



**POLICE ACCOUNTABILITY BOARD
SUPPLEMENTAL PACKET
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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Item 11.d.- ODPa Memorandum titled "Berkeley Police Department's
Police Equipment and Community Safety Ordinance 2023 Annual
Report"



RECOMMENDATION

Date: Monday, February 26, 2024
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability (DPA) 
Keegan Horton, Investigator
Jose Murillo, Program Analyst
Michelle Verger, Policy Analyst
Subject: Berkeley Police Department's Police Equipment and Community Safety Ordinance 2023 Annual Report

Background:

In May 2021, the Berkeley City Council approved the Police Equipment and Community Safety Ordinance (Ordinance No. 7,760-N.S.), which requires the Berkeley Police Department to provide an annual report on the deployment of specific equipment. The report is to be reviewed by the Police Accountability Board (PAB), which will assess compliance with the relevant approval standards set forth by BMC Section 2.100.040. If any equipment is found to be non-compliant with the standards set forth by BMC 2.100.040, the PAB “shall 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.” The PAB shall make these determinations based on the content of the report.

BMC Section 2.100.050(A)(1)(a) – 2.100.050(A)(1)(e) provides minimum reporting requirements for the use of Controlled Equipment. Those reporting requirements are the following:

- 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.

The PAB shall make recommendations based on compliance with the standards outlined in this ordinance.

The Office of the Director of Police Accountability (ODPA) received the Police Equipment and Community Safety Ordinance 2023 Annual Report (hereafter '2023 Report') from Interim Chief Jennifer Louis on February 23, 2024. Given the limited time before the next regular PAB meeting (February 28, 2024) the ODPA staff has conducted an initial review of the report to ensure compliance with the relevant sections of the Berkeley Municipal Code. This memorandum provides recommendations to assist the PAB in determining, 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.

Analysis:

Minimum Reporting Requirements:

In summary, the reporting requirements as articulated in BMC Section 2.100.050(A)(1)(a) – 2.100.050(A)(1)(e) appeared to be complied with in this annual report. Of special note, the ODPA highlights that the BPD has implemented the 2022 recommendation to include the percentage of equipment deployments as illustrated in the visualization on pg. 18 of the 2023 Report.

Enhancing Depth in Oversight: Beyond Preliminary Analysis

Upon the ODPa review of the 2022 report, the DPA remarked that the ODPa and PAB only conducted a superficial review of the annual report since no additional exhibits (i.e. BPD incident reports, BWC footage, etc.) were considered. It appears by the language of the ordinance, that the legislative intent also contemplated a more qualitative review¹ of the incidents where the equipment was deployed and or used². To this end, the ODPa makes the below recommendations on potential avenues for conducting a review of the incidents in question:

Recommendations:

#1 The PAB should consider conducting a systematic review of the incidents referenced in the 2023 Report:

The PAB should consider adopting a methodology for the review of the incidents in the 2023 Report that considers:

- How to systematically review the compliance of the reported equipment;
- Balancing the current workload of the PAB/ODPA,
- Ensuring a timely review that does not impede with BPD's intended presentation of the report to the Council

Specifically, the ODPa recommends three potential methodological approaches:

¹ Section 2.100.040 (C)(2) states: "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."

² For a distinction of this terminology see pg. 3 of the report: "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."

APPROACH/ METHOD	PROS	CONS
Full Review of Each Incident (deployed/used) =64 cases	<ul style="list-style-type: none"> • Can assist with a more thorough assessment of compliance beyond the summary narrative for all incidents • External/independent review can augment the validity of the BPD review 	<ul style="list-style-type: none"> • Time-consuming • Resource extensive
Full Review of Each Incident where equipment was “used” = 12 cases	<ul style="list-style-type: none"> • A focused review can ensure resources/time are maximized • External/independent review can augment the validity of the BPD review 	<ul style="list-style-type: none"> • (Depending on exhibits) Time-consuming • (Depending on exhibits) Resource extensive
Random and or purposive sampling/ selection of Deployed/Use Cases (1/4) = 16 cases	<ul style="list-style-type: none"> • Ensures review of both deployed and used cases • A focused review can ensure resources/time are maximized • External/independent review can augment the validity of the BPD review 	<ul style="list-style-type: none"> • (Depending on exhibits) Time-consuming • (Depending on exhibits) Resource extensive

#2 The BPD should consider affixing, linking, and or attaching incident reports, BWC footage, and or any other relevant records related to the deployment and use of the incidents in a way that is consistent with federal, state, and local law.

Affixing, linking, or attaching these documents directly to the report not only facilitates a deeper, more accessible review process for all stakeholders but also ensures that the evaluation of police equipment use is comprehensive and grounded in real-world contexts. This approach should be carefully designed to align with federal, state, and local privacy and disclosure laws, safeguarding both the integrity of the review process and the privacy rights of individuals involved. Implementing this recommendation would significantly improve the quality of oversight and public trust in the BPD's operations, fostering a more informed and engaged community discourse around police practices and equipment use.

3 The BPD should consider utilizing the ArcGIS StoryMaps³ feature to map out the incidents in the Transparency Hub

It is recommended that the BPD leverages the ArcGIS StoryMaps feature to dynamically map out incidents within their Transparency Hub. This innovative approach not only provides a visual and geographic context to the incidents involving police equipment deployment and use but also enhances public engagement and understanding. By utilizing StoryMaps, the BPD can offer an interactive platform that allows citizens to explore the data through maps, images, and narratives, making the information more accessible and comprehensible. This tool will not only aid in promoting transparency but also in building trust between the community and the police department by providing a clear, engaging, and informative overview of incidents in a geospatial context.

³ For more information on this tool visit: <https://storymaps.com/>