

Agenda Item #10.d.
PAB Jan.12, 2022 Meeting

The Charter of the City of Berkeley, Article XVIII, Section 125 (20)(a) provides that "all [City] departments, officers, and employees shall cooperate with and assist the Director of Police Accountability, Police Accountability Board and its staff and...produce all records and...documents...the Board or its staff requests for the purpose of carrying out its duties and functions...[T]he records and information include without redaction or limitation: (1) Records relevant to Police Department policies, practices, or procedures."

Accordingly, pursuant to Section 20(a)(3), the Police Accountability Board requests that the Berkeley Police Department provide the Board with both a copy of the current working draft of Early Intervention System revisions and the current draft of the Department's revised consent search form. Consistent with Section 20 (a)(3), please provide these documents by close of business on February 2, 2022. This will enable the Board to effectively perform its functions related to City Council Directive, February 23, 2021.

We submit this request in the spirit of collaboration.

Y. J. H. ...
...

REIMAGINING PUBLIC SAFETY COMMUNITY MEETINGS

All Meeting Times: 6pm-8pm
meeting link:

[https://us06web.zoom.us/j/84016485564?](https://us06web.zoom.us/j/84016485564?pwd=MV1RiszTHpYY1J2VhFEMVVFET0dJQT09)
[pwd=MV1RiszTHpYY1J2VhFEMVVFET0dJQT09](https://us06web.zoom.us/j/84016485564?pwd=MV1RiszTHpYY1J2VhFEMVVFET0dJQT09)
Meeting ID: 840 1648 5564

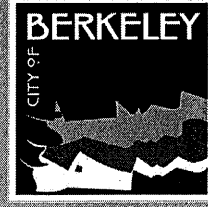
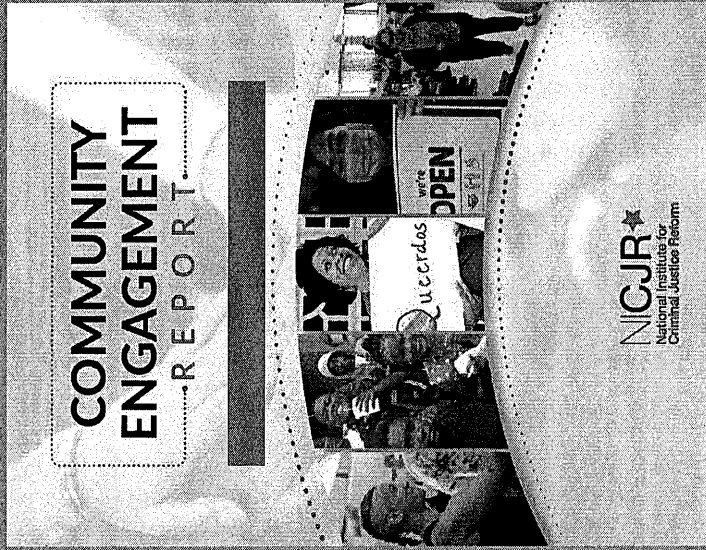
January 13: West Berkeley-Districts 1,2

January 20: Downtown Civic Arts District, South Berkeley-Districts 3,4

February 3: North, UC Campus, Southeast Berkeley-Districts 5,6,7,8

We Want Your Feedback

- Prepare to actively engage in the Community Meetings by reading the Draft Final Report and Recommendations on the website: <https://berkeley-rps.org/>
- Additional opportunity to share your feedback by calling: 888-299-1118
- Visit the website at: <https://berkeley-rps.org/> for updates



Lee, Katherine

From: Office of the Director of Police Accountability
Sent: Monday, December 13, 2021 10:24 AM
To: Lee, Katherine
Cc: Norris, Byron
Subject: FW: To Berkeley PAB members
Attachments: MilEquipmentAFSC10Dec2021.docx

From: John Lindsay-Poland <JLindsay-Poland@afsc.org>
Sent: Friday, December 10, 2021 4:21 PM
To: Office of the Director of Police Accountability <DPA@cityofberkeley.info>; Ismail Ramsey <izzy@ramsey-ehrllich.com>
Cc: Louis, Jennifer A. <JLouis@cityofberkeley.info>
Subject: To Berkeley PAB members

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

Dear Ms. Lee and Chair Ramsey,

Below and attached is a memo for PAB members regarding implementation of Berkeley's ordinance on controlled equipment and new state legislation, AB 481.

Please distribute to other PAB members for their consideration.

Thanks.

John Lindsay-Poland

cc: Interim Chief Louis

To: Members of Berkeley Police Accountability Board and City Council and interim BPD chief

From: John Lindsay-Poland, American Friends Service Committee (AFSC)

Re: Militarized Equipment Policies and AB 481 Requirements

December 10, 2021

I submit information about the requirements of Berkeley's ordinance on Controlled Equipment as well as of AB 481, which was signed by Governor Newsom on September 30 and applies to all local law enforcement agencies in the state. The two pieces of legislation create overlapping requirements for transparency, use policies and reporting on militarized equipment for BPD. **These requirements have implications for the Accountability Board's and City Council's agendas and work on these issues. They require the PAB to maintain a robust capacity, especially during the next six months.** American Friends Service Committee is prepared to support this process with information and analysis.

The Berkeley ordinance on controlled equipment (Police Equipment and Community Safety Ordinance, Berkeley Municipal Code Chapter 2.100) and AB 481 have similar structures and intents: they require law enforcement agencies to submit information and use policies for any of a list of militarized equipment types that the agency seeks to acquire or continue to use. The use policies must be considered by the local governing body (City Council for AB 481; the Police Accountability Board [PAB] and City Council for the Berkeley ordinance), and if approved, the agency must make annual reports on how the equipment has been deployed. Both create calendars for implementation in 2022. However, there are significant differences as well.

It is important to note that AB 481 explicitly does not preempt stronger provisions in local ordinances, such as Berkeley's, that address the same subject. However, any provision in AB 481 that is stronger than the local ordinance will apply.

Timing:

- The Berkeley ordinance requires BPD to submit proposed use policies and impact statements for controlled equipment to the PAB before they are considered by the City Council. These proposed policies and impact statements must be submitted *to the PAB* by April 27, 2022 (one year after City Council passage).
- AB 481 requires that BPD submit use policies and impact statements for controlled equipment the BPD acquired before January 1, 2022 and which it seeks to continue to use to *the City Council* by May 1, 2022. AB 481 also requires that the proposed use policy be posted on the BPD's web site at least 30 days before the City Council agendaizes consideration of approval, and the City Council to approve the use policy through an ordinance within 180 days of the policy's submission. If that doesn't occur, BPD must cease use of the equipment until a use policy is approved by the Council.

In other words, the combined requirements of the Berkeley ordinance and AB 481 mean that the BPD must submit use policies to both the PAB and City Council by sometime in April.

AB 481, like the Berkeley ordinance, applies to controlled equipment acquired through grant funds; purchase, lease, or borrowing; proposals to acquire or use controlled equipment; the 1033 program (BPD does not participate). However, AB 481 also applies to "Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body." In other words, AB 481 applies to mutual aid uses of controlled equipment that come from an outside agency.

The Berkeley ordinance also states: "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." To our knowledge, BPD has yet provided a prioritized list to the PAB. It is critical that it do so soon.

Needs for use policies and impact statements

While BPD has created use policies for a number of types of controlled equipment that it currently uses, AB 481 and the Berkeley ordinance will require further disclosure and/or policy development for all types of controlled equipment that BPD uses. (The Berkeley ordinance requires *impact statements* as well as *use policies*, but AB 481 incorporates impact statement information into the *use policies*.) Some types of controlled equipment used by BPD, including assault rifles and projectile launchers, will require more substantial policy development.

For example, BPD has no policy for the assault rifles deployed with some officers, apart from a general firearms policy. Use policies for armored vehicles, firearms, pepper spray, long batons, LRADs and other equipment don't specify the fiscal cost, measures to safeguard against impacts on civil rights, alternatives, or whether the equipment's maintenance requires third party providers – these are required for use policies mandated by AB 481. Policies and impact statements required by the two pieces of legislation include 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. [AB 481 does not require “intended uses and effects”.]
2. **Purpose:** The purposes and reasons for which the BPD proposes to use each type of Controlled Equipment.
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. [AB 481 does not include costs of adverse impacts or specify types of ongoing costs.]
4. **Authorized and Prohibited Uses:** AB 481 requires the use policy to address “authorized uses for ... each type of military equipment” and the “legal and procedural rules that govern each authorized use”. Berkeley ordinance requires the use policy to identify “any prohibited uses... and any process required prior to use.”
5. **Training:** The course of training that must be completed before any officer, agent, or employee of the Police Department is allowed to use each specific type of Controlled Equipment. [AB 481 also requires naming POST-required courses, and adds that training should “ensure the full protection of the public’s welfare, safety, civil rights, and civil liberties and full adherence to the military equipment use policy.”]
6. **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. [not in AB 481]
7. **Mitigations:** Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts. [not in AB 481]
8. **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. [not in AB 481]
9. **Third Party Dependence:** Whether use or maintenance of the Controlled Equipment will require the engagement of third-party service providers. [not in AB 481]
10. **Auditing and Oversight:** The mechanisms to ensure compliance with the Controlled Equipment Use Policy, including which independent persons or entities have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy. [in AB 481 but not Berkeley ordinance]
11. **Transparency:** The procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Controlled Equipment, and how the Police

Department will ensure that each complaint, concern, or question receives a response in a timely manner.
[in AB 481 but not Berkeley ordinance]

Equipment Covered

Equipment that will require a proposed use policy and impact statement under AB 481 and the Berkeley ordinance are (with our best assessment of existing possession and policy for each):

Equipment	AB 481	Berkeley ordinance	BPD possesses?	Existing policy?
Armored vehicles, excluding police versions of standard consumer vehicles	"Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers"	"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." Excludes police versions of standard passenger vehicles.	Yes	Yes
Unmanned vehicles	Includes unarmed: "Unmanned, remotely piloted, powered aerial or ground vehicles"	Armed only: "Aircraft, vessels, or vehicles of any kind, whether manned or unmanned, with attached or mounted weapons"	No	City moratorium on BPD use of drones
Tracked armored vehicles	"Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion"	"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"	No	No
Assault rifles / patrol rifles	"Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency"	"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"	Yes	Firearms policy, but no policy specific to patrol rifles
Projectile launch platforms	"Following projectile launch platforms and their associated munitions: 40mm	"Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, "bean bag," rubber	Yes	Yes

	projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons."	bullet, or specialty impact munition (SIM) weapons, and equipment used to disperse chemical agents"		
Breaching apparatus	"Battering rams, slugs, and breaching apparatuses that are explosive in nature." Excludes bolt cutters, one-person handheld ram, but does not exclude frangible rounds.	"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" Excludes handheld ram, frangible rounds, bolt cutters.	Yes	Not found in a search
HMMWV-type vehicles	"Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached" Excludes ATVs and motorized dirt bikes	"Multi-purpose wheeled vehicles that are built to operate both on-road and off-road" such as "Humvee, a two and one-half-ton truck, or a five-ton truck, or vehicles built or built or modified to use a breaching or entry apparatus as an attachment" Excludes ATVs and motorized dirt bikes	?	?
Command and control vehicles	"Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units."	Not listed	Yes	No
.50 caliber weapons	Firearms and ammunition of .50 caliber or greater. Excludes "standard-issue shotguns"	Firearms and ammunition of .50 caliber or greater	No	No
Electronic weapons/devices	Identical to Berkeley ordinance, but without Berkeley's exception for reporting LRAD uses as a communications device.	"Taser Shockwave, microwave weapons, water cannons, and the Long-Range Acoustic Device (LRAD)"	Taser no; LRAD yes	Taser no; LRAD yes
Flashbangs, tear gas, pepper balls	"Flashbang' grenades and explosive breaching tools, 'tear gas,' and 'pepper balls'" Excludes handheld pepper spray.	"Explosives, pyrotechnics, such as "flashbang" grenades, and chemical weapons such as "teargas," CS gas, pepper spray, and "pepper balls""	Yes	Yes
Explosive projectile launchers	"Any firearm or firearm accessory that is designed to	Not listed	No	No

launch explosive projectiles"			
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For further information, contact: American Friends Service Committee, John Lindsay-Poland, jlindsay-poland@afsc.org. Tel: 510-282-8983

American Friends Service Committee
California Healing Justice Program
Tel: 510-282-8983
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Received by DPA

JAN 10 2022

EDWARD M. OPTON, JR.
1428 CORNELL AVENUE
BERKELEY, CA 94702

January 7, 2022

Ms. Katherine J. Lee
Office of the Director of Police Accountability
1947 Center St., 5th Floor
Berkeley, CA 94704

Re: Illegality of Dissemination of General Orders

Dear Ms. Lee:

On January 5, 2022, I received a copy of some documents related to W&I Code section 5150. Included with these documents was a copy of Berkeley Police Department General Order C-66 ("Crisis Intervention Team," January 24, 2013). Each page of this document was stamped in red ink:

**"BERKELEY POLICE DEPARTMENT
Unlawful dissemination of this
Information is a misdemeanor.
DO NOT DUPLICATE"**

The prohibition on duplicating and on dissemination and the warning that copying and/or giving the document to another person may be a crime raise some questions that I hope the Police Accountability Commission will investigate. For example:

- * Are all the Berkeley Police Department's General Orders stamped with a warning against revealing their contents?
- * Does a document exist that authorizes the classification of some or all General Orders as not to be duplicated or shared, i.e., secret?

Ms. Katherine J. Lee

January 7, 2022

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* If so, what is the statutory or other authority for issuance of secret General Orders?

*Has the Police Department's policy on secrecy of General Orders changed in the nine years since 2013, when General Order C-66 was issued?

*What is the current policy of the Department concerning prohibition of duplication and/or dissemination of General Orders?

*What types of documents other than General Orders does the Department consider to be non-duplicable?

* What document, if any, contains the Department's standards for classifying documents as non-duplicable? Is that document itself considered secret?

Please make this letter available to the members of the Police Accountability Board. I would have sent this letter directly, via e-mail, to the Board, but the City's posted e-mail link for the Board seems to be inoperative.

Sincerely yours,

A handwritten signature in cursive script that reads "Edward Opto".