcement agencies.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	6	0	2	0	0	8
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	33	0	1	0	0	0	0	1	35
Q1 2023	0	0	3	0	0	0	0	0	0	1	4



AIRP

Airport Bureau

Airport Bureau members perform patrols on foot, bicycle, and Segway; Motorized patrols by car or motorcycle; K-9 patrols and explosives detection; traffic collision investigations; traffic control; security for dignitaries; cargo theft abatement.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	0	0	0	0	0	0	0	0	0
Q1 2023	0	0	1	0	0	0	0	0	0	0	1

ADMN

Airport Administration

The Airport Administration works closely with the San Francisco International Airport Administration, Transportation Security Administration, Federal Aviation Administration, and other regional local, state and federal law enforcement agencies.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	0	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0	0	0	0



Specialized Units/Details

BURG	Burglary	The Burglary Unit investigates: Violent, hot prowl burglaries; Burglaries involving a loss in excess of \$15k; a burglary series which includes multiple districts or jurisdictions; high-profile burglaries; burglaries where a firearm is taken; safe burglaries.
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EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	1	0	0	0	0	1
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	4	0	0	0	0	0	0	0	4
Q1 2023	0	0	0	0	0	0	0	0	0	0	0

CED	Community Engagement Division	Officers assigned to CED proactively engage with the community through relationship building, events, forums, panel discussions, community events, and leading a variety of programs to benefit local youth. This unit also promotes community policing and community engagement in support of District Station activities.
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EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	1	0	0.5	0	0	1.5
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	5	0	0	1	0	0	0	1	7
Q1 2023	0	0	0	0	0	0	0	0	0	0	0

CGIC	Crime Gun Investigative Center	Duties of an Investigator in this unit include: investigating firearms cases in partnership with the ATF for federal prosecution through the Triggerlock Program, present cases to the US Attorney's Office, testify before Federal grand jury, investigate NIBIN correlations, manage the Department's Gun Violence Restraining Order Program.
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EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	2	0	0	0	0	2
Q1 2023	0	0	1.5	0	2	0	1	4.5

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	2	0	0	0	0	0	0	0	2
Q1 2023	0	0	14	0	0	0	0	0	0	0	14



CHIEF

Chief's Office

This Office provides administrative support to the Chief of Police, while effectively managing Media Relations and Risk Management (Internal Affairs, Legal, Professional Standards, and EEO).

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	0	0	0	0	1	0	0	0	1
Q1 2023	0	0	0	0	0	0	1	0	0	0	1

CIS

Crime Information Services Unit

This unit is comprised of the following sections:
 Property Control - Receive, store and maintain all evidence and found property in a secure facility;
 Permits - Process permit applications yearly and maintain files for permitted businesses;
 Report Management Section - Report processing, data storage, and report retrieval.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	0	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	2	0	0	0	0	2

CSI

Crime Scene Investigations

A unit of highly trained members who respond to crime scenes and use forensics, technology and science to assist in the investigations and prosecution of criminal cases.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	1	0	0	0	0	0	0	0	1
Q1 2023	0	0	0	0	1	0	0	0	0	0	1



CVRT Community Violence Reduction Team

The goal of CVRT is to reduce gun violence while reducing recidivism and building trust between the department and impacted communities. CVRT will focus on intelligence gathering, analysis and proactive investigations to prevent and reduce shootings. CVRT also collaborates with justice partners, intervention partners and community stakeholders.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	2	0	0	0	1	0	0	0	3
Q1 2023	0	0	3	0	0	0	1	0	0	0	4

FOB Field Operations Bureau

Oversees District Station personnel and is responsible for the command of patrol operations. FOB is responsible for special deployments based on the needs of the department.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	0	0	0	0	0	0	0	1	1
Q1 2023	0	0	1	0	2	0	0	0	0	0	3

GENE General Work

This unit is responsible for the investigation of assaults, Estes robberies and felonious crimes against persons.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	1	0	0	0	0	0	0	0	1
Q1 2023	0	0	1	0	0	0	0	0	0	0	1



HOMI

Homicide

This unit is responsible for the investigation of homicides and suspicious deaths. Investigators manage crime scenes, follow up on leads and coordinate complex investigations of serious incidents.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	1	0	0	0	0	0	0	1	2
Q1 2023	0	0	0	0	0	0	0	0	0	0	0

HSU

Homeland Security Unit

The HSU enhances the Department's efforts to protect our city's critical infrastructure and key resources, prepares for natural and man-made disasters, and supports on-going efforts against terrorism.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	2	0	0	0	0	0	0	0	2
Q1 2023	0	0	0	0	0	0	0	0	0	0	0

MTA

Traffic Enforcement

This unit is comprised of motorcycle officers who specialize in traffic enforcement, traffic control, vehicle escorts and major collision investigations.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	1	0	0	0	0	1

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	3	0	0	0	0	1	0	1	5
Q1 2023	0	0	3	0	1	0	0	2	0	0	6



NARC

Narcotics

This unit proactively investigates and arrests narcotic traffickers and those involved in narcotic trafficking organizations. Members of this unit frequently interact with district station personnel, providing a forum for the citizens of San Francisco regarding their narcotic complaints.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	5	0	1	0	0	6
Q1 2023	0	0	0	0	1	0	0	1

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	5	0	1	0	0	6	0	0	11
Q1 2023	0	0	0	0	1	0	0	1	0	0	3

NIGH

Night Investigations

This unit conducts proactive enforcement operations, provides technical assistance and serves as a resource to investigative units within the department along with investigating a variety of cases themselves.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0.5	0.5
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	3	0	0	0	0	0	0	0	3
Q1 2023	0	0	0	0	0	0	0	0	0	0	0

PROF

Professional Standards

This unit plays an important role in helping the Department increase transparency and accountability in order to better serve the community. Members of this unit work with the community stakeholders and City leaders in assembling ideas and assisting in implementing those ideas into police policy.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	0	0	1	0	0	0	0	0	1
Q1 2023	0	0	0	0	0	0	0	0	0	0	0



RISK	Risk Management Office	The Risk Management Office (RMO) consists of the Internal Affairs Division, Investigative Services Detail, the Legal Division, the EEO Unit in the SFPD, the BWC Unit, SB1421 Unit and the Early Intervention System. RMO investigates cases that involve officer misconduct and officer-involved shootings.
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EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	1	0	0	0	0	0	0	0	1
Q1 2023	0	0	0	0	0	0	0	0	0	0	0

ROBB	Robbery	The Robbery Unit investigates: bank robberies, armored transport robberies, armed takeover robberies, home invasions, carjacking, robberies where hostages are taken, robberies where the victim(s) is seriously injured as a result of a shooting, stabbing, or physical assault, robberies involving a loss in excess of \$10k, any robbery series, and high-profile robberies.
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EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	1	1

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	3	0	1	0	0	3	0	0	7
Q1 2023	0	0	1	0	0	0	0	1	0	0	2

SID	Special Investigations Division	This division is comprised of the following units that utilize special training and skills to accomplish tasks that include complex, sensitive and confidential criminal investigations: Arson, Bomb Investigations and Dignitary Protection.
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EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	2	0	0	0	0	0	0	0	2
Q1 2023	0	0	2	0	0	0	0	0	0	0	2



SVU **Special Victims Unit** Special Victims Unit investigates the following crimes: Child Abuse, Domestic Violence, Elder Abuse, Financial Crimes, Human Trafficking, Internet Crimes Against Children, Stalking & the Sex Offender Unit.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	2	0	0	0	0	0	0	0	2
Q1 2023	0	0	0	0	0	0	0	0	0	0	0

STAF **Staff Services** This Division is comprised of six units: Personnel, Payroll, Medical Liaison, Background Investigations, Police Physician and ADA Coordinator.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	0	0	1	0	0	0	0	0	1
Q1 2023	0	0	0	0	0	0	0	0	0	0	0

TACT **Tactical/SWAT** Tactical/SWAT is a unit made up of members who are highly trained and specialize in weapons and tactics. They are utilized during critical incidents where there is a potential of violence, assist with the execution of search and arrest warrants and other high-risk calls for service. This unit also includes our Honda (motorcycles), Explosive Ordinance Disposal, and K-9 units.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	9	0	2	0	1	12
Q1 2023	0	0	5	0	0	0	0	5

Indicator Points

	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	38	0	0	0	0	0	0	0	38
Q1 2023	0	0	13	0	0	0	0	1	0	0	14



UNKNOWN

Unknown

Incident dates are unknown or predate a member’s employment with SFPD when an incident occurred. The unknown incident dates may be caused by a clerical error or the data was simply not collected.

EIS Alerts

	OIS	OID	3+ UOF	3+ DPA	Any 5	4+ DPA	Any 6	TOTAL
Q4 2022	0	0	0	0	0	0	0	0
Q1 2023	0	0	0	0	0	0	0	0

Indicator Points

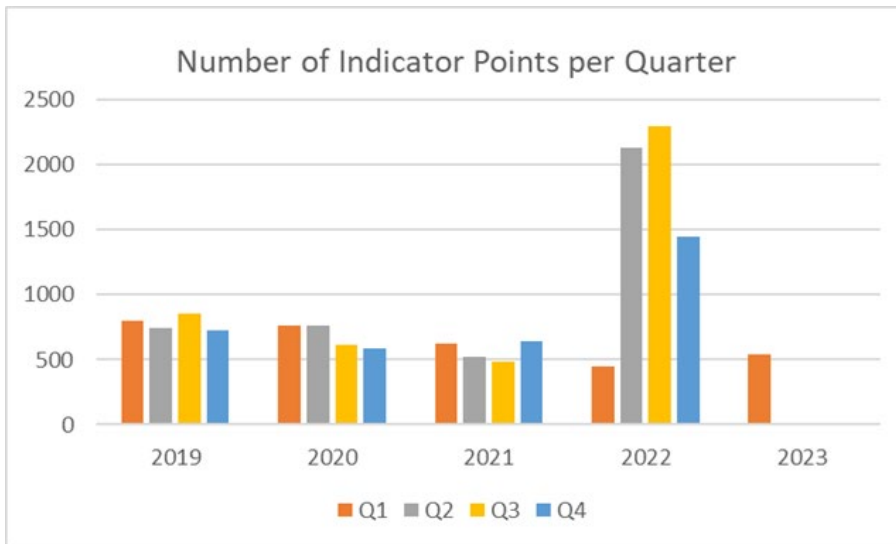
	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	TOTAL
Q4 2022	0	0	0	0	1	0	0	0	0	0	1
Q1 2023	0	0	0	0	4	0	0	0	0	0	4



Comprehensive Data

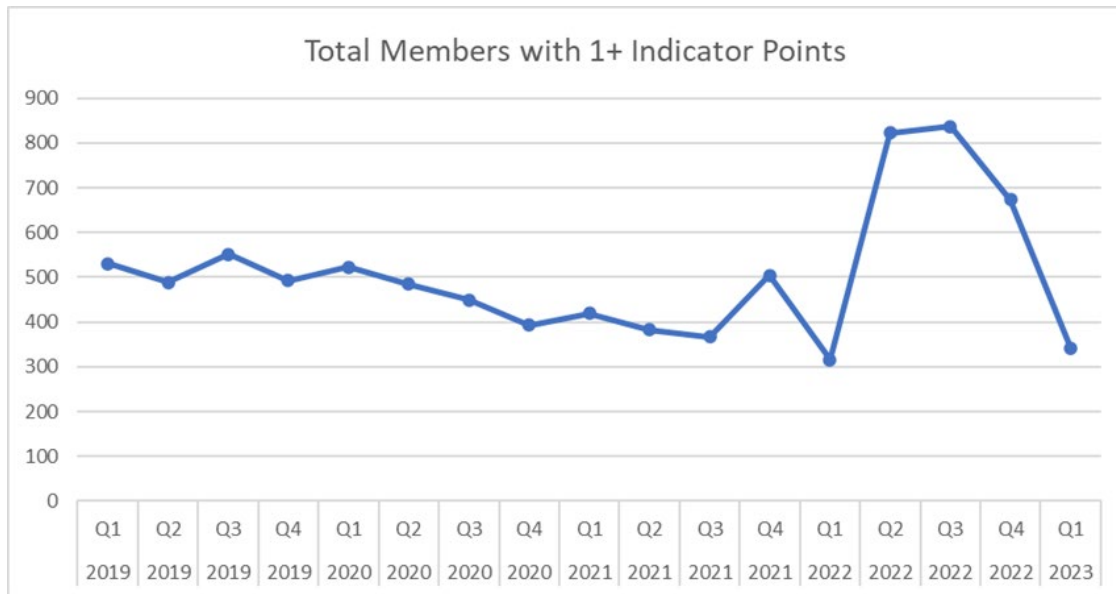
Number of Indicator Points per Quarter					
Year	Q1	Q2	Q3	Q4	Total
2019	802	740	858	726	3,126
2020	767	764	612	586	2,729
2021	626	522	482	641	2,271
2022	447	2,131	2,299	1,447	6,324
2023	544	-	-	-	544

Number of Members		
Year	Quarter	Sworn Members
2018	1	2,307
	2	2,293
	3	2,328
	4	2,330
2019	1	2,318
	2	2,287
	3	2,282
	4	2,284
2020	1	2,296
	2	2,269
	3	2,250
	4	2,233
2021	1	2,211
	2	2,180
	3	2,119
	4	2,104
2022	1	2,047
	2	1,987
	3	1,959
	4	1,942
2023	1	1,909



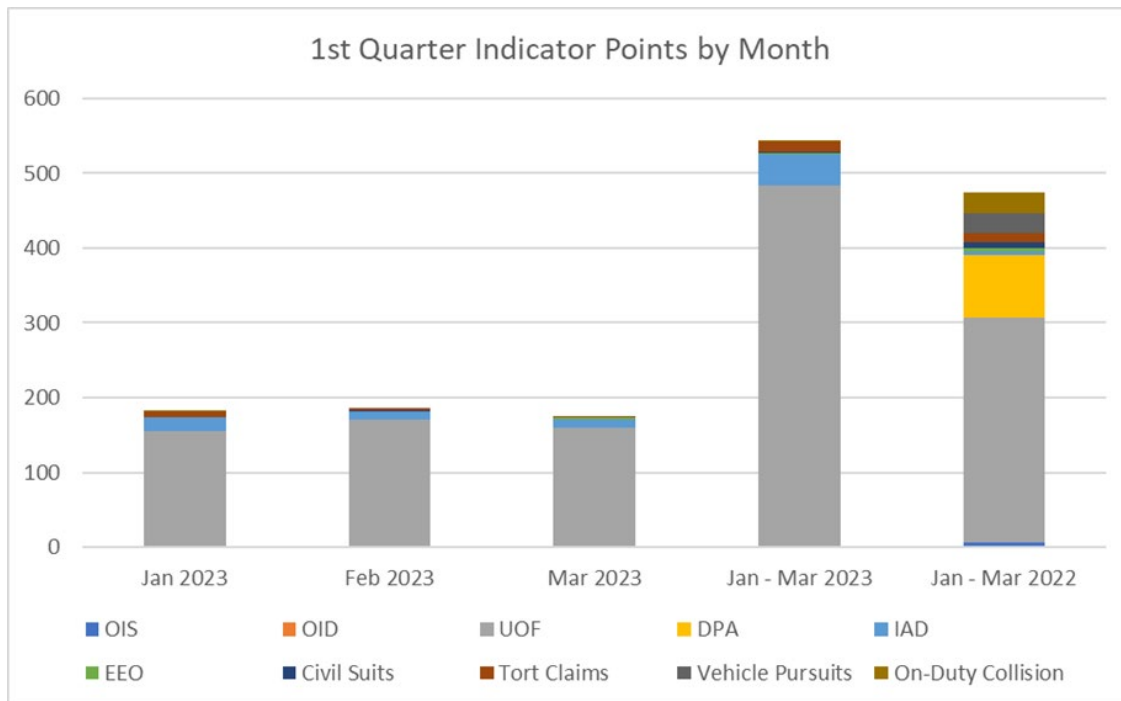


Indicator Points per Member												
Year	Quarter	0	1	2	3	4	5	6	7	8	9+	Total Members with 1+ Indicator Points
2019	1	1787	358	106	51	9	3	1	2	1	0	531
	2	1799	321	112	31	20	3	0	1	0	0	488
	3	1731	362	113	47	19	7	3	0	0	0	551
	4	1791	336	107	33	10	5	2	0	0	0	493
2020	1	1773	366	102	38	11	2	0	3	0	1	523
	2	1785	321	106	29	15	7	3	0	0	3	484
	3	1801	349	67	22	5	2	3	0	0	1	449
	4	1840	273	82	22	9	5	1	0	0	1	393
2021	1	1792	287	90	29	10	0	2	1	0	0	419
	2	1797	286	66	27	2	1	1	0	0	0	383
	3	1752	273	74	17	3	0	0	0	0	0	367
	4	1600	409	69	17	4	3	2	0	0	0	504
2022	1	1731	229	63	13	7	2	1	1	0	0	316
	2	1165	343	159	129	68	41	37	19	13	13	822
	3	1122	312	182	129	81	48	32	15	16	22	837
	4	1262	306	170	87	63	34	9	1	1	2	673
2023	1	1568	212	83	29	11	2	3	1	0	0	341
	2											
	3											
	4											



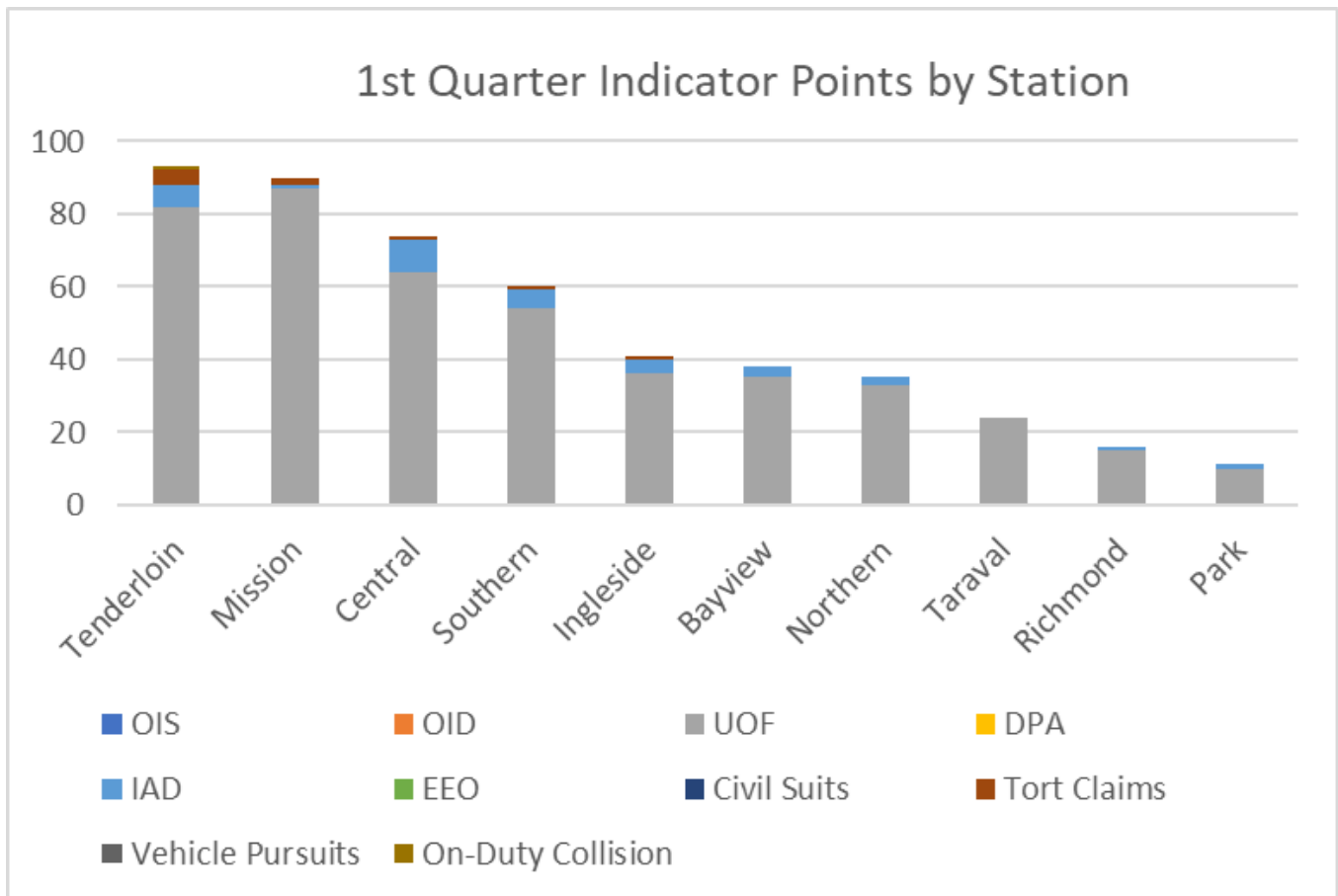


1 st Quarter 2023 Indicator Points by Month											
	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	Total
Jan 2023	0	0	155	0	18	0	0	8	0	2	183
Feb 2023	0	0	170	0	11	0	2	3	0	0	186
Mar 2023	0	0	159	0	12	2	0	2	0	0	175
Jan - Mar 2023	0	0	484	0	41	2	2	13	0	2	544
Jan - Mar 2022	6	1	300	84	4	5	7	13	27	28	475



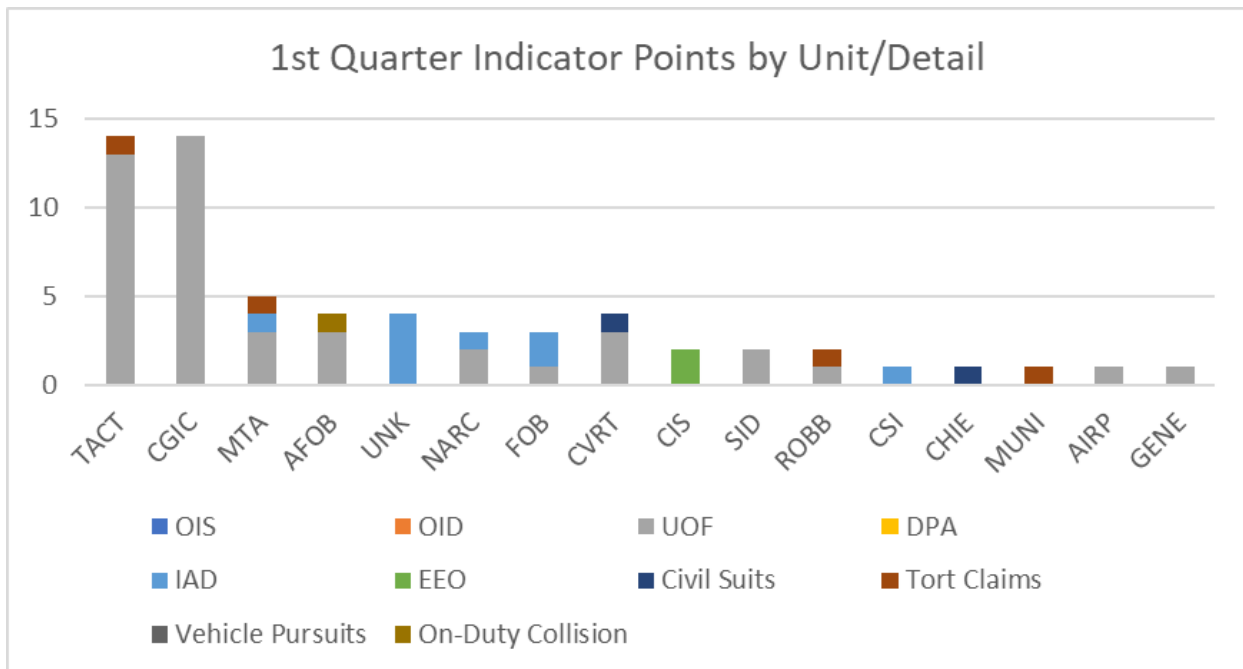


1 st Quarter 2023 Indicator Points by Station											
	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	Total
Tenderloin	0	0	82	0	6	0	0	4	0	1	93
Mission	0	0	87	0	1	0	0	2	0	0	90
Central	0	0	64	0	9	0	0	1	0	0	74
Southern	0	0	54	0	5	0	0	1	0	0	60
Ingleside	0	0	36	0	4	0	0	1	0	0	41
Bayview	0	0	35	0	3	0	0	0	0	0	38
Northern	0	0	33	0	2	0	0	0	0	0	35
Taraval	0	0	24	0	0	0	0	0	0	0	24
Richmond	0	0	15	0	1	0	0	0	0	0	16
Park	0	0	10	0	1	0	0	0	0	0	11
Total	0	0	440	0	32	0	0	9	0	1	482





1 st Quarter 2023 Indicator Points by Unit											
	OIS	OID	UOF	DPA	IAD	EEO	Civil Suits	Tort Claims	Vehicle Pursuits	On-Duty Collision	Total
TACT	0	0	13	0	0	0	0	1	0	0	14
CGIC	0	0	14	0	0	0	0	0	0	0	14
MTA	0	0	3	0	1	0	0	1	0	0	5
AFOB	0	0	3	0	0	0	0	0	0	1	4
UNK	0	0	0	0	4	0	0	0	0	0	4
NARC	0	0	2	0	1	0	0	0	0	0	3
FOB	0	0	1	0	2	0	0	0	0	0	3
CVRT	0	0	3	0	0	0	1	0	0	0	4
CIS	0	0	0	0	0	2	0	0	0	0	2
SID	0	0	2	0	0	0	0	0	0	0	2
ROBB	0	0	1	0	0	0	0	1	0	0	2
CSI	0	0	0	0	1	0	0	0	0	0	1
CHIE	0	0	0	0	0	0	1	0	0	0	1
MUNI	0	0	0	0	0	0	0	1	0	0	1
AIRP	0	0	1	0	0	0	0	0	0	0	1
GENE	0	0	1	0	0	0	0	0	0	0	1
Total	0	0	44	0	9	2	2	4	0	1	62



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Profound in Impact.



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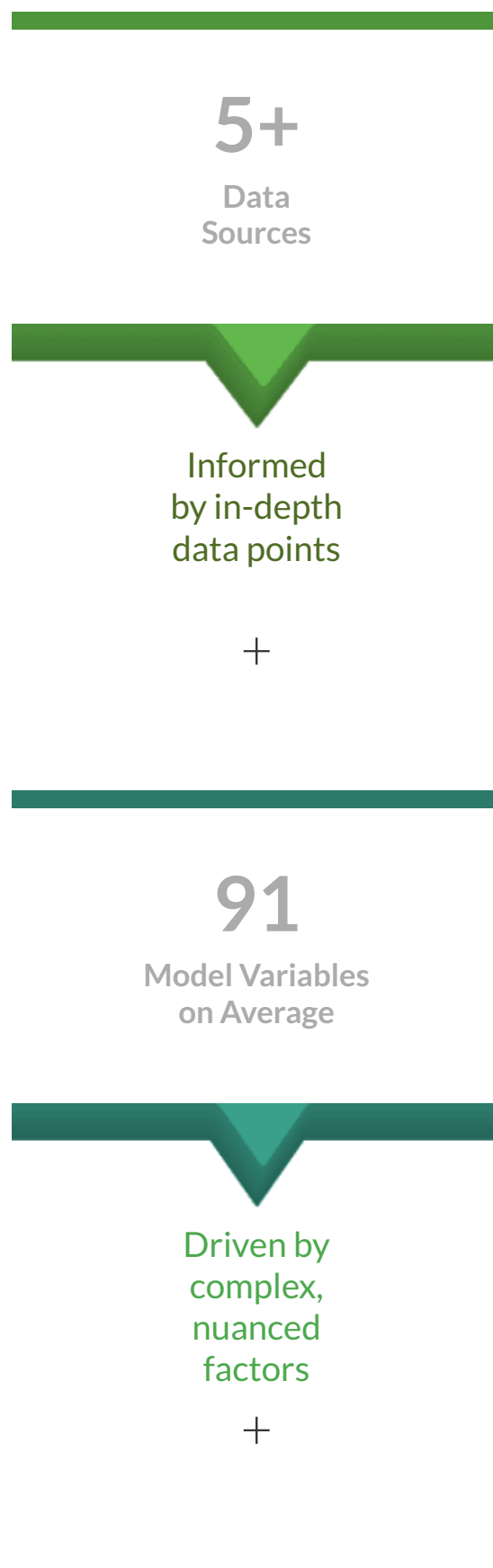
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The First Sign Difference – It’s in the Numbers

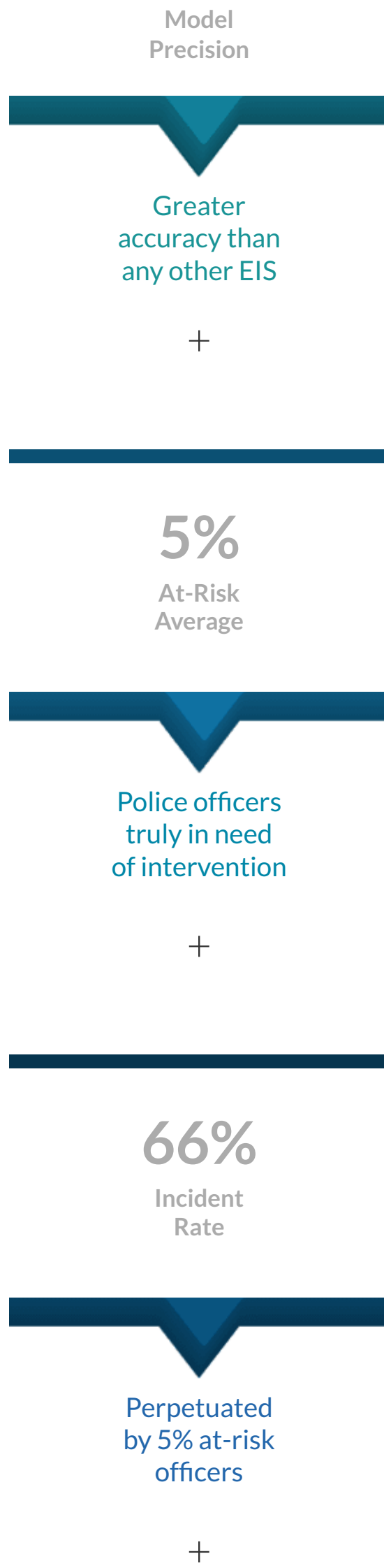
Traditional EIS offerings employ threshold-based triggers to alert agencies to off-track officer behavior. However, these standard systems often flag officers not actually exhibiting at-risk behavior – resulting in inefficient use of resources, time and funds . . . not to mention poor officer morale.

Our groundbreaking **First Sign** solution draws upon decades of evidence-based research, robust information sources and sophisticated analytics to **identify officers truly in need of intervention**.



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What Does This Mean to Your Agency?

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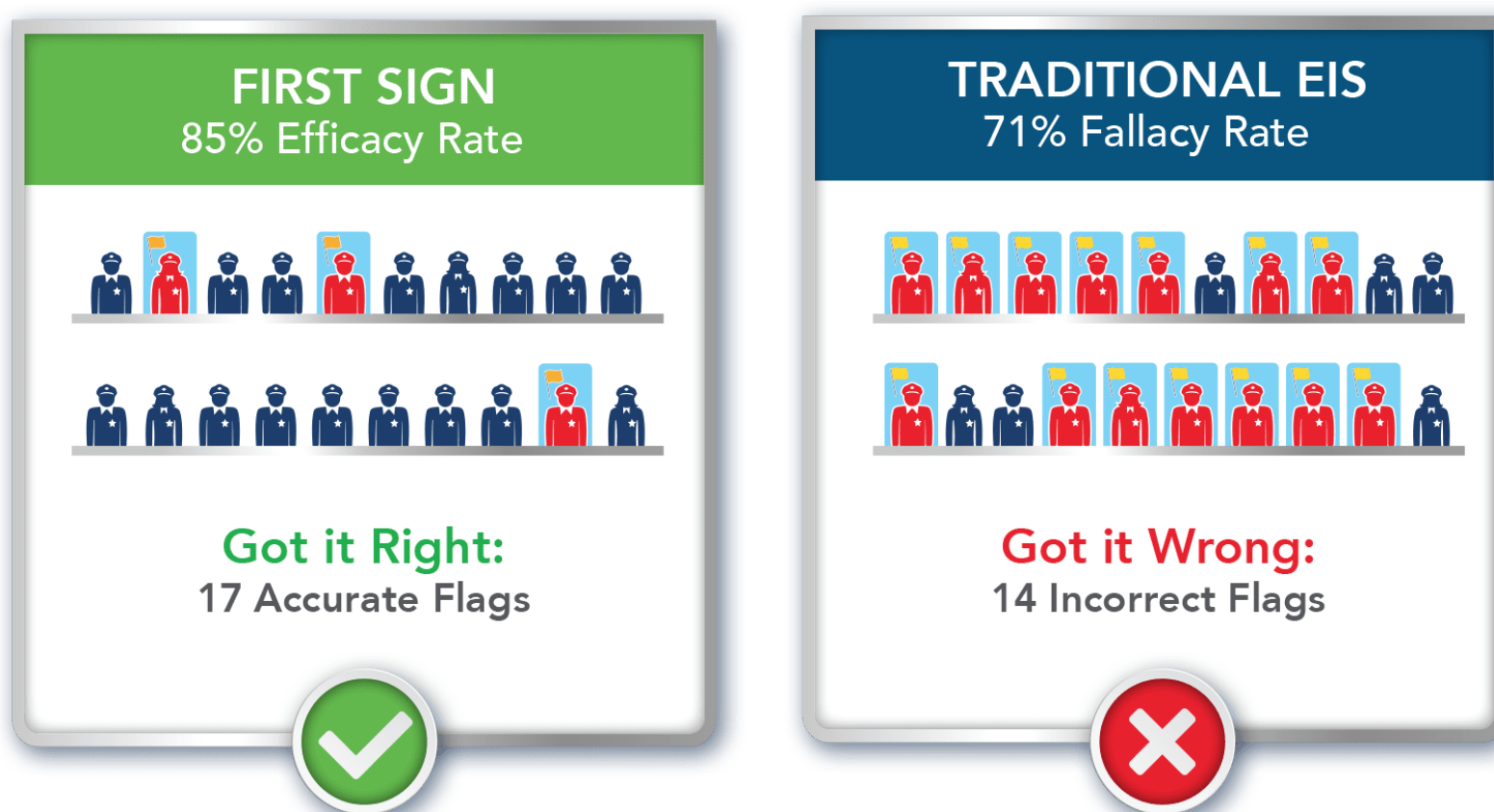
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And How Do We Know This?

Benchmark has the world's largest database on officer performance — and we've validated all predictive analytics through a standardized national model developed in partnership with the **University of Chicago**.

The First Sign Impact — a More Powerful EIS Tool

When comparing **First Sign** to traditional EIS platforms using threshold-based triggers – in an example of **20 Officers Flagged** for off-track behavior – here's what research illustrates:



Sign for First Sign Early Intervention System by Benchmark Analytics: 85% efficiency rate, 17 accurate flags

What this example clearly shows is that traditional EIS platforms **incorrectly flag officers “at-risk” nearly five times more often** than our advanced, research-based **First Sign** solution — a profound difference that can make a massive impact in the way you manage accountability and officer support.

First Sign is your clear choice for a transformative EIS designed to:

- Differentiate those officers creating the greatest challenges for your department
- Boost morale and increase retention of police officers doing their jobs right
- Improve community relations and regain public trust in law enforcement
- Reduce resource needs, administrative time and EIS implementation costs
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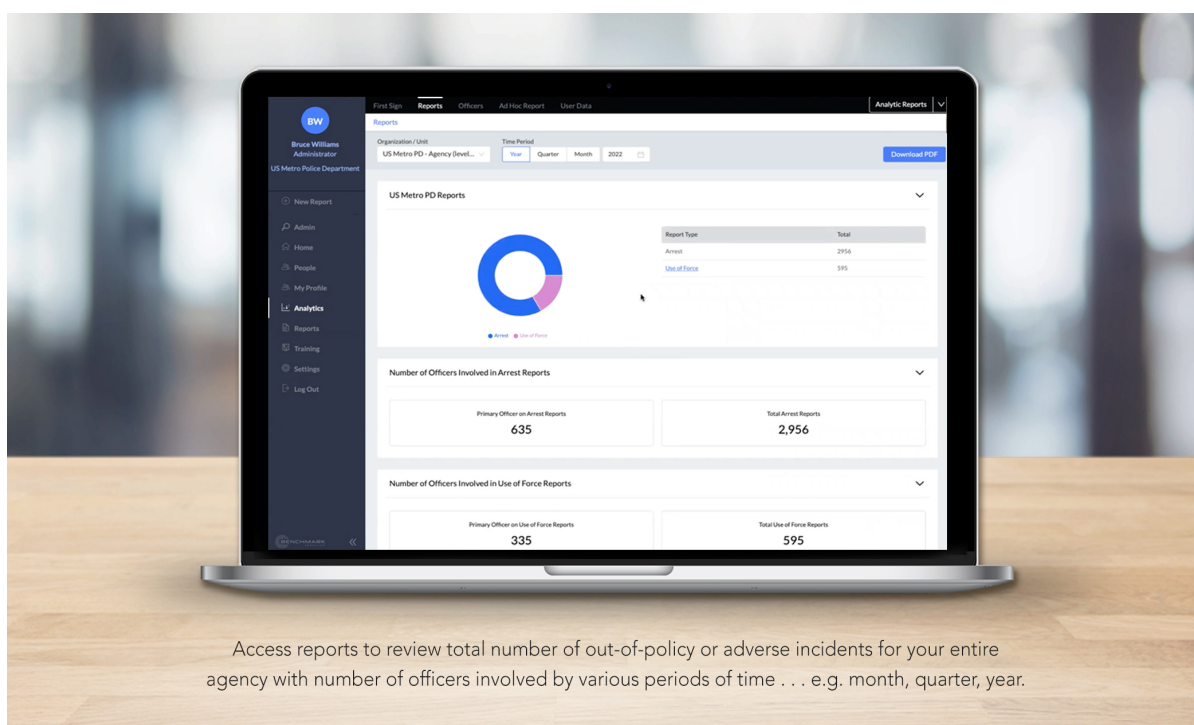
A Multi-Dimensional EIS Built on Six Key Pillars of Success

- 1 Research Legacy
- 2 Academic Credibility
- 3 Scientific Legitimacy
- 4 Iterative Learning
- 5 Compliance Ready
- 6 Reciprocal Officer Support

The First Sign 24/7 Analytic Machine

First Sign is *preventative by design*: our platform analyzes cumulative officer data collected in the **Benchmark Management System®** and other sources. It's **the only research-based, data-driven EIS** that tracks over **20 event markers** shown to lead to truly at-risk, off-track behavior.

Specified supervisors receive real-time alerts as out-of-policy, adverse and at-risk events occur by officers on their team. And from the **First Sign** dashboard, they can manage and review all aspects of the platform configured to work most effectively at meeting the needs of your organization.



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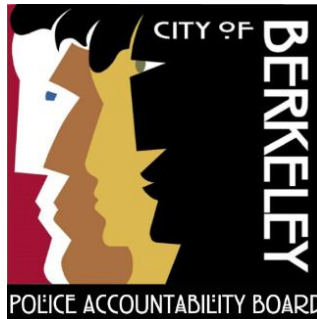


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Item 9. List of current PAB Subcommittees



SUBCOMMITTEES LIST
As of 2/23/2024

Subcommittee	Board Members	Chair	BPD Reps	Subcommittee Reports
Regulations Formed 7-7-21 Renewed 6-7-2023	Calavita Leftwich <u>Public members:</u> Kitt Saginor	N/A	Lt. Dan Montgomery	As of 2/23/2024, there is no subcommittee report available. Any potential updates will be provided during the meeting.
Fair & Impartial Policing Implementation Formed 8-4-21 Renewed 6-7-2023	Calavita Wilson <u>Public members:</u> George Lippman	Calavita	Sgt. Peter Lee	As of 2/23/2024, there is no subcommittee report available. Any potential updates will be provided during the meeting.
Surveillance Technology Policy Formed 6-7-2023	Calavita Moore	N/A	N/A	As of 2/23/2024, there is no subcommittee report available. Any

				potential updates will be provided during the meeting.
Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations Formed 11-15-22	Calavita Moore	Calavita	N/A	As of 2/23/2024, there is no subcommittee report available. Any potential updates will be provided during the meeting.
Body-Worn Camera Policy Formed 03-15-23	Harris Leftwich	Harris	N/A	As of 2/23/2024, there is no subcommittee report available. Any potential updates will be provided during the meeting.
Conflict of Interest Formed 03-29-23	Leftwich Harris Wilson	Leftwich	N/A	As of 2/23/2024, there is no subcommittee report available. Any potential updates will be provided during the meeting.
Lexipol Policy Review Formed 11-08-2023	Leftwich Cayetano Mozes <u>Public members:</u> Kitt Saginor	Leftwich	N/A	As of 2/23/2024, there is no subcommittee report available. Any potential updates will be provided during the meeting.
Budget Review Formed 11-08-2023	Wilson Blackaby	N/A	N/A	As of 2/23/2024, there is no subcommittee report available. Any potential updates will be provided during the meeting.

Commendations Formed 11-08-2023	Moore Blackaby Harris	N/A	N/A	As of 2/23/2024, there is no subcommittee report available. Any potential updates will be provided during the meeting.
Off-Duty Conduct	Cayetano Harris	N/A	Lt. Rittenhouse	As of 2/23/2024, there is no subcommittee report available. Any potential updates will be provided during the meeting.
2024 PAB Strategic Planning Retreat	Leftwich Mozes	N/A	N/A	As of 2/23/2024, there is no subcommittee report available. Any potential updates will be provided during the meeting.

Item 10. Legislative and Policy Update Materials

Internal



Legislative Update

Legislation Tied to Board Activity and Interest

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

MEETING

FEBRUARY 28, 2024

State Legislative Updates

AB 1133: Firearms: concealed carry licenses (no update in CA Legislature but update in Lexipol)

This bill would require the Department of Justice to develop, evaluate, update, maintain, and publish a standardized curriculum for a license to carry a concealed firearm.

The bill would require the department to create a standardized test, as specified, and to make that test available on a web portal.

The bill would require an applicant to submit proof of passing that examination as part of an application to carry a concealed firearm.

The bill would authorize the department to charge a reasonable fee for taking the standardized test, and require that fee to be used, upon appropriation by the Legislature, for the service, maintenance, and administration of the web portal for the test.

Lexipol Updates

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

900.18.12 Temporary Adult Custody: Update on refusal to sign paperwork procedures

200.8 Organization Structure & Responsibility: Removing meter collections

507.5 72-Hour Parking Violations: Requires members to consult with the Traffic Bureau Lieutenant to determine when a vehicle may be towed for “community caretaking”

Lexipol Updates cont.

312.4 Standards of Conduct: Replacing “be quiet, orderly, attentive, and respectful and shall exercise patience and discretion in the performance of their duties” to “act in a manner which upholds the Department core Values of integrity, respect, diversity, and professionalism” in the courteous requirements

352 Firearms Range Regulations: Establishes procedures for BPD firearms facilities.

1010.17 Personnel Complaints: Removing Notice Requirements to complainants after final disposition

1010.28.1 Personnel Complaints Creating a separate noticing requirement to POST for *serious* misconduct

100.3 Recruitment: Now *requires* a comprehensive and strategic recruitment policy

803.3.2 Records Management: Establishing a process for submittal of data to federal agencies

Lexipol Updates cont.

803.8 Records Management: Establishes a good conduct letter procedure

401.7 Fair and Impartial Policing: Reorganizing training requirements section

319 Hate Crimes: Complete rewrite

- A new and more comprehensive definition list
- More robust policy statement
- Removing explicit planning and preparedness commitments but suggesting investigations into hate incidents and weaving some of those commitments into other sections.
- Establishing a hate-crime coordinator
- Establish a disclosure policy
- Creating a more detailed response, victim assistance, and follow-up procedure

City of Berkeley Legislative Update

The City Council approved the additional cameras

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 th St. & Gilman, District 1
Shattuck & Bancroft, District 4	Shattuck & University, District 4
4 th Street & Hearst, District 4	4 th Street & Virginia, District 2
Shattuck & Vine, District 4	8 th Street & Harrison, District 2
2 nd 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	

City of Berkeley Updates cont.

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.
 - 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.
- City council referred the matter to the City Manager to analyze and develop a program in line with the above recommendations and to the June 2024 Budget process.

City of Berkeley Updates cont.

- **Council Item 16 for Public Hearing on February 27, 2024. Zoning Amendments for Berkeley Business; Amending Berkeley Municipal Code Title 23**
 - Removing existing requirements that BPD review proposed alcohol sales establishments to determine whether they would be expected to add crime to the area or whether an applicant's previous alcohol-related violations at another location would indicate a high likelihood of further violations.

City of Berkeley Council Update

Given that there are now two resignations from the City Council (Robinson & Harrison) there will be two special elections.

The first will be held on [April 16, 2024 for the vacancy in District 7](#) (Robinson's district). [Candidates qualified](#) for the ballot in District 7 are James Change and Cecilia Lunaparra.

The second will likely be held on [May 21, 2024 for the vacancy in District 4](#) (Harrison's district). It is on the consent calendar for the city council to adopt 2/28 (today)

Members of the PAB appointed by departed councilmembers can continue to serve until a new appointee is named by the councilmember(s) elect.

City of Berkeley Lobbyist

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)

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>

District 7 Special Election Timeline

<https://berkeleyca.gov/community-recreation/news/berkeley-district-7-special-election-april-16-2024>

Berkeley City Council Regular Meeting Agenda Packet February 13, 2024

<https://berkeleyca.gov/sites/default/files/city-council-meetings/2024-02-13%20Annotated%20Agenda%20-%20Council.pdf>

City of Berkeley's 2024 State and Federal Legislative Platform

<https://berkeleyca.gov/sites/default/files/documents/2024-02-13%20Item%2004%20City%20of%20Berkeley%E2%80%99s%202024%20State%20and%20Federal%20Legislative%20Platform.pdf>

Berkeley City Council Regular Meeting Agenda Packet February 27, 2024

<https://berkeleyca.gov/sites/default/files/city-council-meetings/2024-02-27%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

Thank You!



Item 11.a. 2024 PAB Strategic Planning Session
Retreat Agenda



POLICE ACCOUNTABILITY BOARD

2024 PAB STRATEGIC PLANNING SESSION RETREAT AGENDA

Saturday, March 2nd, 2024

9:30 AM to 4:30 PM

MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709

[\(Click here for Directions\)](#)

Facilitator:

Brian Corr, of the Cambridge Consulting Services Group and Past President of NACOLE, will facilitate the session.

AGENDA

- | | |
|-----------------|---|
| 9:30 AM | WELCOME, INTRODUCTION AND GOALS FOR THE DAY |
| 9:45 AM | PAB CHALLENGES AND OPPORTUNITIES <ul style="list-style-type: none">• What are our strengths?• What are our challenges? |
| 10:15 AM | PAB AND ODPa: RESPECTIVE ROLES AND RESPONSIBILITIES <ul style="list-style-type: none">• What acts are required by each under the Charter Amendment?• What acts are permitted by each under the Charter Amendment?• Where is there overlap and what needs to be clarified? |
| 11:00 AM | PERFORMANCE METRICS <ul style="list-style-type: none">• What does an effective PAB look like within existing confines?• How can we measure our performance? When should that be done? |
| 11:45 AM | BREAK |
| 12:00 PM | WORKING LUNCH AND TRAINING SESSION: THE HISTORY OF POLICE OVERSIGHT |
| 12:45 PM | EXTENDED BREAK |

- 1:15 PM** **LOOKING AHEAD AND THINKING STRATEGICALLY: PAB'S 2024 GOALS**
- Possible discussion topics
 - Serving the Community: Increased Outreach, Education and Engagement
 - Working effectively with the Police Department, Police Union, City Attorney's Office and City Council
 - Legislative advocacy
 - Others?

2:30 PM **BREAK**

- 2:45 PM** **NEXT STEPS**
- How will we get from Point A to Point B?
 - What specific steps will we take to meet our goals?
 - Timeline

4:15 PM **WRAP UP**

4:30 PM **ADJOURNMENT**

DRAFT

Item 11.b Materials regarding the PAB's response to the City Council's directive to the City Manager to engage with the PAB on the proposal for additional security cameras, seeking feedback.



John “Chip” Moore, Chair
Police Accountability Board
jomoore@berkeleyca.gov

February 29, 2024

VIA ELECTRONIC MAIL

To: Dee Williams-Ridley, City Manager
City Manager’s Office
2180 Milvia Street, 5th Floor
Berkeley, CA 94704

Chief Jennifer Louis
Berkeley Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA 94704

Re: Concerns Regarding the Proposed Acquisition of Surveillance Cameras

Dear City Manager Dee Williams-Ridley and Chief Louis,

The Police Accountability Board (PAB) writes to express significant concerns regarding the proposed acquisition and deployment of additional surveillance cameras within the City of Berkeley. Our apprehensions center on the potential circumvention of established procedures as outlined in the Berkeley Municipal Code (BMC) 2.99 - Acquisition and Use of Surveillance Technology ordinance - and the lack of a data-driven justification for this crime intervention measure.

- 1. RECOMMENDATION:** To fortify trust and uphold legal standards, it is imperative for the BPD and City Manager's Office to meticulously follow BMC 2.99's mandated processes, ensuring transparency and community involvement in the surveillance technology acquisition decision-making process.

Compliance with BMC 2.99 and Legal Implications:

It has come to our attention that the process being considered for the acquisition of these surveillance cameras may not fully align with the requirements of BMC 2.99. This ordinance mandates a thorough review and approval process for the use of surveillance technology, designed to safeguard the privacy and rights of our community members. The proposed method for acquiring additional cameras appears to skirt these critical procedures, potentially exposing the City to legal challenges. Given the history of litigation in similar contexts, it is imperative that we adhere strictly to the ordinance's stipulations to mitigate the risk of future legal complications.

- 2. RECOMMENDATION:** We urge the BPD and CMO to articulate a clear, evidence-based rationale for the deployment of additional surveillance cameras, supported by

tangible data on their impact and effectiveness in enhancing public safety, prior to expansion.

Necessity for Data-Driven Justification:

Moreover, the PAB emphasizes the importance of a robust, data-driven analysis to justify the need for enhanced surveillance at specific locations. The Berkeley Police Department (BPD) and City Manager's Office (CMO) should provide clear, empirical evidence supporting the efficacy of surveillance cameras in crime prevention and investigation within our city. Such analysis should consider historical data on the current surveillance program's impact, metrics for evaluating effectiveness, and projected outcomes of the proposed expansion. Given the limited deployment and utilization of fixed cameras thus far, the basis for their expansion appears premature without substantial evidence demonstrating their benefit to public safety.

3. **RECOMMENDATION:** We advocate for a detailed examination of the Urban Institute's Report by all decision-makers to fully understand its findings and recommendations. Additionally, we propose initiating a community-wide discussion, informed by the report's methodologies, to evaluate the true impact and community perspective on the expansion of surveillance technologies in Berkeley.

Empirical Analysis and Public Engagement:

Furthermore, we urge decision-makers to closely examine the findings of the 2011 report by The Urban Institute Justice Policy Center. This comprehensive study underscores the conditional effectiveness of surveillance cameras, highlighting the critical role of active monitoring and the potential for varied outcomes across different contexts. The report also stresses the importance of public involvement in decisions surrounding the investment in and use of surveillance technology. We propose that the City consider employing or developing a survey instrument akin to that used in the study, to ensure that our approach to public safety technology aligns with the community's needs and expectations.

In light of these considerations, the PAB respectfully requests a detailed response to the concerns raised herein, including an explanation of the rationale behind the proposed camera expansion and the measures taken to ensure compliance with BMC 2.99. We believe that a transparent, evidence-based approach to public safety initiatives is essential to maintain the trust and welfare of our community.

Thank you for your attention to these matters. We look forward to your prompt response.

Sincerely,

John "Chip" Moore, Chair
Police Accountability Board

cc: **Via Email Only**
Honorable Mayor Arreguin and Members of the City Council
Mark Numainville, City Clerk
Farimah Brown, City Attorney
Police Accountability Board

ATTACHMENTS:

- 2011 URBAN INSTITUTE REPORT
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>
- 2011 URBAN INSTITUTE REPORT APPENDIX A. SAMPLE INTERVIEW PROTOCOLS
- JANUARY 26, 2024 DPA LETTER TO COUNCIL RE: OBSERVATIONS AND CONSIDERATIONS FOR THE COUNCIL REGARDING ITEM 29, "BUDGET REFERRAL: ADDITIONAL SECURITY CAMERAS AT INTERSECTIONS EXPERIENCING INCREASED VIOLENT CRIME"

2011 URBAN INSTITUTE REPORT

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>

**JANUARY 26, 2024 DPA LETTER TO COUNCIL RE: OBSERVATIONS AND CONSIDERATIONS
FOR THE COUNCIL REGARDING ITEM 29, "BUDGET REFERRAL: ADDITIONAL SECURITY
CAMERAS AT INTERSECTIONS EXPERIENCING INCREASED VIOLENT CRIME"**



Hansel Alejandro Aguilar
Director of Police Accountability
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 proposal¹ to authorize the City Manager to install additional security cameras in five priority intersections² within our city. As part of our Charter-mandated³ 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 meeting⁴.

¹ 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 \(berkeleyca.gov\)](https://www.berkeleyca.gov/sites/default/files/2024-01-30_Agenda_Packet_-_Council.pdf)

² 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)

³ 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.*"

⁴ 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=g8ChkKjQfPs>. 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 2.99⁵) procedures and BPD Policies⁶; 2) Lack of Data-Driven Justification; 3) Legal implications⁷; 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 Center⁸. 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

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

⁶ [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.

⁷ 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.

⁸ 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 Berkeley⁹, BMC 2.99¹⁰ 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 reported¹¹ 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.¹² 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:

⁹ 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/2021-02-23%20Special%20Item%2001%20Report%20and%20Recommendations%20-%20Pres%20Mayor.pdf>

¹⁰ 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)

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

¹² 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

Public



MEMORANDUM

To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability 
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

does not present a data-driven rationale for the need for cameras in the specific locations, as detailed in the literature review memo by the PAB/ODPA.

3. **Legal:** Given past lawsuits regarding the ordinance, a legal analysis is crucial to ensure compliance with the vetting process (see *Secure Justice v. City of Berkeley*). The PAB should consider seeking advice from the CAO or seeking independent counsel to further assess this issue.
4. **Statistical Analysis:** The ODPA is conducting a statistical analysis to evaluate the relationship between crime rates, environmental factors, and the efficacy of camera installation at proposed locations.

Recommendations for the PAB:

- **Communication of Concerns to Council:** The ODPA recommends that the PAB communicate these concerns to the Council, emphasizing the importance of adhering to the established review processes to, as articulated in BMC 2.99, 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)*
- **Proposed Amendment to Council Item:** Should the Council choose to adopt the Budget Referral as is, the PAB should recommend that the authorization for the City Manager to install additional security cameras still requires Board review before formal

Public

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
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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

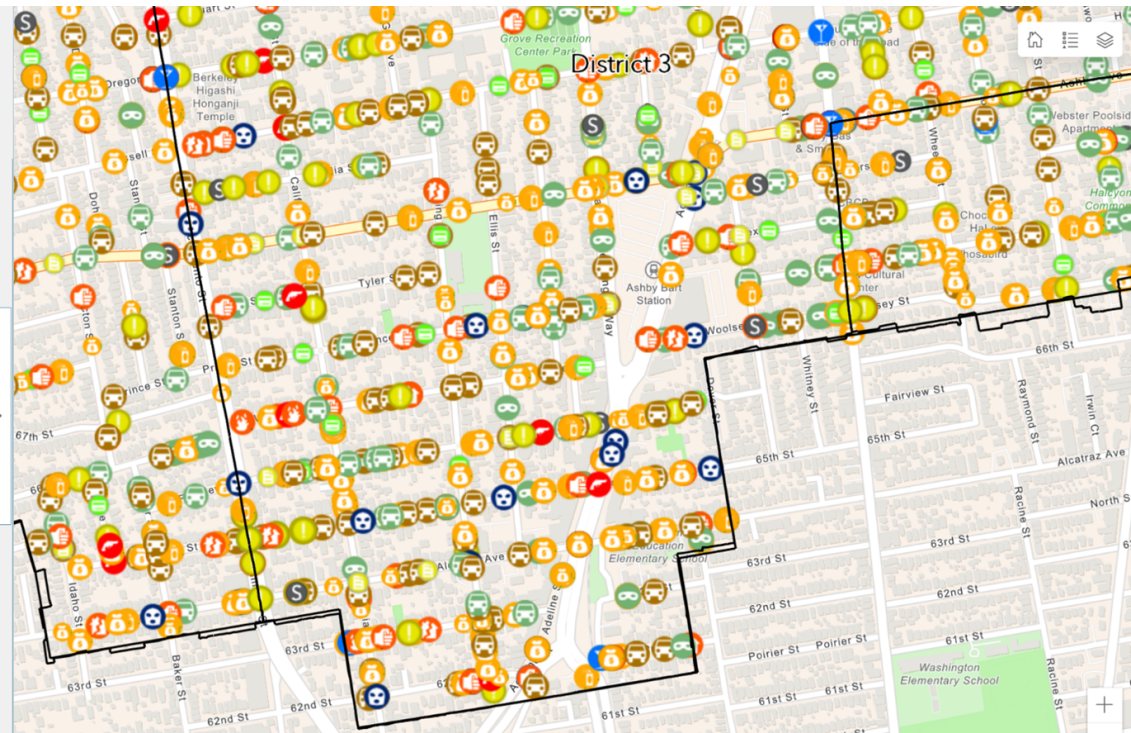
FINANCIAL IMPLICATIONS

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 2022.¹ 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.² In this particular case, a private security camera recorded the suspect subsequently stealing a car, and the footage proved instrumental in their later apprehension.³ 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.

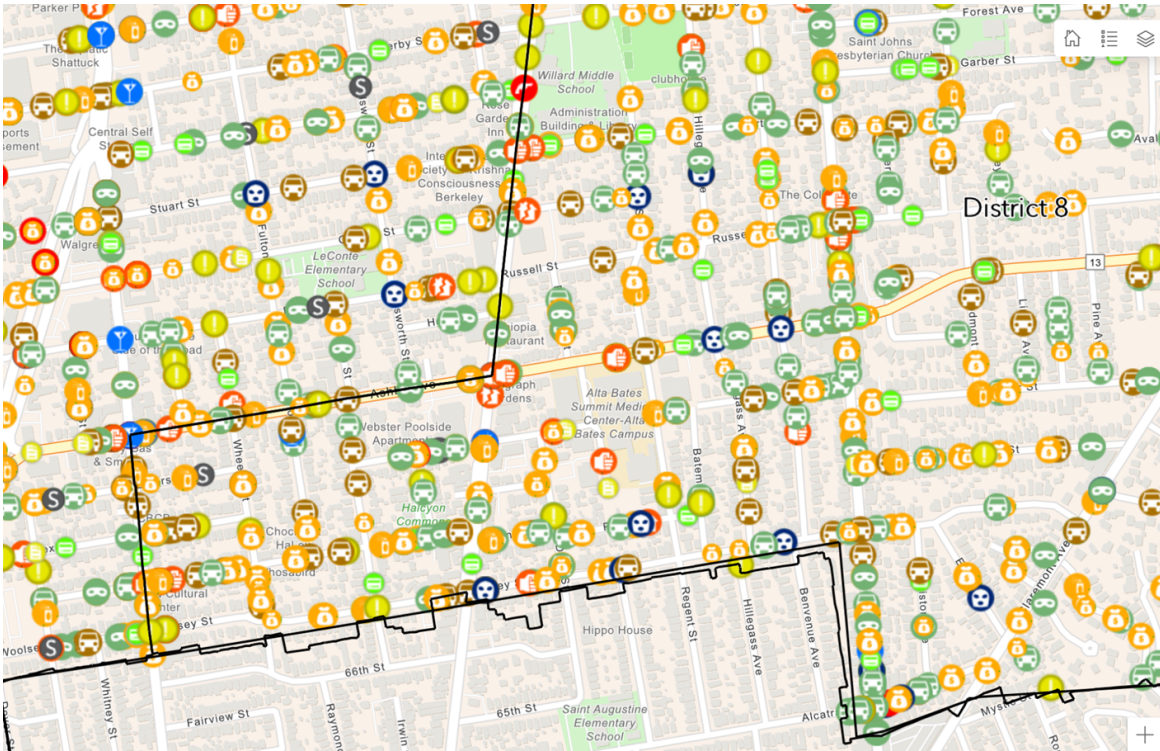


Map showing 1-year of crime data in vicinity of southern District 3. (From BPD Transparency Hub)

¹ 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>

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

³ 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 report⁴ 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.⁵

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

⁴ 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.

⁵Van 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)

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)

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:

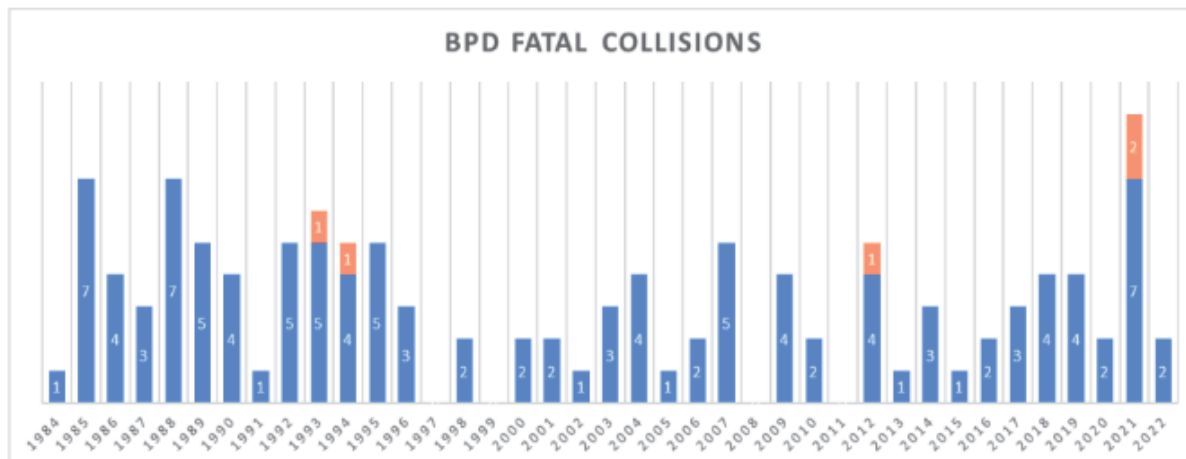


Figure 1 FATAL COLLISIONS IN THE CITY OF BERKELEY
Source: BPD (2023)

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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County of Alameda
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6 **SUPERIOR COURT OF CALIFORNIA**
7 **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, 2019.¹ 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

¹ 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 behavior². 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 ² <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 categories³.
- 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 men⁴.
- 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 ³ <https://www.dailycal.org/2020/07/23/racial-disparities-in-berkeley-police-stop-data-may-indicate-racial-bias/>

25 ⁴ <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
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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**

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

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

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.
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CAUSE OF ACTION

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

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

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.

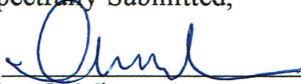
3 C. Enter a temporary injunction restraining the City of Berkeley from using the San
4 Pablo Park Cameras and Transfer Station Cameras surveillance technologies, until such time as they
5 may receive City Council approval.

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.

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Dated: November 30, 2021

Respectfully Submitted,
By: 
Justina G. Mignea
Attorney for Petitioner, Secure Justice

ATTACHMENT 5

BPD Policy 351

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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- 6th Street at University Avenue
- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7th 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
- 62nd 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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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

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

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Surveillance Use Policy-External Fixed Video Surveillance Cameras

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:

Respondent Information

1. Job title:

2. Brief description of job:

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

Yes No

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

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

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?

3.3.2. If no, how did they vary?

Planning

4. Why were you interested in using CCTV?

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

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?

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?

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

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

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

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)

16.1 How were those challenges overcome?

16.2 How long did it take to overcome these challenges?

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

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)?

19. Why was this vendor(s) selected?

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?

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

Installation

27. How many cameras were installed?

28. Where are cameras installed?

29. How were camera locations selected?

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

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

Yes No

31.1 If yes, please describe:

Monitoring

32. Are cameras being actively or passively monitored?

Actively Passively Combination

Explain:

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

Yes No

33.1 If no, why not:

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

Yes No

34.1 If no, why not:

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

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

36.1 Do they undergo any formal training?

Yes No

36.2 If yes, please describe:

36.3 If yes, is the training documented?

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

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

38. What types of incidents are reported?

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

40. What is the protocol for reporting incidents?

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

42. Who has access to the recorded images?

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?

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

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:

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

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

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?

4. How did you find out about this job?

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

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

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

8. Who conducted this training?

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

10. What sort of incidents are you looking for?

11. Who do you report these incidents to?

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

13. How is the tape archived?

14. How is the tape later retrieved for review?

A-3. Protocol for Interviews with Investigators

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?

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

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

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?

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

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

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?

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?

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:

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

- Yes No

17.1. Please explain:

18. How useful is CCTV evidence for:

18.1 Investigations?

18.2 Interviews?

18.3 Interrogations?

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


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

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

Item 11.c. Memorandum from the Director of Police
Accountability regarding his observations and
considerations for the PAB's review of Council Item
16: "Zoning Amendments for Berkeley Business;
Amending Berkeley Municipal Code Title 23."



MEMORANDUM

To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability 
Date: February 21, 2024
Subject: Observations and Considerations for the PAB's review of Council Item 16. Zoning Amendments for Berkeley Business; Amending Berkeley Municipal Code Title 23

The purpose of this memorandum is to inform the PAB about Council Item 16. Zoning Amendments for Berkeley Business; Amending Berkeley Municipal Code Title 23," which is scheduled for consideration by the Council on February 27th, 2024 (see attached¹). The ODP has been reviewing this item and our preliminary analysis has identified a key area of interest.

Proposal to be considered by Council:

Council Item 16 concerns zoning amendments impacting Berkeley businesses and related changes to the Berkeley Municipal Code Title 23. Amendments propose alterations to the current requirements for the Berkeley Police Department (BPD) to review proposed establishments, specifically relating to the determination of potential crime contributions and alcohol-related violations.

In the staff report, it is asserted that forecasting crime or attributing any potential increase to businesses not yet operational is challenging without “objective standards”.

¹ Alternatively, the full agenda packet can be accessed at (relevant item starting at pg.435) : <https://berkeleyca.gov/sites/default/files/city-council-meetings/2024-02-27%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

Background and Rationale for Review

Given the Board's permissive power and duty under [Section 125\(3\)\(a\)\(1\)](#)² "To advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department," it is within the PAB's purview to review this item. The proposal's implications for public safety, particularly in the context of *alcohol outlet density*³ and related literature, warrant careful consideration.

Historically, the PAB and PRC have primarily focused their reviews on ensuring robust guardrails and safeguards concerning the powers and authority of the BPD. However, the current consideration extends to evaluating the potential public safety implications of removing BPD's review authority in one specific municipal process. This shift underscores a broader perspective on public safety, emphasizing not only the direct actions of law enforcement but also the systemic and procedural aspects of municipal governance that may indirectly influence community safety and well-being.

Preliminary analysis for the PAB's consideration:

The City Manager's stance, as articulated in the staff memo, that "there are no objective standards to evaluate the potential of a business to negatively impact public safety in the future, for BPD to forecast crime at a particular location, or to attribute any predicted increase in crime to the operation of a business that does not yet exist," appears somewhat inconsistent with existing literature on *alcohol outlet density* and its impact on public safety⁴. Studies suggest a notable

² [https://berkeley.municipal.codes/Charter/125\(3\)\(a\)\(1\)](https://berkeley.municipal.codes/Charter/125(3)(a)(1))

³ For a helpful primer on alcohol outlets and measuring alcohol outlet density consider the CDC's guide: Centers for Disease Control and Prevention. Guide for Measuring Alcohol Outlet Density. Atlanta, GA: Centers for Disease Control and Prevention, US Dept of Health and Human Services; 2017. <https://www.cdc.gov/alcohol/pdfs/cdc-guide-for-measuring-alcohol-outlet-density.pdf>

⁴ While not exhaustive, some recent literature on this phenomenon includes:

Cameron M. P. (2022). The relationship between alcohol outlets and crime is not an artefact of retail geography. *Addiction* (Abingdon, England), 117(8), 2215–2224. <https://doi.org/10.1111/add.15880>

Gmel G, Holmes J, Studer J. Are alcohol outlet densities strongly associated with alcohol-related outcomes? A critical review of recent evidence. *Drug Alcohol Rev.* 2016;35:40–54.

Franklin FA, Laveist TA, Webster DW, et al. Alcohol outlets and violent crime in Washington D.C. *West J Emerg Med* 2010;11:283–90.

relationship (although not always causal) between the density of alcohol outlets and certain violent crimes, disorderly conduct, alcohol-related traffic incidents, and other public health concerns.

Recommendations for the PAB:

As this item precedes the next scheduled Board meeting in a two-reading process, immediate action is not required for participation in the discussion. However, should the Board wish to contribute, these recommendations could form the basis of the PAB's input to the Council's deliberations on this matter.

Recommendations for the Board include:

1. Advising the Council and City Manager to conduct further analysis of alcohol outlet density literature to assess potential public safety outcomes following the removal of BPD's review process.
2. Advising the Council and City Manager to assess whether this amendment aligns with best practices for maintaining community safety and health.
3. Advising the Council and City Manager to consider assessing whether reassigning the role of the BPD under the ordinance to the City's Public Health department may accomplish the public safety/ public health review that may still be necessary when reviewing alcohol outlet applications.

Alternatively, the Board could elect to withhold commentary or suggestions from this item and prioritize other areas under the Charter.

Attachments:

1. Council Item 16. Zoning Amendments for Berkeley Business; Amending Berkeley Municipal Code Title 23

Campbell CA, Hahn RA, Elder R, et al. The effectiveness of limiting alcohol outlet density as a means of reducing excessive alcohol consumption and alcohol-related harms. *Am J Prev Med* 2009;37:556-69.

ATTACHMENT 1



Office of the City Manager

PUBLIC HEARING
February 27, 2024

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Director, Planning and Development
Subject: Zoning Amendments for Berkeley Business; Amending Berkeley Municipal Code Title 23

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt the first reading of an ordinance amending Title 23 of the Berkeley Municipal Code to streamline and clarify the permitting process for small businesses in commercial districts (“C-Prefixed”), select manufacturing (“M-Prefixed”) districts, and the Residential BART Mixed Use (R-BMU) and Residential Southside Mixed Use (R-SMU) zoning districts.

SUMMARY

In 2019, the City Council adopted a referral (**Attachment 4**) with a set of nine policy considerations “to streamline the zoning review process for new or expanding small businesses,” intended to support Berkeley businesses and bolster Berkeley’s commercial districts. Between 2020 and 2023, the Planning Commission met and considered these recommendations and developed seven additional policy recommendations. Council consideration of these proposals will conclude work on the 2019 referral.

The proposed ordinance would to streamline and clarify the permitting process for small businesses in Berkeley by implementing the following changes:

- **Group Class Instruction:** Reduce the level of permitting discretion for Group Class Instruction and clarifying definitions of “Dance/Exercise/Martial Arts/Music Studio”, “Group Class Instruction”, and “Gyms and Health Clubs.”
- **Incidental Distilled Spirits:** Revise permit requirements and provide clear performance standards for restaurants that wish to serve Incidental Distilled Spirits at a Food Service Establishment.
- **Stand-Alone Beer and Wine Sales and Service:** Permit stand-alone Beer and Wine Sales and Service with an administrative use permit (AUP), subject to performance standards, in all commercial zoning districts.

- **Alcohol Service, Live Entertainment, and Hours of Operation:** Modify the special use standards related to Alcohol Service, Live Entertainment, and Hours of Operation in select C-prefixed and M-prefixed districts.
- **Change of Use:** Removing the permit requirements to change a use in commercial districts, thereby reducing permitting time and costs for small businesses getting established in existing commercial spaces.
- **Office, Business and Professional; Art/Craft Studio; Pet Stores:** Reduce the level of permitting discretion for Office, Business and Professional; Art/Craft Studio; and Pet Stores in select C-prefixed districts.
- **Food Service:** Reduce levels of permitting discretion for food service in commercial and select manufacturing districts and in R-SMU and R-BMU zoning districts, as long as alcohol service is not included. Remove restrictions on rentals of food service establishments to third parties, and on outdoor and seated food service with alcohol in select C and M prefixed districts. Remove quotas on food service in the C-E (Elmwood) district.
- **Drug Paraphernalia Stores:** Remove the prohibition on uses involving sale or distribution of drug paraphernalia in the C-T (Telegraph) district.

These recommendations were considered by the Planning Commission and the Planning Commission’s Zoning Amendments for Berkeley Business Subcommittee in the context of current zoning regulations and General Plan objectives. Staff subsequently developed a refined set of corresponding proposed Zoning Ordinance amendments.

On October 4, 2023, the Planning Commission held a public hearing (**Attachment 2**) and unanimously recommended the proposed zoning amendments to the City Council (Motion/Second (Mikiten/ Moore). Ayes: Merker, Moore, Oatfield, Mikiten, Marthinsen, Twu, Hauser, Ghosh, and Vincent. Noes: None. Abstain: None. Absent: None (9-0-0)).

The zoning amendments are contained in **Attachment 1**, and are proposed for City Council adoption. The proposed zoning amendments advance the City’s Strategic Plan goals to foster a dynamic, sustainable, and locally-based economy and to provide excellent, timely, easily accessible service and information to the community.

FISCAL IMPACTS OF RECOMMENDATION

The proposed amendments are intended to simplify the planning review process for business activities, including new business starts and expansions. Therefore, the proposed amendments may result in a modest increase in business license tax and sales tax revenues due to increased business activity. In addition, the proposed

amendments may result in a modest decrease in staffing-related expenditures and land use permitting fee collections, as more uses would be permitted “by right” rather than through a discretionary permitting process.

CURRENT SITUATION AND ITS EFFECTS

The proposed zoning amendments reflect policy changes that are summarized in *Table 1: Referral Actions and Zoning Amendment Proposals*. Detailed explanations of the proposed zoning amendments are included below.

The first set of proposed zoning amendments reflect specific previously referred actions from City Council, while the second set of proposed zoning amendments reflect staff-initiated changes that are consistent with the previous direction and intent of City Council referrals, and which are recommended by the Planning Commission. Table 1 also includes a column which indicates which Section(s) of the proposed ordinance include changes related to the indicated referral actions. **Attachment 3** is an annotated version of the proposed ordinance that includes comments for each Section which refer to items in Table 1.

Table 1: Referral Actions and Zoning Amendment Proposals

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachments 1 and 3)
2018-2019 CITY COUNCIL REFERRALS			
1.	<p>Group Class Instruction. Allow Group Class Instruction with a Zoning Certificate (ZC) in the C-N, C-E, C-NS and C-SO zoning districts. (Council referral dated 10/15/2019).</p> <p>Revise definitions of “Dance/Exercise/Martial Arts/Music Studio”, “Group Class Instruction”, and “Gyms and Health Clubs.”</p>	<ul style="list-style-type: none"> Removed “Dance/Exercise /Martial Arts/Music Studio” definition and revised the definition of “Group Class Instruction” (simplified to “Group Instruction”). (Section 22) Replaced “Gyms and Health Clubs” use with new “Health and Fitness Facility” use and definition. (Section 25) Changed permit requirements and size thresholds. (Sections 1, 2 and 3) 	<p>1 2 3 4 11 13 22 24 25 26 27</p>

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachments 1 and 3)
		<ul style="list-style-type: none"> Removed ground floor transparency requirement for gyms in the C-DMU, for customer privacy. (Section 4) Conforming technical edits, e.g., renumbering and references. 	
2.	<p>Incidental Distilled Spirits. Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts and the MU-LI and MU-R zoning districts. (Council referral dated 10/15/2019, and Council referral dated 12/4/2018)</p>	<ul style="list-style-type: none"> Revised permit requirements. (Section 19) 	19
3.	<p>Stand-Alone Beer and Wine. Permit stand-alone Beer and Wine Sales and Service with an AUP, subject to performance standards, in all commercial zoning districts. (Council referral dated 10/15/2019 and Council referral dated 12/4/2018)</p>	<ul style="list-style-type: none"> Expanded Bar/Cocktail Lounge/Tavern use type to include “Tap Room/Wine Tasting.” (Sections 3, 13 and 21) Revised permit requirements. (Section 3) 	3 8 13 21
4.	<p>Alcoholic Beverage Sales Standards. Update the Special Use Standards for Alcoholic Beverage Sales in BMC Section</p>	<ul style="list-style-type: none"> Revised permit requirements. (Sections 18 and 19) 	18 19

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachments 1 and 3)
	23.310.030(C). (Council referral dated 10/15/2019)	<ul style="list-style-type: none"> Revised Findings of Public Convenience or Necessity. (Section 18) 	
5.	Hours of Operation. Modify hours and days of operations in commercial districts. (Council referral dated 10/15/2019).	<ul style="list-style-type: none"> Amended district purpose for C-SO District. (Section 9) Revised Hours of Operation. (Section 14) Clarified exceptions. (Section 14) Established that an AUP, not a Use Permit Modification, is required to extend hours to match this change. (Section 14) Conforming technical edit. (Section 9) 	9 14
6.	Change of Use. Remove permit requirements to change a use in commercial districts. (Attachment 1, referral dated 10/15/2019)	<ul style="list-style-type: none"> Removed additional permit requirements related to change of use. (Sections 3 and 4) 	3 4
7.	ATMs. Allow Automatic Teller Machines (ATMs) in commercial districts with a ZC. (Council referral dated 10/15/2019)	<ul style="list-style-type: none"> No recommended changes. 	N/A

STAFF-INITIATED CHANGES CONSISTENT WITH CITY COUNCIL REFERRALS			
8.	Office, Business and Professional; Art/Craft Studio; Pet Stores.	<ul style="list-style-type: none"> Revised permit requirements. (Section 3) 	3

	<ul style="list-style-type: none"> • Allow Office, Business and Professional uses with a ZC in the C-NS and C-T zoning districts. • Allow Art/Craft Studios with a ZC in all commercial zoning districts. • Permit Pet Stores with an AUP in the Corridor Commercial (C-C), University Commercial (C-U), C-N, C-E, C-NS, South Area Commercial (C-SA), C-T, C-SO, Downtown Mixed-Use (C-DMU) and Adeline Corridor Commercial (C-AC) zoning districts. 		
9.	<p>Live Entertainment. Allow unamplified Live Entertainment with a ZC, and permit amplified Live Entertainment with an AUP in the C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC, C-N, C-NS, West Berkeley Commercial (C-W), C-E, MU-LI and MU-R zoning districts.</p>	<ul style="list-style-type: none"> • Added Live Entertainment as incidental use in the R-SMU districts. (Section 1) • Added “Live Entertainment, Unamplified” and “Live Entertainment, Amplified” as land uses in the residential, commercial and manufacturing Allowed Uses Tables. (Section 3) • Removed stand-alone section. (Section 13 and 15) 	1 3 13 15

10.	<p>Seated Food Service Requirement. Allow distilled alcoholic beverage service without seated food service in the C-T, C-NS, and the C-SO zoning districts.</p>	<ul style="list-style-type: none"> Removed requirement that food service must accompany distilled alcohol service. (Sections 8 and 19) 	8 19
11.	<p>Food Service Establishments 3,000 sq. ft or less. Allow Food Service Establishments 3,000 square feet or less with a ZC, and permit food establishments greater than 3,000 square feet with an AUP, in all commercial zoning districts and the R-SMU and R-BMU zoning districts, as long as alcohol service is not included.</p>	<ul style="list-style-type: none"> Added new “Food Service Establishments” uses to Residential and Commercial Allowed Use tables and removed stand-alone section. (Sections 1, 3 and 16) Removed AUP requirement for food service on ground floor in C-DMU. (Section 10) 	1 3 10 16
12.	<p>Food Service Establishment Quota. Remove the Numeric Limitation for Food Service Establishments in the C-E zoning district.</p>	<ul style="list-style-type: none"> Removed numeric quota. (Section 5) 	5
13.	<p>Incidental Food Service Establishment Requirements. Permit incidental Food Service Establishments under 20,000 square feet in manufacturing districts to be indoors and outdoors with an AUP, and remove the specification that food or beverage be limited to “immediate consumption” in the MM zoning district.</p>	<ul style="list-style-type: none"> Added new “Food Service Establishment” incidental uses to Manufacturing Allowed Use Table and removed stand-alone code section. (Sections 13 and 16) 	13 16

14.	Drug Paraphernalia in C-T District. Allow retail sales of drug paraphernalia in the C-T zoning district.	<ul style="list-style-type: none"> Removed prohibition on uses involving sale or distribution of drug paraphernalia in C-T. (Section 8) 	8
15.	Third Party Rental. Remove the restriction on renting space in a Food Service Establishment that serves alcohol incidental to food service to a third party.	<ul style="list-style-type: none"> Removed restriction. (section 19) 	19

Discussion of Proposed Changes

Items 1 through 7 in the list below were considered pursuant to City Council referrals in 2018 and 2019.

1. Group Class Instruction.

Allow Group Class Instruction with a Zoning Certificate (ZC) in the C-N, C-E, C-NS and C-SO zoning districts. Currently, most commercial zoning districts require an AUP for group class instruction. Recent business models focus on creating activity or experience-based enterprises for patrons alongside traditional retail sales (e.g., painting or art classes accompanying the sales of paint and art supplies, or pattern and fabric sales connected with sewing classes).

The proposed amendments would:

- Allow Group Instruction uses with a ZC in all commercial zoning districts, except:
 - An AUP would be required for Group Instruction uses 3,000 square feet or larger in the Neighborhood Commercial (C-N), Elmwood Commercial (C-E), and Solano Avenue (C-SO) zoning districts. The Planning Commission wished to maintain a higher level of discretion for larger Group Instruction uses in smaller commercial districts.
- Allow Health and Fitness Facility uses with a ZC in all commercial zoning districts, except:
- Require an AUP for Health and Fitness Facility uses 7,500 square feet or larger in the Neighborhood Commercial (C-N), Elmwood Commercial (C-E), and Solano Avenue (C-SO) zoning districts. The Planning Commission

wished to maintain a higher level of discretion for larger Health and Fitness Facilities uses in smaller commercial districts.

Revise Definitions Related to Group Class Instruction - The BMC currently includes three related use types (Group Class Instruction, Art Classes/Studios/Dance/Martial Arts Studios, and Gym/Health Club) that share some overlapping uses (exercise classes, for example, appear in both Group Class Instruction and Gym/Health Club). This has led to confusion as to how to classify a proposed use or accommodate emerging business models. The proposed zoning amendments consolidate and refine these definitions, as shown in Table 2.

Table 2: Existing and Proposed Group Class Instruction & Related Definitions

Existing Definitions	Proposed Definitions
<p>Dance / Exercise / Martial Arts / Music Studio. An establishment in which customers assemble for group exercises, dancing, self-defense training, aerobics, choral or musical instrument instruction, other movement drills for learning, rehearsal or non-audience performances.</p>	<p>Group Instruction. An establishment that offers specialized programs in personal growth, development, and instruction in artistic, cultural, and academic pursuits, including music and choral schools, performing arts, arts and crafts, cooking, tutoring, martial arts and self-defense training. Excludes spaces designed exclusively for public performance.</p>
<p>Group Class Instruction. An establishment that offers specialized programs in personal growth and development. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.</p>	
<p>Gyms and Health Clubs. An indoor facility where exercise equipment, classes and related activities related to personal health and fitness are available to paying customers. Excludes parks/playgrounds.</p>	<p>Health and Fitness Facility. An indoor facility where exercise equipment, group classes and other activities related to personal health and fitness are available to customers or members. This can include a facility where exercise equipment, swimming pools, group or aerobic classes (including yoga and Pilates) and other activities related to personal health and fitness are available to customers or members. Excludes: park/playground.</p>

Dance, exercise and aerobics are proposed to be captured in the definition of “Health and Fitness Facility.” “Music Studio” is proposed to be removed from the definition because the use is captured in the existing definition of “Media Production.” Music Instruction is proposed to be included under “Group Instruction.”¹ Note that the definition and permit requirements for a “Commercial Recreation Center” remain unchanged, which permit activities and uses that include indoor rock climbing, bowling alleys, bingo parlors, skating rinks, billiard or pool halls, miniature golf courses and axe throwing.

2. *Incidental Distilled Spirits.*

Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts and the MU-LI and MU-R zoning districts, and with a UP in the R-BMU zoning district. Currently, an operator of a Food Service Establishment must obtain a Use Permit to serve Distilled Spirits that are incidental to food service, which is a process separate from, and in addition to, the State of California Division of Alcohol Beverage Control (ABC) review process. The proposed amendments would permit incidental sale and service of distilled alcoholic beverages with an AUP subject to performance standards. The proposed changes are included in Table 3, below and would also include an amendment to BMC Section 23.310.030(C) – Incidental Beer and Wine Service Standards to condition Food Service Establishments applying to expand alcoholic beverage service.

Table 3: Beer & Wine and Distilled Spirits Incidental to Food Service – Proposed Amendments

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
R-SMU	UP(PH)	UP(PH)
All Commercial Zoning Districts, except C-AC and the R-BMU District	ZC	UP(PH) <u>AUP</u>
<u>R-BMU</u>	<u>ZC</u>	<u>UP(PH)</u>
MU-LI, MU-R	<u>UP(PH)</u> <u>AUP</u>	<u>UP(PH)</u> <u>AUP</u>

3. *Stand-Alone Beer and Wine.*

Permit stand-alone Beer and Wine Sales and Service with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts. Currently, stand-alone Beer and Wine Sales and Service uses (e.g., tap rooms, wine bars, and tasting rooms) are permitted in the C-C, C-U, C-SA, C-T, C-DMU, C-W,

¹ Note: This would be separate from a home occupation use in a residential district that includes small group lessons as an incidental use, such as private piano lessons taught in a home.

and C-AC zoning districts with a Use Permit, which is a process separate from, and in addition to, the State of California's Alcoholic Beverage Control (ABC) review process. The proposed amendments would permit stand-alone sale and service of beer and wine with an AUP in the above listed districts.

4. Alcoholic Beverage Sales and Service Standards.

Update the Special Use Standards for Alcoholic Beverage Sales in BMC Section 23.310.030(C) to align with the proposed Zoning amendments. The proposed amendments include revisions to the standards for Alcoholic Beverage Sales and Service in BMC 23.310.020 and BMC 23.310.030.² These changes include revised findings for public convenience and necessity that provide updated standards consistent with ABC requirements for staff to reference when evaluating permit applications and/or preparing findings for a proposed permit involving alcoholic beverage sales or service.

Revise Alcoholic Beverage Sales General Requirements, Excluding Incidental Beer and Wine Service. BMC Section 23.310.020, Alcoholic Beverage General Requirements Excluding Beer and Wine Service (i.e., distilled spirits), applies to applications that are starting or increasing alcoholic beverage sales (except for beer and wine service that is incidental to food service). The proposed revisions would implement the following changes:

- Currently, a Use Permit is required to begin or increase alcoholic beverage sales or service. The proposed revisions would permit service of distilled spirits incidental to food service with an AUP.
- The proposed revisions would amend the findings of undue concentration of alcoholic beverage sales and service uses to be consistent with State of California definitions found in Business and Professions Code Section 23958.4³ and current ABC regulations.
- The proposed revisions would amend the *Findings of Convenience and Necessity* to include "economic development benefits to the surrounding area", and to require that *only one, not all*, of the listed findings are required for permit issuance.
- The proposed revisions would remove existing requirements that the Berkeley Police Department (BPD) review proposed establishments to determine whether they would be expected to add crime to the area or whether an applicant's previous alcohol-related violations at another location would

² Special Use Standards for Alcoholic Beverage Sales were first established in 1999 and revised in 2008, 2009, 2010, 2011, 2014, and 2019.

³ California State Code, Business and Professions 23958.4.

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=23958.4&lawCode=BPC

indicate a high likelihood of further violations. These findings are difficult to make as there are no objective standards to evaluate the potential of a business to negatively impact public safety in the future, for BPD to forecast crime at a particular location, or to attribute any predicted increase in crime to the operation of a business that does not yet exist. BPD will instead be notified of all approved alcohol-related permits along with their conditions of approval. Furthermore, additional language has been added to the standard conditions of approval to increase safety and improve authentic identification verification.

Revise Alcoholic Beverage Sales General Requirements, Alcoholic Beverage Service When Incidental to Food Service. BMC Section 23.310.030(C) includes standards that apply to beer and wine service that are incidental to food service in commercial zoning districts. The proposed revisions would implement the following changes for beer and wine service that is incidental to food service:

- The proposed revisions would allow beer and wine to be served in its original bottle or can, or in a container.
- The proposed revisions would allow a lounge or bar area to be established for the sole purpose of alcoholic beverage sales and consumption.
- The proposed revisions would empower the Zoning Officer to review and approve changes to hours of operation that have been established through conditions of approval with an AUP.
- The proposed revisions would remove the common permit condition that prohibits the premises to be rented by a third party.
- The proposed revisions would allow advertising of alcoholic beverages and allow alcoholic beverage sales and service equipment to be visible from the public right-of-way, subject to standards in BMC 20.67 (Alcohol Product Advertising).

5. Hours of Operation.

Modify hours and days of operation in commercial zoning districts. Currently, the permitted days and hours of operation vary among commercial zoning districts, and do not account for holidays and other unique cultural and civic events that may occur on a weekday. Currently, in order for a business to extend hours of operation, a UP is required in most commercial zoning districts. To standardize the permitted hours and days of operations across districts, the proposed amendments include the changes to permitted hours of operation as shown in Table 4. Controls related to both noise and alcohol sales would remain in effect with the adoption of the changes articulated in Table 3.⁴ While 24 hour a day operation would be allowed in the C-

⁴ E.g., Chapter 9.84 (Responsible Beverage Service Training), BMC Section 13.46.050 (Regulations for Operation and Conduct of Entertainment Events Involving Service or Permitted Consumption of Alcohol),

DMU and C-T zoning districts for commercial uses, no alcohol service use would be permitted to continue past 2:00 a.m.⁵

Table 4: Hours of Operation – Proposed Amendments

District	Allowed Hours of Operation	Permit Required to Extend Hours
C-C, C-U, <u>C-NS, C-AC, C-W nodes</u>	<u>7:00 a.m.–12:00 midnight</u> <u>6:00 a.m.–2:00 a.m.</u>	AUP
C-N, C-E, <u>C-NS</u> , C-SO, C-SA, C-W outside nodes, <u>MU-R</u>	<u>7:00 a.m.–11:00 p.m.</u> <u>6:00 a.m.–12:00 midnight</u>	<u>UP</u> <u>AUP</u>
<u>C-W nodes</u>	<u>6:00 a.m.–12:00 midnight with</u> <u>Zoning Certificate</u>	<u>UP</u>
<u>C-SA</u>	<u>7:00 a.m.–12:00 midnight</u> <u>Sundays through Thursdays</u> <u>7:00 a.m.–12:00 Fridays and</u> <u>Saturday</u>	<u>UP</u>
<u>C-AG</u>	<u>7:00 a.m.–12:00 midnight</u> <u>Sundays through Thursdays</u> <u>7:00 a.m.–2:00 a.m. Fridays</u> <u>and Saturday</u> <u>6:00 a.m.–2:00 a.m.</u>	<u>UP</u>
<u>C-T between Bancroft Way</u> <u>and the north side of</u> <u>Dwight Way, C-DMU</u>	24 hours per day, 7 days a week	N/A
<u>C-T between the south</u> <u>side of Dwight Way and</u> <u>Parker Street</u>	<u>7:00 a.m.–12:00 midnight</u>	<u>AUP</u>
<u>C-DMU</u>	<u>6:00 a.m. and 2:00 a.m.</u>	<u>AUP</u>
<u>MU-R</u>	<u>6:00 a.m.–10:00 p.m.</u>	<u>AUP</u>

The proposed amendments would require applicants to apply for an AUP to extend their hours of operation beyond what is allowed by their current permit or zoning code.

Chapter 13.48 (Civil Penalties for Multiple Responses to Loud or Unruly Parties, Gatherings or Other Similar Events), Chapter 13.49 (Social Host Ordinance), Chapter 13.60 (Warning Sign Against Consuming Alcoholic Beverages During Pregnancy), Chapter 13.40 (Community Noise), Chapter 20.67 (Alcohol Product Advertising).

⁵ California State Business & Professions Code 25631 regulates any on-sale or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2:00 a.m. and 6:00 a.m. of the same day.

6. *Change of Use.*

Remove “change of use” permit requirements in commercial districts. Currently, all commercial zoning districts except the C-T, C-DMU and C-AC require an AUP or a UP for a change of use, in addition to the permits required for the proposed use itself. In some cases, change of use requirements are different based on project size (square feet), not use. For example, General Retail is allowed in many commercial zoning districts with a ZC, but an AUP is required if it is a change of use for a space over 3,000 square feet in size.

The proposed amendments include the removal of change of use requirements in commercial zoning districts, both for individual uses and for the size of a proposed use. Any proposed use, whether in an empty (vacant) location or as a replacement for a previous use, would be subject to the same permit requirements as the underlying district; there would not be an added discretionary administrative requirement for a proposed use based solely on a change from a previous use. Uses that are different than the immediately previous use would still be evaluated based on compatibility with the purpose of the zoning district and any potential impacts and unique characteristics that may require conditions of approval, to the degree a discretionary permit is required. There remain sections of the zoning code that would still require discretionary procedures based on other underlying size-related regulations, as well as changes in floor area or tenant reconfigurations.

7. *ATMs.*

Allow Automatic Teller Machines (ATMs) in commercial districts with a Zoning Certificate (ZC). Currently the BMC requires a UP for an ATM that is not associated with a financial institution. After evaluation and consultation with small businesses and existing legislation, staff determined this is a low priority and there are no revisions included in the proposed amendments related to ATMs.

Items 8 through 14 below were advanced by Office of Economic Development (OED) staff in response to changing business conditions, research and community engagement. Some of these modifications, particularly number 8, were refined through outreach and engagement, particularly with the Planning Commission and its small business zoning subcommittee.

8. *Office, Business and Professional; Art/Craft Studios; Pet Stores.*

Allow Office, Business and Professional uses with a ZC in the C-NS and C-T zoning districts. Currently, Office, Business and Professional uses require an AUP in the C-NS and C-T zoning districts. The proposed zoning changes revise this requirement to a ZC. The Planning Commission wished to maintain a higher level of discretion for Office, Business and Professional uses in the smaller C-SO, C-E, and C-N zoning

districts and have indicated keeping the AUP requirement is more appropriate in those areas.

Allow Art/Craft Studios with a ZC in all commercial zoning districts and permit Pet Stores with an AUP in the C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-DMU and C-AC zoning districts. Art/Craft Studios require an AUP in some commercial zoning districts and a ZC in others. Pet Stores currently require a UP in all but one commercial zoning district (the C-W). Existing performance standards in the BMC (e.g., Section 13.40.050 Exterior Noise Standards) would continue to provide limits and regulations for any unintended impacts related to the above-mentioned uses. Existing and proposed permit requirements are summarized in Table 5.

TABLE 5: OFFICE; BUSINESS AND PROFESSIONAL; ART/CRAFT STUDIOS; PET STORES – PROPOSED AMENDMENTS

Use	Existing	Proposed
Office, Business and Professional	AUP in C-N, C-E, C-NS, C-T and C-SO ZC in C-C, C-U, C-SA, C-DMU, C-W and C-AC	AUP in C-N, C-E and C-SO zoning districts ZC in all other commercial zoning districts
Art/Craft Studios	ZC in C-AC AUP in all other commercial zoning districts	ZC in all commercial zoning districts
Pet Stores	ZC in C-W UP(PH) in all other commercial zoning districts	ZC in C-W AUP in all other commercial zoning districts

9. *Live Entertainment.*

Allow unamplified Live Entertainment with a ZC, and permit amplified Live Entertainment with an AUP, in the C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC, C-N, C-NS, C-W, C-E, R-SMU, MU-LI and MU-R zoning districts. Live Entertainment is defined as:

“Any one or more of any of the following, performed live by one or more persons, whether or not done for compensation and whether or not admission is charged: musical act (including karaoke); theatrical act (including stand-up comedy); play; revue; dance; magic act; disc jockey; or similar activity.”

Live entertainment, as either a primary or incidental use, is currently not permitted in any residential zoning district. The R-SMU, however, with its relatively dense and mixed-use character, and geographic limitation within the student-oriented Southside Plan Area, is considered an appropriate zoning district in which to permit live entertainment as an incidental use. The proposed changes would allow unamplified

Live Entertainment with a ZC and permit amplified Live Entertainment with an AUP, as summarized in Table 6.

TABLE 6: LIVE ENTERTAINMENT – PROPOSED AMENDMENTS

Zones	Permit Required for Live Entertainment	
	Unamplified	Amplified
C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC, <u>C-N, C-NS, C-W, C-E, MU-LI, MU-R</u>	ZC	AUP
<u>R-SMU</u>	<u>Not Permitted ZC</u>	<u>Not Permitted AUP</u>
<u>C-N, C-NS, C-W</u>	<u>ZC</u>	<u>UP(PH)</u>
<u>C-E</u>	<u>ZC</u>	<u>Not Permitted</u>
<u>MU-LI, MU-R</u>	<u>UP(PH)</u>	<u>UP(PH)</u>

10. *Alcohol and Seated Food Service Requirements.*

Remove the requirement for seated food service to accompany distilled alcoholic beverage service in the C-T, C-NS, and C-SO zoning districts. Currently, only the C-T, C-NS, C-SO and the R-BMU (BART Mixed Use) zoning districts require seated food service with distilled alcoholic beverage service. Under this requirement, business operators must include food service in order to sell and serve distilled alcohol. The C-C, C-U, C-N, C-E, C-SA, C-DMU, C-W and C-AC zoning districts do not have this requirement.

The proposed changes would remove this requirement in the C-T, C-SO, and C-NS districts and regulate the use consistently throughout commercial districts citywide. No change is proposed for the R-BMU district, which would continue to retain this requirement.

11. *Food Service Establishments*

Allow Food Service Establishments 3,000 square feet or less with a ZC and permit food service establishments greater than 3,000 square feet with an AUP in all commercial zoning districts and in the R-SMU and R-BMU zoning districts. Several zoning districts vary permit requirements for Food Service Establishments based on floor area or square footage. In some cases, this is a legacy requirement from having a number of different types of food service (i.e., quick service vs. full service) permitted by size (square feet) in the BMC.

In 2019, due to the evolving nature of food service and the availability of food delivery, three food-related use categories (Carry Out Food Store, Quick Service

Restaurant, and Full-Service Restaurant) were condensed into one use, *Food Service Establishment*. Combining these three previous uses into one removed the size distinctions that were the basis of varying permit requirements.

The proposed zoning amendments related to Food Service Establishment size include allowing Food Service Establishments under 3,000 square feet with a ZC, and permitting those of 3,000 square feet or more with an AUP, in all commercial districts and the R-SMU and in the R-BMU if no alcohol service is provided. The proposed revisions would also remove the requirement that a Notice of Decision (NOD) be posted within 300 feet of a subject property for any Food Service Establishment that receives an AUP in the C-N, C-E, C-NS, C-SA, C-T and C-SO districts.

In addition, the proposed changes include allowing Food Service Establishments in the Arts District Overlay with a ZC, consistent with other commercial zoning districts and its underlying zoning district (C-DMU), and would remove unique findings for food service in the Elmwood (C-E) district related to incidental use and limits on food establishment uses (see 12, below).

Remove the restriction on renting a Food Service Establishment space to a third party. Currently, BMC Section 23.310.030(C)(3) does not allow a restaurant space that includes incidental beer and wine service to be rented to a third party. In order to provide more flexibility and sustainability to food service operations, the proposed zoning amendments would remove the restriction on renting restaurant space to a third party.

12. *Elmwood Food Service Establishment Quota.*

Remove the quota for Food Service Establishments in the C-E zoning district. Currently the C-E (Elmwood) zoning district is the only remaining zoning district that restricts the total number of Food Service Establishments.⁶ All other quotas throughout the City were eliminated in 2016, after an evaluation of the quota program citywide.⁷ Future changes to the quota system in the Elmwood were to be brought to Council after further consultation with the Elmwood Business Association.⁸ The proposed amendment would remove the quota on the number of Food Service Establishments in the C-E. OED staff presented this proposal to the Elmwood Business Association on April 21, 2023 and the Elmwood Business

⁶ Berkeleyside, <https://www.berkeleyside.org/2012/01/17/elmwood-business-quotas-may-change-to-help-startups>, January 17, 2012.

⁷ Berkeley City Council, *Removing Numeric Limitations ("Quotas") in the North Shattuck (C-NS), Telegraph Avenue (C-T), and Solano Avenue (C-SO) Commercial Districts; Amending Berkeley Municipal Code Title 23*, March 29, 2016.

⁸ *Ibid*, page 3 of 76.

Association Board voted to support the recommendation to remove quotas in the C-E District.

13. Incidental Food Service Establishment Requirements in Manufacturing Districts.

Remove the requirement that incidental Food Service Establishments in buildings under 20,000 square feet in manufacturing zoning districts be indoors only. Currently, Incidental Food Service Establishments—i.e., Food Service Establishment uses that are co-located with a primarily permitted use—are permitted in select manufacturing (or “M-prefixed”) zoning districts with an AUP or a UP based on square footage. The proposed zoning amendments would allow for **outdoor** food service in all manufacturing districts, and off-site food or beverage consumption (i.e. “to-go”) in the MM District.

The AUP permit requirement for **indoor** food service in the MU-R and the MU-LI zoning districts would still apply for spaces under 5,000 square feet.

14. Drug Paraphernalia in the C-T Zoning District.

Allow drug paraphernalia stores and the sale of drug paraphernalia in the C-T zoning district. Currently, the C-T *Allowed Uses* section of BMC 23.204.110(B)(3) explicitly prohibits drug paraphernalia stores or the sale of drug paraphernalia in the C-T zoning district. No other zoning district includes this prohibition in the corresponding *Allowed Uses* section.

Currently, there are three existing legal Cannabis Retailers established in the C-T zoning district that offer cannabis paraphernalia. The existing regulation is also challenging to enforce since the statewide legalization of cannabis. The proposed change would remove this restriction in the C-T zoning district and would regulate this category of merchandise the same way as other commercial zoning districts, i.e., as general retail or as part of a Smoke Shop.

Existing Permitted Land Uses & Proposed Zoning Ordinance Amendments

As a result of some of the above proposed zoning amendments, there may be existing uses that, either as a result of previous zoning regulations or specific conditions of approval, would now find themselves subject to more restrictive regulations than new uses in the same zoning district established after the adoption of the proposed zoning amendments. For example, currently in the C-U zoning district, commercial hours of operation end at midnight. Accordingly, an existing business’s approval was premised on ending business at midnight. Under the proposed zoning amendments, however, commercial hours of operation in the C-U zoning district would end at 2:00 a.m. A new business would therefore be allowed to operate two hours longer than an existing business. Currently, adjusting the existing business’ commercial hours of operation would require a permit modification (BMC 23.404.070), which requires a public hearing.

To remedy this scenario and others like it, the revised ordinance includes new language in three sections to modify the process for modifying an existing land use approval to be consistent with the new regulations included in the proposed ordinance. In each case, an AUP is required to modify an approval, which includes public notice and an option to appeal an initial decision, as well as providing the City an opportunity to include conditions of approval, if necessary.

Authorization to modify existing approvals with an AUP is found in the proposed ordinance's revised language for Hours of Operation (BMC 23.302.020(B); Section 14 of **Attachment 1**); General Requirements for Alcohol Beverage Sale and Service (BMC 23.301.020(B); Section 18 of **Attachment 1**); and regulations regarding Alcoholic Beverage Service When Incidental to Food Service (BMC 23.302.030(A); Section 19 of **Attachment 1**).

Miscellaneous Technical Edits

The proposed zoning amendments also include the following technical amendments and corrections unrelated to the amendments to support small businesses:

- **C-SA Text Amendments:** With the adoption of the Adeline Corridor Specific Plan, a number of parcels that were previously included in the C-SA zoning district were rezoned to C-AC. Section 23.204.100 (C-SA zoning district) still includes provisions related to alcoholic beverage sales and service that pertain only to those formerly C-SA parcels (see Section 6 in **Attachments 1 and 3**). The proposed zoning amendments include the removal of those provisions from the C-SA zoning district regulations.

C-SA Height Provisions: The C-SA zoning district includes two different building height standards, which are applied to parcels based on their location. Currently, there are parcels that are zoned C-SA that do not have a building height standard assigned to them. The proposed zoning amendments include revisions to the C-SA Maximum Building Heights Table and accompanying map to provide a building height standard for all C-SA zoned parcels (see Section 7 in **Attachments 1 and 3**).

- **Use Category Titles:** Section 12 of the proposed ordinance includes the correct use category titles for Retail Uses, Person and Housing Services Uses and Food and Alcohol Service, Lodging, Entertainment and Assembly Uses.
- **Family Day Care:** SB 234 (2019) requires cities to consider all family day care homes for up to 14 children, operating under the standards defined by state law, a residential use and prohibits the local requirement of a business license. Earlier this year, the City Council adopted amendments to the Residential Allowed Use Table to reflect these requirements, but the requirement for a ZC still remains in the allowed use tables for commercial and manufacturing districts. The proposed

ordinance includes removal of Family Day Care permit requirements from the commercial and manufacturing use tables, consistent with State requirements.

- *Restaurant Uses:* As a result of previous amendments, there are no longer any regulations that pertain to Carry Out Food Stores, Quick Service Restaurants and Full-Service Restaurants. To eliminate confusion, the proposed zoning amendments include removal of the definitions for these restaurant types from the Glossary and a reference in another section.
- *Formatting Changes:* The proposed ordinance simplifies and improves usability of the Zoning Ordinance by consolidating information into fewer sections and tables.

BACKGROUND

The Zoning Ordinance has evolved over many decades to reflect Berkeley's changing values and the dynamic landscape of property development and land use. Its requirements are intended to guide the City's growth while providing opportunities for feedback from residents, business owners, and commercial district and neighborhood associations.

As noted in the June 7, 2023 Planning Commission report, OED staff consulted with external stakeholders including business services personnel, small business proprietors and operators, and business district networks, as well as City staff including the Community Services Bureau of the Berkeley Police Department, Code Enforcement, and Environmental Health. This collaborative effort also enabled the identification of enhancements in internal city processes and implementation efforts that align with the Council referrals from 2018 and 2019. Some work has already taken place in response to those referrals, including the creation a Coordinated Sign Design program by Council in November 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Small businesses contribute to sustainable transportation and consumer behavior by providing opportunities to shop in commercial districts that are accessible by foot, bicycle and transit. The continued pursuit of environmental sustainability goals, as well as the programs and policies that encourage that pursuit, represents an economic strength for Berkeley and a competitive advantage of the City and the region.

The proposed ordinance includes revisions to permit and other requirements for specified land uses. It does not include allowing any uses currently not permitted that would be anticipated to have a significant effect on the environment and does not qualify as a "project" under the California Environmental Quality Act (CEQA) and further environmental review is not required.

Zoning Amendments for Berkeley Business

PUBLIC HEARING
February 27, 2024

RATIONALE FOR RECOMMENDATION

The goal of these Zoning Ordinance amendments is to simplify and streamline the permitting experience for small businesses, which can in turn enhance the quality of commercial district offerings, help fill vacant storefronts, and generate more local and sustainable economic opportunities. Berkeley’s commercial districts, and the small businesses that comprise them, are vital to the City’s fiscal, social and civic wellbeing.

ALTERNATIVE ACTIONS CONSIDERED

The June 7, 2023 Planning Commission report included a set of recommendations and alternative suggestions for a number of the proposed policy changes, including different permit requirements, differently-worded definitions and alternative approaches to formatting and organization. Ultimately through the work of the subcommittee and wider discussion(s) with the Planning Commission, some of these suggestions were abandoned and others were workshopped into the recommendations presented in this report, to address the goals of City Council’s referrals.

CONTACT PERSON

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Attachments:

- 1: Ordinance.
- 2: Planning Commission Staff Report, October 14, 2023.
- 3: Annotated Ordinance.
- 4: City Council referral to support small business, Oct. 15, 2019.
- 5: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO THE RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), SUPPLEMENTAL USE REGULATIONS CHAPTER (BMC 23.302), ALCOHOLIC BEVERAGE SALES AND SERVICE CHAPTER (BMC 23.310), NONCONFORMING USES, STRUCTURES AND BUILDINGS CHAPTER (BMC 23.324) AND THE GLOSSARY CHAPTER (BMC 23.502) TO SUPPORT BERKELEY BUSINESSES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the lines named “Alcoholic Beverage Service,” “Food Service Establishment” “Group Class Instruction,” and “Gym/Health Club” in Table 23.202-1 Allowed Land Uses in Residential Districts, within Berkeley Municipal Code 23.202.020 are amended, and lines named “Food Service Establishment, Under 3,000 sq. ft.,” “Food Service Establishment, 3,000 sq. ft. or larger,” and a new Incidental Use use category with “Live Entertainment, Unamplified” and “Live Entertainment, Amplified” are added, to read:

Table 23.202-1: Allowed Land Uses in Residential Districts

	RESIDENTIAL DISTRICTS											USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)	
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	R-BMU**		
ZC = Zoning Certificate AUP = ADMINISTRATIVE USE PERMIT UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply **--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D													
Alcoholic Beverage Service	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)* ZC*	UP(PH)*	23.310—Alcoholic Beverage Sales and Service	
Food Service Establishment	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	23.302.070.E—Use-Specific Regulations	
Food Service Establishment, Under 3,000 sq. ft.	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC*	ZC*	23.302.070(E) – Use-Specific Regulations	
Food Service Establishment, 3,000 sq. ft. or larger	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP*	AUP*	23.302.070(E) – Use-Specific Regulations	
Group Class Instruction	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	23.202.150-(C) R-BMU Residential BART Mixed Use District	
Gym/Health and Fitness Facility Club	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	23.202.150-(C) R-BMU Residential BART Mixed Use District	
Incidental Uses													

Live Entertainment, Unamplified	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC	NP	
Live Entertainment, Amplified	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP	NP	

Section 2. That Berkeley Municipal Code 23.202.150(C)(2) is amended to read:

2. Group ~~Class~~-Instruction and ~~Gym/Health Club~~ and Fitness Facility. Group ~~class~~ instruction and ~~gym/health club~~ and fitness facility uses are permitted at the Ashby BART station with a Zoning Certificate. Group ~~class~~-instruction and ~~gym/health club~~ and fitness facility uses are permitted at the North Berkeley BART station with a Use Permit.

Section 3. That the lines named “Family Day Care Home, Large,” “Family Day Care Home, Small,” “Alcoholic Beverage Retail Sale,” “Pet Store,” “Retail General,” “Personal and Household Services, General,” “Laundromats and Cleaners,” “Video Tape/Disk Rental,” “Business Support Services,” “Bank and Financial Services, Retail,” “Insurance Agents, Title Companies, Real Estate Agents, Travel Agents,” “Medical Practitioners,” “Non-Chartered Financial Institutions,” “Office, Business and Professional,” “Bar/Cocktail Lounge/Tavern,” “Dance/Exercise/Martial Arts/Music Studio,” “Food Service Establishment,” “Gym/Health Club,” “Alternative Fuel Station,” “Large Vehicle Sales and Rental,” “Small Vehicle Sales and Rental,” “Vehicle Parts Store,” “Vehicle Rentals,” “Vehicle Repair and Service,” “Vehicle Sales, New,” “Vehicle Sales, Used,” “Cannabis Testing,” “Light Manufacturing,” “Wholesale Trade,” “Food and Beverage for Immediate Consumption,” “Food Service Establishment,” “Live Entertainment,” “Retail Sale of Goods Manufactured On-Site,” “Art/Craft Studio,” “Public Market, Enclosed” and the Notes in Table 23.204-1 Allowed Uses in the Commercial Districts, within Berkeley Municipal Code 23.204.020, are amended, and lines named “Group Instruction, 3,000 sq. ft. or larger,” “Food Service Establishment, Under 3,000 sq. ft.” “Food Service Establishment, 3,000 sq. ft. or larger” “Health and Fitness Facility, Under 7,500 sq. ft.” “Health and Fitness Facility, 7,500 sq. ft.” “Live Entertainment, Unamplified,” and “Live Entertainment, Amplified,” are added, to read:

Table 23.204-1 Allowed Uses in the Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Family Day Care Home, Large	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Family Day Care, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Alcoholic Beverage Retail Sale	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	23.204.060.B-2 23.310
Pet Store	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	ZC [3]	AUP UP(PH)	
Retail, General	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC* [1]	ZC* [2]	ZC* [2]	ZC	ZC* [3]	ZC*	23.204.040.(C)-E (for department stores) 23.204.040.(D)-F (for drug stores)
Personal and Household Services, General	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	ZC [6]	ZC	
Laundromats and Cleaners	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	AUP	AUP	UP(PH)	UP(PH)	AUP [4]	AUP	
Video Tape/Disk Rental	ZC [1]	ZC [1]	ZC [2]	AUP	ZC [2]	--	ZC	ZC [2]	ZC	ZC [5]	NP	
Business Support Services	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC*	ZC [2]	ZC	ZC [5]	ZC [6]	23.204.110.(B)-6 (4)
Bank and Financial Services, Retail	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	AUP	ZC	23.204.110.(B)- 6 64); 23.204.130.(B)- 6 6); 23.204.130.(D)- 3 3)
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC*	ZC* [2]	ZC*	ZC [5]	ZC [6]	23.204.040.(D)(B); 23.204.110.(B)-6 (4); 23.204.130.(D)- 3 3)
Medical Practitioners	ZC [1]	ZC [1]	AUP	NP	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	ZC [5]	ZC [6]	23.204.040.(D)(B); 23.204.110.(B)-6 (4); 23.204.130.D.3
Non-Chartered Financial Institutions	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	UP(PH)*	NP	NP	UP(PH)*	UP(PH)	23.302.070.F 23.204.110.(B)-6 (4)
Office, Business and Professional	ZC [1]	ZC [1]	AUP*	AUP*	AUP ZC*	ZC [1]	AUP ZC*	AUP*	ZC*	ZC [5]	ZC [6]	23.204.040.(B); 23.204.110.(B)-6 4; 23.204.130.(D)- 3 3)
Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting	UP(PH) AUP*	UP(PH) AUP*	UP(PH) AUP*	-- AUP*	NP AUP*	UP(PH) AUP*	UP(PH) AUP*	NP AUP*	UP(PH) AUP*	UP(PH) AUP*	UP(PH) AUP*	23.204.100.B.3 -23.204.140.B-2; 23.310
Dance/Exercise/Martial Arts/Music Studio	ZC [1]	ZC [1]	ZC [2]	AUP	AUP [4]	ZC [1]	ZC	AUP	ZC	ZC [7]	ZC	
Food Service Establishment, under 3,000 sq. ft.	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.302.070.(E)
Food Service Establishment,	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	23.302.070.(E)

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
<u>3,000 sq. ft. or larger</u>	*	*	*	*	*	*	*	*	*	*	*	
Group <u>Class-Instruction, Under 3,000 sq. ft.</u>	ZC {4}	ZC {4}	AUP ZC	AUP ZC	AUP ZC	ZC {4}	ZC	AUP ZC	ZC	ZC	ZC	23.204.040.B
<u>Group Instruction, 3,000 sq. ft. or larger</u>	ZC	ZC	AUP	AUP	ZC	ZC	ZC	AUP	ZC	ZC	ZC	
<u>Health and Fitness Facility, Under 7,500 sq. ft.</u>	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
<u>Health and Fitness Facility, 7,500 sq. ft. or larger</u>	ZC	ZC	AUP	AUP	ZC	ZC	ZC	AUP	ZC	ZC	ZC	
<u>Gym/Health Club</u>	See 23.204.040.C											
Alternative Fuel Station	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP*	UP(PH)	NP	AUP*	UP(PH)	23.204.110-(B)-4 (2); 23.204.140-(B)-3
Large Vehicle Sales and Rental	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [81]	NP	23.204.140-(B)-3
Small Vehicle Sales and Service	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	23.204.100-(B)-5 (3); 23.204.140-(B)-3
Vehicle Parts Store	ZC {4}	NP	ZC {2}	ZC {2}	ZC {2}	ZC {4}	ZC	ZC {2}	NP	AUP* [81]	ZC	
Vehicle Rentals	AUP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	AUP* [81]	NP	23.204.140-(B)-3
Vehicle Repair and Service	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [81]	NP	
Vehicle Sales, New	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	AUP* [81]	NP	23.204.140-(B)-3
Vehicle Sales, Used	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	23.204.100-(B)-5 (3); 23.204.140-(B)-3; 23.204.140-(D)-4
Cannabis Testing	AUP	AUP	NP	NP	NP	NP	NP	NP	AUP	AUP [81]	NP	
Light Manufacturing	-	-	-	-	-	-	-	-	-	AUP [81]	--	
Wholesale Trade	-	-	-	-	--	-	-	-	-	AUP [81]	--	
Incidental Uses												
Food and Beverage for Immediate Consumption	ZC	ZC	AUP ZC	UP(PH) ZC	UP(PH) ZC	ZC	AUP ZC	UP(PH) ZC	ZC	ZC	ZC	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Food Service Establishment	See 23.302.070.E											
Food Service Establishment, Under 3,000 sq. ft.	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.310.030
Food Service Establishment, 3,000 sq. ft. or larger	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	23.310.030
Live Entertainment, Unamplified	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Live Entertainment, Amplified	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	
Live Entertainment	See 23.302.070.E											
Retail Sale of Goods Manufactured On-Site	ZC [4]	ZC [4]	ZC [2]	ZC [2]	ZC [2]	ZC [4]	ZC	ZC [2]	ZC	AUP ZC	ZC	
Art/Craft Studio	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	ZC [6]	
Public Market, Enclosed	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP [92]	AUP	
Notes: [1]—Change of use of floor area over 3,000 square feet requires an AUP. [2]—Change of use of floor area over 2,000 square feet requires an AUP. [3]—Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft. [4]—Requires a Use Permit if 5,000 sq. ft. or more. [5]—Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft. [6]—Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline. [7]—Requires a Use Permit if 7,500 square feet or more. [8][1] Require a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area. [9][2] Requires a Use Permit if more than 10,000 sq. ft.												

Section 4. That Berkeley Municipal Code 23.204.040(B) through (F) be amended, to read:

~~B. Group Class Instruction.~~

- ~~1. C-NS and C-DMU Districts. When group class instruction in the C-NS or C-DMU districts are located on the ground floor adjacent to a street frontage, storefront windows must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.~~

- 2. ~~C-NS District.~~ Group class instruction uses in the C-NS may not exceed 2,500 square feet.
- 3. ~~C-T District.~~ Group class instruction uses in the C-T district are not permitted on the ground floor.

C. Gyms and Health Clubs

1. Permits Required. Table 23.204-5: Gym and Health Club Permit Requirements shows permits required for gyms and health clubs in the Commercial Districts.

Table 23.204-5: Gym/Health Club/Fitness Studio Permit Requirements

DISTRICT/USE SIZE	PERMIT REQUIRED [1]
C-C, C-U, C-DMU	
Under 7,500 sq. ft	ZC
7,500 sq. ft. and greater	AUP
C-N, C-E, C-NS, C-SO	AUP
C-SA, C-T, C-AG	ZC
C-W	
Under 7,500 sq. ft	ZC
7,500 sq. ft. and greater	-UP(PH)
<p>Note: [1] Change of use permit requirements as described in Section 23.204.030.A – Additional Permit Requirements (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p>	

2. C-DMU District. When located on the ground floor adjacent to a street frontage, storefront windows for a gym and health club in the C-DMU district must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

DB. Transparency Requirement for Office Uses. When office uses shown in [Table 23.204-6: Office Uses Subject to Transparency Requirement](#) are located on the ground floor adjacent to a street frontage, storefront windows shall either:

- 1. Include a storefront window display; or

2. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

Table 23.204-6: Office Uses Subject to Transparency Requirement

OFFICE USE	DISTRICT
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	CN, C-E, C-NS, CT, C-SO, C-DMU
Medical Practitioners	C-T
Office, Business and Professional	CN, C-E, C-NS, C-T, C-SO, C-DMU

EC. Department Stores. Table 23.204-7: Department Store Permit Requirements shows permits required for department stores in the Commercial Districts.

Table 23.204-7: Department Store Permit Requirements

DISTRICT/USE SIZE	PERMIT REQUIRED [1]
C-SA, C-T	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	AUP
C-E, C-NS, C-SO	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	Not Permitted
C-N	
3,000 sq. ft. or less	AUP
Over 3,000 sq. ft.	Not Permitted
C-C, C-U	
ZC	
C-AC	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	UP(PH) AUP
<p>Note: [1] Change of use permit requirements as described in Section 23.204.030.A Additional Permit Requirements (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p>	

FD. Drugstores. The following requirements apply to drugstores in the C-N, CE, C-NS, and C-SO districts.

1. Where Prohibited. A new or expanded drugstore is not permitted if it is:

- a. Over 5,000 square feet in gross floor area; and
- b. Within 1,000 feet of any property containing an existing drugstore.

2. Measurement of Distance. Distances between drugstores are measured by a straight line from the nearest point of the property line of the parcel on which the drugstore is proposed to the nearest point of the lot line of the lot on which the nearest drugstore is located.

Section 5. That Berkeley Municipal Code 23.204.080(B)(2) be amended to read:

2. Numerical and Size Limitations.

- a. Table 23.20420 shows land uses subject to ~~numerical and~~ size limitations in the C-E district.

TABLE 23.204-20: C-E LAND USE NUMBER AND SIZE LIMITATIONS

USE	NUMBER LIMIT	MAXIMUM SIZE	PERMIT REQUIRED
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500 sq. ft.	ZC
Bookstores, Periodical Stands	No limit	2,000 sq. ft.	ZC
Food Service Establishments [1]	25 total	No max.	AUP
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000 sq. ft.	ZC
<p>Notes: [1] Excludes food service uses accessory to a food product store. Secondary food service uses associated with all other principal uses are subject to limitations in Table 23.204-20. Change of use of over 3,000 square feet requires Use Permit</p>			

- b. The ZAB may allow a use to exceed the limitations in Table 23.20420 with a Use Permit upon finding that:
 - i. The use will result in the positive enhancement of the purposes of the district; and
 - ii. The use is likely to experience substantial patronage by surrounding residents as indicated by neighborhood resident support, merchant support, marketing surveys, or other information.

Section 6. That Berkeley Municipal Code 23.204.100(B) be amended to read:

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts

~~2. **Alcoholic Beverage Retail Sales.** The sale and service of distilled alcoholic beverages (hard liquor) is not permitted along Adeline Street, south of Ashby Avenue, except that such service is allowed when incidental to meals at full-service restaurants in accordance with Section 23.310—Alcoholic Beverage Sales and Service.~~

~~3. **Bar/Cocktail Lounge/Tavern.** Service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue only when incidental to seated food service.~~

42 Mixed-Use Permits Required.

a. **Zoning Certificate.** A mixed-use project is allowed with a Zoning Certificate if the project:

- i. Complies with all applicable standards in Table 23.20427, Table 23.20428, and Table 23.20429;
- ii. Includes only residential uses above the ground floor; and
- iii. Is less than 5,000 square feet in gross floor area, including any existing floor area incorporated into the project.

b. **Use Permit.** If a mixed-use project does not meet the criteria for approval with a Zoning Certificate as provided above, the project requires a Use Permit and is subject to the findings in Section 23.204.100:~~(E)~~— C-SA South Area Commercial District (Permit Findings).

53. Vehicle Sales.

a. **Applicability.**

- i. In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.
- ii. All new or relocated vehicle sales in the C-SA district shall be exclusively indoor operations with no outdoor activities and shall comply with the requirements of this subsection.
- iii. Expansions or modifications of existing vehicle sales are:
 - 1. Encouraged to comply with standards in Paragraph c (Standards) below where feasible; and
 - 2. Shall not increase or exacerbate a non-conformity with these standards.

b. **Standards.**

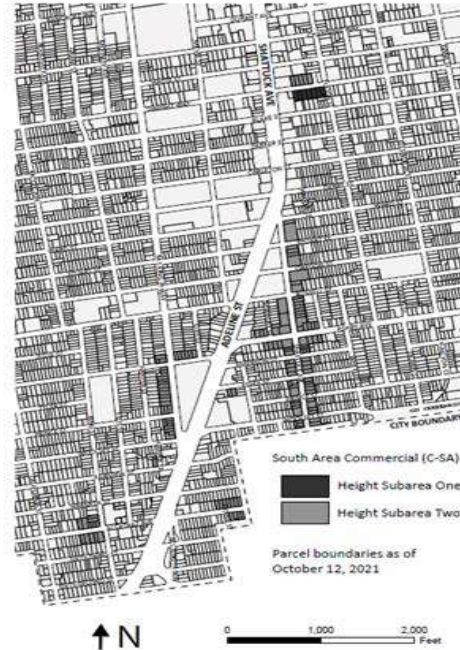
- i. **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.
 - ii. **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;
 - iii. **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.
 - iv. **Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.
 - v. **Repair Activities.** All vehicle repair activities shall be conducted indoors.
 - vi. **Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.
 - vii. **Lighting.** Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City's goals for energy efficiency.
 - vii. **Vehicle Storage.** No vehicles shall be stored in the public right-of-way.
- c. **Modification of Standards.** The Zoning Officer may allow modification to standards in Paragraph c (Standards) above with an AUP upon finding that the modification:
- i. Is necessary to facilitate incorporation of an existing structure;
 - ii. Achieve greater consistency with the surrounding street pattern;
 - iii. Buffers impacts to an adjacent residential district; or
 - iv. Is needed to accommodate dealership operations.

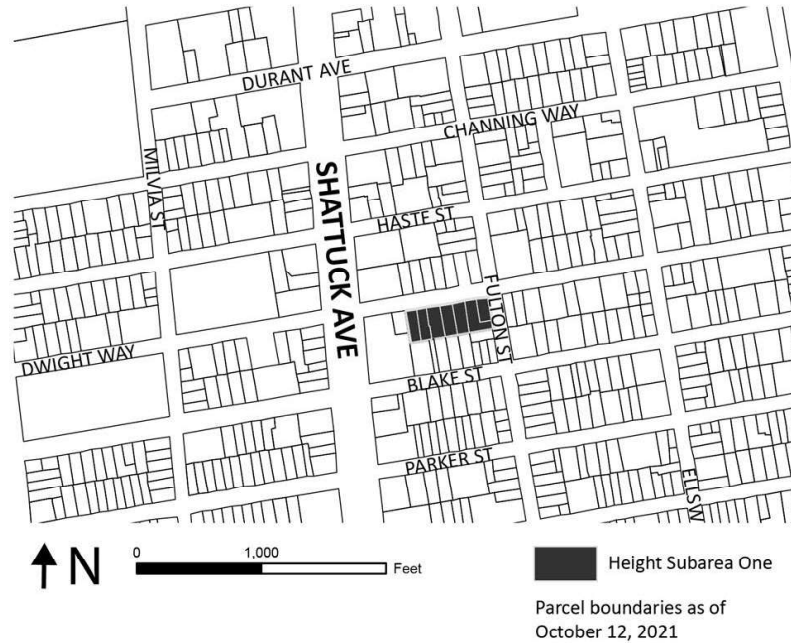
Section 7. That Table 23.204-28 C-SA Maximum Building Heights and Figure 23.204-3 C-SA Building Height Sub-Areas be amended to read:

Table 23.204-28. C-SA Maximum Building Heights

Building Land Use	Maximum Height	
	Subarea 4 <u>One</u>	Subarea 2 <u>All other parcels</u>
Non-Residential Uses	36 ft and 3 stories	24 ft and 2 stories
Mixed Use and Residential Only	60 ft and 5 stories [1]	36 ft and 3 stories [1]
[1] In mixed-use buildings, the third story and above must be used for residential purposes entirely.		

Figure 23.204-3. C-SA Building Height Sub-~~Areas~~area One





Section 8. That Berkeley Municipal Code 23.204.110(B) be amended to read:

B. Allowed Land Uses.

1. **General.** See Table 23.2041: Allowed Uses in the Commercial Districts.
- ~~2. **Bar/Cocktail Lounge/Taverns.** Service of distilled alcoholic beverages in the C-T district is allowed only when incidental to seated food service.~~
- ~~3. **Drug Paraphrenalia Stores.** Any use involving the sale or distribution of drug paraphrenalia is not permitted in the C-T district.~~
- ~~42. **Fuel Stations.** Alternative fuel and gasoline stations are allowed with Use Permit when located in a parking structure.~~
- 3. Residential Use, Ground Floor.** Residential uses are permitted on the ground floor where located behind a commercial use. The ground floor commercial use must meet the following standards:
 - a. Occupy a minimum 30-foot depth of the ground floor, as measured from the ground floor street frontage, and
 - b. Occupy the full extent of the building frontage, excluding required utilities, driveways, pedestrian access and residential lobby.

~~64. **Office Uses.**~~

a. Table 23.204-31 shows permits required for office uses in the C-T district.

TABLE 23.204-31: C-T OFFICE PERMIT REQUIREMENTS

Building Location	Permit Required	
	First and Second Story	Above Second Story
Adjacent to Bancroft Way	As required by Table 23.204-1	AUP
Not adjacent to Bancroft Way		UP(PH)

b. When office uses are located on the ground floor adjacent to street frontage, the storefront windows must either:

- i. Include a window display; or
- ii. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

75. Upper Story Uses.

- a. Floor area above the ground floor may be occupied only by a residential or office uses.
- b. A commercial use that is an integral part of a ground floor establishment is permitted on the second story if the use:
 - i. Has no entrances or exits, other than required fire exits, outside of the ground floor space; and
 - ii. Does not exceed the ground-floor area of the use.

Section 9. That Berkeley Municipal Code 23.204.120(A)(2)(e) be amended to read:

- e. Encourage location of ~~late-night~~late-night commerce in appropriate areas in Berkeley, such as the downtown area, and allow businesses to address demand for late night service on Solano Avenue by establishing a ~~11:00 p.m.~~12:00 midnight-closing time for businesses on Solano Avenue; and

Section 10. That Berkeley Municipal Code 23.204.130(D)(3) be amended to read:

3. Use Limitations; Findings. ~~Food-service establishments and offices~~Offices on the ground floor adjacent to a street frontage require an AUP. To approve the AUP, the Zoning Officer must find that

- (a) The project meets the purposes of the Arts Overlay District as set forth above; and

- (b) The location, size, type, appearance, and signage of the proposed use will:
 - i. Animate and enhance the pedestrian experience on the street; and
 - ii. Be generally open to the public evenings and on weekends, whenever practicable.

Section 11. That Berkeley Municipal Code 23.204.130(E)(7)(a)(iv) be amended to read:

- iv. ~~Gym/Health~~ and Fitness Facility Club

Section 12. That Berkeley Municipal Code 23.204.150(B)(3)(b) be amended to read:

b. Active Commercial Uses Defined. Active Commercial uses are commercial uses which generate regular and frequent foot traffic. Uses include businesses in the following use categories: ~~Retail~~ Retail Uses Sales; Personal and Household Services Uses; Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses; and the following uses: Banks and Financial Services, ~~Retail~~; and Vehicle Parts Stores.

Section 13. That the lines named “Family Day Care Home, Large,” “Family Day Care Home, Small,” “Bar/Cocktail Lounge/Tavern,” “Dance/Exercise/Martial Arts/Music Studio,” “Food Service Establishment,” “Group Class Instruction,” “Gym/Health Club,” and “Food and Beverage for Immediate Consumption,” in Table 23.206-1 Allowed Uses in Manufacturing Districts, within Berkeley Municipal Code 23.206.020, are amended, and lines named “Food Service Establishment, Under 5,000 sq. ft.” “Food Service Establishment, 5,000 sq. ft. or larger,” “Food Service Establishment, Under 20,000 sq. ft.” “Food Service Establishment, 20,000 sq. ft. or larger” “Live Entertainment, Unamplified” and :Live Entertainment, Amplified” are added, to read:

TABLE 23.206-1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Family Day Care Home, Large	NP	NP	ZC*	AUP*	23.206.040.C
Family Day Care Home, Small	NP	NP	ZC*	ZC*	23.206.040.C

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Bar/Cocktail Lounge/Tavern/ <u>Tap Room/Wine Tasting</u>	NP	NP	NP	See 23.306	
<u>Dance/Exercise/Martial Arts/Music Studio</u>	NP	NP	--	UP(PH)	
<u>Food Service Establishment</u>	See 23.302.070.E				
<u>Food Service Establishment, Under 5,000 sq. ft</u>	--	--	AUP*	AUP*	23.302.070(E)
<u>Food Service Establishment, 5,000 sq. ft. larger</u>	--	--	UP(PH)*	UP(PH)*	23.302.070(E)
Group <u>Class</u> -Instruction	NPZC	NPZC	--	UP(PH)ZC	
<u>Gym/Health and Fitness Facility Club</u>	NP	NP	--	NP	
Incidental Uses					
<u>Food and Beverage for Immediate Consumption</u>	--	AUP [2]	--	--	
<u>Food Service Establishment</u>	AUP [2]	--	AUP [2]	AUP	
<u>Food Service Establishment, Under 20,000 sq. ft</u>	AUP*	AUP*	AUP*	AUP*	23.302.070(E)
<u>Food Service Establishment, 20,000 sq. ft. larger</u>	NP	AUP*	NP	AUP*	23.302.070(E)
<u>Live Entertainment</u>	NP	NP	UP(PH)*	UP(PH)*	23.302.020-D
<u>Live Entertainment, Unamplified</u>	NP	NP	ZC	ZC	
<u>Live Entertainment, Amplified</u>	NP	NP	AUP	AUP	

Section 14. That Berkeley Municipal Code 23.302.020(B) be amended to read:

B. Hours of Operation.

1. **Allowed Hours.** Table 23.302-1: Allowed Hours of Operation shows allowed hours of operation for commercial uses in the commercial districts and the MU-R district, unless otherwise restricted by an existing permit.

2. Hours of Operation Defined.

a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.

a. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron.

These limitations do not apply to:

i. The delivery, maintenance, security, product preparation and other pre-opening activities, and

ii. Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.

c. For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.

2.3. Exceptions. The City may allow extended hours of operations with the approval of a permit as shown in Table 23.302-1. If more restrictive hours of operation than what is permitted in Table 23.302-1 are imposed as a condition of approval on an existing AUP or UP, the hours may be modified within the district's current limits with approval of an AUP regardless of the original review authority.

Table 23.302-1: Allowed Hours of Operation

DISTRICT	ALLOWED HOURS OF OPERATION	PERMIT REQUIRED TO EXTEND HOURS
C-C, C-U, <u>C-NS, C-AC, C-W nodes</u>	<u>7:00 a.m. – 12:00 midnight 6:00 a.m. – 2:00 a.m.</u>	AUP
C-N, C-E, <u>C-NS, C-SO, C-SA, C-W outside nodes, MU-R</u>	<u>7:00 a.m. – 11:00 p.m. 6:00 a.m. – 12:00 midnight</u>	<u>UPAUP</u>
<u>C-W nodes</u>	<u>6:00 a.m. – 12:00 midnight with Zoning Certificate</u>	UP
<u>C-SA</u>	<u>7:00 a.m. – 12:00 midnight Sundays through Thursdays 7:00 a.m. – 12:00 Fridays and Saturday</u>	UP
<u>C-AC</u>	<u>7:00 a.m. – 12:00 midnight Sundays through Thursdays 7:00 a.m. – 2:00 a.m. Fridays and Saturday</u>	UP

C-T, C-DMU between Bancroft Way and the north side of Dwight Way	24 hours per day 7 days a week	N/A
C-T between the south side of Dwight Way and Parker Street	7:00 a.m. — 12:00 midnight	AUP
C-DMU	6:00 a.m. and 2:00 a.m.	AUP
MU-R	6:00 a.m. and 10:00 p.m.	AUP

24. Alcohol Sales in C-T District. A Use Permit is required in the C-T district for a business selling alcohol for off-site consumption to remain open past midnight. The Use Permit may be approved only if the business’s ABC license does not require sales of alcohol for off-site consumption to cease by midnight. The Zoning Adjustments Board (ZAB) may approve the Use Permit only upon finding that the extended hours will not generate excessive noise, ~~traffic or parking problems~~ affecting the well-being of the residents of the district.

~~3. C-T District Findings. The Zoning Officer may approve an AUP to extend hours of operation in the C-T district upon finding that the extended hours will not generate excessive noise, traffic, or parking problems affecting the well-being of the residents of the district.~~

~~4. Hours of Operation Defined.~~

~~a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.~~

~~b. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to:~~

~~— The delivery, maintenance, security, product preparation and other pre-opening activities, and~~

~~— Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.~~

~~For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.~~

Section 15. That Berkeley Municipal Code 23.302.020(D) be removed and that Berkeley Municipal Code 23.302.020(E) be amended to read:

~~D. Live Entertainment -- Permits Required.~~ Live entertainment incidental to a permitted use is allowed as shown in Table 23.302-2.

Table 23.302-2: Permit Requirements for Live Entertainment

ZONES	PERMIT REQUIRED	
	AMPLIFIED	UNAMPLIFIED
C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AG	AUP	ZG
C-N, C-NS, C-W	UP(PH)	ZG
C-E	Not Permitted	ZG
M, MM	Not Permitted	Not Permitted
MU-LI, MU-R	UP(PH)	UP(PH)

1. Allowed Activities.

~~a. In the S-O district, food service establishments may have no live entertainment other than unamplified music, poetry reading, comedy or other quiet activities.~~

~~b. In the C-NS district, food service establishments may have no live entertainment other than unamplified background music, unless a Use Permit is obtained.~~

ED. Outdoor Uses.

1. **Applicability.** This subsection applies to outdoor uses including but not limited to exterior service windows, outside automatic teller machines, and the outside storage of goods, containers and/or materials.
2. **General.** Commercial and manufacturing uses shall be conducted solely within an interior of a building unless:
 - a. The permit as required by Paragraph 3 (Permits Required) is obtained; or
 - b. the outdoor use is specifically allowed by the Zoning Ordinance.
3. **Permits Required.** Table 23.302-2 Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.
3. ~~Table 23.302-3: Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.~~

TABLE 23.302-32: PERMIT REQUIREMENTS FOR OUTDOOR USES

DISTRICT/USE CHARACTERISTICS [1]	PERMIT REQUIRED
All Commercial Districts Except for C-W	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)
C-W	
Not abutting a residential district and less than 10,000 s. ft.	AUP
Abutting a residential district	UP(PH)
10,000 sq. ft. or more	UP(PH)
M, MM [2]	
Less than 20,000 sq. ft.	ZC
20,000 sq. ft. or more	AUP
MU-LI	
Less than 20,000 sq. ft.	ZC
20,000 to 30,000 sq. ft.	AUP
More than 30,000 sq. ft.	UP(PH)
MU-R	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)
Notes: [1] Size is measured as the lot area of the outdoor activity or storage [2] In the M and MM district permits are required only for activity or storage not ancillary to a permitted use.	

54. C-W District. In the C-W district, uses outside of a building must be permitted or incidental to permitted use in the district.

65. M, MM, MU-LI Districts. Outside uses in the M, MM, and MU-LI districts may not abut a residential district.

Section 16. That Berkeley Municipal Code 23.302.070(E) be amended to read:

E. Food Service Establishments.

- ~~1. **Maximum Size in R-SMU.** Food service establishments in the R-SMU district may not exceed 1,200 square feet.~~

2. ~~Permits Required in Commercial Districts and in the R-BMU.~~ 6 shows permits required for food service establishments in the commercial districts and in the R-BMU.

Table 23.302-6: Permit Requirements for Food Service Establishments

DISTRICT/USE SIZE	PERMIT REQUIRED
C-C, C-U, C-T, C-W	
Under 1,500 sq. ft	ZC
1,500 sq. ft. or more	AUP
C-N, C-NS, C-SA, C-SO	
Under 1,000 sq. ft	ZC
1,000 sq. ft. or more	AUP
C-AC, South Shattuck and North Adeline Subareas	
3,000 sq ft or less	ZC
Over 3,000 sq ft	AUP
C-AC, South Adeline Subarea	
1,500 sq ft or less	ZC
Over 1,500 sq ft	AUP
R-BMU, North Berkeley BART Station	UP(PH)
C-E	AUP [1]
C-DMU	
Under 3,000 sq. ft outside the Arts District Overlay	ZC
3,000 sq. ft. or more	AUP
Any size within the Arts District Overlay	AUP [2]
Notes:	
[10]—All food service uses in the C-E district require an AUP and may not be considered as an incidental use except when accessory to a food product store.	
[11]—See 23.204.130.D.3 for required findings.	

3. ~~Notification of Decision.~~ Food service establishments requiring an AUP in the C-N, C-E, C-NS, C-SA, C-T, C-SO districts must provide public notification of decision (NOD) within a 300-foot radius of the subject property.

4. ~~Carry Out Limitations in C-U District.~~ Food service establishments in the C-U district that exclusively sell food for offsite consumption are not permitted at any

~~location on University Avenue between Oxford Street and Martin Luther King Jr. Way until a Downtown Retail Plan is adopted by the City Council.~~

~~5.1. **Outdoor Cafe Seating.**~~

- a. Outdoor cafe seating on private property outside of the public right-of-way is allowed in the commercial districts with the following permits:
 - i. Zoning Certificate when seating does not abut a residential district.
 - ii. AUP when seating abuts a residential district.

~~b. Outdoor seating is not permitted for food service establishments in the MU-LI District.~~

~~c.b.~~ Sidewalk cafe seating within the public right-of-way is subject to 23.302.060 (Sidewalk Cafe Seating).

~~6.2. **Building Openings – C-E and C-NS Districts.** Food service establishments in the C-E and C-NS districts may have no openings, other than fixed windows and required fire exits, within 50 feet of a residential district.~~

~~7.3. **C-W District Requirements.**~~

~~a. Food service drive-through is not permitted on properties fronting San Pablo Avenue.~~

~~b. To approve a Use Permit for a food service establishment on a lot with frontage on San Pablo Avenue, the ZAB must find that:~~

- ~~i. The project does not conflict with the goals and policies of the C-W district;~~
- ~~ii. The location, size, appearance and signage of the project will not adversely affect the San Pablo Avenue corridor;~~
- ~~iii. The project supports pedestrian-oriented development;~~
- ~~iv. The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of fast food development, including, but not limited to increased traffic, litter, and noise; and~~
- ~~v. For projects which include construction of new buildings, the project design:
 - ~~1. Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets;~~
 - ~~2. Provides pedestrian scale and siting; and~~
 - ~~3. Incorporates continuity in street facades.~~~~

~~8. Permits Required in Manufacturing Districts.~~ Table 23.3028 shows permits required for food service establishments in the manufacturing districts.

TABLE 23.302-7: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS IN MANUFACTURING DISTRICTS

USE TYPE AND SIZE	DISTRICT			
	M	MM	MU-LI	MU-R
Incidental Use				
Under 20,000 sq. ft.	AUP [1]	AUP [1,2]	AUP [1]	AUP [1]
20,000 sq. ft. or more	-	-	-	AUP
Carry-Out Food Service (Primary Use)				
Under 5,000 sq. ft.	-	-	AUP	AUP
5,000 sq. ft. or more	-	-	UP	UP
Quick-Service Restaurant (Primary Use)				
Under 5,000 sq. ft.	-	-	AUP	AUP
5,000 sq. ft. or more	-	-	UP	UP
Full-Service Restaurant (Primary Use)				
	-	-	UP	UP
Notes: [12]—Outdoor food service is not permitted. [13]—Limited to food or beverage for immediate consumption.				

9.4. MU-LI and MU-R District – Findings.

- a. To approve an AUP ~~or Use Permit~~ to establish or expand a food service establishment in the MU-LI or MU-R district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial character of the area.
- b. ~~To approve an AUP for a food service establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on-site.~~

Section 17. That Berkeley Municipal Code 23.302.070(G) and (H) be amended to read:

G. Parking Lot/Structure.

~~1. Permits Required.~~

2.1. Permits Required. Table 23.302-9-7 shows required permits for the exclusive or primary use of a lot for off-street parking spaces.

TABLE 23.302-97: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES

DISTRICT	PERMIT REQUIRED
Residential Districts	
R-3	Use Permit for all parking lots and structures. [1]
R-S, R-SMU, R-BMU	Use Permit for parking structures only. Parking lots are not permitted, except on lots between Acton Street and Virginia Gardens and between Peralta Avenue and Northside Avenue in the R-BMU.
All other residential districts	Use Permit for all parking lots and structures.
Commercial Districts	
C-C, C-U	Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-SO	AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-DMU	AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.
C-N, C-E, C-NS, C-SA	Use Permit for all parking lots and structures.
C-T	Use Permit for all parking structures. All parking lots not permitted.
C-W	AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.
Manufacturing Districts	
M, MM	AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-LI	Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-R	Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.

Notes:

[1] Parking lots and structures in the R-3 district are not permitted within the Southside Plan area

~~3.2.~~ **Residential District Standards.** See 23.322.110– Parking Lots in Residential Districts for standards that apply to the exclusive or primary use of a lot for off-street parking spaces in a residential district.

H. Residential Use, Ground-Floor Units.

1. Southside Plan Area. In the R-3, R-S, R-SMU, and C-T districts within the Southside Plan boundaries, individual unit entries located within six feet of the front property line shall be at least 18 inches above the finished grade of the adjacent public frontage.
- I. **Senior Congregate Housing.** Table 23.302-~~40-8~~ shows permits required for senior congregate housing.

TABLE 23.302-~~40-8~~: PERMIT REQUIREMENTS FOR SENIOR CONGREGATE HOUSING

PROJECT	PERMIT REQUIRED
Change of use from an existing dwelling unit to accommodate six or fewer people	ZC
Change of use from an existing dwelling unit to accommodate seven or more people	AUP
New construction to accommodate any number of people	UP(PH)

Section 18. That Berkeley Municipal Code 23.310.020 be amended to read:

A. Applicability.

1. This section applies to any application to begin ~~or increase~~ alcoholic beverage sales or service, excluding ~~beer and wine~~ alcoholic beverage service incidental to a food service establishment ~~in a Commercial District~~ (see 23.310.030 (Alcoholic Beverage Service When Incidental to a Food Service)).
- ~~2. As used in this section, an increase in alcoholic beverage sales or service includes, but is not limited to:~~
 - ~~a. Adding the sales or service of distilled spirits to any existing sales or service of beer and/or wine;~~
 - ~~b. Extending the hours of operation of any establishment that sells or serves any alcoholic beverage; and~~

~~c. Adding to the capacity, floor area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.~~

~~3. An increase in alcoholic beverage sales or service does not include extending the hours of operation of any food service establishments with incidental beer and/or wine service.~~

B. Permit Required. ~~A Use Permit is required to begin or increase alcoholic beverage sales or service in any way.~~

~~1. An Administrative Use Permit is required to begin service of alcoholic beverages, except as provided in 23.310.030 (Alcoholic Beverage Service When Incidental to Food Service).~~

~~1.2. To increase sales and service of alcoholic beverages, an existing Administrative Use Permit or Use Permit may be modified with an AUP regardless of the original review authority.~~

C. Application – List of Nearby Establishments. ~~As part of an application to begin or increase alcoholic beverage sales or service, the applicant must provide a list of all establishments within a 1,000-foot radius which are in the same category of alcoholic beverage sales or service, as defined by the California Department of Alcoholic Beverage Control.~~

DC. Findings of Public Convenience or Necessity. ~~To approve a permit for alcoholic beverage sales or service, the decision-making body must make the following findings: If the proposed use is within a 1,000-foot radius of the site of a use that is in the same category of alcoholic beverage sales or service, excluding food service establishments with incidental service of beer and/or wine, the Zoning Adjustments Board (ZAB) may approve the application~~

~~1. The number of alcoholic beverage sales licensees in the census tract does not exceed the limit set by the Department of Alcoholic Beverage Control, as defined in California Business and Professions Code Section 23958.4, excluding Food Service Establishments with incidental alcohol service; and~~

~~1.2. At least one of the following: only if it makes all of the following findings:~~

~~a. The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the district purpose.~~

~~b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.~~

~~b.-c. The applicant has operated a licensed establishment that has not been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in Berkeley, as verified by the Police Department, such violations do not indicate a high likelihood of further~~

~~violations and/or detrimental impacts from the proposed establishment.~~ In making this finding, the ~~ZAB decision-making body~~ may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.

~~4. If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.~~

~~3. If the number of alcoholic beverage sales licenses in the census tract exceeds the limit set by the Department of Alcoholic Beverage Control; the decision-making body must find that the public convenience or necessity would be served by approving alcohol sales at the proposed location for any two or more of the following reasons:~~

~~a. The proposed establishment will promote the City’s economic health, contribute to General Plan or area plan policies, or further the purposes of the district.~~

~~b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.~~

~~c. The sale of alcoholic beverages will enhance recreational or entertainment opportunities in the area.~~

~~d. The sale of alcoholic beverages complements the sale of other goods and merchandise at the location.~~

~~e. The issuance of a license at the proposed location will improve the convenience of area residents and visitors who purchase alcoholic beverages.~~

~~4. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.~~

Section 19. That Berkeley Municipal Code 23.310.030 be amended to read:

A. **Permits Required.** Table 23.310-1 shows permits required for alcoholic beverage service when incidental to a food service establishment. If more restrictive requirements than what is permitted in Table 23.310-1 are imposed as a condition of approval on an existing AUP or UP, the use may be modified with an AUP regardless of the original review authority.

Table 23.310--1: Permits Required for Alcoholic Beverage Service

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
R-SMU	UP(PH)	UP(PH)

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
<u>R-BMU</u>	<u>ZC</u>	<u>UP (PH)</u>
All Commercial Districts, except C-AC and the R-BMU District	ZC	<u>UP(PH), AUP</u>
<u>C-AC</u>	<u>ZC</u>	<u>AUP</u>
MU-LI, MU-R	<u>UP(PH), AUP</u>	<u>UP(PH), AUP</u>

~~B. Use Limitations.~~

- ~~1. **R-SMU District.** In the R-SMU district, alcoholic beverage service is allowed only for full-service restaurants. Alcoholic beverage service is not allowed for carry out food stores and quick-service restaurants.~~
- ~~2. **Commercial Districts.** In Commercial Districts, beer and wine service is allowed by right when for on-site consumption with seated food service.~~
- ~~3. **C-NS and R-BMU Districts.** In the C-NS district, distilled spirit service is allowed only for full-service restaurants. Distilled spirit service is not allowed for carry out food stores and quick-service restaurants.~~
- ~~4. **C-T and C-SO Districts.** In the C-T and C-SO districts, distilled spirit service is allowed only for on-site consumption with seated food service.~~
- ~~5. **C-AC District.** In the C-AC district, distilled spirit service is allowed along Adeline Street south of Ashby Avenue only for on-site consumption with seated food service.~~

CB. Incidental Beer and Wine Service Standards. The following standards apply to beer and wine service incidental to a food service establishment ~~in a Commercial District.~~

1. **Licensing.**
 - a. The food service establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
 - b. An operator of the licensed establishment may not have a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety, or nuisance statutes or regulations before issuance or transfer of a business license at this location.
2. **Service.**

- a. Beer and wine beverage service shall be incidental to the primary food service use.
- b. Beer and wine service incidental to seated food service shall only be allowed at a bona fide eating place making actual and substantial sales of meals as determined and required by the California Department of Alcoholic Beverage Control.
- c. The sale of beer and wine for off-site consumption is not permitted.
- ~~d. Employees may not serve beer or wine to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.~~
- ~~e. All beer and wine served to patrons must be served in durable restaurant tableware. Beer or wine may not be distributed in its original bottle or can, or in any other potentially disposable container.~~
- ~~f. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service, or consumption of alcoholic beverages directly to patrons for consumption.~~
- ~~g.d.~~ g.d. Hours of operation are subject to review and amendment by the review authority ~~Zoning Officer or the ZAB~~ as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City of Berkeley standards or policies.

3. **Operation.**

- a. The food service establishment must operate at least five days a week.
- b. The service of beer and wine shall be limited to normal meal hours (per California Department of Alcoholic Beverage Control) during the food service establishment's hours of operation.
- c. During ~~operating the food service establishment's~~ hours of operation, ~~100 percent of the service~~ all customer accessible areas shall be ~~designed and used~~ available for meal service and the food service establishment must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- ~~d. At no time shall the operator rent the restaurant space to a third party.~~
- ~~e.d.~~ e.d. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:
 - i. Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets; and

ii. Surveillance to public areas near the establishment, keeping public areas free of trash and litter, providing lighting, and otherwise preventing conduct that might disturb the peace and quiet of residences in the vicinity.

~~f.e.~~ The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.

~~g.f.~~ The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

4. **Advertising.**

~~a. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior constitute a violation of this requirement. Establishments shall comply with Municipal Code Chapter 20.67 (Alcohol Product Advertising)~~

~~b. Alcohol dispensing facilities and signs advertising alcoholic beverages may not be visible from the public right-of-way.~~

5. **Training.**

a. The operator shall finish a Crime Prevention through Environmental Design (CPTED) survey before beginning alcohol service.

b. All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with Municipal Code Section 9.84.030 (Responsible Beverage Service Training) and finish the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 90 days of employment at the establishment. Employees who have finished the course within the last 12 months are exempt from this requirement.

Section 20. That Berkeley Municipal Code 23.324.040(B)(2)(b) be amended to read:

b. **Uses with Major Investments.** Lawful nonconforming ~~full or quick service restaurants~~food services establishments with cooking or food preparation facilities, gas/auto fuel stations, theaters, manufacturing plants with specifically designed fixed facilities and other uses which represent a major investment in physical plant or facilities shall not be considered or declared terminated, regardless of the duration of non-use, unless:

i. Such fixed structures, equipment, or facilities are removed; or

ii. Other uses could not be established without major removal of or extensive remodeling or replacement of structures associated with the previous established use.

Section 21. That Berkeley Municipal Code 23.502.020(B)(4) be amended to read:

4. **Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting.** A business devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food is **only** incidental to the consumption of such beverages.

Section 22. That Berkeley Municipal Code 23.502.020(D) be amended to read:

D. “D” Terms.

- ~~1. **Dance/Exercise/Martial Arts/Music Studio.** An establishment in which customers assemble for group exercises, dancing, self-defense training, aerobics, choral or musical instrument instruction, other movement drills for learning, rehearsal or non-audience performances.~~
- ~~2.1. **Deck.** An unenclosed structure, usually made of wood, built to provide a solid continuous surface for outdoor use and/or access to a door, which is accessible from the ground level, directly or from a connecting stairway and is separated from the ground by an air space.~~
- ~~3.2. **Demolition.** A building or enclosed structure shall be considered demolished for the purposes of this chapter when, within any continuous 12-month period, such building or enclosed structure is destroyed in whole or in part or is relocated from one lot to another. For purposes of this definition, destroyed in part means when 50 percent or more of the enclosing exterior walls and 50 percent or more of the roof are removed. Removal of facades or portions of facades requires Design Review.~~
- ~~4.3. **Density.** See 23.106.100 - Residential Density~~
- ~~5.4. **Density Bonus.** See 23.332.020 (Definitions).~~
- ~~6.5. **Department.** The Planning and Development Department of the City of Berkeley or its successor administrative unit.~~
- ~~7.6. **Department Store.** A retail store selling several kinds of merchandise, which are usually grouped into separate sections, including but not limited to, apparel, housewares, household hardware, household appliances, household electronics and gifts.~~
- ~~8.7. **Dormer.** A projection built out from a sloping roof, usually housing a vertical window or ventilating louver. See also 23.304.110 (Dormers).~~

- ~~9-8.~~ **Dormitory.** A building providing group living accommodations, occupied by individuals not sharing a common household, characterized by separate sleeping rooms without individual kitchen facilities and containing congregate bath and/or dining facilities or rooms.
- ~~10-9.~~ **Drive-in Uses.** A use where a customer is permitted or encouraged, either by the design of physical facilities or by the service and/or packaging procedures offered, to be served while remaining seated within an automobile. This use includes drive-through food service establishments, financial services (banks), and automatic carwashes.
- ~~11-10.~~ **Driveway.** A paved, vehicular accessway connecting an off-street parking space or parking lot with a public or private street.
- ~~12-11.~~ **Drug Paraphernalia.** As defined in California Health and Safety Code Section 11364.5(d).
- ~~13-12.~~ **Drugstore.** A retail establishment where the profession of pharmacy is practiced and/or where licensed prescription drugs and general merchandise are offered for sale. A food products store with a pharmacy is not a drugstore.
- ~~14-13.~~ **Dry Cleaning and Laundry Plants.** A place where clothes are dry cleaned, dyed and/or laundered as part of a commercial business, whether or not such clothes were deposited by a customer at that location, or transported from another location, as part of a service. This use includes all establishments subject to Section 19233 of the State of California Business and Professions Code, regulating Dry Cleaning Plants, but excludes laundromats and cleaners as defined in this chapter.
- ~~15-14.~~ **Duplex.** A building or use of a lot designed for, or occupied exclusively by, two households.
- ~~16-15.~~ **Dwelling Unit.** A building or portion of a building designed for, or occupied exclusively by, persons living as one household.

Section 23. That Berkeley Municipal Code 23.502.020(F) (11) be amended to read:

11. Food Service Establishments. An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises.

~~**a. Carry Out Food Store:** A store which serves food or non-alcoholic beverages for immediate consumption not on the premises, but usually in the vicinity of the store. This use is usually characterized as an establishment which serves food altered in texture and/or temperature on a customer demand basis, puts such food in non-sealed packages or edible containers, requires payment for such food before consumption, and provides no seating or other physical accommodations for on-premises dining. Examples of this use include~~

~~delicatessens and other stores without seating which sell doughnuts, croissants, ice cream, frozen yogurt, cookies, whole pizzas and sandwiches. This use excludes bakeries and food products stores.~~

~~**b. Quick Service Restaurant:** An establishment which serves food or beverages for immediate consumption either on the premises, or to be taken out for consumption elsewhere. This use is usually characterized as an establishment in which food is cooked on a customer-demand basis, payment is required before consumption, limited or no able service is provided (no waiters), and seating or other physical accommodations for on-premises customer dining is provided. Examples of this use include establishments selling primarily hamburgers or other hot or cold sandwiches, hot dogs, tacos and burritos, pizza slices, fried chicken, or fish and chips.~~

~~**c. Full-Service Restaurant:** An establishment which serves food or beverages for immediate consumption primarily on the premises, with only a minor portion, if any, of the food being taken out of the establishment. This use is characterized as an establishment in which food is stored, cooked or prepared on the premises on a customer-demand basis, which requires payment after consumption, and provides seating and tables for on-premises customer dining, and may provide with table service (waiters).~~

Section 24. That Berkeley Municipal Code 23.502.020(G)(6) be amended to read:

6. ~~**Group Class Instruction.** An establishment that offers specialized programs in personal growth, and development, and instruction in artistic, cultural, and academic pursuits, including music and choral schools, performing arts, arts and crafts, cooking, tutoring, martial arts and self-defense training. Excludes spaces designed exclusively for public performance. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.~~

Section 25. That Berkeley Municipal Code 23.502.020(G)(9) be removed:

9. ~~**Gyms and Health Clubs.** An indoor facility where exercise equipment, classes and related activities related to personal health and fitness are available to paying customers. Excludes parks/playgrounds.~~

Section 26. That Berkeley Municipal Code 23.502.020(H)(2) – (11) be amended to read:

2. ~~**Health and Fitness Facility.** A facility where exercise equipment, swimming pools, group or aerobic classes (including yoga and Pilates) and other activities related to person health and fitness are available to customers or members. Excludes park/playground.~~

23. Hedge. Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier.

34. Height of Building, Average. See 23.106.090.A (Average Building Height).

45. Height of Building, Maximum. See 23.106.090.B (Maximum Building Height).

56. Home Occupation. A business use conducted on property developed with a residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building or Group Living Accommodation room and is operated only by the residents of the subject residence.

There are three classification of Home Occupations. For the purposes of this section, a "customer" is considered a single paying customer, but may include more than one person receiving the services at the same time:

(1) Class I Home Occupation--Involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.

(2) Class II Home Occupation--Involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.

(3) Class III Home Occupation--Involves more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site and/or involves shipping of goods directly from the subject residence.

67. Hospital. A facility for in-patient medical care licensed under California Administrative Code, Title 17, Section 237 or 238.

78. Hot Tub. A tub or small pool, usually made of wood or fiberglass, in which heated water is maintained for recreational or therapeutic activities, including, but not limited to, jacuzzis, whirlpools and spas.

89. Hotel, Residential. A type of group living accommodations which provides rooms for rent for residential purposes, including single residential occupancy (SRO) rooms.

910. Hotel, Tourist. A building with sleeping rooms used, designed, or intended for occupancy by transient guests for a period not to exceed 14 consecutive days.

This use includes inns, bed and breakfasts (B&Bs), and hostels, and excludes building with residential hotel rooms and dwelling units.

4011. Household. One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.

4412. Household Income, Gross. The income of all adult members of the household as determined by the guidelines used by the Berkeley Housing Authority for its administration of the Section 8 Rental Subsidy Program. For purposes of this definition, household is the same as Family in the federal Section 8 Existing Housing Program or its future equivalent. Classification of Households, based on income, shall be based on the following percentages of the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures for income of the most recent U.S. Census that are available:

- (a) *Low Income Household.* A household whose gross income is greater than 80 percent and less than 100 percent of the median income.
- (b) *Lower Income Household.* A household whose income is no greater than 80 percent and above 50 percent of the median income.
- (c) *Very Low Income Household.* A household whose gross income is 50 percent or less of the median income.

Section 27. That Berkeley Municipal Code 23.502.020(S)(31) be amended to read:

31. **Studio.** See Art/Craft Studio ~~and Dance, Exercise, Martial Arts or Music Studio.~~

Section 28. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Planning and Development Department
Land Use Planning Division

STAFF REPORT
October 4, 2023

TO: Members of the Planning Commission
FROM: Justin Horner, Associate Planner
SUBJECT: Zoning Amendments for Berkeley Business Public Hearing

RECOMMENDATION

Planning Commission is asked to hold a public hearing, receive and provide comment on the proposed Zoning Amendments for Berkeley Business (“proposed zoning amendments”), and make a recommendation for consideration by the City Council.

SUMMARY

In response to City Council referrals and recommendations from the Planning Commission’s Zoning Amendments for Berkeley Business Subcommittee, staff from the Office of Economic Development (OED) and the Land Use Planning Division (LUP) are proposing zoning amendments (**Attachment 1**) targeted at supporting businesses, particularly small businesses with fewer than 50 employees, in commercial, manufacturing and the Residential BART Mixed Use (R-BMU) and Residential Southside Mixed Use (R-SMU) zoning districts.

On June 7, 2023, the Planning Commission heard a presentation and held a discussion on proposed policy changes and zoning amendments (**Attachment 2**). At that meeting, the Planning Commission appointed a Subcommittee, which met on June 28, 2023 and August 23, 2023, to review the draft proposed ordinance in detail. The proposed ordinance is included as **Attachment 1** to this report. The policy rationale for each of these zoning amendments is discussed at length in the June 7, 2023 Planning Commission staff report. Changes made subsequent to the June 7, 2023 Planning Commission meeting are discussed in detail below.

FISCAL IMPACTS OF RECOMMENDATION

As noted in the June 7, 2023 Planning Commission report, the proposed amendments are intended to simplify the planning review process for business activities, including new business starts and expansions. Therefore, the proposed amendments may result in a modest increase in business license tax and sales tax revenues due to increased

business activity. In addition, the proposed amendments may result in a modest decrease in staffing-related expenditures and land use permitting fee collections, as more uses would be permitted “by right” rather than through a discretionary permitting process.

CURRENT SITUATION AND ITS EFFECTS

The Zoning Ordinance has evolved over many decades to reflect Berkeley's changing values and the dynamic landscape of property development and land use. Its requirements are intended to guide the city's growth while providing opportunities for feedback from residents, business owners, and commercial district and neighborhood associations.

OED staff has observed a specific challenge encountered by small, independent enterprises—the intricate path of maneuvering through the permit review procedure, and associated timelines and financial implications.

In order to better accommodate today's small, independent enterprises, OED staff propose a series of amendments. While they would apply to businesses of all sizes, these proposed zoning amendments aim to establish a streamlined, cost-effective, and expedited process tailored to smaller businesses. These changes further the City of Berkeley's Strategic Plan goals to "foster a dynamic, sustainable, and locally-based economy" and "provide excellent, timely, easily- accessible service and information to the community," while honoring the city's commitment to public participation and ensuring that new uses are compatible with neighboring land uses.

BACKGROUND

As detailed in the June 7, 2023 Planning Commission report, the proposed zoning amendments reflect policy changes that are summarized in Table 1 Referral Actions and Zoning Amendment Proposals. The first six proposed zoning amendments reflect specific referred actions from City Council, while the second set of eight proposed zoning amendments reflect staff-initiated changes that are consistent with the direction and intent of City Council referrals. Table 1 also includes a column which indicates which Section(s) of the proposed ordinance (**Attachment 1**) include changes related to the indicated referral actions. **Attachment 1** also includes comment bubbles for each Section of the proposed ordinance to indicate which of the items in Table 1 are referred to therein.

Table 1 Referral Actions and Zoning Amendment Proposals

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachment 1)
CITY COUNCIL REFERRALS			
1.	<p>Group Class Instruction. Allow Group Class Instruction with a Zoning Certificate (ZC) in the C-N, C-E, C-NS and C-SO zoning districts. (Council referral dated 10/15/2019).</p> <p>Revise definitions of “Dance/Exercise/Martial Arts/Music Studio”, “Group Class Instruction”, and “Gyms and Health Clubs.”</p>	<ul style="list-style-type: none"> Removed “Dance/Exercise /Martial Arts/Music Studio” use and revised the definition of “Group Class Instruction” (simplified to “Group Instruction”) to include it. (Section 23) Replaced “Gyms and Health Clubs” use with new “Health and Fitness Facility” use and definition. (Section 25) Changed permit requirements and size thresholds. (Sections 1, 2 and 3) Removed ground floor transparency requirement for gyms in the C-DMU, for customer privacy. (Section 4) Conforming technical edits, e.g. renumbering and references. 	<p>1 2 3 4 11 13 22 24 25 26 27</p>
2.	<p>Incidental Distilled Spirits. Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts and the MU-LI and MU-R zoning districts. (Council referral dated 10/15/2019, and Council referral dated 12/4/2018)</p>	<ul style="list-style-type: none"> Revised permit requirements. (Section 18) 	<p>19</p>
3.	<p>Stand-Alone Beer and Wine. Permit stand-alone Beer and Wine Sales and Service with an AUP, subject to performance standards, in all commercial zoning districts. (Council referral dated 10/15/2019 and Council referral dated 12/4/2018)</p>	<ul style="list-style-type: none"> Expanded Bar/Cocktail Lounge/Tavern use type to include “Tap Room/Wine Tasting.” (Sections 3, 12 and 20) Revised permit requirements. (Section 3) 	<p>3 13 21</p>
4.	<p>Alcoholic Beverage Sales Standards. Update the Special Use Standards for Alcoholic Beverage Sales in BMC Section 23.310.030(C). (Council referral dated 10/15/2019)</p>	<ul style="list-style-type: none"> Revised permit requirements. (Sections 17 and 18) 	<p>18 19</p>

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachment 1)
		<ul style="list-style-type: none"> Revised Findings of Public Convenience or Necessity. (Section 17) 	
5.	Hours of Operation. Modify hours and days of operations in commercial districts. (Council referral dated 10/15/2019).	<ul style="list-style-type: none"> Amended district purpose for C-SO District. (Section 8) Revised Hours of Operation. (Section 13) Clarified exceptions. (Section 13) Establish that an AUP, not a Use Permit Modification, is required to extend hours to match this change. (Section 13) Conforming technical edit. (Section 8) 	9 14
6.	Change of Use. Remove permit requirements to change a use in commercial districts. (Attachment 1, referral dated 10/15/2019)	<ul style="list-style-type: none"> Removed additional permit requirements related to change of use. (Sections 3 and 4) 	3 4
7.	ATMs. Allow Automatic Teller Machines (ATMs) in commercial districts with a ZC. (Council referral dated 10/15/2019)	<ul style="list-style-type: none"> No recommended changes. 	N/A
STAFF-INITIATED CHANGES CONSISTENT WITH CITY COUNCIL REFERRALS			
8.	Office, Business and Professional; Art/Craft Studio; Pet Stores. <ul style="list-style-type: none"> Allow Office, Business and Professional uses with a ZC in the C-N, C-E, C-NS, C-T and C-SO zoning districts; Allow Art/Craft Studios with a ZC in all commercial zoning districts; and Permit Pet Stores with an AUP in the Corridor Commercial (C-C), University Commercial (C-U), C-N, C-E, C-NS, South Area Commercial (C-SA), C-T, C-SO, Downtown Mixed-Use (C-DMU) and Adeline Corridor Commercial (C-AC) zoning districts. 	<ul style="list-style-type: none"> Revised permit requirements. (Section 3) 	3
9.	Live Entertainment. Allow unamplified Live Entertainment with a ZC, and permit amplified Live Entertainment with an AUP in the C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC, C-N, C-NS, West Berkeley Commercial (C-W), C-E, MU-LI and MU-R zoning districts.	<ul style="list-style-type: none"> Added Live Entertainment as incidental use in the R-SMU districts. (Section 1) Added "Live Entertainment, Unamplified" and "Live 	1 3 13 15

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachment 1)
		Entertainment, Amplified” as their land uses in the residential, commercial and manufacturing Allowed Uses Tables. (Section 3) <ul style="list-style-type: none"> Removed stand-alone section. (Section 12 and 14) 	
10.	Seated Food Service Requirement. Allow distilled alcoholic beverage service without seated food service in the C-T, C-NS, and the C-SO zoning districts.	<ul style="list-style-type: none"> Removed requirement that food service must accompany distilled alcohol service. (Sections 7 and 18) 	8 19
11.	Food Service Establishments 3,000 sq. ft or less. Allow Food Service Establishments 3,000 square feet or less with a ZC, and permit food establishments greater than 3,000 square feet with an AUP, in all commercial zoning districts and the R-SMU and R-BMU zoning districts, as long as alcohol services is not included.	<ul style="list-style-type: none"> Added new “Food Service Establishments” uses to Residential and Commercial Allowed Use tables and removed stand-alone section. (Sections 1, 3 and 15) Removed requirement that food service on ground floor in C-DMU requires an AUP. (Section 9) 	1 3 10 16
12.	Food Service Establishment Quota. Remove the Numeric Limitation for Food Service Establishments in the C-E zoning district.	<ul style="list-style-type: none"> Removed numeric quota. (Section 5) 	5
13.	Incidental Food Service Establishment Requirements. Permit incidental Food Service Establishments under 20,000 square feet in manufacturing districts to be indoors and outdoors with an AUP, and remove the specification that food or beverage be limited to “immediate consumption” in the MM zoning district.	<ul style="list-style-type: none"> Added new “Food Service Establishment” incidental uses to Manufacturing Allowed Use Table and removed stand-alone section. (Sections 12 and 15) 	13 16
14.	Drug Paraphernalia in C-T District. Allow retail sales of drug paraphernalia in the C-T zoning district.	<ul style="list-style-type: none"> Removed prohibition on uses involving sale or distribution of drug paraphernalia in C-T. (Section 7) 	8
15.	Third Party Rental Remove the restriction on renting space in a Food Service Establishment that serves alcohol incidental to food service to a third party.	<ul style="list-style-type: none"> Removed restriction. (section 18) 	19

Changes Subsequent to June 7, 2023 Planning Commission

The June 7, 2023 Planning Commission staff report included detailed discussion of the referral actions and rationales for the proposed zoning changes. Subsequent to that meeting, revised recommendations from the Zoning Amendments for Berkeley Business Subcommittee and from project planning, policy planning, and Office of Economic Development staff have been incorporated into the proposed ordinance. Those changes are summarized below.

1. Group Class Instruction: The BMC includes three related use types (Group Class Instruction, Art Classes/Studios/Dance/ Martial Arts Studios, and Gym/Health Club) that share some overlapping uses (exercise classes, for example, appear in both Group Class Instruction and Gym/Health Club). This has led to some confusion as to how to classify a proposed use. The June 7, 2023 Planning Commission report included revisions to the definitions of each of three related uses to make each one distinct and to clarify how a proposed use should be classified. The report also proposed an alternative approach: consolidating the definitions and creating fewer use types.

The proposed zoning amendments include a consolidation of the three use types into two use types (Group Instruction and Health and Fitness Facility) and provides definitions that expand and clarify what types of uses are to be considered under each use type.

- **Single Land Use Alternative:** An alternative approach is to consolidate the two proposed use types (“Group Instruction” and “Health and Fitness”) into one single land use, called “Group Activity.” As a result of other changes included in the proposed ordinance, the permit requirements for Group Instruction and Health and Fitness Facility are the same across all commercial districts. It may not be necessary to distinguish between the two use types if they are regulated similarly. However, the two uses are regulated differently in the M, MM, and MU-R zoning districts: Group Instruction is permitted with a ZC, while Health and Fitness uses are not permitted.

In addition, the June 7, 2023 Planning Commission report included permitting Group Class Instruction in any commercial zoning district with a ZC. Currently, Group Class Instruction uses require an AUP in smaller neighborhood commercial districts (C-N, C-E and C-SO zoning districts). The proposed ordinance includes a revision requiring an AUP for *larger* Group Instruction uses (3,000 sq. ft. or larger) in the C-N, C-E and C-SO zoning districts, while permitting smaller uses with a ZC.

2. *Revised Levels of Permit Discretion for Office, Business and Professional:* The June 7, 2023 Planning Commission report included a revision to the Allowed Use Table which permitted Office, Business and Professional uses in all commercial zoning districts with a ZC.

In discussing this item, Subcommittee members expressed a concern that making Office, Business and Professional uses easier to establish in smaller neighborhood commercial districts could make it difficult for neighborhood-serving retail to compete in these more discrete areas. Currently, Office, Business and Professional uses require an AUP in smaller neighborhood commercial districts (C-N, C-E and C-SO zoning districts). The proposed ordinance includes a revision that maintains this AUP requirement for Office, Business and Professional use in these three smaller neighborhood commercial zoning districts.

3. *Live Entertainment.* The June 7, 2023 Planning Commission report included revisions to BMC Section 23.302.020 to make it easier for live entertainment to be approved as an incidental use in commercial zoning districts and in the MU-LI and MU-R zoning districts.

The proposed ordinance includes an additional revision permitting live entertainment as an incidental use in the R-SMU district. Live entertainment, as either a primary or incidental use, is currently not permitted in any residential zoning district. The R-SMU, however, with its relatively dense and mixed-use character, and geographic limitation within the student-oriented Southside Plan Area, was considered an appropriate zoning district in which to permit live entertainment as an incidental use.

4. *Structural/Formatting Changes.* Currently, for some uses, the residential, commercial and manufacturing allowed use tables do not contain information about required permits for certain use types; instead, users are instructed to find this permit-related information in other sections or tables of the BMC.

Where appropriate, the proposed ordinance eliminates these references and additional tables, and includes required permit distinctions directly within the allowed use tables themselves. The intent is to simplify the ordinance, remove extraneous language, and to make it easier for users to locate the required permit(s).

- **Food Service Establishments:** Currently, Food Service Establishment is a single use, and users need to go elsewhere in the BMC to learn about permit distinctions based on project size. The proposed ordinance removes the extra section and instead includes two use types, based on size, directly in the Allowed Use Tables (Food Service Establishment, Under 3,000 sq. ft. and Food Service Establishment, 3,000 sq. ft. or larger).

- Live Entertainment: Currently, a user must consult a separate section of the BMC for permit requirements related to unamplified and amplified live entertainment. The proposed ordinance removes the extra section and instead includes two use types directly in the Allowed Use Tables (Live Entertainment, Unamplified and Live Entertainment, Amplified). This revision also includes the addition of an Incidental Use category within the Residential Allowed Use Table.
- Group Instruction and Health and Fitness Facility: Currently, a user must consult a separate section of the BMC for permit requirements related to the size and location of Gym/Health Club/Fitness uses. The proposed ordinance removes the extra section and instead includes size-based distinctions in the Allowed Use Tables (Group Instruction, Under 3,000 sq. ft.; Group Instruction, 3,000 sq. ft. or larger; Health and Fitness Facility, Under 7,500 sq. ft.; and Health and Fitness Facility, 7,500 sq. ft. or larger).

5. *Technical Changes*. The proposed zoning amendments also include five technical amendments: two related to the C-SA zoning district, one that corrects use category titles, and two related to restaurant uses.

- C-SA District:
 1. With the adoption of the Adeline Corridor Specific Plan, a number of parcels that were previously included in the C-SA zoning district were rezoned to C-AC. Section 23.204.100 (C-SA zoning district) still includes provisions that pertain only to those formerly C-SA parcels. The proposed zoning amendments include the removal of those provisions from the C-SA zoning district regulations.
 2. The C-SA zoning district includes two different building height standards, which are applied to parcels based on their location. Currently, there are parcels that are zoned C-SA that do not have a building height standard assigned to them. The proposed zoning amendments include revisions to the C-SA Maximum Building Heights Table and accompanying map to provide a building height standard for all C-SA zoned parcels.
- Use Category Titles: Section 12 of **Attachment 1** includes the correct use category titles for Retail Uses, Person and Housing Services Uses and Food and Alcohol Service, Lodging, Entertainment and Assembly Uses.
- Restaurant Uses: As a result of previous amendments, there are no longer any regulations that pertain to Carry Out Food Stores, Quick Service Restaurants and Full-Service Restaurants. To eliminate confusion, the proposed zoning amendments include removal of the definitions for these restaurant types from the Glossary and a reference in another section.

Existing Land Uses and the Proposed Zoning Ordinance Amendments

As a result of some of the proposed zoning ordinance amendments, there may be existing uses that, either as a result of previous zoning regulations or specific conditions of approval, would be subject to more restrictive regulations than new uses in the same zoning district that would be established after the adoption of the proposed zoning amendments.

For example, currently in the C-U zoning district, commercial hours of operation end at midnight. Accordingly, an existing business' approval was premised on ending business at midnight. Under the proposed zoning changes, however, commercial hours of operation in the C-U zoning district would end at 2:00 a.m. A new business would therefore be allowed to operate two hours longer than an existing business. Currently, adjusting the existing business' commercial hours of operation would require a permit modification (BMC 23.404.070), which requires a public hearing.

The revised ordinance includes new language in three sections to modify the process for modifying an existing land use approval to be consistent with the new regulations included in the proposed ordinance. In each case, an AUP is required to modify an approval, which includes public notice and an option to appeal an initial decision, as well as providing the city an opportunity to include conditions of approval, if necessary.

Authorization to modify existing approvals with an AUP is found in the proposed ordinance's revised language for Hours of Operation (BMC 23.302.020(B); Section 13 of **Attachment 1**); General Requirements for Alcohol Beverage Sale and Service (BMC 23.301.020(B); Section 17 of **Attachment 1**); and regulations regarding Alcoholic Beverage Service When Incidental to Food Service (BMC 23.302.030(A); Section 18 of **Attachment 1**).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Environmental Review Status

The proposed ordinance includes revisions to permit and other requirements for specified land uses to encourage economic development. It does not include allowing any uses currently not permitted that would be anticipated to have a significant effect on the environment.

California Public Resource Code Section 21065 defines a "project" under CEQA as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed ordinance includes revisions to permit and other requirements for specified land uses to encourage economic development. It does not include allowing any uses currently not permitted that would be anticipated to have a significant effect on the environment. The proposed ordinance does not consist of a discretionary action that would permit or

cause any direct or indirect change in the environment. The proposed ordinance is therefore not a project under CEQA, and further environmental review is not required.

RATIONALE FOR RECOMMENDATION

The proposed zoning amendments aim to provide a more straightforward, cost-effective, and efficient process for businesses in their establishment or expansion phases. As noted in the June 7, 2023 Planning Commission report, OED staff consulted with business services personnel, small business proprietors and operators, as well as the Community Services Bureau of the Berkeley Police Department, along with code enforcement staff from the Zoning, Neighborhood Services, and Environmental Health Divisions. This collaborative effort enabled the identification of enhancements in processes and implementations that align with Council referrals.

At its June 7, 2023 meeting, the Planning Commission expressed support for the proposed zoning amendments' general direction. Consequently, a Subcommittee was convened to offer further analysis and a detailed review of the proposed ordinance. The Subcommittee conducted that review and suggested a select number of changes that have been incorporated into the proposed ordinance.

ALTERNATIVE ACTIONS CONSIDERED

As noted above, the June 7, 2023 Planning Commission report included a set of recommendations and alternative suggestions for a number of the proposed policy changes, including different permit requirements, differently-worded definitions and alternative approaches to formatting and organization.

NEXT STEPS

Upon a recommendation from the Planning Commission, the City Council will conduct a public hearing on the proposed ordinance. The proposed zoning amendments would be effective 30 days after the second reading of the ordinance by the City Council.

CONTACT PERSON

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Attachments:

1. Ordinance
2. June 7, 2023 Planning Commission report and attachments
3. Public Hearing Notice

Referenced Council Referrals:

1. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager Williams-Ridley, 12/4/18)
2. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager Williams-Ridley, 10/15/19)

ATTACHMENT 3

ORDINANCE NO. -N.S.

AMENDMENTS TO THE RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), SUPPLEMENTAL USE REGULATIONS CHAPTER (BMC 23.302), ALCOHOLIC BEVERAGE SALES AND SERVICE CHAPTER (BMC 23.310), NONCONFORMING USES, STRUCTURES AND BUILDINGS CHAPTER (BMC 23.324) AND THE GLOSSARY CHAPTER (BMC 23.502) TO SUPPORT BERKELEY BUSINESSES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the lines named "Alcoholic Beverage Service," "Food Service Establishment" "Group Class Instruction," and "Gym/Health Club" in Table 23.202-1 Allowed Land Uses in Residential Districts, within Berkeley Municipal Code 23.202.020 are amended, and lines named "Food Service Establishment, Under 3,000 sq. ft.," "Food Service Establishment, 3,000 sq. ft. or larger," and a new Incidental Use use category with "Live Entertainment, Unamplified" and "Live Entertainment, Amplified" are added, to read:

Commented [HJ1]: 1. Group Class Instruction
9. Live Entertainment
11. Food Service Establishments 3,000 sq. ft. or less

Table 23.202-1: Allowed Land Uses in Residential Districts

	RESIDENTIAL DISTRICTS											USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)	
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	R-BMU**		
Alcoholic Beverage Service	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) ⁺ ZC*	UP(PH) ⁺	23.310—Alcoholic Beverage Sales and Service
Food Service Establishment	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) ⁺ ZC*	UP(PH) ⁺	23.302.070.E—Use-Specific Regulations
Food Service Establishment, Under 3,000 sq. ft.	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC*	ZC*	23.302.070(E)—Use-Specific Regulations
Food Service Establishment, 3,000 sq. ft. or larger	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP*	AUP*	23.302.070(E)—Use-Specific Regulations
Group Class Instruction	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) ⁺	23.202.150.(C) R-BMU Residential BART Mixed Use District
Gym/Health and Fitness Facility/Club	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) ⁺	23.202.150.(C) R-BMU Residential BART Mixed Use District
Incidental Uses													

Live Entertainment, Unamplified	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC	NP	
Live Entertainment, Amplified	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP	NP	

Section 2. That Berkeley Municipal Code 23.202.150(C)(2) is amended to read:

Commented [HJ2]: 1. Group Class Instruction

2. Group ~~Class~~-Instruction and ~~Gym/Health Club and Fitness Facility~~. Group ~~class~~ instruction and ~~gym/health club and fitness facility~~ uses are permitted at the Ashby BART station with a Zoning Certificate. Group ~~class~~-instruction and ~~gym/health club and fitness facility~~ uses are permitted at the North Berkeley BART station with a Use Permit.

Section 3. That the lines named "~~Family Day Care Home, Large~~," "~~Family Day Care Home, Small~~," "Alcoholic Beverage Retail Sale," "Pet Store," "Retail General," "Personal and Household Services, General," "Laundromats and Cleaners," "Video Tape/Disk Rental," "Business Support Services," "Bank and Financial Services, Retail," "Insurance Agents, Title Companies, Real Estate Agents, Travel Agents," "Medical Practitioners," "Non-Chartered Financial Institutions," "Office, Business and Professional," "Bar/Cocktail Lounge/Tavern," "Dance/Exercise/Martial Arts/Music Studio," "Food Service Establishment," "Gym/Health Club," "Alternative Fuel Station," "Large Vehicle Sales and Rental," "Small Vehicle Sales and Rental," "Vehicle Parts Store," "Vehicle Rentals," "Vehicle Repair and Service," "Vehicle Sales, New," "Vehicle Sales, Used," "Cannabis Testing," "Light Manufacturing," "Wholesale Trade," "Food and Beverage for Immediate Consumption," "Food Service Establishment," "Live Entertainment," "Retail Sale of Goods Manufactured On-Site," "Art/Craft Studio," "Public Market, Enclosed" and the Notes in Table 23.204-1 Allowed Uses in the Commercial Districts, within Berkeley Municipal Code 23.204.020, are amended, and lines named "Group Instruction, 3,000 sq. ft. or larger," "Food Service Establishment, Under 3,000 sq. ft.," "Food Service Establishment, 3,000 sq. ft. or larger" "Health and Fitness Facility, Under 7,500 sq. ft.," "Health and Fitness Facility, 7,500 sq. ft." "Live Entertainment, Unamplified," and "Live Entertainment, Amplified," are added, to read:

Commented [HJ3]: 1. Group Class Instruction
 3. Stand-Alone Beer and Wine
 6. Change of Use
 8. Office, Business & Professional. Art/Craft Studio, Pet Store
 9. Live Entertainment
 11. Food Service Establishments 3,000 sq. ft. or less
TECHNICAL CHANGE related to Family Day Care Homes

Table 23.204-1 Allowed Uses in the Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Family Day Care Home, Large	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Family Day Care, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Alcoholic Beverage Retail Sale	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	23.204.060.B.2 23.310
Pet Store	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	ZC [3]	AUP UP(PH)	
Retail, General	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC* [1]	ZC* [2]	ZC* [2]	ZC	ZC* [3]	ZC*	23.204.040.(C).E (for department stores) 23.204.040.(D).F (for drug stores)
Personal and Household Services, General	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	ZC [5]	ZC	
Laundromats and Cleaners	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	AUP	AUP	UP(PH)	UP(PH)	AUP [4]	AUP	
Video Tape/Disk Rental	ZC [1]	ZC [1]	ZC [2]	AUP	ZC [2]	--	ZC	ZC [2]	ZC	ZC [5]	NP	
Business Support Services	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC*	ZC [2]	ZC	ZC [5]	ZC [6]	23.204.110.(B).6(4)
Bank and Financial Services, Retail	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	AUP	ZC	23.204.110.(B).6(4); 23.204.130.(B).6(4); 23.204.130.(D).3(1)
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC*	ZC* [2]	ZC*	ZC [5]	ZC [6]	23.204.040.(B).E; 23.204.110.(B).6(4); 23.204.130.(D).3(1)
Medical Practitioners	ZC [1]	ZC [1]	AUP	NP	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	ZC [5]	ZC [6]	23.204.040.(B).E; 23.204.110.(B).6(4); 23.204.130.D.3
Non-Chartered Financial Institutions	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	UP(PH)*	NP	NP	UP(PH)*	UP(PH)	23.302.070.F 23.204.110.B.6(4)
Office, Business and Professional	ZC [1]	ZC [1]	AUP*	AUP*	AUP ZC*	ZC [1]	AUP ZC*	AUP*	ZC*	ZC [5]	ZC [6]	23.204.040.B; 23.204.110.B.6(4); 23.204.130.D.3
Bar/Cocktail Lounge/Tavern/ Tap Room/Wine Tasting	UP(PH) AUP*	UP(PH) AUP*	UP(PH) AUP*	-- AUP*	NPA UP*	UP(PH) AUP*	UP(PH) AUP*	NP AUP*	UP(PH) AUP*	UP(PH) AUP*	UP(PH) AUP*	23.204.100.B.3 23.204.140.B.2; 23.310
Dance/Exercise/Martial Arts/Music Studio	ZC [1]	ZC [1]	ZC [2]	AUP	AUP [4]	ZC [1]	ZC	AUP	ZC	ZC [7]	ZC	
Food Service Establishment, under	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.302.070.E

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
3,000 sq. ft.												
Food Service Establishment, 3,000 sq. ft. or larger	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	23.302.070.E
Group Class-Instruction, Under 3,000 sq. ft.	ZC [4]	ZC [4]	AUP ZC	AUP ZC	AUP ZC	ZC [4]	ZC	AUP ZC	ZC	ZC	ZC	23.204.040.B
Group Instruction, 3,000 sq. ft. or larger	ZC	ZC	AUP	AUP	ZC	ZC	ZC	AUP	ZC	ZC	ZC	
Health and Fitness Facility, Under 7,500 sq. ft.	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Health and Fitness Facility, 7,500 sq. ft. or larger	ZC	ZC	AUP	AUP	ZC	ZC	ZC	AUP	ZC	ZC	ZC	
Gym/Health Club	See 23.204.040.C											
Alternative Fuel Station	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP*	UP(PH)	NP	AUP *	UP(PH)	23.204.110.1(B)-4(2) 23.204.140.1(B)-3
Large Vehicle Sales and Rental	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP * [8.1]	NP	23.204.140.1(B)-3
Small Vehicle Sales and Service	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	23.204.100.1(B)-5(3); 23.204.140.1(B)-3
Vehicle Parts Store	ZC [4]	NP	ZC [2]	ZC [2]	ZC [2]	ZC [4]	ZC	ZC [2]	NP	AUP * [8.1]	ZC	
Vehicle Rentals	AUP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	AUP * [8.1]	NP	23.204.140.1(B)-3
Vehicle Repair and Service	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP * [8.1]	NP	
Vehicle Sales, New	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	AUP * [8.1]	NP	23.204.140.1(B)-3
Vehicle Sales, Used	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	23.204.100.1(B)-5(3); 23.204.140.1(B)-3; 23.204.140.1(D)-4
Cannabis Testing	AUP	AUP	NP	NP	NP	NP	NP	NP	AUP	AUP [8.1]	NP	
Light Manufacturing	--	--	--	--	--	--	--	--	--	AUP [8.1]	--	
Wholesale Trade	--	--	--	--	--	--	--	--	--	AUP [8.1]	--	
Incidental Uses												
Food and Beverage for Immediate Consumption	ZC	ZC	AUP ZC	UP(PH) ZC	UP(PH) ZC	ZC	AUP ZC	UP(PH) ZC	ZC	ZC	ZC	

Commented [HJ4]: Instead of using a table in section 23.204.040, we made new land uses here, for ease of use.

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Food Service Establishment	See 23.302.070.E											
Food Service Establishment, Under 3,000 sq. ft.	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.310.030
Food Service Establishment, 3,000 sq. ft. or larger	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	23.310.030
Live Entertainment, Unamplified	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Live Entertainment, Amplified	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	
Live Entertainment	See 23.302.070.E											
Retail Sale of Goods Manufactured On-Site	ZC [4]	ZC [4]	ZC [2]	ZC [2]	ZC [2]	ZC [4]	ZC	ZC [2]	ZC	AUP ZC	ZC	
Art/Craft Studio	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	ZC [6]	
Public Market, Enclosed	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP [9]	AUP	
Notes: [1]—Change of use of floor area over 3,000 square feet requires an AUP. [2]—Change of use of floor area over 2,000 square feet requires an AUP. [3]—Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft. [4]—Requires a Use Permit if 5,000 sq. ft. or more. [5]—Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft. [6]—Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline. [7]—Requires a Use Permit if 7,500 square feet or more. [9][1] Require a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area. [9][2] Requires a Use Permit if more than 10,000 sq. ft.												

Commented [HJ5]: Instead of using a table in section 23.302.070, we made new land uses here, for ease of use.

Section 4. That Berkeley Municipal Code 23.204.040(B) through (F) be amended, to read:

Commented [HJ6]: 1. Group Class Instruction 6. Change of Use

B. Group Class Instruction.

- C-NS and C-DMU Districts.** When group class instruction in the C-NS or C-DMU districts are located on the ground floor adjacent to a street frontage,

storefront windows must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

- 2. **C-NS District.** Group class instruction uses in the C-NS may not exceed 2,500 square feet.
- 3. **C-T District.** Group class instruction uses in the C-T district are not permitted on the ground floor.

C. Gyms and Health Clubs

1. **Permits Required.** Table 23.204-5: Gym and Health Club Permit Requirements shows permits required for gyms and health clubs in the Commercial Districts.

Commented [HJ7]: Created new use (Health and Fitness Facility) and moved permit requirements to Commercial Allowed Uses Table (Section 3, above), so we can get rid of this table. New definition in Glossary, below (Section 25)

Table 23.204-5: Gym/Health Club/Fitness Studio Permit Requirements

DISTRICT/USE SIZE	PERMIT REQUIRED [1]
C-C, C-U, C-DMU	
Under 7,500 sq. ft	ZC
7,500 sq. ft. and greater	AUP
C-N, C-E, C-NS, C-SO	AUP
C-SA, C-T, C-AC	ZC
C-W	
Under 7,500 sq. ft	ZC
7,500 sq. ft. and greater	-UP(PH)
<p>Note: [1] Change of use permit requirements as described in Section 23.204.030.A – Additional Permit Requirements (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p>	

2. **C-DMU District.** When located on the ground floor adjacent to a street frontage, storefront windows for a gym and health club in the C-DMU district must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

DB. Transparency Requirement for Office Uses. When office uses shown in [Table 23.204-6: Office Uses Subject to Transparency Requirement](#) are located on the ground floor adjacent to a street frontage, storefront windows shall either:

1. Include a storefront window display; or
2. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

Table 23.204-6: Office Uses Subject to Transparency Requirement

OFFICE USE	DISTRICT
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	CN, C-E, C-NS, CT, C-SO, C-DMU
Medical Practitioners	C-T
Office, Business and Professional	CN, C-E, C-NS, C-T, C-SO, C-DMU

EC. Department Stores. Table 23.204-7: Department Store Permit Requirements shows permits required for department stores in the Commercial Districts.

Table 23.204-7: Department Store Permit Requirements

DISTRICT/USE SIZE	PERMIT REQUIRED ^[1]
C-SA, C-T	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	AUP
C-E, C-NS, C-SO	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	Not Permitted
C-N	
3,000 sq. ft. or less	AUP
Over 3,000 sq. ft.	Not Permitted
C-C, C-U	ZC
C-AC	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	UP(PH) AUP
Note:	
^[1] Change of use permit requirements as described in Section 23.204.030.A Additional	

~~Permit Requirements (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.~~

FD. Drugstores. The following requirements apply to drugstores in the C-N, CE, C-NS, and C-SO districts.

1. Where Prohibited. A new or expanded drugstore is not permitted if it is:

- a. Over 5,000 square feet in gross floor area; and
- b. Within 1,000 feet of any property containing an existing drugstore.

2. Measurement of Distance. Distances between drugstores are measured by a straight line from the nearest point of the property line of the parcel on which the drugstore is proposed to the nearest point of the lot line of the lot on which the nearest drugstore is located.

Section 5. ~~That~~ Berkeley Municipal Code 23.204.080(B)(2) be amended to read:

Commented [HJ8]: 12. Food Service Establishment Quota (C-E)

2. Numerical and Size Limitations.

- a. Table 23.204-20 shows land uses subject to ~~numerical and~~ size limitations in the C-E district.

TABLE 23.204-20: C-E LAND USE NUMBER AND SIZE LIMITATIONS

USE	NUMBER LIMIT	MAXIMUM SIZE	PERMIT REQUIRED
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500 sq. ft.	ZC
Bookstores, Periodical Stands	No limit	2,000 sq. ft.	ZC
Food Service Establishments [1]	25 total	No max.	AUP
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000 sq. ft.	ZC

Notes:

~~[1] Excludes food service uses accessory to a food product store. Secondary food service uses associated with all other principal uses are subject to limitations in Table 23.204-20.~~

~~Change of use of over 3,000 square feet requires Use Permit~~

- b. The ZAB may allow a use to exceed the limitations in Table 23.204-20 with a Use Permit upon finding that:
 - i. The use will result in the positive enhancement of the purposes of the district; and
 - ii. The use is likely to experience substantial patronage by surrounding residents as indicated by neighborhood resident support, merchant support, marketing surveys, or other information.

Section 6. That Berkeley Municipal Code 23.204.100(B) be amended to read:

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts

~~2. **Alcoholic Beverage Retail Sales.** The sale and service of distilled alcoholic beverages (hard liquor) is not permitted along Adeline Street, south of Ashby Avenue, except that such service is allowed when incidental to meals at full-service restaurants in accordance with Section 23.310—Alcoholic Beverage Sales and Service.~~

~~3. **Bar/Cocktail Lounge/Tavern.** Service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue only when incidental to seated food service.~~

42 Mixed-Use Permits Required.

- a. **Zoning Certificate.** A mixed-use project is allowed with a Zoning Certificate if the project:
 - i. Complies with all applicable standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29;
 - ii. Includes only residential uses above the ground floor; and
 - iii. Is less than 5,000 square feet in gross floor area, including any existing floor area incorporated into the project.
- b. **Use Permit.** If a mixed-use project does not meet the criteria for approval with a Zoning Certificate as provided above, the project requires a Use Permit and is subject to the findings in Section 23.204.100.(E)— C-SA South Area Commercial District (Permit Findings).

53. Vehicle Sales.

- a. **Applicability.**

Commented [HJ9]: TECHNICAL CHANGE to C-SA: many C-SA parcels were rezoned to C-AC when the Adeline Plan was adopted. Due to that rezoning, there are no longer areas within the C-SA zoning district that meet these conditions (there are now all C-AC).

i. In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.

ii. All new or relocated vehicle sales in the C-SA district shall be exclusively indoor operations with no outdoor activities and shall comply with the requirements of this subsection.

iii. Expansions or modifications of existing vehicle sales are:

1. Encouraged to comply with standards in Paragraph c (Standards) below where feasible; and
2. Shall not increase or exacerbate a non-conformity with these standards.

b. **Standards.**

i. **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.

ii. **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;

iii. **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.

iv. **Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.

v. **Repair Activities.** All vehicle repair activities shall be conducted indoors.

vi. **Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.

vii. **Lighting.** Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City's goals for energy efficiency.

- vii. **Vehicle Storage.** No vehicles shall be stored in the public right-of-way.
- c. **Modification of Standards.** The Zoning Officer may allow modification to standards in Paragraph c (Standards) above with an AUP upon finding that the modification:
 - i. Is necessary to facilitate incorporation of an existing structure;
 - ii. Achieve greater consistency with the surrounding street pattern;
 - iii. Buffers impacts to an adjacent residential district; or
 - iv. Is needed to accommodate dealership operations.

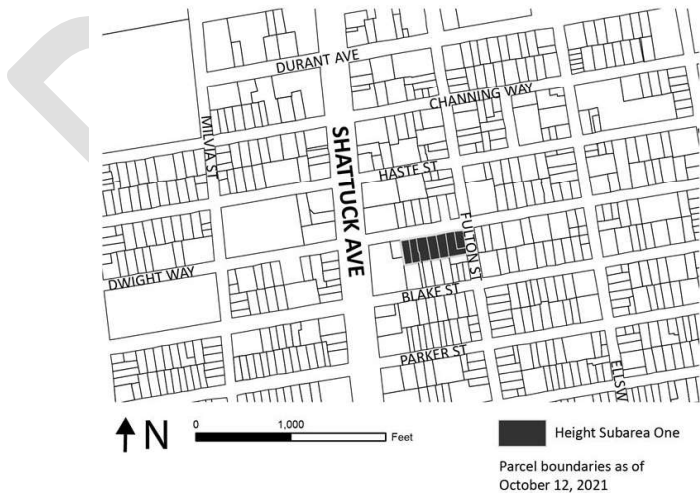
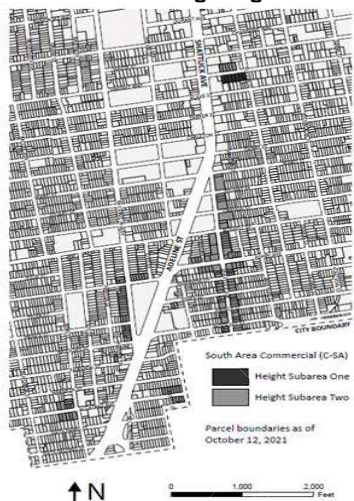
Section 7. That Table 23.204-28 C-SA Maximum Building Heights and Figure 23.204-3 C-SA Building Height Sub-Areas be amended to read:

Commented [HJ10]: TECHNICAL CHANGE to C-SA: Some C-SA parcels are not included in the C-SA Maximum Building Heights Table

Table 23.204-28. C-SA Maximum Building Heights

Building Land Use	Maximum Height	
	Subarea 1 <u>One</u>	Subarea 2 <u>All other parcels</u>
Non-Residential Uses	36 ft and 3 stories	24 ft and 2 stories
Mixed Use and Residential Only	60 ft and 5 stories [1]	36 ft and 3 stories [1]
[1] In mixed-use buildings, the third story and above must be used for residential purposes entirely.		

Figure 23.204-3. C-SA Building Height Sub-Areas Area One



Section 8. That Berkeley Municipal Code 23.204.110(B) be amended to read:

Commented [HJ11]: 10. Seated Food Service Requirement
14. Drug Paraphernalia in C-T District

B. Allowed Land Uses.

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
- ~~2. **Bar/Cocktail Lounge/Taverns.** Service of distilled alcoholic beverages in the C-T district is allowed only when incidental to seated food service.~~
- ~~3. **Drug Paraphernalia Stores.** Any use involving the sale or distribution of drug paraphernalia is not permitted in the C-T district.~~
- ~~4. **Fuel Stations.** Alternative fuel and gasoline stations are allowed with Use Permit when located in a parking structure.~~
- ~~5. **Residential Use, Ground Floor.** Residential uses are permitted on the ground floor where located behind a commercial use. The ground floor commercial use must meet the following standards:

 - a. Occupy a minimum 30-foot depth of the ground floor, as measured from the ground floor street frontage, and
 - b. Occupy the full extent of the building frontage, excluding required utilities, driveways, pedestrian access and residential lobby.~~

~~6. **Office Uses.**~~

- ~~a. Table 23.204-31 shows permits required for office uses in the C-T district.~~

TABLE 23.204-31: C-T OFFICE PERMIT REQUIREMENTS

Building Location	Permit Required	
	First and Second Story	Above Second Story
Adjacent to Bancroft Way	As required by Table 23.204-1	AUP
Not adjacent to Bancroft Way		UP(PH)

- ~~b. When office uses are located on the ground floor adjacent to street frontage, the storefront windows must either:

 - ~~i. Include a window display; or~~~~

- ii. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

75. Upper Story Uses.

- a. Floor area above the ground floor may be occupied only by a residential or office uses.
- b. A commercial use that is an integral part of a ground floor establishment is permitted on the second story if the use:
 - i. Has no entrances or exits, other than required fire exits, outside of the ground floor space; and
 - ii. Does not exceed the ground-floor area of the use.

Section 9. That Berkeley Municipal Code 23.204.120(A)(2)(e) be amended to read:

Commented [HJ12]: 5. Hours of Operation

- e. Encourage location of ~~late night~~late-night commerce in appropriate areas in Berkeley, such as the downtown area, and allow businesses to address demand for late night service on Solano Avenue by establishing a ~~11:00 p.m~~12:00 midnight closing time for businesses on Solano Avenue; and

Section 10. That Berkeley Municipal Code 23.204.130(D)(3) be amended to read:

Commented [HJ13]: 11. Food Service Establishments 3,000 sq. ft. or less

3. Use Limitations; Findings. ~~Food service establishments and offices~~Offices on the ground floor adjacent to a street frontage require an AUP. To approve the AUP, the Zoning Officer must find that

- a. The project meets the purposes of the Arts Overlay District as set forth above; and
- b. The location, size, type, appearance, and signage of the proposed use will:
 - i. Animate and enhance the pedestrian experience on the street; and
 - ii. Be generally open to the public evenings and on weekends, whenever practicable.

Section 11. That Berkeley Municipal Code 23.204.130(E)(7)(a)(iv) be amended to read:

Commented [HJ14]: 1. Group Class Instruction

- iv. ~~Gym/Health~~and Fitness Facility Club

Section 12. That Berkeley Municipal Code 23.204.150(B)(3)(b) be amended to read:

Commented [HJ15]: TECHNICAL CHANGE to correct proper use category titles.

b. Active Commercial Uses Defined. Active Commercial uses are commercial uses which generate regular and frequent foot traffic. Uses include businesses in the following use categories: Retail-Retail Uses Sales; Personal and Household Services Uses; Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses; and the following uses: Banks and Financial Services, Retail, and Vehicle Parts Stores.

Section 13. That the lines named "Family Day Care Home, Large," "Family Day Care Home, Small," "Bar/Cocktail Lounge/Tavern," "Dance/Exercise/Martial Arts/Music Studio," "Food Service Establishment," "Group Class Instruction," "Gym/Health Club," and "Food and Beverage for Immediate Consumption," in Table 23.206-1 Allowed Uses in Manufacturing Districts, within Berkeley Municipal Code 23.206.020, are amended, and lines named "Food Service Establishment, Under 5,000 sq. ft." "Food Service Establishment, 5,000 sq. ft. or larger," "Food Service Establishment, Under 20,000 sq. ft." "Food Service Establishment, 20,000 sq. ft. or larger" "Live Entertainment, Unamplified" and "Live Entertainment, Amplified" are added, to read:

Commented [HJ16]: 1. Group Class Instruction
3. Stand-Alone Beer and Wine
9. Live Entertainment
13. Incidental Food Service Requirements
XX. Technical change for Family Day Care Home

TABLE 23.206-1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Family Day Care Home, Large	NP	NP	ZC*	AUP*	23.206.040.C
Family Day Care Home, Small	NP	NP	ZC*	ZC*	23.206.040.C
Bar/Cocktail Lounge/Tavern/ Tap Room/Wine Tasting	NP	NP	NP	See 23.306	
Dance/Exercise/Martial Arts/Music Studio	NP	NP	--	UP(PH)	
Food Service Establishment	See 23.302.070.E				
Food Service Establishment, Under 5,000 sq. ft	=	=	AUP*	AUP*	23.302.070(E)
Food Service Establishment, 5,000 sq. ft. larger	=	=	UP(PH)*	UP(PH)*	23.302.070(E)
Group Class Instruction	NPZC	NPZC	--	UP(PH)ZC	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Gym/Health and Fitness Facility Club	NP	NP	--	NP	
Incidental Uses					
Food and Beverage for Immediate Consumption	--	AUP [2]	--	--	
Food Service Establishment	AUP [2]	--	AUP [2]	AUP	
Food Service Establishment, Under 20,000 sq. ft.	AUP*	AUP*	AUP*	AUP*	23.302.070(E)
Food Service Establishment, 20,000 sq. ft. larger	NP	AUP*	NP	AUP*	23.302.070(E)
Live Entertainment	NP	NP	UP(PH)*	UP(PH)*	23.302.020(D)
Live Entertainment, Unamplified	NP	NP	ZC	ZC	
Live Entertainment, Amplified	NP	NP	AUP	AUP	

Commented [HJ17]: Instead of using a table in section 23.302.070, we made two new land uses here, for ease of use. Cutting the reference and the table simplifies the code.

Section 14. That Berkeley Municipal Code 23.302.020(B) be amended to read:

Commented [HJ18]: 5. Hours of Operation

B. Hours of Operation.

1. **Allowed Hours.** Table 23.302-1: Allowed Hours of Operation shows allowed hours of operation for commercial uses in the commercial districts and the MU-R district, unless otherwise restricted by an existing permit.

2. Hours of Operation Defined.

Commented [HJ19]: Not new language; existing language that has been relocated

a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.

b. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to:

i. The delivery, maintenance, security, product preparation and other pre-opening activities, and

ii. Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.

a. For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.

c.

2.3. **Exceptions.** The City may allow extended hours of operations with the approval of a permit as shown in Table 23.302-1. If more restrictive hours of operation than what is permitted in Table 23.302-1 are imposed as a condition of approval on an existing AUP or UP, the hours may be modified within the district's current limits with approval of an AUP regardless of the original review authority.

Table 23.302-1: Allowed Hours of Operation

DISTRICT	ALLOWED HOURS OF OPERATION	PERMIT REQUIRED TO EXTEND HOURS
C-C, C-U, <u>C-NS, C-AC, C-W nodes</u>	7:00 a.m. — 12:00 midnight 6:00 a.m. — 2:00 a.m.	AUP
C-N, C-E, <u>C-NS, C-SO, C-SA, C-W outside nodes, MU-R</u>	7:00 a.m. — 11:00 p.m. 6:00 a.m. — 12:00 midnight	UPAUP
<u>C-W nodes</u>	6:00 a.m. — 12:00 midnight with Zoning Certificate	UP
<u>C-SA</u>	7:00 a.m. — 12:00 midnight Sundays through Thursdays 7:00 a.m. — 12:00 Fridays and Saturday	UP
<u>C-AC</u>	7:00 a.m. — 12:00 midnight Sundays through Thursdays 7:00 a.m. — 2:00 a.m. Fridays and Saturday	UP
<u>C-T, C-DMU between Bancroft Way and the north side of Dwight Way</u>	24 hours per day 7 days a week	N/A
<u>C-T between the south side of Dwight Way and Parker Street</u>	7:00 a.m. — 12:00 midnight	AUP
<u>C-DMU</u>	6:00 a.m. and 2:00 a.m.	AUP
<u>MU-R</u>	6:00 a.m. and 10:00 p.m.	AUP

24. Alcohol Sales in C-T District. A Use Permit is required in the C-T district for a business selling alcohol for off-site consumption to remain open past midnight. The Use Permit may be approved only if the business’s ABC license does not require sales of alcohol for off-site consumption to cease by midnight. The Zoning Adjustments Board (ZAB) may approve the Use Permit only upon finding that the extended hours will not generate excessive noise, ~~traffic or parking problems~~ affecting the well-being of the residents of the district.

~~3. C-T District Findings.~~ The Zoning Officer may approve an AUP to extend hours of operation in the C-T district upon finding that the extended hours will not generate excessive noise, traffic, or parking problems affecting the well-being of the residents of the district.

~~4. Hours of Operation Defined.~~

~~a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.~~

~~b. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to:~~

- ~~— The delivery, maintenance, security, product preparation and other pre-opening activities, and~~
- ~~— Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.~~

~~For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.~~

Commented [HJ20]: This definition is moved up to the beginning of the section

Section 15. ~~That~~ Berkeley Municipal Code 23.302.020(D) be removed and that Berkeley Municipal Code 23.302.020(E) be amended to read:

Commented [HJ21]: 9. Live Entertainment.

~~D. Live Entertainment -- Permits Required.~~ Live entertainment incidental to a permitted use is allowed as shown in Table 23.302-2.

Commented [HJ22]: Permit levels now moved to Commercial and Manufacturing Use Tables (one row for each of amplified and unamplified)

Table 23.302-2: Permit Requirements for Live Entertainment

ZONES	PERMIT-REQUIRED	
	AMPLIFIED	UNAMPLIFIED
C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC	AUP	ZC
C-N, C-NS, C-W	UP(PH)	ZC

ZONES	PERMIT REQUIRED	
	AMPLIFIED	UNAMPLIFIED
G-E	Not Permitted	ZC
M, MM	Not Permitted	Not Permitted
MU-LI, MU-R	UP(PH)	UP(PH)

1. Allowed Activities.

- a. In the S-O district, food service establishments may have no live entertainment other than unamplified music, poetry reading, comedy or other quiet activities.
- b. In the C-NS district, food service establishments may have no live entertainment other than unamplified background music, unless a Use Permit is obtained.

ED. Outdoor Uses.

1. **Applicability.** This subsection applies to outdoor uses including but not limited to exterior service windows, outside automatic teller machines, and the outside storage of goods, containers and/or materials.
2. **General.** Commercial and manufacturing uses shall be conducted solely within an interior of a building unless:
 - a. The permit as required by Paragraph 3 (Permits Required) is obtained; or
 - b. the outdoor use is specifically allowed by the Zoning Ordinance.
3. **Permits Required.** Table 23.302-2 Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.
3. Table 23.302-3: Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.

TABLE 23.302-32: PERMIT REQUIREMENTS FOR OUTDOOR USES

DISTRICT/USE CHARACTERISTICS [1]	PERMIT REQUIRED
All Commercial Districts Except for C-W	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)

C-W	
Not abutting a residential district and less than 10,000 s. ft.	AUP
Abutting a residential district	UP(PH)
10,000 sq. ft. or more	UP(PH)
M, MM [2]	
Less than 20,000 sq. ft.	ZC
20,000 sq. ft. or more	AUP
MU-LI	
Less than 20,000 sq. ft.	ZC
20,000 to 30,000 sq. ft.	AUP
More than 30,000 sq. ft.	UP(PH)
MU-R	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)
Notes:	
[1] Size is measured as the lot area of the outdoor activity or storage	
[2] In the M and MM district permits are required only for activity or storage not ancillary to a permitted use.	

- 54. **C-W District.** In the C-W district, uses outside of a building must be permitted or incidental to permitted use in the district.
- 65. **M, MM, MU-LI Districts.** Outside uses in the M, MM, and MU-LI districts may not abut a residential district.

Section 16. That Berkeley Municipal Code 23.302.070(E) be amended to read:

E. Food Service Establishments.

- ~~1. **Maximum Size in R-SMU.** Food service establishments in the R-SMU district may not exceed 1,200 square feet.~~
- ~~2. **Permits Required in Commercial Districts and in the R-BMU.** 6 shows permits required for food service establishments in the commercial districts and in the R-BMU.~~

~~Table 23.302-6: Permit Requirements for Food Service Establishments~~

Commented [HJ23]: 10. Seated Food Service Requirements
11. Food Service Establishments 3,000 sq. ft. or less
13. Incidental Food Service Establishments

Commented [HJ24]: These requirements amended and moved to Residential and Commercial Allowed Use tables (see Sections 1 and 3, above)

DISTRICT/USE SIZE	PERMIT REQUIRED
C-C, C-U, C-T, C-W	
Under 1,500 sq. ft	ZC
1,500 sq. ft. or more	AUP
C-N, C-NS, C-SA, C-SO	
Under 1,000 sq. ft	ZC
1,000 sq. ft. or more	AUP
C-AC, South Shattuck and North Adeline Subareas	
3,000 sq ft or less	ZC
Over 3,000 sq ft	AUP
C-AC, South Adeline Subarea	
1,500 sq ft or less	ZC
Over 1,500 sq ft	AUP
R-BMU, North Berkeley BART Station	UP(PH)
C-E	AUP [1]
C-DMU	
Under 3,000 sq. ft outside the Arts District Overlay	ZC
3,000 sq. ft. or more	AUP
Any size within the Arts District Overlay	AUP [2]
Notes: [10]—All food service uses in the C-E district require an AUP and may not be considered as an incidental use except when accessory to a food product store. [11]—See 23.204.130.D.3 for required findings.	

3. **Notification of Decision.** Food service establishments requiring an AUP in the C-N, C-E, C-NS, C-SA, C-T, C-SO districts must provide public notification of decision (NOD) within a 300-foot radius of the subject property.

4. **Carry Out Limitations in C-U District.** Food service establishments in the C-U district that exclusively sell food for offsite consumption are not permitted at any location on University Avenue between Oxford Street and Martin Luther King Jr. Way until a Downtown Retail Plan is adopted by the City Council.

5.1. **Outdoor Cafe Seating.**

- a. Outdoor cafe seating on private property outside of the public right-of-way is allowed in the commercial districts with the following permits:
 - i. Zoning Certificate when seating does not abut a residential district.
 - ii. AUP when seating abuts a residential district.

~~b. Outdoor seating is not permitted for food service establishments in the MU-LI District.~~

~~e.b.~~ Sidewalk cafe seating within the public right-of-way is subject to 23.302.060 (Sidewalk Cafe Seating).

~~6-2.~~ **Building Openings – C-E and C-NS Districts.** Food service establishments in the C-E and C-NS districts may have no openings, other than fixed windows and required fire exits, within 50 feet of a residential district.

~~7-3.~~ **C-W District Requirements.**

a. Food service drive-through is not permitted on properties fronting San Pablo Avenue.

~~b. To approve a Use Permit for a food service establishment on a lot with frontage on San Pablo Avenue, the ZAB must find that:~~

- ~~i. The project does not conflict with the goals and policies of the C-W district;~~
- ~~ii. The location, size, appearance and signage of the project will not adversely affect the San Pablo Avenue corridor;~~
- ~~iii. The project supports pedestrian-oriented development;~~
- ~~iv. The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of fast food development, including, but not limited to increased traffic, litter, and noise; and~~
- ~~v. For projects which include construction of new buildings, the project design:

 - ~~1. Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets;~~
 - ~~2. Provides pedestrian scale and siting; and~~
 - ~~3. Incorporates continuity in street facades.~~~~

~~8. **Permits Required in Manufacturing Districts.** Table 23.3028 shows permits required for food service establishments in the manufacturing districts.~~

Commented [HJ25]: These requirements amended and moved to Manufacturing District Use table (see Section 13, above)

TABLE 23.302-7: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS IN MANUFACTURING DISTRICTS

USE TYPE AND SIZE	DISTRICT			
	M	MM	MU-LI	MU-R
Incidental Use				
Under 20,000 sq. ft.	AUP [1]	AUP [1,2]	AUP [1]	AUP [1]
20,000 sq. ft. or more	-	-	-	AUP
Carry-Out Food Service (Primary Use)				
Under 5,000 sq. ft.	-	-	AUP	AUP
5,000 sq. ft. or more	-	-	UP	UP
Quick Service Restaurant (Primary Use)				
Under 5,000 sq. ft.	-	-	AUP	AUP
5,000 sq. ft. or more	-	-	UP	UP
Full-Service Restaurant (Primary Use)				
	-	-	UP	UP
Notes: [12]—Outdoor food service is not permitted. [13]—Limited to food or beverage for immediate consumption.				

9.4 MU-LI and MU-R District – Findings.

- a. To approve an AUP ~~or Use Permit~~ to establish or expand a food service establishment in the MU-LI or MU-R district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial character of the area.
- b. ~~To approve an AUP for a food service establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.~~

Section 17. ~~That~~ Berkeley Municipal Code 23.302.070(G) and (H) be amended to read:

Commented [HJ26]: TECHNICAL EDITS to correct numbering

G. Parking Lot/Structure.

1. ~~Permits Required.~~

2.1. **Permits Required.** Table 23.302-9.7 shows required permits for the exclusive or primary use of a lot for off-street parking spaces.

TABLE 23.302-9.7: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES

DISTRICT	PERMIT REQUIRED
Residential Districts	
R-3	Use Permit for all parking lots and structures. [1]
R-S, R-SMU, R-BMU	Use Permit for parking structures only. Parking lots are not permitted, except on lots between Acton Street and Virginia Gardens and between Peralta Avenue and Northside Avenue in the R-BMU.
All other residential districts	Use Permit for all parking lots and structures.
Commercial Districts	
C-C, C-U	Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-SO	AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-DMU	AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.
C-N, C-E, C-NS, C-SA	Use Permit for all parking lots and structures.
C-T	Use Permit for all parking structures. All parking lots not permitted.
C-W	AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.
Manufacturing Districts	
M, MM	AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-LI	Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-R	Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.

Notes:

[44][1] Parking lots and structures in the R-3 district are not permitted within the Southside Plan area

3.2 Residential District Standards. See 23.322.110– Parking Lots in Residential Districts for standards that apply to the exclusive or primary use of a lot for off-street parking spaces in a residential district.

H. Residential Use, Ground-Floor Units.

1. Southside Plan Area. In the R-3, R-S, R-SMU, and C-T districts within the Southside Plan boundaries, individual unit entries located within six feet of the front property line shall be at least 18 inches above the finished grade of the adjacent public frontage.
- I. Senior Congregate Housing. Table 23.302-10-8 shows permits required for senior congregate housing.

TABLE 23.302-108: PERMIT REQUIREMENTS FOR SENIOR CONGREGATE HOUSING

PROJECT	PERMIT REQUIRED
Change of use from an existing dwelling unit to accommodate six or fewer people	ZC
Change of use from an existing dwelling unit to accommodate seven or more people	AUP
New construction to accommodate any number of people	UP(PH)

Section 18. That Berkeley Municipal Code 23.310.020 be amended to read:

Commented [HJ27]: 4. Alcoholic Beverage Sales Standards

A. Applicability.

1. This section applies to any application to begin ~~or increase~~ alcoholic beverage sales or service, excluding ~~beer and wine~~ alcoholic beverage service incidental to a food service establishment ~~in a Commercial District~~ (see 23.310.030 (Alcoholic Beverage Service When Incidental to a Food Service)).
2. ~~As used in this section, an increase in alcoholic beverage sales or service includes, but is not limited to:~~
 - a. ~~Adding the sales or service of distilled spirits to any existing sales or service of beer and/or wine;~~
 - b. ~~Extending the hours of operation of any establishment that sells or serves any alcoholic beverage; and~~

~~c. Adding to the capacity, floor area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.~~

~~3. An increase in alcoholic beverage sales or service does not include extending the hours of operation of any food service establishments with incidental beer and/or wine service.~~

B. Permit Required. ~~A Use Permit is required to begin or increase alcoholic beverage sales or service in any way.~~

~~1. An Administrative Use Permit is required to begin service of alcoholic beverages, except as provided in 23.310.030 (Alcoholic Beverage Service When Incidental to Food Service).~~

~~4-2. To increase sales and service of alcoholic beverages, an existing Administrative Use Permit or Use Permit may be modified with an AUP regardless of the original review authority.~~

C. Application – List of Nearby Establishments. ~~As part of an application to begin or increase alcoholic beverage sales or service, the applicant must provide a list of all establishments within a 1,000-foot radius which are in the same category of alcoholic beverage sales or service, as defined by the California Department of Alcoholic Beverage Control.~~

DC. Findings of Public Convenience or Necessity. ~~To approve a permit for alcoholic beverage sales or service, the decision-making body must make the following findings: If the proposed use is within a 1,000-foot radius of the site of a use that is in the same category of alcoholic beverage sales or service, excluding food service establishments with incidental service of beer and/or wine, the Zoning Adjustments Board (ZAB) may approve the application~~

~~1. The number of alcoholic beverage sales licensees in the census tract does not exceed the limit set by the Department of Alcoholic Beverage Control, as defined in California Business and Professions Code Section 23958.4, excluding Food Service Establishments with incidental alcohol service; and~~

~~4-2. At least one of the following; only if it makes all of the following findings:~~

~~a. The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the district purpose.~~

~~b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.~~

~~b-c. The applicant has operated a licensed establishment that has not been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in Berkeley, as verified by the Police Department, such violations do not indicate a high likelihood of~~

~~further violations and/or detrimental impacts from the proposed establishment. In making this finding, the ZAB decision-making body may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.~~

~~4. If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.~~

~~3. If the number of alcoholic beverage sales licenses in the census tract exceeds the limit set by the Department of Alcoholic Beverage Control; the decision-making body must find that the public convenience or necessity would be served by approving alcohol sales at the proposed location for any two or more of the following reasons:~~

~~a. The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the purposes of the district.~~

~~b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.~~

~~c. The sale of alcoholic beverages will enhance recreational or entertainment opportunities in the area.~~

~~d. The sale of alcoholic beverages complements the sale of other goods and merchandise at the location.~~

~~e. The issuance of a license at the proposed location will improve the convenience of area residents and visitors who purchase alcoholic beverages.~~

~~4. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.~~

Section 19. That Berkeley Municipal Code 23.310.030 be amended to read:

A. **Permits Required.** Table 23.310-1 shows permits required for alcoholic beverage service when incidental to a food service establishment. If more restrictive requirements than what is permitted in Table 23.310-1 are imposed as a condition of approval on an existing AUP or UP, the use may be modified with an AUP regardless of the original review authority.

Table 23.310-1: Permits Required for Alcoholic Beverage Service

Commented [HJ28]: 2. Incidental Distilled Spirits
4. Alcoholic Beverage Sales Standards
10. Seated Food Service Requirement
15. Third Party Rental

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
R-SMU	UP(PH)	UP(PH)
<u>R-BMU</u>	<u>ZC</u>	<u>UP (PH)</u>
All Commercial Districts, except C-AC and the R-BMU District	ZC	UP(PH) AUP
C-AC	ZC	AUP
MU-LI, MU-R	<u>UP(PH) AUP</u>	<u>UP(PH) AUP</u>

B. Use Limitations.

- ~~1. **R-SMU District.** In the R-SMU district, alcoholic beverage service is allowed only for full-service restaurants. Alcoholic beverage service is not allowed for carry-out food stores and quick-service restaurants.~~
- ~~2. **Commercial Districts.** In Commercial Districts, beer and wine service is allowed by right when for on-site consumption with seated food service.~~
- ~~3. **C-NS and R-BMU Districts.** In the C-NS district, distilled spirit service is allowed only for full-service restaurants. Distilled spirit service is not allowed for carry-out food stores and quick-service restaurants.~~
- ~~4. **C-T and C-SO Districts.** In the C-T and C-SO districts, distilled spirit service is allowed only for on-site consumption with seated food service.~~
- ~~5. **C-AC District.** In the C-AC district, distilled spirit service is allowed along Adeline Street south of Ashby Avenue only for on-site consumption with seated food service.~~

CB. Incidental Beer and Wine Service Standards. The following standards apply to beer and wine service incidental to a food service establishment, ~~in a Commercial District.~~

1. **Licensing.**
 - a. The food service establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
 - b. An operator of the licensed establishment may not have a prior licensed establishment that was the subject of verified complaints or violations

regarding alcohol, public safety, or nuisance statutes or regulations before issuance or transfer of a business license at this location.

2. **Service.**

- a. Beer and wine beverage service shall be incidental to the primary food service use.
- b. Beer and wine service incidental to seated food service shall only be allowed at a bona fide eating place making actual and substantial sales of meals as determined and required by the California Department of Alcoholic Beverage Control.
- c. The sale of beer and wine for off-site consumption is not permitted.
- ~~d. Employees may not serve beer or wine to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.~~
- ~~e. All beer and wine served to patrons must be served in durable restaurant tableware. Beer or wine may not be distributed in its original bottle or can, or in any other potentially disposable container.~~
- ~~f. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service, or consumption of alcoholic beverages directly to patrons for consumption.~~
- g.d. Hours of operation are subject to review and amendment by the review authority - Zoning Officer or the ZAB as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City of Berkeley standards or policies.

3. **Operation.**

- a. The food service establishment must operate at least five days a week.
- b. The service of beer and wine shall be limited to normal meal hours (per California Department of Alcoholic Beverage Control) during the food service establishment's hours of operation.
- c. During ~~operating the food service establishment's~~ hours of operation, 100 percent of the service all public areas shall be designed and used available for meal service and the food service establishment must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- ~~d. At no time shall the operator rent the restaurant space to a third-party.~~
- e.d. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:

i. Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets; and

ii. Surveillance to public areas near the establishment, keeping public areas free of trash and litter, providing lighting, and otherwise preventing conduct that might disturb the peace and quiet of residences in the vicinity.

f.e. The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.

g-f. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

4. Advertising.

a. ~~There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior constitute a violation of this requirement. Establishments shall comply with Municipal Code Chapter 20.67 (Alcohol Product Advertising)~~

b. ~~Alcohol dispensing facilities and signs advertising alcoholic beverages may not be visible from the public right-of-way.~~

5. Training.

a. The operator shall finish a Crime Prevention through Environmental Design (CPTED) survey before beginning alcohol service.

b. All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with Municipal Code Section 9.84.030 (Responsible Beverage Service Training) and finish the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 90 days of employment at the establishment. Employees who have finished the course within the last 12 months are exempt from this requirement.

Section 20. That Berkeley Municipal Code 23.324.040(B)(2)(b) be amended to read:

b. **Uses with Major Investments.** Lawful nonconforming ~~full or quick service restaurants~~ food services establishments with cooking or food preparation facilities, gas/auto fuel stations, theaters, manufacturing plants with specifically designed fixed facilities and other uses which represent a major

Commented [HJ29]: TECHNICAL EDIT: "full or quick service restaurants" no longer exist as a use type (see Section 25 below)

investment in physical plant or facilities shall not be considered or declared terminated, regardless of the duration of non-use, unless:

- i. Such fixed structures, equipment, or facilities are removed; or
- ii. Other uses could not be established without major removal of or extensive remodeling or replacement of structures associated with the previous established use.

Section 21. That Berkeley Municipal Code 23.502.020(B)(4) be amended to read:

Commented [HJ30]: 3. Stand-Alone Beer and Wine

- 4. **Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting.** A business devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food is ~~only~~ incidental to the consumption of such beverages.

Section 22. That Berkeley Municipal Code 23.502.020(D) be amended to read:

Commented [HJ31]: 1. Group Class Instruction

D. "D" Terms.

- ~~1. **Dance/Exercise/Martial Arts/Music Studio.** An establishment in which customers assemble for group exercises, dancing, self-defense training, aerobics, choral or musical instrument instruction, other movement drills for learning, rehearsal or non-audience performances.~~
- ~~2-1. **Deck.** An unenclosed structure, usually made of wood, built to provide a solid continuous surface for outdoor use and/or access to a door, which is accessible from the ground level, directly or from a connecting stairway and is separated from the ground by an air space.~~
- ~~3-2. **Demolition.** A building or enclosed structure shall be considered demolished for the purposes of this chapter when, within any continuous 12-month period, such building or enclosed structure is destroyed in whole or in part or is relocated from one lot to another. For purposes of this definition, destroyed in part means when 50 percent or more of the enclosing exterior walls and 50 percent or more of the roof are removed. Removal of facades or portions of facades requires Design Review.~~
- ~~4-3. **Density.** See 23.106.100 – Residential Density~~
- ~~5-4. **Density Bonus.** See 23.332.020 (Definitions).~~
- ~~6-5. **Department.** The Planning and Development Department of the City of Berkeley or its successor administrative unit.~~

- 7-6. Department Store.** A retail store selling several kinds of merchandise, which are usually grouped into separate sections, including but not limited to, apparel, housewares, household hardware, household appliances, household electronics and gifts.
- 8-7. Dormer.** A projection built out from a sloping roof, usually housing a vertical window or ventilating louver. See also 23.304.110 (Dormers).
- 9-8. Dormitory.** A building providing group living accommodations, occupied by individuals not sharing a common household, characterized by separate sleeping rooms without individual kitchen facilities and containing congregate bath and/or dining facilities or rooms.
- 10-9. Drive-in Uses.** A use where a customer is permitted or encouraged, either by the design of physical facilities or by the service and/or packaging procedures offered, to be served while remaining seated within an automobile. This use includes drive-through food service establishments, financial services (banks), and automatic carwashes.
- 11-10. Driveway.** A paved, vehicular accessway connecting an off-street parking space or parking lot with a public or private street.
- 12-11. Drug Paraphernalia.** As defined in California Health and Safety Code Section 11364.5(d).
- 13-12. Drugstore.** A retail establishment where the profession of pharmacy is practiced and/or where licensed prescription drugs and general merchandise are offered for sale. A food products store with a pharmacy is not a drugstore.
- 14-13. Dry Cleaning and Laundry Plants.** A place where clothes are dry cleaned, dyed and/or laundered as part of a commercial business, whether or not such clothes were deposited by a customer at that location, or transported from another location, as part of a service. This use includes all establishments subject to Section 19233 of the State of California Business and Professions Code, regulating Dry Cleaning Plants, but excludes laundromats and cleaners as defined in this chapter.
- 15-14. Duplex.** A building or use of a lot designed for, or occupied exclusively by, two households.
- 16-15. Dwelling Unit.** A building or portion of a building designed for, or occupied exclusively by, persons living as one household.

Section 23. ~~That~~ Berkeley Municipal Code 23.502.020(F) (11) be amended to read:

Commented [HJ32]: TECHNICAL EDIT: There are no longer any regulations pertaining to Carry Out Food Store, Quick Service Restaurant, or Full Service Restaurant; so, deleting definitions.

11. **Food Service Establishments.** An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises.

~~a. **Carry Out Food Store:** A store which serves food or non-alcoholic beverages for immediate consumption not on the premises, but usually in the vicinity of the store. This use is usually characterized as an establishment which serves food altered in texture and/or temperature on a customer-demand basis, puts such food in non-sealed packages or edible containers, requires payment for such food before consumption, and provides no seating or other physical accommodations for on-premises dining. Examples of this use include delicatessens and other stores without seating which sell doughnuts, croissants, ice cream, frozen yogurt, cookies, whole pizzas and sandwiches. This use excludes bakeries and food products stores.~~

~~b. **Quick Service Restaurant:** An establishment which serves food or beverages for immediate consumption either on the premises, or to be taken out for consumption elsewhere. This use is usually characterized as an establishment in which food is cooked on a customer-demand basis, payment is required before consumption, limited or no able service is provided (no waiters), and seating or other physical accommodations for on-premises customer dining is provided. Examples of this use include establishments selling primarily hamburgers or other hot or cold sandwiches, hot dogs, tacos and burritos, pizza slices, fried chicken, or fish and chips.~~

~~c. **Full-Service Restaurant:** An establishment which serves food or beverages for immediate consumption primarily on the premises, with only a minor portion, if any, of the food being taken out of the establishment. This use is characterized as an establishment in which food is stored, cooked or prepared on the premises on a customer-demand basis, which requires payment after consumption, and provides seating and tables for on-premises customer dining, and may provide with table service (waiters).~~

Section 24. That Berkeley Municipal Code 23.502.020(G)(6) be amended to read:

Commented [HJ33]: 1. Group Class Instruction

6. **Group Class Instruction.** An establishment that offers specialized programs in personal growth, and development, and instruction in artistic, cultural, and academic pursuits, including music and choral schools, performing arts, arts and crafts, cooking, tutoring, martial arts and self-defense training. Excludes spaces designed exclusively for public performance. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.

Section 25. That Berkeley Municipal Code 23.502.020(G)(9) be removed:

Commented [HJ34]: 1. Group Class Instruction

- 9. ~~Gyms and Health Clubs. An indoor facility where exercise equipment, classes and related activities related to personal health and fitness are available to paying customers. Excludes parks/playgrounds.~~

Section 26. That Berkeley Municipal Code 23.502.020(H)(2) – (11) be amended to read:

Commented [HJ35]: 1. Group Class Instruction

- 2. Health and Fitness Facility. A facility where exercise equipment, swimming pools, group or aerobic classes (including yoga and Pilates) and other activities related to person health and fitness are available to customers or members. Excludes park/playground.

Commented [HJ36]: New definition to replace Gym/Health Club/Fitness Studio

- 23. Hedge. Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier.

- 34. Height of Building, Average. See 23.106.090.A (Average Building Height).

- 45. Height of Building, Maximum. See 23.106.090.B (Maximum Building Height).

- 56. Home Occupation. A business use conducted on property developed with a residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building or Group Living Accommodation room and is operated only by the residents of the subject residence.

There are three classification of Home Occupations. For the purposes of this section, a "customer" is considered a single paying customer, but may include more than one person receiving the services at the same time:

- (1) Class I Home Occupation--Involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.
- (2) Class II Home Occupation--Involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.
- (3) Class III Home Occupation--Involves more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site and/or involves shipping of goods directly from the subject residence.

- 67. **Hospital.** A facility for in-patient medical care licensed under California Administrative Code, Title 17, Section 237 or 238.
- 78. **Hot Tub.** A tub or small pool, usually made of wood or fiberglass, in which heated water is maintained for recreational or therapeutic activities, including, but not limited to, jacuzzis, whirlpools and spas.
- 89. **Hotel, Residential.** A type of group living accommodations which provides rooms for rent for residential purposes, including single residential occupancy (SRO) rooms.
- 910. **Hotel, Tourist.** A building with sleeping rooms used, designed, or intended for occupancy by transient guests for a period not to exceed 14 consecutive days. This use includes inns, bed and breakfasts (B&Bs), and hostels, and excludes building with residential hotel rooms and dwelling units.
- 1011. **Household.** One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.
- 1112. **Household Income, Gross.** The income of all adult members of the household as determined by the guidelines used by the Berkeley Housing Authority for its administration of the Section 8 Rental Subsidy Program. For purposes of this definition, household is the same as Family in the federal Section 8 Existing Housing Program or its future equivalent. Classification of Households, based on income, shall be based on the following percentages of the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures for income of the most recent U.S. Census that are available:
 - (a) *Low Income Household.* A household whose gross income is greater than 80 percent and less than 100 percent of the median income.
 - (b) *Lower Income Household.* A household whose income is no greater than 80 percent and above 50 percent of the median income.
 - (c) *Very Low Income Household.* A household whose gross income is 50 percent or less of the median income.

Section 27. That Berkeley Municipal Code 23.502.020(S)(31) be amended to read:

Commented [HJ37]: 1. Group Class Instruction

31. **Studio.** See Art/Craft Studio ~~and Dance, Exercise, Martial Arts or Music Studio.~~

Section 28. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

DRAFT



Office of the City Manager

ACTION CALENDAR

October 15, 2019

(Continued from September 24, 2019)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Economic Development Manager
Subject: Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses

RECOMMENDATION

Refer to the Planning Commission modifications to the Zoning Ordinance that are designed to streamline the zoning review process for new or expanding small businesses in Berkeley.

SUMMARY

In April 2017, City Council referred to the City Manager analysis of a number of policy and programmatic initiatives to support the City's small businesses, including "streamlining of zoning, permitting and licensing requirements and processes." In February of 2019, six changes to the Zoning Ordinance were enacted. Subsequently, staff from the Office of Economic Development (OED) have identified eight additional potential modifications to the Zoning Ordinance for the Council and Planning Commission to consider. These eight changes are proposed in Berkeley's commercial zoning districts to make the permitting review process for small businesses less complex and time consuming:

1. Consider permitting Group Instruction (Dance Studios, Yoga Studios, Martial Arts, Exercise) with a Zoning Certificate.
2. Clarify the threshold for design review and the applicability of design guidelines for sign applications in commercial districts.
3. Consider permitting the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP) subject to performance standards.
4. Consider permitting standalone Beer and Wine Sales (such as Tap Rooms and Wine Bars) with a Zoning Certificate subject to performance standards.
5. Consider modifying the limitation on hours of operations in some commercial districts.
6. Consider the necessity of 'change of use' requirements in commercial districts.
7. Consider the appropriate levels of discretion for Arcades and Automatic Teller Machines (ATMs) commercial districts.

8. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the proposed changes to the Zoning Ordinance.

These proposed revisions reflect input from the small business community and are seen by staff as relatively straightforward opportunities to modernize and improve the Zoning Ordinance to reflect present day conditions and community values. Each of these proposed modifications is designed to make the zoning review process for small businesses easier, clearer, and more streamlined.

FISCAL IMPACTS OF RECOMMENDATION

Modifications to the Zoning Ordinance, and the accompanying public hearings, will require staff time from the Planning Department, Office of Economic Development, and City Attorney's Office to produce staff reports and attend the required Planning Commission and City Council hearings. Proposed modifications are designed to simplify the planning review process for desirable business activities (including new business starts and expansions) and therefore may result in a modest increase in business license tax and sales tax revenues.

CURRENT SITUATION AND ITS EFFECTS

The Zoning Ordinance has evolved over decades to reflect Berkeley's changing values and the changing landscape of property development and land use. Its requirements are intended to guide the City's growth while preserving its existing character. However, businesses and people operate differently than they did 20 to 50 years ago, and some of the current permit thresholds and ordinance requirements do not recognize these changes. This results in a permitting process that can be unnecessarily lengthy and cumbersome, especially for independently-owned small businesses without the sophistication to navigate our complicated code and permitting process. Since its last major overhaul in 1999, the Zoning Ordinance has been updated in large and small ways at least 16 times to reflect new approaches to land use and changes in the ways businesses function and residents view their community. Staff has observed that it is particularly difficult for smaller, independently-owned businesses to navigate the permit review process and the associated timelines and expense. The modifications proposed here are designed with the unique needs and challenges of small businesses in mind. Further, these recommendations follow up on the recently adopted (January 2019) zoning modifications to support small business that have improved the experiences in several cases over a period of five months.

In order to update our ordinance to better accommodate today's locally-owned, small, independent enterprises that are highly desirable to our community, and to adhere to best practices in planning and sustainable economic development, staff recommends the eight modifications to the Zoning Ordinance listed above to provide regulatory relief for small businesses in their establishment or expansion phases. These changes are an important component and continuation of a broader effort to improve our organization's embrace of our customer service and Strategic Plan goals to "foster a dynamic, sustainable, and locally-based economy" and "provide excellent, timely, easily-

accessible service and information to the community,”¹ while honoring the City’s commitment to public participation and ensuring that new uses are compatible with neighboring land uses.

BACKGROUND

On April 25, 2017, the City Council referred to the City Manager a bundle of recommendations entitled the “Small Business Support Package” with the objective to “to support the establishment of new, and sustainability of existing small and/or locally owned businesses.” Among the strategies that Council asked staff to analyze and implement included “streamlining of zoning, permitting and licensing requirements and processes for small/local businesses and not-for-profits, to reduce associated costs and delays, and, where appropriate, provide less onerous levels of review.”² In the Council’s annual referral prioritization exercise conducted in May 2017, the item was ranked as the Council’s top priority among the referrals not pertaining to housing.

Subsequently, during summer and fall of 2017, Office of Economic Development (OED) staff conducted significant outreach and research on Berkeley’s small businesses and compiled its findings in a work session report and presentation to council on January 16, 2018.³ Small business owners and advocates identified the lengthy permitting review process as one of the primary barriers to small business startup and expansion in Berkeley. As a result, staff recommended six modifications to the Zoning Ordinance that were adopted by the City Council on January 22, 2019.⁴ Over six months since the zoning modifications went into effect, several business have benefited from the amendments by reducing months of permit review time and additional expenses. For example, Thai Corner at 1277 Gilman Street, the Sundhari Spa at 1605 Solano Avenue, and AxeVentures at 2566 Telegraph Avenue each were able to open their business or expand their hours via a Zoning Certificate, rather than wait several months for an AUP. In addition, the zoning modifications were acknowledged by the Northern California Chapter of the American Planning Association (NorCal APA) with an Award of Merit in Economic Planning and Development.

The goal of this second round of zoning changes is again to improve and simplify the permitting experience for small businesses, which can in turn enhance the quality of commercial district offerings, help fill vacant storefronts, and generate more local and sustainable economic opportunities. The recommendations distill specific complaints, concerns, challenges, and staff observations into concise changes to the zoning ordinance designed specifically to alleviate long permit queues, clear up applicant confusion, and streamline the experience of doing business in Berkeley. The

¹ See *City of Berkeley 2018-2019 Strategic Plan*, adopted by Berkeley City Council, January 16, 2018.

² See *Small Business Support Package*, adopted by Berkeley City Council, Item 41, April 25, 2017.

³ See *Economic Development Worksession, Small Business Support*.

https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2017-01-16_WS_Item_01_Economic_Development_Worksession.aspx

⁴ See *Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses*, adopted by City Council, Item 1, January 22, 2019

https://www.cityofberkeley.info/Clerk/City_Council/2019/01_Jan/Documents/2019-01-22_Item_01_Ordinance_7635.aspx

recommendations are also informed by outreach, conducted February through August 2019, to neighborhood stakeholders, business owners, elected officials and commissioners. Staff aimed to identify and streamline the particular controls that lengthen the review process for desired and noncontroversial uses. In addition, the recommendations are consistent with purpose statements for commercial districts in section 23E of the Zoning Ordinance.

The following recommendations and rationale continue to iterate on the progress and inputs gathered from the first round of zoning amendments to support small businesses:

1. Consider permitting Group Instruction (Dance Studios, Yoga Studios, Martial Arts, Exercise) with a Zoning Certificate. Currently the Zoning Ordinance requires an AUP for Group Class Instruction in the majority of commercial zoning districts. A new yoga studio or exercise studio, or businesses interested in adding classes to an existing business, such as an art gallery or culinary business, are subject to discretionary review through an AUP application. The AUP requirement typically lengthens the zoning review process by three to six months, and typically increases the cost by roughly \$1,000 to \$4,000.

OED staff has observed an increase in business models that employ a combination of retail and/or food consumption with instruction, training and class offerings. As the prevalence of online purchases for soft goods (e.g., clothing, books, music) increases, these creative commercial uses are increasingly critical to the vitality and sustainability of neighborhood commercial districts. Therefore staff recommends amending the Zoning Ordinance to permit these uses in commercial districts with a Zoning Certificate.

2. Clarify the threshold for design review and the applicability of design guidelines for sign applications in commercial districts. Section 20.12.070 of the Zoning Ordinance and Section 23E.08.020 of the Sign Code have conflicting and contradictory language related to the threshold for the design review of a new sign and the requirements for a Sign Permit. In addition, the current application for Signs and Awnings throughout the City refer to the Downtown Sign Guidelines; those guidelines have been used for the review and processing of signs beyond Downtown. This has led to confusion for applicants, business owners and sign companies wishing to do business in Berkeley. The impact is especially detrimental to small, independent business owners interested in opening a new business with a new sign.

To remedy this, staff recommends a minor modification to the language in Section 23E.08.020 Applicability of Design Review in non-residential districts to clarify the types of signs that are subject to design review and signs that are exempt. In addition, the Planning Commission should determine whether the Downtown Sign Guidelines are suitable for the evaluation of signs throughout the City or only Downtown.

3. Consider permitting the sale of Distilled Spirits that are incidental to a Food Establishment with an Administrative Use Permit (AUP) subject to performance standards. Presently an operator of a food service establishment must obtain a Use Permit with a Public Hearing UP(PH) to serve distilled spirits. This review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control (ABC), the state agency regulating the sale, service, and production of alcohol. The UP(PH) requirement typically lasts between five to eleven months, and includes \$5,215 in fees. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for food service purveyors.

Staff recommends the incidental service of distilled spirits at a food establishment be permitted via an AUP, subject to specific conditions of approval and the adopted performance standards which are approved by Berkeley's law enforcement officials and in line with the best practices employed by the state ABC. Nearby residents and property owners will still be notified of the proposed use and will have the ability to provide comments and appeal the Planning Department's decision.

4. Consider permitting standalone Beer and Wine Sales (such as Tap Rooms and Wine Bars) with a Zoning Certificate subject to performance standards. Currently, tap rooms, wine bars and tasting rooms are subject to the UP(PH) process in most commercial districts. As noted above, the UP(PH) requirement typically lasts between five to eleven months, and includes \$5,215 in fees. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for entrepreneurs interested in this type of business. This review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control (ABC), the state agency regulating the sale, service, and production of alcohol.

Staff recommends that standalone beer and wine sales be permitted via a Zoning Certificate, subject to the performance standards which are approved by Berkeley's law enforcement officials and in line with the best practices employed by the state ABC. The City of Berkeley has an emerging wine and beer scene, resulting in additional tourism, tax revenue, manufacturing and job creation; this policy change could help to encourage its continued expansion.

5. Consider modifying the limitation on hours of operations in some commercial districts. Currently, several commercial zoning districts limit the hours of operation for businesses; e.g., businesses in the Elmwood District may not operate outside of 7am-11pm. In order for a business to exceed the existing limits, they must apply for a UP(PH) (adding approximately five to eleven months and \$5,215 in fees to the zoning approval process). This is a significant obstacle for many business owners and has served as a deterrent for entrepreneurs that may be interested in providing food and drinks to customers after 11:00 pm. Many of the City's entertainment activities end at or after 11:00 pm; in some

districts, the limits on hours of operations restricts businesses from offering complementary services. This could result in lost tax revenue, job opportunities and lost business to adjacent cities. Staff recommends that the Planning Commission consider removing the blanket restriction in some or all commercial districts, allowing business owners to maintain hours of operation that comply with any applicable State laws and are aligned with their business model and customer demand.

6. Consider the necessity for 'change of use' requirements in commercial districts triggered by square footage. Currently in some C-prefixed districts, a change of use above a certain square footage threshold necessitates an AUP or a UP(PH). A commercial change of use requirement based on square footage is atypical; surrounding jurisdictions do not impose this level of scrutiny on neighborhood serving business, which puts Berkeley at a competitive disadvantage in its attraction of new businesses to larger commercial spaces. Each district's Use Table makes allowances for different levels of discretionary review for particular uses based on square footage thresholds. This additional requirement therefore adds to the overall complexity of the zoning ordinance; as it is a supplemental requirement implemented via an asterisk, often it is initially overlooked by applicants.

Staff recommends that the Planning Commission review the appropriateness and benefits of an AUP for a Change of Use and consider eliminating the requirement in some or all commercial districts. Proposed uses would be evaluated and reviewed based on the levels of discretion defined in the Use Table for each district.

7. Consider the appropriate levels of discretion for Arcades and Automatic Teller Machines (ATMs) commercial districts. Commercial recreation uses that are classified as Arcades (e.g., Emporium and 90's Experience, Oakland, CA and the High Scores Arcade Museum, Alameda, CA) have become increasingly popular and prevalent. With the rise of internet sales posing challenges to retailers, these types of experiential commercial establishments have become increasingly important to the overall health of commercial districts. However, Berkeley's existing zoning controls make it difficult or impossible to open that type of establishment in most districts. Currently, Arcades are either prohibited or require a UP(PH), which adds approximately five to eleven months and \$5,215 in fees to the zoning approval process. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for entrepreneurs interested in this type of business.

ATMs also typically require an AUP or UP(PH), and in some districts are prohibited unless part of a Financial Institution. ATMs are often a beneficial and complimentary element for active commercial districts, especially if there's a lack of financial institutions in the area like some parts of Berkeley. Furthermore, the City of Berkeley is considering a policy that would require businesses to accept

cash. Staff recommends that the Planning Commission review the levels of discretion for Arcades and ATM's in commercial districts.

- 8. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the proposed changes to the Zoning Ordinance. The Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades provide additional requirements and limitations for certain uses in the Zoning Ordinance. Several of the regulations are limiting and don't reflect the current standards in other jurisdictions. In addition, these sections would need to be modified to be consistent with the recommended Zoning Ordinance amendments above. Furthermore, the Public Convenience or Necessity findings for alcohol use and the distance buffers for Arcades are overly restrictive, don't reflect best practices and conflict with typical business practices. For example, Section 23E.16.040(A)(1)(b)(5) states "no beer or wine may be distributed in its original bottle or can." Staff recommends that the Planning Commission consider updating the Special Use section of the ordinance to be reasonable, enforceable and be consistent with surrounding jurisdictions.

Next Steps

Staff recommends that City Council review and adopt this referral to Planning Commission. Subsequently, Planning Department staff would present the Planning Commission with information, case studies and analysis relevant to each proposed change, seek guidance from the Commission, and draft Zoning Ordinance amendments for the Commission's review. It is possible that some of the recommendations may be implemented as part of the Zoning Ordinance Revision Project (ZORP), a current initiative to modernize and streamline the Zoning Ordinance. Planning Commission hearings will provide opportunities for additional feedback from small business owners, citizens, neighborhood associations, and commercial district groups.

Strategic Plan Connection

This referral is a component of a Strategic Plan Priority Project (Small Business Support), advancing our goals to provide an efficient and financially-healthy City government; to foster a dynamic, sustainable, and locally-based economy; and to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

ENVIRONMENTAL SUSTAINABILITY

Many of the City's environmental sustainability goals are inextricably tied to the overall health of the City's economy. Small businesses make up the bulk of Berkeley's economy. Small businesses often contribute to sustainable transportation and consumer behavior by providing opportunities to shop in neighborhood commercial districts that are accessible by foot, bicycle and transit.

RATIONALE FOR RECOMMENDATION

Berkeley's commercial districts, and the small businesses that comprise them, are vital to the City's economic, social and civic wellbeing. These zoning changes represent the

most immediate and straightforward approach the City can take to assist small businesses and potentially reduce commercial vacancies. They are designed specifically to support small independent operators seeking to invest and activate these districts, and will provide the community with needed goods and services. These changes also have the added addition of improving our city's internal permitting processes, by shortening timelines and improving customer service.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered various other changes to levels of discretionary review and other zoning compliance review for commercial uses, but recommends moving forward with the modifications proposed above while continuing to gather input on additional changes.

CONTACT PERSON

Jordan Klein, Economic Development Manager, (510) 981-7534

Kieron Slaughter, Community Development Project Coordinator, (510) 981-2490

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL
ZONING ORDINANCE AMENDMENTS TO SUPPORT BERKELEY
BUSINESS**

The public may participate in this hearing by remote video or in-person.

The Department of Planning and Development is proposing amendments to the City's Zoning Ordinance (Title 23) to establish a streamlined, cost-effective, and expedited review and approval process tailored to smaller businesses, while preserving the city's commitment to public participation and ensuring that new uses are compatible with neighboring land uses. Proposed amendments affect the following sections of Title 23:

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.150 R-BMU Residential BART Mixed Use District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use-Specific Permit Requirements and Regulations
- 23.204.080 C-E Elmwood Commercial District
- 23.204.100 C-SA South Area Commercial District
- 23.204.110 C-T Telegraph Avenue Commercial District
- 23.204.120 C-SO Solano Avenue Commercial District
- 23.204.130 C-DMU Downtown Mixed-Use District
- 23.204.150 C-AC Adeline Corridor Commercial District
- 23.206.020 Allowed Land Uses (Manufacturing Districts)
- 23.302.020 Supplemental Use Regulations (Hours of Operation)
- 23.302.070 Supplemental Use Regulations (Use-Specific Regulations)
- 23.310.020 Alcoholic Beverage Sales and Service (General Alcohol Service Requirements)
- 23.310.030 Alcoholic Beverage Sales and Service (Incidental Alcohol Service Requirements)
- 23.324.040 Nonconforming Uses
- 23.502.020 Glossary

The hearing will be held on, February 27, 2024 at 6:00 pm in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of February 15, 2024. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Justin Horner, Associate Planner, at 510-981-7476.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, 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 City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

Published: February 16, 2024 – The Berkeley Voice

Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 15, 2024.

\_\_\_\_\_  
Mark Numainville, City Clerk



Page 546

**Item 11.d. Materials regarding the BPD's 2023  
Annual Report on Police Equipment and Community  
Safety Ordinance and respective municipal code.**

**Police Equipment and  
Community Safety Ordinance  
2023 Annual Report**



## INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.050 of the ordinance mandates an annual report for the deployment of specific equipment the Berkeley Police Department possesses. Below is a list and inventory of the reportable equipment under the city ordinance:

- Patrol Rifle (96)  
Associated .223 duty and training rounds (93,128)
- Less Lethal single 40MM launcher (20)
- Less Lethal Milkor LTL 40 MM multi-launcher (2)  
Associated 40mm rounds (637)
- Less Lethal FN 303 Launcher (8)  
Associated FN rounds (5,813)  
Associated FN Pava rounds (181)
- Oleoresin capsicum (handheld OC spray) (182)
- Chlorobenzylidene Malononitrile and Oleoresin capsicum/ tear gas (300)
- Remington 700 Precision Rifle (6)  
Associated .308 rounds (2400)
- Light/sound distraction device (110)
- Long Range Acoustic Device (LRAD) (2)
- 36" batons (195)
- Barret Model 99 Precision Rifle (1)  
Associated .50 rounds (50)

The annual report on the controlled equipment shall contain the following information per Ordinance NO. 7,760N.S.:

- (a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.
- (b) A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is

Deployed, not to transfers of location or placement of equipment inside Department vehicles.

- (c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police areas. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.
- (d) A summary of any complaints or concerns received concerning Controlled Equipment.
- (e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

There have been no additional internal audits beyond those conducted to gather and confirm data for this report. There were no identified violations of equipment use, or any complaints submitted to the department concerning the above-listed equipment.

Section 2.100.020 (D) defines deployment as “to utilize or employ Controlled Equipment for a deliberate purpose in the presence of members of the public during management or control of crowds, during any Special Response Team deployment or to affect some response from members of the public during any other operation or critical response. “Deployed” shall not mean an officer merely wearing a piece of Controlled Equipment on their belt or elsewhere on their person.” Deployment means the display of the equipment to affect some response from members of the public. The equipment does not have to be used (I.E. less lethal projectile actually launched and struck a suspect); simply having it and in view of a person to specifically affect a response would be considered a deployment. Deployments are to be reported per the ordinance and the table on page 5 of this report reflects both deployments and utilization of equipment.

The Blue Team system and Equipment Ordinance system are the two systems that capture all utilizations and deployments of equipment enabling the Police Department to fulfill the obligations set forth by the ordinance. The Blue Team

system documents all uses of force which includes patrol rifle deployments and utilization of less-lethal systems (I.E. less lethal projectile launched and struck a suspect). This system is maintained by the Internal Affairs Bureau. The Equipment Ordinance system captures deployments of all equipment outlined in the ordinance.

The Police Department responded to 63,691 calls from the community in 2023. Of the 63,691 calls received, 64 of them resulted in the deployment of military equipment. For details on these systems and other military equipment refer to page 19 or the Impact Statements located on the Berkeley Police Department website.

The table on page 5 details each of the 64 equipment deployment incidents extracted from the Blue Team and Equipment Ordinance systems. Each row within the table represents an incident where a specified equipment was deployed or utilized. The number of specified equipment deployed per incident is not represented. The table includes the service of 2 arrest warrants and 10 search warrants; 5 of which were served by the Special Response Team in cases involving a violent suspect. Equipment that is not outlined in the table was not deployed or used in 2023.

It should be noted that all military equipment deployments in 2023 were made during incidents where the Berkeley Police Department responded to a call for service made by community members or in the service of search warrants. There was one instance of a military equipment deployment made during a sex registrant compliance check on a violent offender with a history of firearm violations.

Additionally, 5,306 stops were conducted by the Berkeley Police Department in 2023. These 5,306 total stops break down to 3,665 vehicle stops, 1,554 pedestrian stops, and 87 bicycle stops. Five of the 5,306 stops resulted in the use (less lethal projectile launched towards a suspect) of the Penn Arms 40MM, also known as "less lethal." These statistics illustrate the extremely rare percentage (0.00094%) of the time less lethal munitions are used in relation to overall contacts.

The table summarizing each incident on the next page (page 5) contains violence and details of crimes that can be unsettling to read. Reader discretion is advised.

There were 12 incidents where military equipment was used (less lethal projectile launched at a suspect, OC spray sprayed, patrol rifle used, or light and sound distraction device used). These incidents are highlighted in yellow.

It is important to note that information provided to police dispatchers by victims, witnesses, and community members guides police responses. Officers and supervisors make decisions on the deployment of equipment based, in part, on community members' observations and reports.

Each incident is listed in chronological order, and instances where the equipment was used are highlighted in yellow.

| #  | Equipment Deployed             | Summary of Deployment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Beat |
|----|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 1. | Patrol rifle,<br>40MM launcher | Officers responded to a disturbance call from a neighbor. Officers knew the subject they were to contact had felony warrants for his arrest for firearm violations. Additionally, officers had previously recovered a bulletproof vest during a visit to this apartment, and on another day the subject had barricaded himself in his apartment when officers attempted to contact him. On this night, Officers contacted the subject who shined a flashlight at an officer's eyes, blinding the officer on purpose. The suspect had a power drill and refused multiple requests and orders for him to put the power drill down. Patrol rifle and 40MM launcher were deployed. A trained negotiator took over communication with the subject and utilized de-escalation techniques. The subject placed the power drill down but lifted his jacket to reveal a 7" fixed-blade dagger on his belt. The subject was agitated, verbally aggressive, and cursed at officers. He was also incoherent and rambled about telepathy. The subject needed to be detained before the situation became any more dangerous. Officers launched 40MM rounds at the subject. Other officers grabbed the subject before he could go for the dagger. The subject was immediately provided medical attention. He was arrested for the warrants and for violating an elder abuse restraining order by being at that apartment. | 14   |
| 2. | Patrol rifle                   | Officers responded to a burglary in progress at a business after the alarm company called the police and reported seeing the burglars live on surveillance cameras. The suspects fled in a vehicle but crashed. Officers conducted a high-risk vehicle stop. Patrol rifle deployed as officers ordered the occupants out of the vehicle. Four suspects were arrested for burglary and a large number of stolen items were located in the car. The stolen property was returned to the business.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 5    |
| 3. | 40MM launcher                  | Officers were flagged down at midnight by a business owner regarding a possible burglary in progress. The business owner had surveillance cameras on                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 6    |

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|    |                                                                                                                          | the property and advised that the suspect was hiding in the back. This suspect had previously burglarized this business two other times. 40MM launcher deployed as officers entered the business. The suspect was located and taken into custody. He was arrested for burglary and possession of methamphetamine.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                     |
| 4. | 40MM launcher,<br>Patrol rifle                                                                                           | BART Police requested assistance with reports of a man on a BART train with a gun. Berkeley Police responded and deployed patrol rifle and 40MM launcher. Berkeley and BART officers located the suspect on the train. This man was armed with a gun and was wearing body armor underneath his rain jacket. The subject was uncooperative and cursed at the officers. He was ultimately detained and BART police took custody of the man.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 5                   |
| 5. | 40MM launcher                                                                                                            | A father called the police on his daughter after she attempted to stab him with a knife. He barricaded himself in a bedroom. She tried to break down the door with a metal pole and stabbed at the door with her knife while also threatening to stab him. She fled the residence before police arrived. The father requested that his daughter be arrested and advised that his daughter was still in possession of the knife. Officers located the daughter who ignored officers' commands to stop. 40MM launcher was deployed. She walked dangerously into the street and traffic. Officers had to follow her and were able to pull her off the street onto a grassy area where she continued to resist. Officers were able to handcuff her, but she spat at officers and attempted to kick them. She was arrested for assault with a deadly weapon and other charges. The knife was later located hidden in her undergarment. | 5                   |
| 6. | FN303 launcher,<br>Light/sound<br>distraction device,<br>LRAD,<br>Patrol rifle,<br>40MM launcher,<br>Remington 700 rifle | The Special Response Team conducted two search warrants at two residences in connection to a violent robbery of a Berkeley business where an elderly victim was pistol-whipped multiple times. A firearm and evidence were recovered during the service of these high-risk search warrants and several individuals were arrested. The LRAD and light sound distraction devices were used during the service of both warrants.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Outside of Berkeley |
| 7. | FN303 launcher,<br>Light sound<br>distraction device,<br>LRAD,<br>Patrol rifle,<br>40MM launcher,<br>Remington 700 rifle | The Special Response Team conducted two search warrants at two residences in connection to a violent robbery of a Berkeley business where an elderly victim was pistol-whipped multiple times. A firearm and evidence were recovered during the service of these high-risk search warrants and several individuals were arrested. The LRAD and light sound distraction devices were used during the service of both warrants.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Outside of Berkeley |
| 8. | 40MM launcher                                                                                                            | A partially naked suspect under the influence of narcotics entered a restaurant that had a stay-away court order against him. The subject violated the stay-away court order when he walked in and then climbed into the ceiling. The employees called the police as the suspect climbed back down and started throwing things. 40mm launcher deployed as officers arrived on the scene. Officers tried to talk to him, but he was yelling nonsensically as he retreated into the kitchen area and armed himself with a fire extinguisher. Officers ordered the subject to drop the fire extinguisher, but he did not comply and started spraying the fire extinguisher at the officers. He raised the fire extinguisher while moving towards an officer as if to assault the officer with it.                                                                                                                                    | 5                   |



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|    |                                                                                                  | Another officer saw this and launched a 40MM launcher round at the suspect. The subject continued to threaten officers with the fire extinguisher. The officer launched another 40MM launcher round at the suspect who then ran upstairs and barricaded himself in the bathroom. Many attempts to de-escalate the subject through the locked bathroom door were made but to no avail. The subject continued to spray the fire extinguisher at officers from under the closed door. Ultimately, officers had to force entry into the bathroom and detain the subject who was in the process of hanging himself. He was admitted to the hospital and placed on a psychiatric evaluation hold. A criminal case was sent to the District Attorney's Office for review. An employee of the business was injured in this incident and the subject caused close to \$20,000 in damages to the business. |                     |
| 9. | 40MM launcher                                                                                    | BART Police requested code 3 cover (emergency assistance) after community members reported a subject brandishing a knife and attacking BART riders on the platform. Officers arrived and deployed 40MM launcher. BART Police contacted the subject and took him into custody.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 5                   |
| 10 | 40MM launcher                                                                                    | A community member called the police after finding a burglar in her residence. Officers arrived and deployed 40MM launcher as they contacted the suspect. He was detained and arrested for burglary and for an outstanding warrant from another county.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 6                   |
| 11 | Patrol rifle                                                                                     | A victim called the police and reported being a victim of an armed (firearm) home invasion robbery with four suspects involved. Officers located the suspect vehicle occupied by all four suspects and conducted a high-risk vehicle stop. Patrol rifle deployed as the suspects were ordered out of the vehicle and taken into custody. A firearm and evidence from the home invasion robbery were located inside the vehicle. All four suspects were arrested for the home invasion robbery and one was additionally charged with firearm violations.                                                                                                                                                                                                                                                                                                                                          | 12                  |
| 12 | 40MM launcher,<br>Patrol rifle,<br>LRAD,<br>Light sound<br>distraction device,<br>FN303 launcher | A victim called the police and reported being a victim of an armed robbery. The victim memorized the suspect's license plate and provided it to the police. This vehicle was involved in numerous other Berkeley crimes. Officers located the armed robbery suspect's vehicle and initiated a vehicle stop, but the vehicle failed to yield. A pursuit was initiated. Officers lost sight of the vehicle on the freeway but located the vehicle at a residence outside of Berkeley. A high-risk search warrant was served by the Special Response Team at this residence. Light/sound distraction device and the LRAD were used during the service of this warrant. Evidence was recovered from the search warrant and the suspect was apprehended at a later time.                                                                                                                              | Outside of Berkeley |
| 13 | FN303 launcher                                                                                   | A construction worker called the police after someone approached him and tried to stab him with a knife. The victim did not know the suspect and the suspect said nothing to the victim prior to trying to stab him. Shortly later, a worker from a nearby restaurant called the police and reported a person pacing around the restaurant armed with a knife. FN303 launcher deployed as officers arrived at the restaurant. The suspect was located and the knife was recovered in the restaurant. He was arrested for assault with a deadly weapon.                                                                                                                                                                                                                                                                                                                                           | 5                   |
| 14 | Patrol rifle                                                                                     | A community member called the police and reported a home invasion robbery in progress in his house. He reported that he armed himself with a gun and was trapped in his residence. Patrol rifle deployed as officers arrived on the scene.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 5                   |

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|    |                                  | They contacted someone at the front door of this residence. This person had a firearm in plain sight within his reach. He reached for the firearm but was detained before he grabbed the gun. This person turned out to be the community member who called the police. He was intoxicated and according to a friend, the caller had been exhibiting paranoid delusional ideations. The caller was placed on a psychiatric evaluation hold. The judge approved a firearm emergency protective order to allow the seizure of the caller's firearm.                                                                                                                                                                                |    |
| 15 | 40MM launcher                    | A victim called the police and reported that her neighbor threatened her with a large knife. 40MM launcher deployed as officers arrived on the scene. As Officers were talking to the victim the suspect emerged from his residence. Officers detained the suspect and located the large knife. The suspect was arrested for threatening the victim with a knife.                                                                                                                                                                                                                                                                                                                                                               | 10 |
| 16 | Patrol rifle                     | A caller reported that her grandson had shot at and "hurt" her husband, the suspect's grandfather. The caller reported the suspect dragged his elderly grandfather down a flight of steps and then fired a gun at him. Patrol rifle deployed as officers arrived at the scene. Officers located the suspect and detained him. He was still in possession of the gun. The grandfather was not shot and was medically assessed by the fire department. The bullet entered and exited the grandfather's pants, but did not hit him. The suspect was arrested for possession of a loaded firearm in public, felon in possession of a firearm, possession of narcotics (crack cocaine), and a domestic violence warrant.             | 3  |
| 17 | 40MM launcher                    | A neighbor called the police and reported hearing an argument between a husband and wife. The caller reported that he heard the husband yelling "Put the knife down" and children crying in the background. 40MM launcher deployed as officers responded to this domestic violence call. Upon arrival, they located and detained the suspect (girlfriend) outside of the residence. The victim (boyfriend) was inside the residence with their child. The boyfriend was stabbed in the neck with keys by the girlfriend and was injured. The suspect was arrested for domestic violence and medical attention was provided to the victim.                                                                                       | 4  |
| 18 | FN303 launcher,<br>40MM launcher | Employees at a restaurant called the police and reported someone bleeding from the neck. Officers responded and located the subject in front of the restaurant bleeding profusely from his neck and wrist. The subject held a broken glass bottle against his neck and refused to put the glass bottle down. 40MM launcher and FN303 were deployed. The fire department was staged nearby as Berkeley Police negotiators tried to de-escalate the situation. The subject rambled incoherently about tattoos and eyes watching him. Eventually, the subject lost consciousness due to blood loss. Berkeley Fire Medics immediately rendered aid. He was transported to the hospital and placed on a psychiatric evaluation hold. | 3  |
| 19 | FN303 launcher                   | A Berkeley City employee reported hearing a man screaming and hitting things with what sounded like a metal object. The man repeatedly screamed expletives. This man walked towards her with a metal pipe in hand and brandished her with it. He was foaming at the mouth and walked away. Officers familiar with this subject located him at a park swinging the metal pipe and hitting objects on the street. FN303 launcher deployed as officers detained this subject armed with the metal pipe. He was placed on a psychiatric evaluation                                                                                                                                                                                  | 5  |

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|    |                              | hold. The Berkeley City employee requested no prosecution for the misdemeanor so the case was not forwarded to the District Attorney's Office.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |
| 20 | Patrol Rifle                 | A victim witnessed her vehicle being burglarized and confronted the suspects. One suspect pointed a gun at the victim and turned this auto burglary into an armed robbery. Investigators served a search and arrest warrant at the suspect's residence at a later time. Patrol rifle deployed as investigators served the warrants. Evidence was recovered in the residence that included cocaine, a large amount of ammunition, and a firearm. The suspect was also located and arrested for narcotic violations, robbery, firearm violations, and being a felon in possession of a firearm.                                                                                                                                                                                                                                                                                                                                          | Outside of Berkeley |
| 21 | 40MM launcher                | A community member called the police and reported hearing a subject yell, "I'll kill you b****!" 40MM launcher deployed when officers arrived on the scene and saw the subject holding a metal bat. The subject was cooperative and was detained. After further investigation and after speaking with the caller, it was determined that no crime had occurred. The subject volunteering surrendered the bat to the officers and was released at the scene.                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 4                   |
| 22 | Patrol rifle, FN303 launcher | Investigators conducted a sex registrant compliance check on a known violent offender and pimp. Patrol rifle and FN303 launcher were deployed during this compliance check. In a previous compliance check, this sex registrant ran and dropped a gun. The sex registrant was not in compliance and a case has been forwarded to the District Attorney's Office for review.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 9                   |
| 23 | 40MM launcher                | A Berkeley resident called regarding a trespasser who was loitering on her front porch. She reported that the subject was agitated and had attempted to enter her residence. She was scared. The porch where the trespasser was located is atop a flight of 17 steps (second floor). Officers contacted the subject who refused to come down. The subject was uncooperative and threw paper at the officers who were standing at the ground level. The subject was unintelligible. He was agitated at times and screamed. It was unknown if the subject had weapons. 40MM launcher deployed. Officers engaged in de-escalation tactics and negotiated with him from the ground floor for approximately an hour. The subject requested a cup of coffee. He left once officers gave him a cup of coffee. The Berkeley resident did not wish to press charges and the subject did not fit the criteria for a psychiatric evaluation hold. | 9                   |
| 24 | 40MM launcher                | A victim called the police and reported being injured after a suspect had thrown rocks at him and then hit him with a golf club. The suspect was located by officers and was still holding a golf club. He was hitting random objects with the golf club and was agitated and on the verge of tears. 40MM launcher deployed as officers contacted the suspect. He was detained and positively identified by the victim. He was arrested for assault with a deadly weapon. At the Berkeley Jail, officers noticed the suspect's eyes were dilated and he started dozing off. The fire department was summoned for a medical evaluation. They transported the suspect to the hospital. This case was forwarded to the District Attorney's Office for review.                                                                                                                                                                             | 13                  |
| 25 | Patrol rifle                 | A victim called the police after her neighbor, whom she'd been disputing with, brandished a gun at the victim and her young daughter. The suspect fled in his vehicle and the victim provided the suspect's license plate to the police. Officers located this vehicle and initiated a high-risk vehicle stop. Patrol rifle deployed as                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 11                  |

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|    |                      | the driver was ordered out of the vehicle and to walk backwards towards the officers. The driver/suspect was detained and admitted that there was a gun in the car. Officers located the firearm. The victim identified the driver as the suspect and he was arrested for firearm violations and brandishing a weapon.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |   |
| 26 | Patrol rifle         | An elderly victim called the police after two suspects robbed her of her purse. Officers located the suspect vehicle, but it fled the area. The car was located a second time and officers attempted a vehicle stop, but the suspects fled on foot. Patrol rifle deployed as officers searched for the robbery suspects. Four suspects were located and arrested for robbery. The victim's stolen purse was located in the suspect's vehicle and returned to her. Further investigation showed the suspect's vehicle as a stolen car.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 4 |
| 27 | 40MM launcher        | A community member was shopping at a business when she saw a man swinging an axe around and talking to himself in the store. She called the police and reported what she saw. Officers arrived on the scene and saw the man in the store with the axe still in hand. 40MM deployed as officers entered the business and contacted the suspect. He was ordered to lay on the ground which he complied with. He was detained and lied about his name. Further investigations revealed his true identity and a parole violation warrant for his arrest. He was arrested for the warrant. The man never brandished the axe.                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 9 |
| 28 | 40MM, FN303 launcher | The Berkley Fire Department reported a person who attempted to run into the fire station as the garage door was closing. This subject then fled from the fire station and onto the roof of a large warehouse. Officers arrived on the scene and saw the suspect on the roof. The suspect was running back and forth from one side of the roof to the other. The subject ripped cable wires from the roof and used them to climb into the warehouse where he started a fire. Officers entered the warehouse to put the fire out as the suspect climbed back onto the roof. The subject threw items from the roof at officers. Attempts to de-escalate and negotiate with the subject were not effective. Officers suspected the subject to be under the influence of narcotics. One officer launched two 40MM launcher rounds at the subject that caused him to run away from the officer to the parking lot where he was detained. The suspect was transported to the hospital by the fire department and later to jail for burglary, vandalism, arson, and probation violation. | 5 |
| 29 | OC spray             | A victim called the police and reported a man kicking down her fence. An officer arrived on scene and contacted the subject who refused to speak to the officer. The officer followed the suspect on foot as he gave commands for him to stop. The suspect yelled and cursed at the officer and refused to stop. A second officer arrived and immediately recognized the suspect from prior police contacts as someone violent with the police. This officer ordered the suspect to stop but was ignored. He attempted to grab the suspect's arms, but the suspect pulled his arms away and ran. The suspect physically resisted the officer as he continued his attempts to detain him. This officer sprayed the suspect with OC spray as the suspect continued to resist. When the second officer arrived, they were able to detain him. Medical aid was provided and he was placed on a psychiatric evaluation hold. The suspect is on probation for robbery. The criminal case was forwarded to the District Attorney's Office for review.                                   | 8 |

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| 30 | 40MM launcher | A community member called the police after she looked outside of her house and saw a man waving a large knife at her residence. The community member did not know this man. 40MM launcher deployed when officers arrived on the scene. They located the subject and detained him. The subject had a large knife and a bag. Further investigation revealed that the knife and bag were stolen from a residence nearby. The stolen property was returned and the subject was arrested for concealing a dirk or dagger.                                                                           | 10 |
| 31 | 40MM launcher | A downtown business security guard called and reported a theft in progress. When officers arrived on the scene, they saw the suspect inside the store with a knife in his hand. 40MM launcher deployed as officers entered the business to detain the suspect. The suspect had drug paraphernalia and credit cards that did not belong to him. He was arrested for grand theft, identity theft, and possession of drug paraphernalia.                                                                                                                                                          | 4  |
| 32 | 40MM launcher | The Berkeley Fire Department requested the Police for assistance for a subject who was becoming aggressive. The subject is known to the police as an individual with a violent history. Officers arrived to assist the fire department. The subject was uncooperative with the Berkeley Fire Department medics and was yelling. At one point the subject stood up and lunged at the officers and medics. He sat back down and continued to yell incoherently. 40MM deployed as another officer de-escalated and calmed the subject. The subject was placed on a psychiatric evaluation hold.   | 4  |
| 33 | 40MM launcher | A known subject called the police and reported people following her. She told dispatch she "doesn't want to have to kill someone." Officers know this subject as someone who has experienced several mental health crises in the past, has a history of violence involving weapons, and has previously assaulted officers. Officers located this subject and she was holding a metal pole and knife. 40MM launcher deployed as officers engaged in de-escalation tactics. The subject complied with officers and was safely detained. The subject was placed on a psychiatric evaluation hold. | 4  |
| 34 | 40MM launcher | Employees at an office called the police and reported a suspect barged his way into the office and told the employees that he was waiting for troops. He started taking off his clothes and was aggressive. The subject tried to punch one of the employees. 40MM launcher deployed as officers arrived on the scene. The subject was located and detained. He was placed on a psychiatric evaluation hold.                                                                                                                                                                                    | 4  |
| 35 | 40MM launcher | An employee called the police and reported a robbery. An officer responded and located the suspect holding a metal rod who refused to comply with the officer's orders to drop the metal rod. The suspect walked approximately two blocks as the officer followed and attempted to de-escalate the situation. 40MM was deployed as more officers arrived on the scene. The suspect was safely detained and arrested for robbery and parole violation.                                                                                                                                          | 4  |
| 36 | 40MM launcher | A community member called the police and reported that an acquaintance was standing in front of his house holding an axe. He reported that the subject has mental health issues. A second community member called and reported the subject asked him if he needed wood to be chopped. 40MM launcher deployed as officers arrived on the scene. The subject was located and complied with the officer's commands. After talking to both callers, the subject did not threaten                                                                                                                   | 5  |

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|    |                             | anyone and did not fit the criteria for a psychiatric evaluation hold. The staff at this housing were contacted and advised of the incident.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |
| 37 | Patrol rifle                | A community member called the police and reported a fight between 6-8 individuals. The community member also reported seeing a gun. Officers arrived on the scene and attempted to detain several subjects. They fled from officers and one of them discarded a "ghost gun" that officers recovered. The subject who discarded the firearm was arrested for firearm violations. He also had two warrants for his arrest for robbery and reckless evasion of peace officers. Patrol rifle deployed as officers continued searching the area for the remaining suspects. In the same vicinity, officers tried to stop a car attempting to flee the area. He failed to stop and rammed a police vehicle while an officer was inside, crashed into a parked vehicle, and drove onto the sidewalk before crashing into a fence and becoming immobilized. Officers arrested this suspect for numerous crimes including reckless evasion, assault with a deadly weapon, and hit and run.                                                                                                                              | 5  |
| 38 | Patrol rifle, 40MM launcher | An elderly mother called and reported that her son was actively violating a restraining order. Officers arrived on the scene and located the suspect in front of the mother's house. The suspect immediately placed his hand in the front pocket of his baggy hooded sweater as if he had a weapon. He yelled, "I have something for you" and "Go ahead, shoot me. I want you to shoot me. I'm ready to die right now!" He walked away from officers and continued to tell officers to shoot him. He kept his hand in his pocket as if he had a weapon. There was a standoff for approximately an hour where the suspect stood on the sidewalk with his hand in his pocket and refused to comply with simple orders. Patrol rifle and 40MM were deployed as officers spent over an hour negotiating with the potentially armed suspect. When he finally took his hand out of his pocket and allowed officers to handcuff him, officers discovered he was holding onto a flare the entire time and had no weapon. He was arrested for violating the restraining order from his mom, elder abuse, and vandalism. | 12 |
| 39 | Patrol rifle                | A community member called and reported being a victim of an attempted vehicle theft while she was sitting in the back of her car. The suspect fled the area in another vehicle and the victim chased after him in her car. The suspect reversed and rammed the victim, so the victim rammed the suspect back. Ultimately, the suspect got away from the victim. Officers conducted an area check and located the suspect vehicle parked and occupied. Officers conducted a high-risk vehicle stop. Patrol rifle deployed as the suspects were detained. The driver had a knife that fell onto the ground as he was detained and a window punch tool was located in his pocket. Records check showed he was on parole. He was arrested for vehicle theft, assault with a deadly weapon, possession of burglary tools, possession of stolen property, petty theft, and parole violation.                                                                                                                                                                                                                         | 6  |
| 40 | 40MM launcher               | A grandmother called the police and reported that her grandson was trying to kill her daughter, his mother. The grandmother reported that he was armed with a knife and pleaded for the police to respond immediately. She was scared for her life. Officers arrived at the apartment complex and noted that items had been thrown from the grandmother's 4th-floor apartment onto the ground floor. Officers knocked and asked the grandmother to open the door but she was too afraid to come out from her room. The suspect had barricaded items                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 4  |

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|    |                                | against the front door. 40MM launcher deployed as officers forced the door open to protect the grandmother and mother. They located the suspect hiding. He was arrested for numerous crimes including robbery and probation violation. The grandmother and mother were located safe in the residence. Adult Protective Services was advised of the incident.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |    |
| 41 | 40MM launcher                  | A community member called the police and reported that his son was vandalizing their home. The son is known to officers as someone who uses narcotics and is extremely violent towards police officers. The father advised that his son had just left the residence and was vandalizing cars in front. 40MM launcher deployed as a group of officers approached the suspect and ordered him to the ground. Officers noted the suspect had vandalized a neighbor's vehicle next to where he was standing. The suspect did not comply with the officer's orders and charged at a police vehicle. He jumped onto the hood of the police vehicle, smashed the windshield, and stomped on the light bar on the vehicle's roof. While on top of the police vehicle, the suspect ripped out an antenna. While the suspect was stomping on the roof of the police vehicle, an officer launched a 40MM round at the suspect, but it missed. The suspect then sat on the roof of the police vehicle as officers attempted to talk to the suspect. Officers were able to safely pull the suspect off the roof of the vehicle and detain him. He was placed on a psychiatric evaluation hold and the criminal case was forwarded to the District Attorney's office for review. | 10 |
| 42 | 40MM launcher                  | Multiple community members called the police and reported a subject throwing items out the window of a vacant multi-unit building. The property manager advised that no one should be in the building and requested the subject be arrested. Officers gave multiple commands outside and inside the building for the suspect to surrender, but he failed to exit. The suspect barricaded himself in one of the units. 40MM launcher deployed as officers forced entry into the unit. The suspect was located and had burglary tools and drug (methamphetamine) paraphernalia. He was arrested for burglary, possession of burglary tools, possession of narcotics paraphernalia, and other crimes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 5  |
| 43 | 40MM launcher                  | A caller reported a suspect was actively violating a domestic violence restraining order and that he was concerned for the protected person. Officers responded to the location and were allowed entry into the residence. 40MM launcher deployed as officers looked for the suspect. He was located and arrested for violating a restraining order and possession of methamphetamine.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 3  |
| 44 | Patrol rifle,<br>40MM launcher | An officer contacted two teenagers who were drinking alcohol on the corner of a residential neighborhood. During the detention, one of the teenagers told the officer he had a gun. The officer located the gun and arrested him. Records show the suspect had previously been arrested for armed robbery. A search warrant was authorized by a judge for the suspect's residence. Patrol rifle and 40MM launcher deployed as officers cleared the residence. Multiple rifle rounds and other bullets were located.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 9  |



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| 45 | Patrol rifle                | Numerous robberies occurred in Berkeley and other cities where the robbers targeted mostly elderly persons leaving specific businesses. Investigators served a search warrant at one of the suspect's residence. Patrol rifle deployed as they cleared the house. Evidence was recovered during this warrant service. Suspects in this robbery series were located and arrested at a later time and a firearm was recovered.                                                        | Outside of Berkeley |
| 46 | FN303 launcher              | An employee at a business called and reported a man breaking windows and furniture with a metal pole. Staff and customers were frightened. FN303 deployed as officers entered the business to detain the man reportedly armed with a metal pole. The suspect was detained and arrested for vandalism. He caused \$90,000 worth of damages to this business.                                                                                                                         | 5                   |
| 47 | FN303 launcher              | A caller reported that a suspect had possibly broken into a residence and was trespassing. Officers confirmed this and ordered the suspect to exit, but he refused to come out and barricaded himself. Officers negotiated with the suspect as the homeowner arranged for a house key brought to the officers. FN303 deployed as officers made entry into the residence and detained the suspect. He was placed on a psychiatric evaluation hold.                                   | 5                   |
| 48 | Patrol rifle                | Officers responded to an active shooter in another city. Witnesses reported multiple shots fired with an employee shot. Patrol rifle deployed as officers made entry into the business and contacted a suspect who was armed with a firearm. Officers shot the suspect and located the victim employee deceased.                                                                                                                                                                    | Outside of Berkeley |
| 49 | Patrol rifle, 40MM launcher | A community member flagged down a police officer and reported being a victim of an armed robbery. Officers responded and attempted to detain two suspects nearby. The suspects ran into the rear yards of a residential neighborhood. Patrol rifle and 40MM launcher were deployed as officers conducted an extensive search for the armed suspects. Both suspects were located and positively identified by the victim as the ones who robbed him. They were arrested for robbery. | 5                   |
| 50 | 40MM launcher               | Investigators served an arrest warrant on a white supremacist prison gang member who is a sex registrant. This suspect was trying to contact a 10-year-old child against a court order. 40MM launcher deployed as the arrest warrant was served. He was located and arrested.                                                                                                                                                                                                       | Outside of Berkeley |



|    |                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                     |
|----|--------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 51 | FN303 launcher,<br>Light/sound<br>distraction device,<br>LRAD,<br>Patrol rifle,<br>40MM launcher,<br>Remington 700 rifle | Several robberies occurred outside of Berkeley where the suspects evaded CHP in a stolen vehicle. Police officers from another agency located the suspect vehicle parked in Berkeley and surveilled it and requested Berkeley Police for assistance. Berkeley officers successfully detained the violent suspects after they attempted to flee. Several officers were hurt during the detention and a firearm with an extended magazine was located in the stolen vehicle the suspects were in. Property from armed robbery victims were located in the stolen vehicle. One of the suspects detained had a warrant stemming from a Berkeley robbery. Further investigations connected these suspects and their associates to 16 different Bay Area criminal cases that included shootings, robberies, burglaries, and other crimes. The suspects were arrested. At a later time, The Special Response Team served a high-risk search warrant on the suspects' residence in another city. The LRAD and light/sound diversion device were used during the service of the search warrant. Two suspects were arrested for robbery and firearm violations. Evidence that included two handguns and two assault rifles was recovered from this search warrant. | Outside of Berkeley |
| 52 | Patrol rifle                                                                                                             | A robbery victim called the police to report her boyfriend was being robbed by a suspect armed with a gun. There was a struggle between the suspect and the boyfriend for the gun. The suspect fired a round in the air as officers arrived. Officers chased after the suspect as he fled on foot. Patrol rifle deployed as other officers arrived. Officers caught up to the suspect and gave orders which the suspect refused to follow. A brief struggle ensued where the suspect and officers were all on the ground. The suspect kept reaching for his waistband which was concealed since he was laying on his stomach. Officers struggled to pull the suspect's hands out from his waistband but were ultimately successful. They handcuffed the suspect and discovered he was reaching for a gun at his waistband. The suspect was arrested for armed robbery and firearm violations.                                                                                                                                                                                                                                                                                                                                                            | 10                  |
| 53 | OC spray                                                                                                                 | A community member called and reported a subject doing martial arts moves near pedestrians. People moved out of his way, but he attacked a random person. Officers responded and contacted the shirtless suspect. He appeared compliant initially, but without warning, he attempted to grab an officer's leg. Officers struggled with the suspect in their attempts to handcuff him. The suspect grabbed onto the officer's vest where other equipment was located and attempted to pull him onto the ground. The officer managed to unholster his OC spray and sprayed the suspect. It should be noted that this suspect is 6'3" and approximately 250lbs and was significantly bigger than both officers. A third officer arrived at the scene and they were able to handcuff the suspect who continued to resist. Medical aid was provided to the suspect. He was placed on a psychiatric evaluation hold and the criminal case was forwarded to the District Attorney's Office.                                                                                                                                                                                                                                                                     | 4                   |
| 54 | 40MM launcher                                                                                                            | Employees at an apartment complex called the police and reported domestic violence where the victim was dragged down the hallway and her hair pulled by the suspect. The suspect and victim were not located, but surveillance cameras recorded the violent crime. 40MM launcher deployed as investigators served an arrest warrant for the suspect. He was located and arrested for domestic violence.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 4                   |

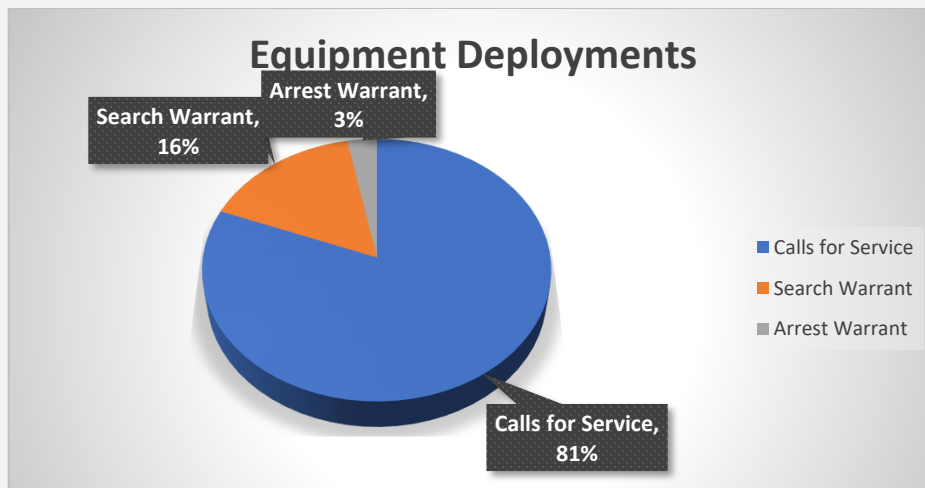
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|----|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 55 | FN303 launcher                | A front desk employee at an apartment complex called the police and reported someone screaming for help. The employee reported that the screaming subject was holding a gun. She later said it was a knife. FN 303 launcher deployed as officers knocked on the front door of the subject's apartment. The subject complied with officers and displayed signs of a mental crisis. He was placed on a psychiatric evaluation hold.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 12 |
| 56 | 40MM launcher                 | A community member called the police and reported someone screaming in front of her apartment complex at 2:00am. The community member reported hearing the subject scream that he had a gun and was throwing objects at the building. Officers knew this subject from prior contacts as someone violent with the police. Officers deployed 40MM launcher as they communicated with the subject from a distance. The subject was screaming and yelling at officers, but eventually complied and was detained. He was placed on a psychiatric evaluation hold.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 2  |
| 57 | 40MM launcher, Patrol rifle   | Several robberies occurred outside of Berkeley where the suspects evaded CHP in a stolen vehicle. Police officers from another agency located the suspect vehicle parked in Berkeley and requested Berkeley Police for assistance. Berkeley officers successfully detained the violent suspects after they attempted to flee. Several officers were hurt during the detention and a firearm with an extended magazine was located in the stolen vehicle the suspects were in. Property from armed robbery victims were located in the stolen vehicle. One of the suspects detained had a warrant stemming from a Berkeley robbery. Further investigations connected these suspects and their associates to 16 different Bay Area cases that included shootings, robberies, burglaries, and other crimes. The suspects were arrested. At a later time, Detectives served a warrant at a Berkeley residence that is connected to one of the suspects. Patrol rifle and 40MM launcher were deployed as Detectives served the warrant. Evidence relating to shootings and robberies was located. | 11 |
| 58 | 40MM launcher                 | A community member called the police and reported a friend ingested an entire bottle of pills in his attempt to commit suicide. Officers arrived on the scene and contacted the man through the window of an RV he was inside of. The subject was screaming for officers to leave and expressed his desire to die. He also threatened to burn the RV down if officers approached. The subject passed out so officers entered the RV to save him. 40MM deployed as officers contacted the man. The fire department took the man to the hospital where he was placed on a psychiatric evaluation hold.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 13 |
| 59 | FN303 launcher, 40MM launcher | A community member called the police and reported being the victim of domestic violence. She reported that her boyfriend strangled her and punched her in the head multiple times. She fled their apartment to call the police. Further investigations showed three warrants for the subject's arrest and a stay-away order protecting the victim. Officers attempted to contact the subject at the apartment, but the subject refused to come to the door. FN303 and 40MM launchers were deployed as officers continued to negotiate with the subject to surrender. He surrendered after 20 minutes and was arrested for domestic violence and violating a restraining order.                                                                                                                                                                                                                                                                                                                                                                                                               | 5  |

|    |                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                        |
|----|----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 60 | 36" batons,<br>FN303 launcher,<br>40MM launcher                      | The Special Response Team (SRT) assisted the San Francisco Police Department during the 2023 APEC Conference. SRT members were not utilized and were in San Francisco in a standby capacity. No contact was made with any community members.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Outside of<br>Berkeley |
| 61 | Patrol rifle                                                         | A community member called the police and reported seeing a man with a gun. Officers arrived on the scene and contacted the community member. He pointed out the vehicle that the subject with the gun entered. Patrol rifle deployed as officers conducted a high-risk vehicle stop on the vehicle and contacted the driver. A firearm was located but turned out to be a BB gun. No brandishing of the BB gun was ever made by the subject. No arrest was made.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 14                     |
| 62 | Patrol rifle                                                         | Detectives served a search warrant on a prolific burglary suspect who has an extensive arrest history including sexual assault, firearm violations, and assault with a deadly weapon. Patrol rifle deployed as Detectives entered the residence and served the warrant. Evidence was recovered and the investigation is ongoing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 5                      |
| 63 | Light sound<br>distraction device,<br>Patrol rifle,<br>40MM launcher | A community member called and reported her upstairs neighbor fired a gun and the bullet traveled down into her apartment. Officers were familiar with the apartment where the gunshot came from because of previous domestic violence and child abuse investigations from that unit. Officers confirmed that a bullet was shot through the ceiling from the upstairs unit into the downstairs unit. Officers negotiated with the suspect to surrender, but he refused. Patrol rifle and 40MM launcher were deployed. Officers continued to negotiate with the suspect to surrender. After a 5-hour police standoff, the suspect surrendered. A search warrant at the house was served and evidence was recovered that included an assault rifle and many rifle rounds. The suspect was arrested for firearm violations, probation violation, child endangerment, narcotics, and a stay-away order violation.                                                                                                                                                                                                                                                                                                         | 11                     |
| 64 | FN303 launcher,<br>Patrol rifle<br>40MM launcher                     | A community member requested a Police officer conduct a welfare check on a subject who was banging his head against a van. When the officer arrived at the scene, a shirtless man ran up to the police vehicle with a large knife and stabbed at the police vehicle several times. The officer sped away to gain distance from the subject. After gaining distance from the subject, the officer exited his police vehicle and employed de-escalation techniques. The subject refused to drop the knife and pointed the knife at the officer on several occasions in a threatening manner. More officers arrived to assist. Patrol Rifle, 40MM launcher, and FN 303 launchers were deployed. Officers continued to speak to the subject and attempted to de-escalate, but the man rambled about the FBI ruining his life and was yelling at officers. This was an extremely dangerous situation as the man refused to drop the knife. Officers launched 40MM and FN303 rounds at the man causing him to drop the knife. Officers immediately detained the man and medical attention was provided. He was placed on a psychiatric evaluation hold. The criminal case was forwarded to the District Attorney's Office. | 2                      |

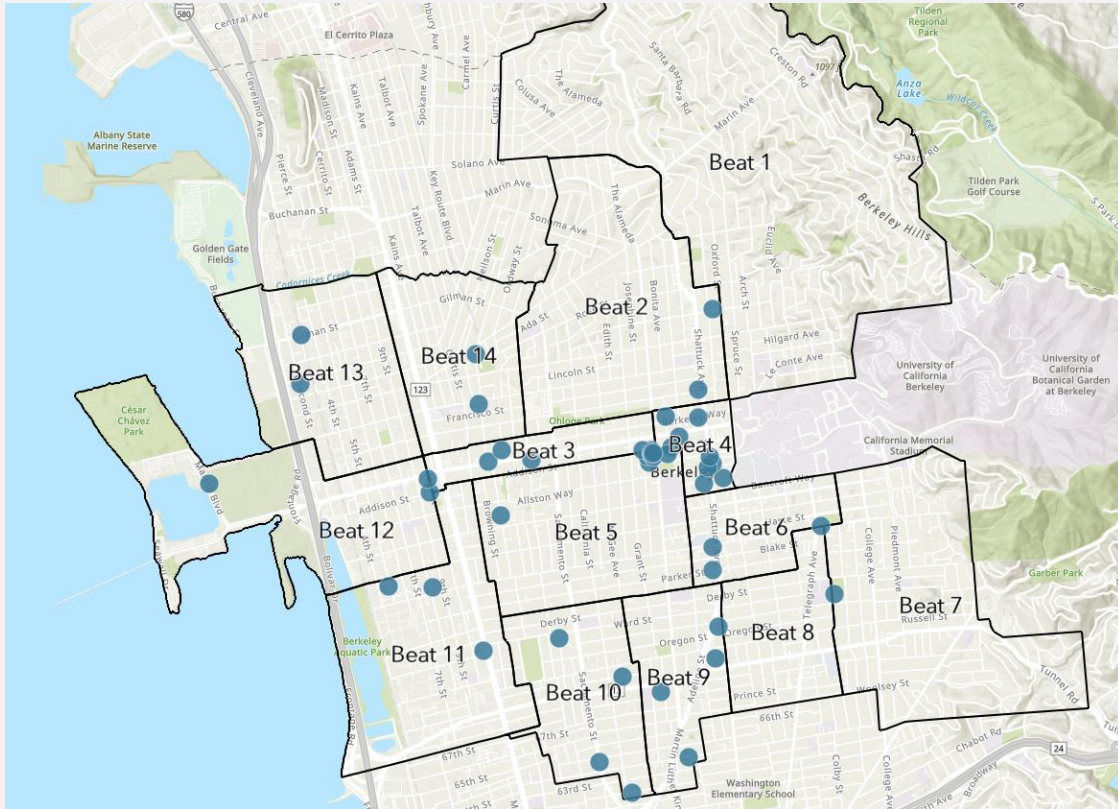
Below is a table that shows the total number of times a specified equipment was deployed in 2023. It should be noted that different types of equipment may be deployed in one incident and the same equipment may be deployed by multiple officers within a single incident.

| EQUIPMENT                                              | Number of Deployments |
|--------------------------------------------------------|-----------------------|
| Patrol Rifle                                           | 27                    |
| 40MM Single Launcher                                   | 41                    |
| 40MM LTL Multi-Launcher                                | 0                     |
| FN 303 Launcher                                        | 16                    |
| FN Pava Impact Projectile                              | 0                     |
| Oleoresin Capsicum Spray                               | 2                     |
| Chlorobenzylidene Malononitrile and Oleoresin capsicum | 0                     |
| Remington 700 Rifle                                    | 3                     |
| Light/Sound Diversionary Device                        | 5                     |
| Long Range Acoustic Device                             | 4                     |
| 36" Batons                                             | 1                     |
| Barret Model 99                                        | 0                     |

Below is a pie chart that represents in percentage the equipment deployments that were in response to 2 arrest warrants, 10 search warrants, and 52 calls for services.



Below is a map showing where each of the above 55 equipment deployments occurred in Berkeley. 9 occurred in other Bay Area cities.



The following are product descriptions of the military equipment the Berkeley Police Department possesses:

**Patrol Rifle:**

The “M4” was developed and produced for the United States government by Colt Firearms and was based off of the original ArmaLite Rifle (AR) patent purchased by Colt in 1959. Although Colt owned the trademarked name of “M4”, a number of other manufacturers offer M4-like firearms under various model names. The M4 and its variants fire 5.56×45mm NATO (and .223 Remington) ammunition, and are a gas-operated, magazine-fed firearm with a barrel length ranging from 11.5” to 16”.

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

#### **Penn Arms 40MM Single Launcher & Milkor LTL Multi-Launcher**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct-fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Penn Arms L-140 single-shot launcher.

#### **FN 303**

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

#### **Oleoresin capsicum (OC spray)**

First Defense manufactures different sizes of OC sprays. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. Besides being effective on humans, OC-based chemical agents usually work on animals as well. In a liquid form, OC can appear as a clear, amber, or heavy dark red solution depending on the manufacturer. It is mixed with several types of solutions which act as carriers.



#### Chlorobenzylidene Malononitrile (CS) & (OC)

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

OC is a chemical agent that has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

#### Remington 700 Precision Rifle

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

#### Light/Sound Diversionary Device

Light/Sound Diversionary devices also known as distraction devices, flashbang, light/sound and noise/flash devices have been available for approximately 40 years and are a safe and effective tool for Law Enforcement (LE) to use during challenging tactical incidents. When a

diversionary device is deployed it creates a loud noise, heat and brilliant light and creates an effective diversion.

**Long Range Acoustic Device (LRAD)**

The Long-Range Acoustic Device (LRAD) is a high-intensity directional acoustical array for a long-range, crystal-clear notification system. The use of the LRAD is for communications. It is essentially a powerful loud speaker.

**36" Baton**

The Berkeley Police Department issues a knurled grip, polycarbonate, fixed-length straight baton for crowd control purposes. The baton is 36" long and 1.25" in diameter and weighs about 1.64 pounds. Polycarbonate is a thermoplastic, which means it is durable and resistant to splintering and heat.

**Barrett Model 99 Precision Rifle**

The Barrett Model 99 rifle is a single-shot bolt-action 50-caliber rifle first introduced in 1999. It is intended to be used in emergencies where there is a high potential for violence.



## Appendix:

### Applicable Lexipol Policies Respective to Each Equipment

#### Patrol Rifle

- Policy 300 (Use of Force)
- Policy 349 (Tactical Rifle Operator Program)

#### 40MM single launcher

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### 40MM LTL multi-launcher

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### FN 303 Launcher & FN Pava rounds

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### Remington 700 Rifle

- Policy 300 (Use of Force)
- Policy 354 (Precision Rifle)

#### Light/Sound Diversionary Device

- Policy 353 (Diversionary Device)

#### Long Range Acoustic Device

- Policy 707 (Long Range Acoustical Device)

#### 36" batons

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)
- Policy 428 (First Amendment Assemblies)

#### Barret Model 99

- Policy 300 (Use of Force)
- Policy 354 (Precision Rifle)

## Chapter 2.100

# POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE

Sections:

- 2.100.010 Name of Ordinance.**
- 2.100.020 Definitions.**
- 2.100.030 Controlled Equipment Use Policy Requirement.**
- 2.100.040 Acquisition and Use of Controlled Equipment.**
- 2.100.050 Reports on the Use of Controlled Equipment.**
- 2.100.060 Enforcement.**
- 2.100.070 Transparency.**
- 2.100.080 Whistleblower Protections.**
- 2.100.090 Severability.**

### **2.100.010 Name of Ordinance.**

(A) This Ordinance shall be known as the Police Equipment and Community Safety Ordinance. (Ord. 7760-NS § 1, 2021)

### **2.100.020 Definitions.**

(A) "Controlled Equipment" is equipment that is militaristic in nature and includes, but is not limited to, all of the following:

(1) Vehicles that are built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.

(a) Police versions of standard passenger vehicles are specifically excluded from this section.

(2) Multi-purpose wheeled vehicles that are: built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck; or built or modified to use a breaching or entry apparatus as an attachment.

(a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.

(3) Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.

- (4) Aircraft, vessels, or vehicles of any kind, whether manned or unmanned, with attached or mounted weapons.
  - (5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive in nature. Items designed to remove a lock, such as bolt cutters, small gauge frangible rounds, or a handheld ram, are excluded from this policy.
  - (6) Firearms of .50 caliber or greater.
  - (7) Ammunition of .50 caliber or greater.
  - (8) Specialized firearms, including the Colt M4, and associated ammunition of less than .50 caliber, as defined in Sections [30510](#) and [30515](#) of the California Penal Code.
  - (9) Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, "bean bag," rubber bullet, or specialty impact munition (SIM) weapons, and equipment used to disperse chemical agents.
  - (10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.
  - (11) Explosives, pyrotechnics, such as "flashbang" grenades, and chemical weapons such as "teargas," CS gas, pepper spray, and "pepper balls".
  - (12) Batons 30 inches or longer in length.
  - (13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, and water cannons and the Long Range Acoustic Device (LRAD). Use of the LRAD for the purpose of communicating lifesaving information to residents during disasters, in evacuation exercises, to conduct search and rescue operations, or communicate to persons threatening suicide who are in an inaccessible location shall be exempt from the reporting requirements under Section [2.100.050](#) of this Chapter.
  - (14) Any other equipment as determined by a majority of the City Council to require additional oversight.
- (B) "City" means any department, agency, bureau, and/or subordinate division of the City of Berkeley.
- (C) "Controlled Equipment Impact Statement" means a publicly released, written document that includes, at a minimum, all of the following:
- (1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.
  - (2) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.

(3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.

(4) Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public.

(5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.

(6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, and rationale for selection over alternative methods.

(7) Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third party service providers.

(D) Except as provided below, "Deployed" means to utilize or employ Controlled Equipment for a deliberate purpose in the presence of members of the public during management or control of crowds, during any Special Response Team deployment or to affect some response from members of the public during any other operation or critical response. "Deployed" shall not mean an officer merely wearing a piece of Controlled Equipment on their belt or elsewhere on their person.

(1) Batons 30 inches or longer in length shall only be deemed "deployed" when used for management or control of crowds.

(E) "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires the use of unapproved Controlled Equipment.

(F) "Police Accountability Board" means the body established by Charter Article XVIII. The Police Review Commission, established by Ordinance No. 4,644-N.S., as amended, shall serve any and all functions and duties set forth by this chapter before and until they are transferred to the Police Accountability Board pursuant to Charter Article XVIII. (Ord. 7760-NS § 1, 2021)

### **2.100.030 Controlled Equipment Use Policy Requirement.**

Controlled Equipment requires a publicly available use policy that identifies the purpose, any prohibited uses, training requirements, and any process required prior to use. (Ord. 7760-NS § 1, 2021)

## 2.100.040 Acquisition and Use of Controlled Equipment.

### (A) *Restrictions Prior to Submission and Approval*

(1) The Police Department shall not engage in any of the following activities regarding a piece of Controlled Equipment before the Berkeley Police Accountability Board ("Police Accountability Board"), or any successive agency, reviews and recommends, and the City Council approves, a Controlled Equipment Impact Report and a Controlled Equipment Use Policy for that equipment in compliance with this section.

- (a) Requesting the transfer of Controlled Equipment pursuant to Section 2576a of Title [10](#) of the United States Code.
- (b) Seeking funds for Controlled Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring Controlled Equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Using any new Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the City Council pursuant to this Ordinance.
- (e) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Controlled Equipment.

### (B) *Submission to Police Accountability Board*

- (1) At least 15 days prior to any public meeting to consider the adoption of any Controlled Equipment Use Policy or Controlled Equipment Impact Report, the Use Policy and Impact report shall be published for public review.
- (2) The final Controlled Equipment Impact Report and Controlled Equipment Use Policy shall be made publicly available on the Department's website for as long as the Controlled Equipment is available for use.
- (3) The Police Accountability Board shall consider Controlled Equipment Impact Reports and Controlled Equipment Use Policies as an agenda item for review at an open session of a meeting.

### (C) *Criteria for Police Accountability Board Recommendations*

- (1) The Police Accountability Board shall recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter only if it determines all of the following:
  - (a) The Controlled Equipment is needed and there is no practicably available alternative equipment which is not Controlled Equipment that is sufficient for the purposes.
  - (b) The proposed Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(c) The Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.

(2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, the Police Accountability Board's recommendation for approval for the funding, acquisition, or use of the Controlled Equipment shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need for the Police Department to take proactive steps to minimize those effects.

(D) *Temporary Use in Exigent Circumstances*

(1) Notwithstanding the provisions of this Chapter, the Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the requirements in Section [2.100.040](#). However, if the Department does so, it must take all of the following actions:

(a) 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 under local, state or federal law;

(b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Section [2.100.040](#); and

(c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

(E) *Police Accountability Board Review Required Before City Council Consideration of Approval*

(1) The Police Accountability Board shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy, and notify the Police Department of its recommendations.

(2) The Police Accountability Board shall present its recommendations to City Council.

(3) Failure by the Police Accountability Board to make its recommendation on a proposal within ninety (90) days, or thirty (30) days in instances where the proposal is subject to a time-sensitive grant application, of submission shall enable City Staff to proceed to the City Council for approval of the proposal.

(F) *Police Accountability Board Review of Prior Recommendations*

(1) The Police Accountability Board shall determine, as part of its annual Work Plan, whether to include the review of any Controlled Equipment use policy in the coming year.

(2) A Police Accountability Board recommendation to City Council that a prior approval be revoked shall be presented to Council. If City Council does not act on such a recommendation within four (4) City Council

meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment.

(G) *Review Process for Previously-Acquired Equipment*

(1) The Police Department shall have one year from the date of passage of this Ordinance to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval if the Department wishes to continue the use of Controlled Equipment acquired prior to the passage of this Ordinance. If the Department fails to do so, it must cease use of such equipment.

(2) To ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of such Controlled Equipment, and the Police Accountability Board shall consider this ranking in determining the order in which to perform its review.

(H) *City Council Approval Process*

(1) After the Police Accountability Board review requirements have been met, the Police Department shall schedule for City Council consideration the proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy, and include Police Accountability Board recommendations, at least fifteen (15) days prior to a public meeting.

(2) If the City Council does not approve such item within four (4) regular City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment until such review and approval occurs. (Ord. 7760-NS § 1, 2021)

## **2.100.050 Reports on the Use of Controlled Equipment.**

(A) *Annual Report on Controlled Equipment*

(1) The Police Department shall submit a report on Controlled Equipment to the Police Accountability Board within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use. The report shall be provided no later than March 15th of each year, unless the Police Accountability Board advises the Department that an alternate date is preferred. The Department shall also make each annual report publicly available on its website for as long as the Controlled Equipment is available for use. The annual report shall, at a minimum, include the following information for the immediately preceding calendar year:

(a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.

(b) A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is Deployed, not to transfers of location or placement of equipment inside Department vehicles.

(c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.

(d) A summary of any complaints or concerns received concerning Controlled Equipment.

(e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

(B) *Compliance or Revocation of Approval*

(1) Within 60 days of the Police Department submitting an annual report, the Police Accountability Board shall place the report as an agenda item for an open session of a regular meeting. The Police Accountability Board shall determine, based on the report, whether each piece of Controlled Equipment reported on has complied with the standards for approval set forth in Section [2.100.040](#).

(2) If the Police Accountability Board determines that any Controlled Equipment has not complied with the standards for approval set forth in Section [2.100.040](#), it shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations shall be forwarded to City Council in accordance with the approval process in Section [2.100.040](#).

(3) After review by the Police Accountability Board, the Police Department shall submit the annual report to City Council, indicating its approval or lack of compliance for each piece of Controlled Equipment. (Ord. 7760-NS § 1, 2021)

## **2.100.060 Enforcement.**

(A) *Remedies for Violations of this Ordinance* This 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. 7760-NS § 1, 2021)



## 2.100.070 Transparency.

### (A) Disclosure Requirements

(1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

(2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary. (Ord. 7760-NS § 1, 2021)

## 2.100.080 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. 7760-NS § 1, 2021)

## 2.100.090 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional. (Ord. 7760-NS § 1, 2021)

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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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