

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

POLICE ACCOUNTABILITY BOARD CONTROLLED EQUIPMENT REPORTING SUBCOMMITTEE

Board Members: Moore, Mizell

**Tuesday, May 31, 2022
11:00 a.m.**

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/83842714327>. 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 **838 4271 4327**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

- 1. CALL TO ORDER**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

- 4. NEW BUSINESS (discussion and action)**

The Police Accountability Board and Office of the Director of Police Accountability (ODPA) were created to provide independent civilian oversight of the Berkeley Police Department. They review and make recommendations on police department policies, and investigate complaints made by members of the public against police officers. For more information, contact the ODPA.

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Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

Consider any new information received regarding deadlines for PAB's recommendations to the City Council.

5. OLD BUSINESS (discussion and action)

Continue to develop plan for addressing Community Safety Ordinance Impact Statements, Associated Equipment Policies, Annual Equipment Use Report, and Military Equipment Policy 709.

6. SCHEDULE NEXT MEETING DATE

7. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

8. ADJOURNMENT

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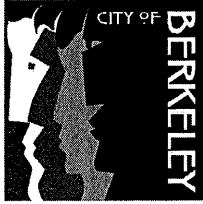
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SB 343 Disclaimer

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 dpa@cityofberkeley.info or (510) 981-4950.



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

Materials for Controlled Equipment Reporting Subcommittee of Police Accountability Board ▪ May 31, 2022 meeting

Police Equipment & Community Safety Ordinance Impact Statements (revised; ODPa received 5-25-2022)
BPD Policy 428, First Amendment Assemblies (rev. 5-25-2022)
BPD Policy 709, Military Equipment (rev. 5-23-2022)
John Lindsay-Poland memo of May 22, 2022 re: Proposals for amended / additional language to proposed Impact Statement and Policy 709 on Military and Controlled Equipment.
Oakland PD Departmental General Order K-6, Patrol Rifle Program (effective 10-6-2008) (referenced in above memo)
Wendy Alfsen & Barb Atwell, Co-Clerks, Berkeley Friends Racial Justice Action Team, email of May 23, 2022 to PAB and Controlled Equipment Subcommittee

**Police Equipment and
Community Safety Ordinance
Impact Statements**

Rec'd 5-25-22

ACKNOWLEDGEMENTS

Thank you to the subject matter experts for helping author this report.

Officer Corey Bold –
Patrol Officer and chemical agent instructor

Officer Semir Muratovic –
Patrol Officer and Bomb Squad Technician

Officer Derek Radey –
Patrol Officer and less lethal coordinator/instructor

Lieutenant Kevin Reece –
Special Response Team Commander

Officer Scott Salas –
Patrol officer and Special Response Team high ground team leader

Lieutenant Jennifer Tate –
Traffic Lieutenant and defensive tactics instructor

Officer Jason Tillberg –
Department trainer and Department Armorer

Officer Sean Tinney –
Department trainer and Special Response Team member

TABLE OF CONTENTS

Introduction	2
M4 rifle/Patrol Rifle	3
Penn Arms 40MM Single Launcher	8
Milkor LTL Multi-Launcher	13
FN 303 Launcher & FN Pava Impact Projectile	19
Oleoresin Capsicum Spray.....	24
Chlorobenzylidene Malononitrile and Oleoresin capsicum	27
Remington 700 Rifle	32
ReconRobotics Recon Scout XT Robots.....	35
Andros Remotec HD-1 Hazardous Duty Robot	38
Light/Sound Diversionary Device	41
Long Range Acoustic Device	45
36" Batons	48
Mobile Command Vehicle.....	52
Barret Model 99	54
Appendix	58

INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.020 of the ordinance mandates an impact statement for certain equipment that the Berkeley Police Department possesses. An impact statement is defined in section 2.100.020 (C) and is a publicly released written document that includes the following details for each equipment:

- 1) Description
- 2) Purpose
- 3) Fiscal cost
- 4) Impact
- 5) Mitigation
- 6) Alternatives
- 7) Third Party Dependence

An impact statement for each of the following equipment has been authored by subject matter experts in their respective fields:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM launcher
- Milkor LTL multi-launcher
- FN 303 Launcher & FN Pava rounds
- Oleoresin capsicum (OC spray)
- Chlorobenzylidene Malononitrile and Oleoresin capsicum (tear gas)
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/sound distraction device
- Long Range Acoustic Device (LRAD)
- 36" batons
- Mobile Command Vehicle
- Barret Model 99

Impact statements were compiled in this report in a prioritized ranking for the Police Accountability Board to consider in determining the order in which to perform its review per the Police Equipment and Community Safety Ordinance.

M4 Rifle and Associated Ammunition

(1) **Description:**

A. **Background:**

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 5.56x45mm 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.

Currently, BPD uses two different kinds of .223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. This is done for several reasons.

1. FMJ ammunition is cheaper to purchase. While many agencies use the same ammunition for training and duty use, the department saves a significant amount of money by using FMJ ammunition for training.
2. The observed performance between the two rounds is negligible for training purposes. Officers can use the FMJ ammunition in a training course and see no difference in operation and performance versus using 62 grain soft point duty ammunition.
3. The 62-grain soft point ammunition has been shown to have less over penetration and over travel compared to FMJ ammunition.

This means that rounds fired are less likely to hit unintended targets.

B. Quantity:

The Berkeley Department currently owns and maintains 96 rifles.

Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

C. Capability:

The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

D. Lifespan:

Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has

changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

E. Use:

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

F. How it Works:

The M4 patterned rifle works the same as a majority of all modern firearms. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. As the bullet travels down the barrel, gas from the ignited powder also escapes from the muzzle. Some of that gas is recycled back into the chamber of the firearm which causes the firearm to cycle its action and load another bullet. From there the process repeats with each pull of the trigger.

The .223 Remington cartridge is made up of several parts, primarily the primer, casing, gunpowder, and bullet. The bullet is seated into the front or opening of the casing. Gunpowder is placed between the bullet and the interior of the casing and a primer is seated in the rear part of the casing. When the trigger of a firearm is pulled, it releases the hammer, which strikes the firing pin, driving it forward. The firing pin collides with the rear of the cartridge, where the primer is seated, which ignites the primer. The spark from the primer ignites the gunpowder. Gas converted from the burning powder rapidly expands in the cartridge. The expanding gas forces the bullet out of the cartridge and down the barrel with great speed. The rifling in the barrel causes the bullet to spin as it travels out of the barrel. The bullet's speed and escaping gases produce a "bang."

After the bullet exits the barrel, the spent casing which housed the bullet, gunpowder, and primer are ejected from the firearm.

(2) Purpose:

The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally

equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

(3) Fiscal Cost:

A. Initial Cost:

Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000 and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

B. Cost of Use:

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

C. Cost of Potential Adverse Effects:

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

See section B. above, these costs are determined based on the rifle's assignment.

E. Training Costs:

Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Typical round count for such classes range between 800 rounds and 1200 rounds per student. Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by a BPD firearm instructor which constitutes an additional 500 or so rounds per officer.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. Upgrade Costs:

Upgrade costs and Maintenance cost are synonymous due to the consistent design and lack of changes of the rifle over the last 60 years. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing, those upgrade costs are unknown at this time.

(4) Impact:

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The M4 patterned rifle, which fires the .223 Remington cartridge, is a superior firearm to stop a lethal threat compared to the issued pistols to police officers, in that officers equipped with this firearm shoot less rounds, fire more accurately, and are less likely to fire errant rounds. Highly volatile and violent incidents, such as a hostage situation, can be more safely and efficiently resolved with a rifle.

The M4 patterned rifle, and the accompanying .223 Remington cartridge it fires, is intended as a tool to increase the safety and welfare of citizens and officers alike. The M4 patterned rifle and .223 Remington cartridge, both inanimate objects, have zero impact on things such as civil rights or civil liberties of the public. Any abuses of authority or power would be the result of an individual who violates the Berkeley Police Department's policies, including state and federal laws.

(5) **Mitigations:**

Per Policy 300, "Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons."

(6) **Alternatives:**

There are no suitable alternatives to the M4 rifle for the intended purpose. The M4 rifle is a law enforcement standard across the US and other countries due to its reliability, ease of use, ease of maintenance, and increased accuracy over other options.

There are no suitable alternatives to the .223 Remington cartridge, as the current BPD M4 rifle is designed for that particular cartridge. The .223 Remington cartridge is a law enforcement standard across the US and other countries due to its reliability, availability, and increased accuracy over other options.

(7) **Third Party Dependence:**

Berkeley Police Department armorers are trained and capable to handle any and all issues related to the maintenance or repair of the M4 rifles. Additionally, BPD firearm instructors are fully certified by state and private training institutes to fully educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

All ammunition purchased by BPD, like all equipment, is dependent on Third Party vendors. Vendor stock and availability is outside BPD control or management. Once ammunition is purchased and in BPD custody there is no additional need for Third Party assistance.

Penn Arms 40mm Single Launcher

(1) **Description:**

A. **Background:**

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.

B. Quantity:

The Berkeley Police Department currently owns and maintains 20 Penn Arms less lethal launchers.

C. Capability:

The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

D. Lifespan:

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

E. Use:

The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

F. How it works:

The Penn Arms 40mm single launcher is a double action, break open less lethal launcher. The launcher is capable of firing a single 40mm projectile. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than the FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The Penn Arms single launcher is a basic design making it easy to operate and maintain.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the

potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will almost always resolve a violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) Fiscal Cost:

A. Initial Cost:

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

B. Cost of Use:

Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. Cost of Potential Adverse Effects:

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. Annual and Ongoing Costs:

See section B above

E. Training Costs:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

G. Upgrade Costs:

There are no foreseeable upgrade costs. The Penn Arms single launcher has few working parts and is of a simple design.

(4) Impact:

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but hopefully the minimal amount of force needed to safely resolve the incident.

The Penn Arms single launcher, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. This tool does not require officers to overcome a hostile crowd to stop a violent assault.

(5) Mitigation:

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved

projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

(6) Alternative:

The Penn Arms single launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) **Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling all issues related to the repair or maintenance of the Penn Arms single launcher.

Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

Milkor LTL Multi-launcher

(1) **Description:**

A. **Background:**

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 Milkor LTL multi-shot launcher.

B. **Quantity:**

The Berkeley Police Department currently owns and maintains 2 Milkor LTL less lethal launchers. One Milkor launcher is assigned to the Berkeley Special Response Team.

C. **Capability:**

The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

D. **Lifespan:**

The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

E. Use:

The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

F. How it works:

The Milkor LTL multi-shot launcher utilizes a spring actuated cylinder allowing it to fire 6 individual 40mm projectiles. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel. The spring assisted cylinder automatically turns and loads the next projectile.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The benefit to the Milkor LTL is its ability to provide a quick follow up less lethal application, if necessary. The Milkor holds 6 projectiles while the Penn Arms launcher only holds one. Reloading the Penn Arms single launcher can be time consuming and requires the officer to briefly change focus from the suspect to the reload procedure. The Milkor LTL on the other hand, allows the officer to maintain focus on the suspect and assess whether a follow up application is necessary. This ability is significant when the suspect is advancing, attempting to flee, or demonstrates a high pain compliance threshold.

(2) Purpose:

The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to

maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will generally resolve the violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

B. Cost of Use:

Cost for the Milkor LTL launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. Cost of Potential Adverse Effects:

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. Annual and Ongoing Costs:

See section B above

E. Training Costs:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use.

G. Upgrade Costs:

There are no foreseeable upgrade costs.

(4) Impact:

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The Milkor LTL launcher, with its high level of accuracy and 6 projectile capacity, can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent

assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

(5) **Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

(6) **Alternative:**

The Milkor LTL multi-launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation

from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) Third Party Dependence:

The Berkeley Police Department armorers are trained and capable of handling most issues related to the repair or maintenance of the Milkor LTL launcher. In the event of a catastrophic malfunction, the Milkor LTL will need to be sent to the manufacturer for repair. To date, there have been no significant repairs needed to the Milkor LTL. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for regular maintenance, repair, or instruction.

FN 303 and FN Pava Impact Projectile

(1) Description:

A. Background:

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.

B. Quantity:

The Berkeley Police Department currently owns and maintains 8 FN 303 less lethal launchers.

C. Capability:

The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

D. Lifespan:

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

E. Use:

The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

F. How it works:

An air reservoir attaches to the FN 303 through an air hose coupler and provides pressure through compressed air. When fired, the compressed air drives a piston that pushes the .68 caliber projectile through the barrel at approximately 280 feet per second. For comparison, the FN projectile is the size of a paintball and the velocity is the same as a commercially manufactured paintball gun.

The projectiles are 8.5 grams in weight and utilize a polystyrene fin stabilized body with a non-toxic forward payload to aid in stability and accuracy. The projectile will deliver approximately 24-foot pounds of kinetic energy at the muzzle which is about double the kinetic energy of most paintball guns. Most paintballs have a mass of 3 grams while the FN 303 projectile has a mass of 8.5 grams which increases the kinetic energy produced.

Available projectiles are impact, impact + non-permanent marking, impact + permanent marking, and impact + PAVA (0.5% PAVA/Oleoresin Capsicum).

The impact + PAVA projectile is intended to be direct fired at an individual. In addition to delivering pain through kinetic energy upon impact, the PAVA

projectile will deliver a secondary chemical irritant, which is the Oleoresin Capsicum (O.C.) payload. Oleoresin Capsicum generally causes irritation/burning at the application site, irritation to the eyes, and coughing. According to the National Institute of Health, the effects of O.C. power exposure tend to resolve on their own within 30 minutes.

Pain is highly subjective and other circumstances, such as heavy clothing, may render the impact ineffective. The application of a secondary chemical irritant may assist in gaining compliance and successfully resolving a potentially violent incident with the minimal amount of force necessary.

(2) Purpose:

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential

for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) Fiscal Cost:

A. Initial Cost:

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

B. Cost of Use:

Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. Cost of Potential Adverse Effects:

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death. Only trained officers are authorized to use the FN 303.

D. Annual and Ongoing Costs:

See section B above

E. Training Costs:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

G. Upgrade Costs:

The overall design of the FN 303 has changed little since its initial release in the early 2000s thus anticipated upgrade costs will be minimal.

(4) **Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The FN 303, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

(5) **Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders."

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer's ability to target approved impact areas.

(6) Alternative:

The FN303 launcher is one of three less lethal options the Berkeley Police Department possess that allow officers to address a potentially violent confrontation from a distance. All three (Penn Arms single launcher, Milkor LTL multi-launcher, and FN303) are viable options that have different strengths and weaknesses. The Penn Arms single launcher and the Milkor LTL multi-launcher operate very similarly and use the same projectile. The Penn Arms single launcher is smaller and easier to carry; however, the Penn Arms single launcher is capable of holding only one projectile while the Milkor LTL multi-launcher is capable of holding six projectiles. The projectiles used by the Penn Arms single launcher and Milkor LTL multi-launcher are larger which results in more kinetic energy transferred compared to the projectiles used in the FN303; however, the FN303 holds 15 projectiles and is capable of launching it at a faster rate.

An alternative that the Berkeley Police Department does not possess is the TASER. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject's clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

(7) Third Party Dependence:

The Berkeley Police Department armorers are trained and capable of handling regular maintenance and most repairs. In the event of a catastrophic failure, the device will be sent to the manufacturer for repair. To date there have been 2 devices that required manufacturer repair, both of which were under warranty.

Additionally, department firearm instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, most repairs, or instruction.

OC (oleoresin capsicum) Spray

(1) Description:

A. Background:

For the purposes of this portion of the Impact Statement, OC (Oleoresin capsicum) will be referred to in the spray form as opposed to the aerosol canister form. 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.

B. Quantity:

Qty 23 – First Defense MK-9 OC spray (13- ounces)

Qty 178 – First Defense MK-3 OC spray (3 ounces)

Most of the MK-3 OC sprays are issued to and maintained by individual officers; however, a small amount of these sprays is stored in a secured equipment room as spares in case of damage or new personnel issue.

C. Capability:

The First Defense MK-3 OC sprays are standard issued to all police officers and are worn on the police officers' belt. It has an effective range of 10-12 feet. The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

D. Lifespan:

Aerosol products eventually lose pressure over time. The lifespan of both the MK-9 and MK-3 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

E. Use:

OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

F. How it Works:

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, burning/stinging skin sensation, redness of the skin, irritation and burning of the nose, runny nose, salivation and burning sensation of the mouth, cough, gagging sensation, shortness of breath, temporary paralysis of the larynx (person unable to speak) and nausea (caused by shock, not the OC itself). A person may also feel disorientated, anxiety, and/or panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

(2) Purpose:

There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

(3) Fiscal Cost:

A. Initial Cost:

The MK-3 OC spray cost approx. \$19 per unit and the MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

B. Cost of Use:

The cost of each usage is unpredictable due to the unknown nature of crime, timelines of dangerous situations, and number of applications.

C. Cost of Potential Adverse Effects:

Adverse effects of improper use of OC spray are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

See below cost of training.

E. Training Cost:

Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

F. Maintenance and Storage Costs:

The majority of the MK-3 OC sprays are either stored within the Police Department or with each sworn police officer while they conduct official duties. All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

G. Upgrade Costs:

No upgrades exist for this equipment as of this report.

(4) Impact:

The physical effects of being subjected to OC may significantly reduce an individual's aggressive behavior. Reports have shown that the use of OC can reduce the amount of officer and arrestee injuries due to its effectiveness. Chemists assigned to the FBI Forensic Science Research and Training Center report no long-term health risks associated with the use of OC. The use of the MK-3 or MK-9 OC spray can render a dangerous and violent situation safe without using a higher level of force.

(5) Mitigations:

Law Enforcement Officers attend a Police Officer Standard Training (POST) approved academy before they enter into a Field Training Program and continue their training. During this academy they are taught about OC, how to deploy it, its effects, and the decontamination process. They are also subjected to OC to physically feel the effects themselves. After the academy, each officer is issued a MK-3 OC spray which they are to keep on their person while on duty. If deployed and when practical, medical personnel should be summoned for the affected person(s) per policy 303.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

Alternatives to utilizing OC sprays are tools such as expandable batons, less lethal launchers, and/or physical body weapons. The rationale to use OC spray depends on the circumstances of each individual incident and the individual officer involved in the incident. As mentioned above, reports have shown that OC spray may significantly reduce an individual's aggressive behavior which can minimize the amount of force necessary to apprehend that subject. Per our Use of Force policy (Lexipol 300), we shall use the minimal amount of force possible during each incident, thus making OC spray a valuable option.

(7) **Third Party Dependence:**

There is no third-party dependence for the First Defense OC spray. Once they are purchased, they are secured in their designated locations within the Police Department or with sworn police officers while they conduct official duties.

Chlorobenzylidene Malononitrile and Oleoresin Capsicum

(1) **Description:**

A. **Background:**

Chlorobenzylidene malononitrile (CS):

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.

Oleoresin capsicum (OC):

For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. 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. OC is mixed with several types of solutions which act as carriers.

B. Quantity:

Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

C. Capability:

CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

D. Lifespan:

CS and OC canisters expire in approximately 5 years.

E. Use:

Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

(2) Purpose:

There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

(3) Fiscal Cost:

A. Initial Cost:

The cost for CS canisters ranges from \$20.00 to \$39.00 per unit. The cost for OC canisters ranges from \$36.00 to \$44.00 per unit. The Berkeley Police Department prefers the use of the Combined Tactical Systems (CTS) chemical agents and we purchase them from LC Action Police Supply.

B. Cost of Use:

The cost of each proposed use is unpredictable due to the demand, unknown nature and timelines of dangerous crowd/riots situations, dangerous barricade situations, and hostage situations.

C. Cost of Potential Adverse Effects:

Adverse effects of improper use of OC and CS are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

See below cost of training.

E. Training Cost:

When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

F. Maintenance and Storage Costs:

The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

G. Upgrade Costs:

No upgrades exist for this equipment as of this report.

(4) Impact:

BPD is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Law Enforcement, under Penal Code 12403.1, is able to lawfully purchase, possess, or use chemical agents in the discharge of their duties. CS and/or OC canisters have been prominently used to resolve dangerous barricaded suspect situations and violent crowd control/riot situations.

Berkeley Police officers are trained to utilize time and distance to de-escalate dangerous barricaded situations in order to resolve each incident with minimal the use of force (per Use of Force Policy 300). In some circumstances when all other options are exhausted, CS and/or OC can be inserted into the structure in which the barricaded suspect is, denying access to certain areas inside. Unless exigent circumstances arise, all attempts to evacuate the structure are made prior to any deployment. When CS and/or OC are deployed into a structure the suspect may be forced outside allowing the situation to resolve safely with no use further use of force.

CS and/or OC chemical agents can be utilized to create order in dangerous crowd control/riot situations that have demonstrated violence or destruction. During these incidents, typically a clear and direct warning has been given to the crowd to disperse before the chemical agents are deployed. The ability to disperse crowds from a distance limits injury to Police Officers as well as damage to critical structures.

(5) Mitigations:

Regarding the already mentioned impacts, the decision to utilize chemical agents (unless there are exigent circumstances) flows through the chain of command and ultimately makes its way to the Chief of Police and the City Manager. If there are exigent circumstances, the Field Commander makes the decision and then advises

the Chief of Police as soon as practical. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

With these procedures incorporated in BPD's policies, this mitigates many potential negative impacts. Per Policy 428 – First Amendment Assemblies - The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agents, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed. Less-than-lethal munitions (40 mm CS impact rounds), chemical agents (including OC spray), and/or smoke shall only be deployed in crowd control situations as outlined in the Use of Force Policy. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

In addition to the mitigations in place, the Berkeley Police Special Response Team also receives annual training on the use of chemical agents, the effects, and the decontamination process. Per policy 303, when practical, medical personnel should be summoned for the affected person(s).

(6) Alternatives:

There are no direct alternatives for CS and OC. They are the industry's leading way to resolve barricaded suspects while reducing the likelihood of injury to the subject, community, and officers. Additionally, it is one of the only tools that allows officers to stop acts of violence or regain order during crowd control/riot situations. They are very distinct in nature and have direct purposes. The rationale to use CS or OC depends on the circumstances of each incident. The Berkeley Police Department shall use the minimal amount of force per our Use of Force Policy 300. The use of CS or OC allows the police personnel to maintain distance, giving officers more time to react and avoid a potential need for a higher level of force to safely resolve the situation.

(7) Third Party Dependence:

There is no third-party dependence for CS and OC chemical agents. Once they are purchased, they are secured in their designated areas and stay there until they are either used during incidents or training.

Remington 700 Rifle

(1) **Description:**

A. **Background:**

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.

BPD utilizes Hornady .308-caliber ammunition. This particular ammunition is specially designed for law enforcement applications due to its increased and consistent accuracy and performance.

B. **Quantity:**

The Berkeley Police Department Special Response Team (SRT) currently possesses six Remington 700 rifles, all configured in the same manner.

Currently, BPD has approximately 1,800 Hornady .308-caliber rounds. That quantity of ammunition fluctuates depending on supply from distributors and training schedules of those trained officers.

C. **Capability:**

The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

D. **Lifespan:**

The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

E. Use:

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

F. How it Works:

The Remington 700 is a manually operated rifle. It requires the officer to physically maneuver a handle to expel a spent cartridge and to load another unspent round of ammunition in order to fire a second round. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The officer must then pull a handle attached to the bolt to the rear, ejecting the spent cartridge. The officer then pushes the bolt forward, which picks up another bullet from the magazine, and closes the chamber, making the rifle ready to fire again.

(2) Purpose:

This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

(3) Fiscal Cost:

A. Initial Cost:

The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

B. Cost of Use:

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on training.

C. Cost of Adverse Effects:

Adverse effects and improper usage of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement

parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

E. Training Costs:

The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

F. Maintenance and Storage Costs:

Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. Upgrade Costs:

Upgrade costs and maintenance cost are synonymous due to the consistent design. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

(4) Impact:

The primary purpose of this rifle is to further SRT's goal of adding time and distance when dealing with a violent and dangerous individual(s). The rifle may allow SRT additional time by increasing the distance between law enforcement and the specific individual, thereby increasing the likelihood of a more peaceful resolution. Like all tools, it has a time and place for its intended operational efficacy.

(5) Mitigations:

Mitigating impacts from this tool's primary purpose is done through regular training. The training includes accuracy, decision making, scenarios, and various other training points. All uses of force require documentation that is completed by the supervisor

in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The Remington 700 rifle is an industry standard tool used to deliver precision accuracy on an intended target. This tool can deliver accuracy and predictability through intermediate barriers like glass windows. It can be used at distances greater than any other tool currently possessed or authorized. No alternate tool or method would accomplish the same goal.

(7) **Third Party Dependence:**

These rifles are fairly simple in their design and operation. They do require regular maintenance which is commonly performed by each individual member. BPD Armorers are also capable of performing additional maintenance. If an issue arises which is beyond the scope of our Armorers we would seek professional assistance from the manufacturer. However, the need for this is very rare.

ReconRobotics Recon Scout XT

(1) **Description:**

A. **Background:**

The Recon Scout XT is a throwable micro-robot manufactured by ReconRobotics for use in law enforcement applications. The Recon Scout XT enables officers to obtain instantaneous video footage and audio within indoor or outdoor environments. Designed to withstand repeated drops onto concrete, the Recon Scout XT robot can be thrown into hazardous situations (hostage rescue, barricaded subjects, natural disasters, etc.) in order to allow officers to quickly and safely make informed decisions when seconds count.

B. **Quantity:**

The Berkeley Police Department has two Recon Scout XT throwable robots, both purchased in 2010.

C. **Capability:**

The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous

situations, indoor and outdoor, and provide live audio and video feed back to the controller.

D. Lifespan:

Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

E. Use:

The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

F. How it Works:

The Recon Scout XT robot has a cylindrical body with a finned-wheel at either end of its body, and is stabilized by a rubber "tail". It measures approximately 6 ½" wide, and each wheel is about 5" in diameter (fin to fin) and weights just over one pound (1.2 lbs.). The Recon Scout XT robot sends digital video and audio back to an Operator Control Unit (OCU; controller with a screen and joystick), which allows the officer to control the robot, which provides a live feedback containing audio and visual feeds. The Recon Scout XT robot does not record audio or video footage; there is no data storage capability.

(2) Purpose:

The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

(3) Fiscal Cost:

A. Initial cost:

The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

B. Cost of Use:

There is no "per use" cost of this equipment. The Recon Scout XT is powered by a rechargeable battery.

C. Cost of Potential Adverse Impacts:

The likelihood of adverse impacts due to the use of the Recon Scout XT robot is low – it is small, lightweight and is not likely to injure persons or damage personal property when deployed; however, there is a small chance that the Recon Scout XT robot might cause damage to personal property when deployed (thrown) into a structure. Due caution is used when it becomes necessary to throw, rather than place, the robot into a structure.

D. Annual and Ongoing Cost:

There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

E. Training Cost:

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

F. Maintenance and Storage Costs:

There are no annual or storage costs.

G. Upgrade Costs:

There are no upgrades available at the time of this report.

(4) Impact:

The Recon Scout XT robot is used to safely gather information in situations where it may be dangerous to expose an officer, or officers, to gather the same information. Putting officers in such unknown, tense situations has the potential to create violent encounters, or otherwise place officers in unnecessary peril and danger that might otherwise be avoided by the use of a tool like the Recon Scout XT robot. The Recon Scout XT robot is not likely to have a negative impact on the welfare or safety of the public as its role is to gather real-time information during high-risk incidents such as

hostage or potentially life-threatening situations. The Recon Scout XT robot is likely to improve the welfare and increase the safety of the public through its ability to gather real-time information and feed it back to police officers. The Recon Scout XT robot does not have the capability to record or store data.

(5) **Mitigations:**

The use of the Recon Scout XT robot is limited to sworn police officers, and guided by field supervisors (Lieutenants and Sergeants). Procedurally, the Recon Scout XT robot is used when exigent circumstances exist (hostage situation, barricaded subject, natural disaster necessitating rescue, etc.) and real-time information is necessary to safely and effectively resolve the situation. The robot does not record or store data.

(6) **Alternatives:**

Unmanned aerial vehicles (UAV) are an alternative to robots such as the Recon Scout XT robot. However, the Berkeley City Council has prohibited the Berkeley Police Department from using UAVs. They are not constrained by obstacles on the ground and provide far superior perspective and situational awareness; at times, obstacles halt the Recon Scout XT robot's movement. There are several other robots on the market, however, the Recon Scout XT robot is compact, lightweight (weighing in at just over a pound), very maneuverable, and can easily be carried by an officer. It can also be introduced into structures by throwing it through any opening – an option not possible with other robot models.

(7) **Third Party Dependence:**

The Recon Scout XT robot does not currently rely on a third-party company or vendor for its use or maintenance. Should maintenance or parts be required beyond the scope of the members of the Berkeley Police Department, the robot would be sent to ReconRobotics for service.

Andros Remotec HD-1 Hazardous Duty Robot

(1) **Description:**

A. **Background:**

The Andros Remotec HD-1 Hazardous Duty Robot, hereinafter referred to as Remotec HD-1 robot, was designed to support a wide range of missions in demanding environments. The Remotec HD-1 robot is capable of lifting up to 125 pounds, tracked articulators stair climbing, and has an integrated Talisman radio system for a stronger radio wave connection between the controller and the robot.

Remotec has served explosive ordinance disposal units, hazardous materials units, and other first responders as a provider of mobile robotic systems for application into a variety of undesirable, hazardous and potentially life-threatening environments. The Remotec HD-1 robot allows individuals to approach hazardous devices to examine and manipulate the device without putting people in harm's way.

B. Quantity:

The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

C. Capability:

Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- 1) A spike to break glass and access vehicles or homes with potential explosive devices inside
- 2) An X-ray mount in order to remotely X-ray suspected explosive devices.
- 3) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- 4) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
- 5) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- 6) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

D. Lifespan:

The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just

over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

E. Use:

Used to examine and possible destroy hazardous materials such as an explosive device.

F. How it Works:

The Remotec HD-1 robot is piloted by a bomb technician into a hazardous area to locate, examine, and render suspicious packages and explosive devices safe by utilizing a variety of attachable tools.

(2) Purpose:

The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

(3) Fiscal Cost:

A. Initial Cost:

Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

B. Cost of Use:

None. The robot is electric and operated through the City's electricity for charging.

C. Cost of Potential Adverse Effects:

The Remotec HD-1 robot interacts with inanimate objects. However, should it encounter a package that explodes, it could potentially destroy the robot and damage other property.

D. Annual and Ongoing Costs:

There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

E. Training Costs:

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

F. Maintenance and Storage Costs:

Remotec offers occasional maintenance and upkeep workshops free of charge.

G. Upgrade Costs:

There are no costs for upgrades as the company has stopped manufacturing the robot and any applicable upgrades.

(4) Impact:

The Remotec HD-1 robot is used by the Berkeley Police Department Bomb Squad as a means to examine a potentially explosive device in order to keep the community safe. Since April 2020, the Berkeley Police Department Bomb Squad has responded to 14 incidents. The impact of the Remotec HD-1 robot has been to reduce and minimize the danger posed by calls of possible explosive devices to the Berkeley Police Department's Bomb Technicians.

(5) Mitigations:

The Remotec HD-1 robot is used in situations where a hazardous device exists. In these situations, the area is always evacuated in order to ensure community safety.

(6) Alternatives:

The Remotec HD-1 robot is 13 years old and there has been significant development in technology. There are several alternatives that are far superior than our current Remotec HD-1; Mark V-A1 robot developed by Remotec Andros, Caliber Flex developed by ICOR Technology, Digital Vanguard-S developed by Med-Eng and T7 and T4 developed by L3Harris Technologies. These are alternatives that have newer and better technology and capabilities than the Remotec HD-1 robot.

(7) Third Party Dependence:

Remotec representatives are the only ones used to diagnose and maintain complex issues on the robot that cannot be done in-house. Since it is proprietary technology, Remotec may void warranties on any repairs made by outside vendors or by untrained personnel. Therefore, all complex issues with the Remotec HD-1 robot must be repaired by Remotec.

Light/Sound Diversionary Device

(1) **Description:**

A. **Background:**

Light/Sound Diversionary devices also known as distraction device, 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. The device will be referred to a diversionary device throughout this document.

B. **Quantity:**

Qty 50 - CTS 7290 Diversionary Device

C. **Capability:**

When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

D. **Lifespan:**

The lifespan of the CTS 7290 Diversionary Device is 5 years.

E. **Use:**

The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

F. **How it Works:**

The main charge of a modern diversionary device typically contains flash powder which is sometimes called photoflash powder. Upon initiation, this chemical compound causes the device to deflagrate (not detonate). The powder mixture is rapidly changed into gases that expand outward reaching upwards to 3,800 times the original volume of the charge itself. This process releases the desired effects of loud noise, bright light and the feeling of atmospheric pressure. Flash powder is typically made up of an oxidizer and some type of fuel. The oxidizer is needed to initiate and sustain the flash powder's rapid combustion. This is required since sufficient oxygen cannot be obtained from just the surrounding air.

(2) **Purpose:**

The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

B. **Cost of Use:**

The cost of each proposed use is unpredictable due to the unknown nature and timelines of dangerous barricade situations, critical incident, and hostage situations. The devices may be stored inside of the Police Department, in the Special Response Team Vehicle, or in the rescue vehicle. There are no additional storage costs. There are no associated costs for transporting, maintenance, training, or upgrades.

C. **Cost of Potential Advert Effects:**

Adverse effects of improper use of a diversionary device are not calculable. It could result in serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See below training cost.

E. **Training Cost:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

F. Maintenance and Storage Costs:

The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

G. Upgrade Costs:

No upgrades exist for this equipment as of this report.

(4) Impact:

The Berkeley Police Department is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Diversionsary Devices may be utilized in many situations to include potentially dangerous barricaded subject situations, hostage situations, and critical incidents. Some criteria considered prior to a deployment is dependent upon whether the suspect is a dangerous felon, causes a life-threatening situation and/or other unique incidents where it appears to be a reasonable method in which to resolve the situation. When deployed appropriately these devices can assist in safely apprehending suspects and resolving high risk critical incidents with minimal or no injuries to suspects and/or officers.

(5) Mitigations:

Since Diversionsary Devices are considered low explosives, there are several protocols in place to mitigate possible negative results (i.e. minor or major injuries).

Only trained and qualified personnel are permitted to deploy diversionary devices; typically, members of the Special Response Team who receive constant training regarding the deployment, effects, and post deployment protocols.

Pre-deployment concerns are typically gathered and evaluated, such as:

- The number of people at a location and the individual location of suspects within the structure.
- Evaluation if there are children or elderly people present
- An evaluation of the suspect's mental and physical conditioning
- Evaluation of the building/room layout

- Possible combustible/flammable substances present
- Lighting conditions

When a diversionary device is deployed, the officer shall utilize a helmet, hearing protection, eye protection, body armor, and nomex (fire resistive) gloves.

If a diversionary device is used, a supervisor shall be notified, medical treatment/screening is conducted, and a collection of the deflagrated device is completed. Documentation utilizing the device serial number is recorded.

Per Policy 351 - Except in extreme emergencies (i.e., life-threatening situations), flash/sound diversionary devices shall not be used without prior authorization of the incident commander/on-scene supervisor. Whenever diversionary devices are carried by personnel in an actual situation or incident, that fact shall be noted in the after-action report or police report. In the event devices are deployed, the circumstances surrounding their deployment shall be fully described. The Chief of Police or his or her designee shall be responsible for reviewing any deployment of diversionary devices to ensure that policy was followed. Diversionary devices are registered by serial number with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Typically, the police department's purchase of new devices is reported directly (by case-lot serial numbers) to ATF by the device manufacturer via ATF Form 5. The National Firearms Act requires the police department to notify ATF upon the use/expenditure of diversionary devices. A Special Response Team member shall be responsible for submitting written notification to ATF when all devices listed on a single ATF form 5 have been used/expended.

(6) Alternatives:

A possible alternative to a diversionary device (flashbang) is the Tactical Electronic Distraction Device (T.E.D.D.) which emits 2600 lumen light and high pitched 120 decibel sound to disorientate subjects. This could be a good tool as it is not a low explosive however it has its negative aspects as well:

- There is no feeling of atmospheric pressure, limiting the desired momentary physiological effect.
- A suspect could pick up and throw the device at potential victims and at police officers. The currently used diversionary devices are too hot to attempt this.

- In certain circumstances, a suspect could potentially steal the device during an escape.
- The individual cost per unit is approx. \$200 which is much more than a diversionary device
- This device is significantly less effective in disorienting subjects compared to a diversionary device.

(7) Third Party Dependence:

There is no third-party dependence for Diversionary Devices with the exception of communication with ATF of the purchase. Once they are purchased, they are secured within their designated locations where they are stored until they are either used during incidents or training.

Long Range Acoustic Device (LRAD)

(1) Description:

A. Background:

The Long-Range Acoustic Device (LRAD) is a high intensity directional acoustical array for long range, crystal clear notification system. The use of the LRAD is for communications.

B. Quantity:

The Berkeley Police Department possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

C. Capability:

Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

D. Lifespan:

The lifespan for both LRADs is 25 years.

E. Use:

The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

F. How it Works:

The LRADs are essentially a long-range speaker or long-range megaphone and operates as such.

(2) Purpose:

The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

(3) Fiscal Cost:

A. Initial Cost:

The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

B. Cost of Use:

There is no cost associated with each use of the LRADs. The systems run on batteries or can plug into a vehicle.

C. Cost of Potential Adverse Effects:

Adverse effects of improper use of the LRADs are not calculable. It could lead to hearing loss. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

BPD has not incurred any additional cost to date for this equipment.

E. Training Costs:

Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

F. Maintenance and Storage Costs:

There are no maintenance or storage costs for this equipment.

G. Upgrade Costs:

No upgrades exist for this equipment as of this report.

(4) Impact:

The Berkeley Police Department is committed to ensuring the safety of our community. Having the ability to communicate efficiently and effectively in different situations is crucial in providing potentially life-saving information to the public. The LRAD provides BPD personnel the ability to communicate long distances to people that are in a given area, inside structures, or barricaded inside a structure. The LRAD is very effective any situation involving communicating information to large crowds, or entire communities.

(5) Mitigations:

The only potential negative impact of the LRAD's is that they are capable of producing a high pitched "deterrent tone" that is designed to disperse a potential threat. This "deterrent tone" does have the ability to cause hearing damage. BPD Policy 707 strictly prohibits any member of BPD from using the LRAD as a weapon.

Additionally, the LRAD can only be deployed at the direction of a Watch Commander or Incident Commander and may only be used by personnel specifically trained in the use of the LRAD.

(6) **Alternatives:**

BPD is not aware of any other sound speakers that are able to clearly communicate over long distances of up to 1 mile.

(7) **Third Party Dependence:**

To date, BPD has not depended on any third party for the use or maintenance of this equipment.

36" Baton

(1) **Description:**

A. **Background:**

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, resistant to splintering and heat.

B. **Quantity:**

In 2017, BPD purchased 175 polycarbonate 36" batons to replace aging wood batons of the same purpose. Additional polycarbonate batons were purchased over the past four years to ensure all sworn police officers as well as trained reserve police officers are equipped with the 36" baton. BPD possesses approximately 195 - 36" polycarbonate batons. Most of these batons are issued to and maintained by individuals. However, a small amount of these batons is stored in a secure equipment room as spares in case of damage or new personnel issue.

C. **Capabilities:**

The 36" baton is carried in a "baton ring" on an officer's belt just as any other baton. It is used as a safety tool and is a means for officers to defend themselves in certain crowd control or riot situations. Trained officers may employ particular applications of force with their 36" batons when directed by their chain of command. The 36" baton is the desirable baton in a crowd control situation as it is 7" longer than the standard 29" baton. The longer baton creates more distance

between the officer and others, which is critical when dealing with violent or aggressive crowds.

D. Lifespan:

The manufacturer provides a lifetime repair or replacement guarantee.

E. Use:

The 36" baton is a less-lethal force tool and is intended to be used in crowd control situations in close quarters, where officers may defend an attack, or when engaging in physical contact with combative or aggressive crowd members. The 36" baton is only used for crowd situations.

F. How it Works:

There are a number of appropriate blocking or striking techniques an officer may use when force is justified and the decision is made to use the 36" baton to effectively gain control of a person or situation. The use of the baton requires the officer to continually monitor and assess effectiveness of any delivered strikes. The reason this type of force is administered is to stop a person's attack, threat or resistance, with the goal to place them under lawful arrest for their actions.

(2) Purpose:

The 36" baton is a less-lethal tool that may be used when a crowd becomes aggressive, hostile or violent. It is the most effective individual tool of choice when officers are in formation and engaged in crowd control duties.

When officers are deployed to maintain, disperse, or protect others from a violent crowd or civil disobedience, it is imperative that they have an adequate safety zone to protect themselves or others. The 36" baton provides officers additional distance from a potential threat than the standard issue 29" baton.

When the baton is used to strike a subject, kinetic energy transfer occurs. Kinetic energy is the energy of motion. The amount of translational kinetic energy which an object has depends upon two variables: the mass of the object and the speed of the object. The desired effect is for the officer to apply a baton strike with the necessary energy to stop the threat as quickly and safely as possible. By targeting the large muscle areas of the arms or legs with sufficient kinetic energy, motor and sensory nerves can be affected. When the nerves are affected this will create momentary muscle dysfunction or pain, which will allow the officer the ability to gain control of the subject, while minimizing the possibility of long-term injury to the subject.

The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person as outlined in policy 303 and 300.

(3) Fiscal Cost:

A. Initial Cost:

The cost of the Monadnock MP36 2004 36" polycarbonate baton with knurled grip was \$53.00 per baton in September 2017. After tax, \$10,132.94 was spent for the purchase of 175 batons. The department placed an additional order for 20 batons in December 2019. It is anticipated that the cost of the baton will fluctuate a few dollars based on supply and demand over time.

B. Cost of Use:

The only cost associated with use that of ongoing departmental training to ensure officers are proficient in authorized baton techniques.

C. Costs of Potential Adverse Impacts:

Adverse effects from improper use of the 36" baton cannot be anticipated. Improper use could lead to serious bodily injury or death. Additionally, the improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

There is no additional annual or ongoing cost associated with the 36" baton.

E. Training costs:

Training on the applications of the batons are conducted at the police academy. Police Office Standard Training (POST) requires "arrest and control" training every 2 years which includes portions of baton training. This training is conducted in-house by POST certified defensive tactics instructors.

F. Maintenance and Storage Costs:

There are no associated costs to transporting, maintenance, or upgrades.

G. Upgrade Costs:

No upgrades exist for this equipment as of this report.

(4) Impact:

Per Policy 300, "The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. The Department is committed to

accomplishing this mission with respect and minimal reliance of the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force.”

At times, it may become necessary for police officers to use force in crowd control situations to move a crowd, stop violent behavior, overcome resistance or make a lawful arrest. Officers have been trained that they must do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public. When deemed necessary, use of the 36” baton may be used as a tool to strike a person, create a barrier or used in formation in order to move a crowd in a certain direction. The use of the baton may cause discomfort, pain, blunt trauma and has the potential to cause serious injury. Their use is subject to the totality of the circumstances, proper training, department policy, as well as federal and state law.

Officers who use the 36” baton are trained to continuously assess each situation where force is used and only use the force that is reasonably necessary and proportional to respond to the threat or resistance to effectively and safely resolve the incident.

(5) Mitigations:

Per Policy 300, “In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.”

Per Policy 303, “Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device. Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices. When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.”

Every officer who carries a 36” baton has been trained how to properly carry the equipment, it’s intended use, target areas and non-target areas. Large muscle groups such as the upper legs or lower abdomen are approved target areas and areas to be avoided at the groin and head. When a baton strike is directed at an intended target area and the subject moves simultaneously, it is possible for the officer to unintentionally strike a non-target area. Officers are trained to consider the

placement of baton strikes, and to immediately render medical aid to the subject as soon as it is safe to do so.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The alternatives to the 36" crowd control baton are the 29" standard issue baton and collapsible 26" Rapid Containment Baton (RCB). The standard issue baton and RCB are shorter in length and require officers to be closer to the person they are engaging, thereby increasing the risk of injury to the officer and the person. A longer baton provides an officer with more distance which creates a small safety zone and allows the officer time to react and access the situation before making use of force decisions.

(7) **Third Party Dependence:**

There is no requirement for a third-party service provider to issue the 36" crowd control baton. Berkeley Police Department Defensive Tactics Instructors provide in-house training on the proper use of the baton.

Mobile Command Vehicle

(1) **Description:**

A. Background

The Berkeley Police Department owns one Mobile Command Vehicle (MCV). Our MCV is a 2003 Freightliner MT55. This vehicle's most common use is as a commercial delivery vehicle. Our 2003 Freightliner MT55 was converted into a MCV by adding desktop work stations, additional police radios and emergency lighting. The MCV is 30' long and has a gross vehicle weight (GVW) of approximately 23,000 pounds.

B. Quantity:

The Berkeley Police Department owns 1 MCV.

C. Capability:

The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

D. Lifespan:

This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

E. Use:

This vehicle is used as a mobile command post for large scaled events.

F. How it Works:

This vehicle operates and drives like other vehicles.

(2) Purpose:

This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4th of July, critical incidents or natural disasters.

(3) Fiscal Cost:

A. Initial cost:

The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

B. Cost of Use:

The cost of use is the cost of fuel from the City Corporation Yard.

C. Cost of Potential Adverse Effects:

Adverse effects of improper use of the MCV are not calculable, but is the same as improper use of any vehicles. The improper use could result in civil liabilities.

D. Annual and Ongoing Costs:

There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

E. Training Costs:

Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

F. Maintenance and Storage Costs:

There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

G. Upgrade Cost:

The MCV is almost 20 years old and upgrades would involve replacing different parts of the vehicle. This work would be conducted by the City of Berkeley's Corporation Yard. The cost would be staff time plus the cost of any necessary parts.

(4) Impact:

The MCV is used as a command post for any large scaled event. It works as a mobile central location where resources can stage and be deployed from. It provides the police department with on-site command, supplying a control and communications hub that is needed for large community events, or critical incidents such as natural disasters in order to maintain public safety.

(5) Mitigations:

The MCV shall only be operated by trained personnel that have demonstrated proficiency in the operations of this vehicle per Berkeley Police Department Policy 811.

(6) Alternatives:

The MCV is almost 20 years old. Current MCV from other agencies are large mobile homes converted into MCVs.

(7) Third Party Dependence:

All maintenance is completed through the Cities Corp Yard so there is no dependence on a third party.

Barrett Model 99 Rifle

(1) Description:

A. Background:

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 emergency situations where there is a high potential for violence.

B. Quantity:

Berkeley Police Department Special Response Team (SRT) currently possess 1 (one) of these rifles and is not looking to purchase any others.

Currently BPD has approximately 100 Summit Ammunition .50-caliber BNG rounds.

C. Capability:

This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

D. Lifespan:

This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

E. Use:

This rifle is used primarily in emergency situations where a life-threatening situation exists, necessitating a vehicle to be disabled.

F. How it Works:

This is a bolt-action rifle that fires one round at a time and needs to be reloaded by hand after each round. The Barrett Model 99 rifle works similar to all modern bolt-action rifles. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The operator pulls the bolt back, ejecting the spent cartridge. The operator then loads another bullet into the breach, pushes the bolt forward, and closes the chamber, making the rifle ready to fired again.

(2) Purpose:

The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

B. **Cost of Use:**

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

E. **Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition.

F. **Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. **Upgrade Costs:**

Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

(4) Impact:

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The Barrett rifle is a firearm the department would primarily use to stop a vehicle which poses a lethal threat to the public or used to disable a vehicle that presents a threat to the safety of another person(s) by its continued use.

The Barrett rifle is intended as a tool to increase the safety and welfare of community members and officers alike.

The Barrett rifle has minimal or no impact on civil rights or civil liberties as it will only be deployed in very specific situations, by very select members of the SRT. This is not a piece of equipment that is carried by an officer on routine patrol, and is highly unlikely that any members of our community would ever see this equipment due to its very selective use in the most critical of instances.

(5) Mitigations:

Only four BPD members are authorized to utilize this rifle. Authorized members are trained in its use as well as the very specific and limited circumstances where this equipment would be utilized.

(6) Alternatives:

There is no other alternative tool or asset available that could accomplish the same goal of this rifle. An alternative rifle to the Barrett model 99 is a different rifle of equal capability, such as a Lapua .338 caliber rifle.

(7) Third Party Dependence:

These rifles are simple in their design and operation. They do require regular maintenance which is performed by an SRT Team Leader. If an issue arises which is beyond the scope of our Armorers we would seek manufacturer assistance. However, the need for this is expected to be very rare.

Appendix:

Applicable Lexipol Policies Respective to Each Equipment

Policies are hyperlinked to the Berkeley Police Department Lexipol policy website.

M4 rifle/Patrol Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 349 \(Tactical Rifle Operator Program\)](#)

Penn Arms 40MM launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

Milkor LTL multi-launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

FN 303 Launcher & FN Pava rounds

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

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 \(Precision Rifle\)](#)

ReconRobotics Recon Scout XT Robots & Andros Remotec HD-1 Hazardous Duty Robot

- [Policy 708 \(Robot Cameras\)](#)

Light/Sound Diversionary Device

- [Policy 353 \(Diversionary Device\)](#)

Long Range Acoustic Device

- Policy 707 (Long Range Acoustical Device)

36" batons

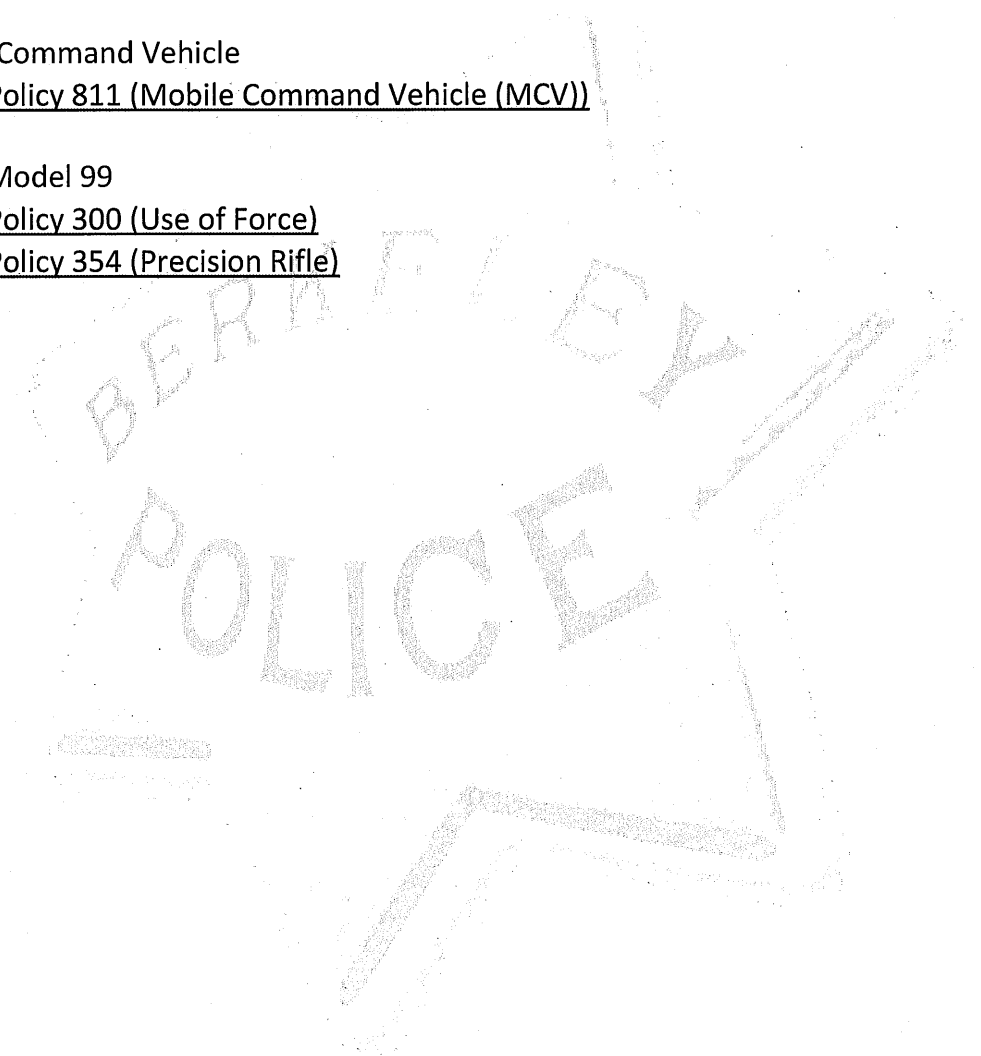
- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)
- Policy 428 (First Amendment Assemblies)

Mobile Command Vehicle

- Policy 811 (Mobile Command Vehicle (MCV))

Barret Model 99

- Policy 300 (Use of Force)
- Policy 354 (Precision Rifle)



First Amendment Assemblies

428.1 PURPOSE

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

428.2 MISSION STATEMENT

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

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

428.3 POLICY

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

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

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

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

428.4 USE OF FORCE

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

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

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

Personnel deployments during demonstrations should include clear and specific objectives.

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

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

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

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

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

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

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

428.5 USE OF VEHICLES

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

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

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

428.6 DEFINITIONS

Control Hold: Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.).

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

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

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

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

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

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

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

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

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

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

Passive Resistance: When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way (i.e., a person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.)

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

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

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

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

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

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

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

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

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

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

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

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

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

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

428.7 PLANNED EVENTS

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

428.8 SPONTANEOUS EVENTS

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

428.9 GENERAL EVENT PROCEDURES

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

428.10 DISPERSAL ORDERS

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

428.11 MASS ARRESTS

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

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

428.12 MUTUAL AID

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

Berkeley Police Department

Law Enforcement Services Manual

First Amendment Assemblies

428.13 MEDIA ACCESS

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

428.14 POST-EVENT

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

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

428.15 TRAINING

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

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

Military Equipment

709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The Berkeley City Council.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

709.2 POLICY

It is the policy of the Berkeley Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

709.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Berkeley Police Department (Government Code § 7071).
- (e) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).

709.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM Single Launcher
- Milkor LTL Multi-Launcher
- FN 303 Launcher & FN Pava Impact Projectile
- Oleoresin Capsicum Spray
- Chlorobenzylidene Malononitrile and Oleoresin capsicum
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/Sound Diversionary Device
- Long Range Acoustic Device
- Mobile Command Vehicle
- Barret Model 99

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

709.4.1 BERKELEY POLICE DEPARTMENT'S INVENTORY

Rifles and Associated Ammunitions

Rifle:

M4 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Colt M-4 patterned rifle, which fires the .223 Remington cartridge

Quantity: The Berkeley Department currently owns and maintains 96 rifles

Capabilities: The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

Lifespan: Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Manufacturer's Description: This specially designed law enforcement weapon system features many of the combat proven advantages of the military Colt M4. With the 4-position buttstock fully retracted, the Colt Law Enforcement Carbine is less than 32in length and weighs only 6.9 lb - ideal for tactical deployment and traditional patrol.

PURPOSE and AUTHORIZED USE:

Purpose: The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: Exact costs unknown. Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

Annual cost: Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

Training costs: Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

Maintenance costs: Vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Remington 700 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Remington 700 rifle, which fires the .308 caliber ammunition.

Quantity: The Berkeley Department currently owns and maintains 6 rifles

Capabilities: The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

Lifespan: The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

Manufacturer's Description: The Model 700 SPS Tactical is a highly maneuverable member of the family. It's built for tack-driving accuracy with a 20" heavy-contour tactical-style barrel and dual-point pillar bedding in its black synthetic stock. Hogue® overmoldings on the stock facilitate sure handling, and it has a semi-beavertail fore-end for added stability off a rest.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

Annual cost: If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

Maintenance costs: Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force, Policy 354-Precision Rifle. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Barret Model 99 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle

Quantity: The Berkeley Department currently owns and maintains 1 rifle.

Capabilities: This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

Lifespan: This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

Manufacturer's Description: The Model 99 brings new levels of long-range precision shooting. Known as much for its dependability as its versatility, the Model 99 has unfailing accuracy you can rely on.

PURPOSE and AUTHORIZED USE:

Purpose: The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Annual cost: The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

RIFLE AMMUNITION:

.223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. (Use in the Colt M4 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type:.223 Remington ammunition: 55 grain FMJ (full metal jacket)

.223 Remington ammunition 62 grain soft point for duty purposes

Quantity: Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

Capabilities: The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Product Description:

.223 Remington ammunition: 55 grain FMJ (full metal jacket)

Make sure you hit your target with the Winchester USA .223 Rem 55-Grain Full Metal Jacket Ammunition. The full metal jacket ammunition features a 55 grain weight and includes 200 rounds. The caliber is .223 Rem, and the ammunition is made in the USA.

.223 Remington ammunition 62 grain soft point

Federal TRU 223 ammo is custom made ammunition for the Urban Law Enforcement Officer in mind. It features a lead core Hi Shock Soft Point bullet which offers great stopping power and excellent penetration, a non corrosive primer and brand new never fired brass casing and nickel plated brass primer. This LE Tactical ammo can be reloaded up to 5 times for those shooters that reload their 223 ammo. Federal LE 223 Remington has a muzzle velocity of 3050 feet per second and a muzzle energy of 1281 ft lbs. This 223 Federal ammo is new production packaged in 20 round boxes and 200 rounds per case. Federal TRU ammunition is engineered using Mil-Quality specifications. Each Federal TRU cartridge is made using select mil-quality low flash powders that do not disrupt an officer's night vision. The TRU case and web are built using thicker brass, adding the extra strength needed for the high powered rifle. TRU primers are crimped for added holding ability. This virtually eliminates backed out primers that can lock-up your weapon. With TRU ammunition, potentially disastrous situations are greatly reduced. TRU bullets are specifically engineered ranging from fragmenting designs for tactical entry to deeper penetrating bullets for patrol.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of incapacitating an individual from a distance and providing greater accuracy at a distance. This ammunition is used in the M4 rifle.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Initial Cost: Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

Annual cost: The annual cost of the equipment is minimal, and is dependent on the amount of training.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Hornady .308-caliber ammunition (for the Remington 700 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Hornady .308-caliber ammunition

Quantity: The Berkeley Department currently possess approximately 1800 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of incapacitating an individual or disabling an object in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation. This ammunition is specifically designed for accuracy at distances of 500 yards.

Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Manufacturer's Description: Millions of successful hunts have proven the accuracy and deadly effect of the famous Hornady® InterLock®, SST®, InterBond® and CX™ bullets we load into Hornady® Custom™ rifle ammunition.

Every round of Hornady® Custom™ ammunition is hand inspected before packaging to ensure the highest levels of quality control. At Hornady®, we manufacture Custom™ ammunition to give shooters and hunters the advantage of handloaded accuracy in a factory load.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of incapacitating an individual from a distance of 500 yards and providing greater accuracy at a distance. This ammunition is used in the Remington 700 rifle.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost: The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$1 dollars per bullet; \$20 for a box of 20, plus shipping and handling. We currently possess 1800 rounds of BMG ammunition, \$1800.

Annual cost: The annual cost of the equipment is minimal, and is dependent on the amount of training.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Summit Ammunition.50-caliber BNG rounds of ammunition (for the Barrett Model 99)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Summit Ammunition.50-caliber BNG rounds of ammunition

Quantity: The Berkeley Department currently possess approximately 100 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Lifespan: Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Manufacturer's Description: This is 50 Cal. BMG Summit Ammunition 700gr. M-2 Armor Piercing Ammo. Summit Ammunition has been manufacturing 50 Cal. BMG for over 10 years and they manufacture a premium quality product. They are a fully licensed and insured manufacturer. This ammo is loaded with NEW Winchester brass, New USGI powder and Pulled Lake City M-2 AP bullets.

PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

FISCAL IMPACT:

Initial Cost:

Annual cost: The annual cost of the equipment is minimal.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

TRAINING:

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

ROBOTS:

ReconRobotics Recon Scout XT (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: ReconRobotics Recon Scout XT

Quantity: The Berkeley Department currently owns and maintains 2.

Capabilities: The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

Lifespan: Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

Manufacturer's Description: The Recon Scout XT is just eight inches long and weighs just 1.3 lbs., making it extremely easy to carry and throw. Moreover, deploying the Recon Scout XT takes just 5 seconds, and using it requires no special training. Simply pull the activation pin and throw the device through a doorway or over a wall, or drop it down a vertical shaft using a tether. Using a single joystick on the operator control unit (OCU), a tactical team leader or warfighter can then direct the device to move through the environment and send back real-time video. Equipped with an infrared optical system that automatically turns on when the ambient light is low, the Recon Scout XT can transmit video up to 100 feet indoors and 300 feet outdoors, day or night. The Recon Scout XT may also be specified in any of three transmitting frequencies, allowing police and military personnel to operate up to three robots in the same environment at the same time.

PURPOSE and AUTHORIZED USE:

Purpose: The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

Authorized Uses: The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

FISCAL IMPACT:

Initial Cost: The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Annual cost: There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

Training costs: The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

Maintenance costs: There are no annual or storage costs.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 708 Robot Cameras.

TRAINING:

Andros Remotec HD-1 Hazardous Duty Robot (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Andros Remotec HD-1 Hazardous Duty Robot

Quantity: The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

Capabilities: Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- (a) A spike to break glass and access vehicles or homes with potential explosive devices inside
- (b) An X-ray mount in order to remotely X-ray suspected explosive devices.
- (c) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- (d) A hook with cutting blades that are used to cut backpack straps, ropes, etc.

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

- (e) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- (f) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

Lifespan: The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

Manufacturer's Description: The Remotec ANDROS fleet of hazardous duty unmanned vehicles is the preferred choice of first responders worldwide. The robust, mission-proven design of the ANDROS line keeps danger at a distance with:

- Simultaneous tool mounts for rapid response during dynamic missions (i.e. suits changing needs as the mission unfolds)
- A versatile array of two-way audio, video, advanced sensors, tools and controllers
- Easy maintainability for minimal downtime

Made in the USA and backed by world-class training and post-sale support, it's no wonder there are over 1,000 ANDROS robots deployed around the globe.

PURPOSE and AUTHORIZED USE:

Purpose: The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

Authorized Uses: Used to examine and possible destroy hazardous materials such as an explosive device.

FISCAL IMPACT:

Initial Cost: Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

Annual cost: There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

Training costs: Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

Maintenance costs: Remotec offers occasional maintenance and upkeep workshops free of charge.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 708 Robot Cameras.

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

TRAINING:

Less Lethal Launchers:

Penn Arms 40mm Single Launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Penn Arms 40mm Single Launcher

Quantity: The Berkeley Department currently owns and maintains 20.

Capabilities: The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: A 40mm compact single-shot break-open frame launcher with a rifled barrel and folding stock. Features include: Double-action trigger, trigger lock push button and hammer lock safeties.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

Milkor LTL Multi-launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Milkor LTL Multi-launcher

Quantity: The Berkeley Department currently owns and maintains 2.

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Capabilities: The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

Manufacturer's Description: Developed with our partner company, Abrams Airborne Manufacturing, The 40mm Multi-Shot Less-Lethal Tactical Launcher (LTL) was manufactured with the needs of the modern tactical team at the forefront. The launcher is capable of firing a wide variety of 40mm LTL ammo.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

FN 303 and FN Pava Impact Projectile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: FN 303 and FN Pava Impact Projectile

Quantity: The Berkeley Department currently owns and maintains 8 FN 303 less lethal launchers.

Capabilities: The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

Lifespan: The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: The FN 303® Less Lethal Launcher is constructed from durable lightweight polymer with comfortable ergonomics and an easy to operate safety. The FN 303® Launcher is equipped with both flip-up iron sights and an integrated MIL-STD-1913 top mounting rail for optical or electronic sights or other accessories. The lightweight polymer

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

magazine holds 15 projectiles and offers a clear rear cover to allow the operator to instantly verify both the payload type and the number of projectiles remaining.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

Annual cost: Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs: Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

Light/sound Diversionary Devices:

CTS 7290 Diversionary Device (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: CTS 7290 Diversionary Device

Quantity: The Berkeley Department currently owns and maintains 50.

Capabilities: When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

Lifespan: The lifespan of the CTS 7290 Diversionary Device is 5 years.

Manufacturer's Description: The CTS 7290 is the standard for diversionary flash-bang devices. The 7290 produces a 165-180 db and 6-8 million candela of light output. The patented design of the 7290, incorporates a porting system that eliminates movement of the body at detonation even if the top or bottom of the device should be in contact with a hard surface. In addition, internal adjustments have greatly reduced smoke output.

Flash Bangs are used by special tactical units during hostage rescue and high-risk warrants. It is an ATF-controlled Class-C explosive device that emits a bright light and thunderous noise to distract potentially dangerous individuals.

PURPOSE and AUTHORIZED USE:

Purpose: The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

Authorized Uses: The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

FISCAL IMPACT:

Initial Cost: Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

Annual cost: See below training cost.

Training costs: Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

Maintenance costs: The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 353 Diversionary Devices.

TRAINING:

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices.

Long Range Acoustic Device

The Long-Range Acoustic Device (LRAD)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: The Long Range Acoustic Device (LRAD)

Quantity: The Berkeley Department currently owns and maintains possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

Capabilities: Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

Lifespan: The lifespan for both LRADs is 25 years.

Manufacturer's Description: LRAD 100x In addition to being 20 – 30 decibels louder than bullhorns and vehicle-based P.A. systems, the LRAD 100X is also up to 6X louder and much more intelligible than other hailing devices of comparable size and weight. Live or recorded broadcasts from the portable LRAD 100X easily overcome engines, sirens and noisy crowds to ensure every message is heard and understood. The LRAD warning tone safely alerts attention to the voice messages that follow, establishes large standoff zones, and is the safer crowd control alternative to non-lethal and kinetic measures.

LRAD 450XL- The LRAD 450XL utilizes technology developed and patented* by Genasys Inc. to provide the audio output of larger acoustic hailers almost twice its size and weight, while delivering the same outstanding vocal clarity inherent in all LRAD systems. The LRAD 450XL broadcasts powerful warning tones to command attention to the highly intelligible voice messages that follow, enabling operators to change behavior and enhance response capabilities with safe, scalable escalation of force. Lightweight and designed for use on tripods or mounted on vessels, vehicles, and Remote Weapon Stations (RWS), the LRAD 450XL is a highly effective, long range communication system in use around the world for public safety, law enforcement, maritime and defense applications.

PURPOSE and AUTHORIZED USE:

Purpose: The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

Authorized Uses: The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

FISCAL IMPACT:

Initial Cost: The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

Annual cost: BPD has not incurred any additional cost to date for this equipment.

Training costs: Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

Maintenance costs: costs for this equipment.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 707 Long Range Acoustic Device.

TRAINING:

Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD.

Mobile Command Vehicle

Mobile Command Vehicle (MCV)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: MCV is a 2003 Freightliner MT55

Quantity: The Berkeley Department currently owns and maintains 1.

Capabilities: The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

Lifespan: This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

Manufacturer's Description: The 22' Freightliner MT55 P1200 is the biggest stepvan option for your delivery fleet, offering maximum capacity, accessibility and maneuverability. Built with a powerful Cummins 6.7L 200HP Diesel Motor, this route truck has folding lower shelves to optimize your cargo space and rear sonar for safety.

PURPOSE and AUTHORIZED USE:

Purpose: This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4th of July, critical incidents or natural disasters.

Authorized Uses: This vehicle is used as a mobile command post for large scaled events.

FISCAL IMPACT:

Initial Cost: The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

Annual cost: There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

Training costs: Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

Maintenance costs: There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 811 Mobile Command Vehicle.

TRAINING:

Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle.

Chlorobenzylidene Malononitrile and Oleoresin Capsicum

Chlorobenzylidene Malononitrile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Chlorobenzylidene malononitrile (CS)

Quantity: The Berkeley Department currently owns and maintains Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Capabilities: CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

Lifespan: CS and OC canisters expire in approximately 5 years.

Manufacturer's Description: Unable to locate from the manufacture, provided by the subject matter experts. 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.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

FISCAL IMPACT:

Initial Cost: The cost for CS canisters ranges from \$20.00 to \$39.00 per unit.

Annual cost: See below cost of training.

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Training costs: When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Training is conducted by Peace Officer Standards and Training (POST) certified Berkeley Police chemical agent training officer.

Oleoresin Capsicum (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Oleoresin capsicum (OC)

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

Capabilities: A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters ca

Lifespan: CS and OC canisters expire in approximately 5 years.

Manufacturer's Description: Unable to locate from the manufacture, provided by BPD subject matter experts. Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public.

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

OC 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.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

FISCAL IMPACT:

Initial Cost: The cost for OC canisters ranges from \$36.00 to \$44.00 per unit.

Annual cost: See below cost of training.

Training costs: When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Training is conducted by a Peace Officer Standards and Training (POST) certified Berkeley Police chemical agent training officer.

Oleoresin Capsicum Spray (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Oleoresin capsicum (OC) spray

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Capabilities: The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

Lifespan: Aerosol products eventually lose pressure over time. The lifespan the MK-9 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

Manufacturer's Description: The MK-4 is an ideal size for patrol officers to wear on a duty belt and will deliver 11-12 short bursts of OC at an effective range of 10-12 feet(18-20 for the MK9). This 1.3/% MC OC aerosol product features a 360-degree stream deliver method which allows the aerosol projector to disperse OC from any angle while providing a target specific, strong concentrated stream for greater standoff.

PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

FISCAL IMPACT:

Initial Cost: The MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

Annual cost: See below cost of training.

Training costs: Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

LEGAL AND PROCEDURAL RULES:

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

TRAINING:

Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer.

709.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military 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 military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) 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 military equipment.
- (g) Acquiring military equipment through any means not provided above.

709.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

709.6.1 TEMPORARY USE IN EXIGENT CIRCUMSTANCES

The Berkeley Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the requirements in BMC 2.100.040, however the Department must take the following actions:

- (a) Provide written notice of the acquisitions 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

Berkeley Police Department

Law Enforcement Services Manual

Military Equipment

- (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 received approval, as applicable from the City Council pursuant to BMC 2.100.040
- (c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

709.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

709.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

709.9 MILITARY EQUIPMENT QUESTIONS

Any member of the public may direct their questions regarding this policy and ordinance to a Sergeant in the Professional Standards Bureau at 510-981-5734 or 510-981-5974. Concerns may also be directed to police@cityofberkeley.info. Questions will be answered in a timely manner by a member of the Berkeley Police Department.

709.9.1 MILITARY EQUIPMENT CONCERNS

Any member of the public may direct their concerns regarding this policy and any of the military equipment to Internal Affairs Bureau at 510-981-5706.

709.10 ASSOCIATED EQUIPMENT USE POLICIES

The below links will direct to the respective use policies:

300-Use of Force

303-Control Devices and Techniques

349-Tactical Rifle Operator Program

353-Flash/Sound Diversionary Devices

Berkeley Police Department
Law Enforcement Services Manual

Military Equipment

354-Precision Rifle Operator Program

428-First Amendment Assemblies

707-Long Range Acoustical Device (LRAD)

708-Robot Cameras

811-Mobile Communications Vehicle (MCV)

709.11 COMPLIANCE

The Department's Audit and Inspection Sergeant will ensure that the Department members comply with this policy. The Audit and Inspection Sergeant will conduct an annual audit with the assistance from members of the Professional Standards Bureau. Any violations will be referred to the Internal Affairs Bureau and handled in accordance with General Order P-26 (Personnel Compliant Procedures). All instances of non-compliance will be reported to the City Council via the annual military equipment report.

To: Berkeley Police Accountability Board Subcommittee on Military Equipment
From: John Lindsay-Poland, American Friends Service Committee
Re: Proposals for amended / additional language to proposed Impact Statement and Policy 709 on Military and Controlled Equipment
May 22, 2022

Contents

- 1. Use of CS gas and OC canisters (tear gas)**
- 2. Use of Impact projectiles and launchers**
- 3. Applying Berkeley's policies to outside law enforcement agencies**
- 4. Deployments of assault rifles and sniper rifles**
- 5. Use of .50 Caliber Barrett rifle**

1. Use of CS gas and OC canisters (tear gas)

- Reference: Impact Statement pp 27-32.
- Reference: Policy 709, p. 24-27
- The proposed Impact Statement would authorize the use of CS gas and OC canisters (p. 29) for “crowd control” and “crowd dispersal”.
- Policy 709 also would authorize the use of CS gas (p. 25) and OC canisters (p. 27) for “crowd control” and “crowd dispersal”. The proposal refers to OC canisters (not the handheld pepper spray carried on individual officers’ belts) as “tear gas” (p. 27).
- Both the proposed Impact Statement and Policy 709 refer to Policy 303 (“Control Devices and Techniques”). Policy 303 also explicitly authorizes CS gas for “crowd control” and “crowd dispersal” (at 303.6).
- Neither proposal nor Policy 303 references the language of AB 48 (Penal Code § 13652).
- Neither proposal nor Policy 303 reference Berkeley’s prohibition on the use of “tear gas” by BPD or any “outside department or agency called to respond to mutual aid in Berkeley”, enacted in June 2020 by the City Council. (see p. 5 of June 9, 2020 Council minutes)

Berkeley’s prohibition on the use of tear gas and other chemical agents is a City Council action of June 9, 2020, which reads in the City Council minutes as follows:

Action: M/S/Carried (Davila/Harrison) to establish an official City of Berkeley policy 1) prohibiting the use of tear gas by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, and 2) prohibiting the use of pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. Vote: All Ayes.

<https://records.cityofberkeley.info/PublicAccess/paFiles/cqFiles/index.html> enter: 6/09/2020
CLK: Minutes; City Council; SPECIAL

According to BPD's military equipment use report, within the last year the Department honored the tear gas ban and did not deploy either OC canisters or CS gas at all.

Proposal on Tear Gas

Impact statement, p. 29: Replace the section on "Use" for CS gas and OC canisters ((1)E), with the statement:

"Tear gas, including CS gas and OC canisters, is not authorized for use by the Berkeley Police Department or by any outside department or agency called to respond to mutual aid in Berkeley. Berkeley Police Department will phase out its possession of CS gas and OC canisters within three months."

Policy 709, CS gas, p. 25: Replace the section on "Purpose and Authorized Uses" for CS gas, with the statement:

"CS gas is not authorized for use by the Berkeley Police Department or by any outside department or agency called to respond to mutual aid in Berkeley. Berkeley Police Department will phase out its possession of CS gas within three months."

Policy 709, OC canisters, p. 27: Replace the section on "Purpose and Authorized Uses" for OC canisters, with the statement:

"OC canisters are not authorized for use by the Berkeley Police Department or by any outside department or agency called to respond to mutual aid in Berkeley. Berkeley Police Department will phase out its possession of OC canisters within three months."

2. Use of Impact projectiles and launchers

- Penn Arms 40mm Single Launcher (Impact Statement, pp. 8-13; Policy 709, pp. 15-16)
- Milkor LTL Multi-Launcher (Impact statement, pp. 13-18; Policy 709, pp. 16-18)
- FN 303 Launcher and FN Pava Impact Projectile (Impact Statement, pp. 19-24; Policy 709 pp. 18-20)

References: AB 48 (Penal Code § 13652)

AB 48 significant limits the legal authorized use of kinetic impact projectiles – "sponge rounds", "baton rounds", and other "less lethal" impact rounds – for crowd control. Use is only permitted "to defend against a threat to life or serious bodily injury" and only after officers have attempted objectively reasonable de-escalation techniques, given multiple audible warnings of use, given opportunity for dispersal. Officers may not fire indiscriminately into a crowd but must distinguish between those using violence and those who are not. The statute also states that law enforcement shall not use these weapons solely to enforce a directive or curfew or in response to a verbal threat; that prohibition arguably applies regardless of whether there is a crowd.

As with chemical agents, although the proposed Impact Statement, Policy 709, and Policy 303 don't directly reference crowd control as an authorized use, neither do they incorporate the language of AB 48 or its limitations on the use of less lethal impact munitions.

Proposal on impact projectiles

The Impact Statement and Policy 709 will incorporate the language of Penal Code § 13652, by referencing that language directly. These changes should also be incorporated into Policy 303.

Impact statement: In the impact statement for each of the three types of impact projectile equipment:

Penn Arms 40mm launcher, p. 9

Milkor LTL Multi-Launcher, p. 14

FN 303 Launcher and FN Pava Impact Projectile, p. 19

In the sections on “Use”, replace the text or add the following (edited from the statute to remove reference to chemical agents, already governed by Berkeley’s prohibition):

Kinetic energy projectiles agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

1. De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
2. Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
3. Persons are given an objectively reasonable opportunity to disperse and leave the scene.
4. An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
5. Kinetic energy projectiles are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
6. Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles on bystanders, medical personnel, journalists, or other unintended targets.
7. An objectively reasonable effort has been made to extract individuals in distress.
8. Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
9. Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
10. Kinetic energy projectiles shall not be used by any law enforcement agency solely due to any of the following:
 - a. A violation of an imposed curfew.
 - b. A verbal threat.
 - c. Noncompliance with a law enforcement directive.

Policy 709: In Policy 709, for each of the three types of impact projectile equipment:

Penn Arms 40mm launcher, p. 16

Milkor LTL Multi-Launcher, p. 17

FN 303 Launcher and FN Pava Impact Projectile, p. 19

In the sections on “Authorized Uses”, replace the text or add the following (edited from the statute to remove reference to chemical agents, already governed by Berkeley’s prohibition):

Kinetic energy projectiles agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

11. De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
12. Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
13. Persons are given an objectively reasonable opportunity to disperse and leave the scene.
14. An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
15. Kinetic energy projectiles are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
16. Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles on bystanders, medical personnel, journalists, or other unintended targets.
17. An objectively reasonable effort has been made to extract individuals in distress.
18. Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
19. Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
20. Kinetic energy projectiles shall not be used by any law enforcement agency solely due to any of the following:
 - d. A violation of an imposed curfew.
 - e. A verbal threat.
 - f. Noncompliance with a law enforcement directive.

3. Berkeley's policies must apply to outside agencies invited into Berkeley.

Many law enforcement agencies have proposed – and governing bodies have adopted – policies to ensure local policies govern the use of any military equipment in their communities. The proposed policy of Long Beach PD on says:

COORDINATION WITH OTHER LAW ENFORCEMENT AGENCIES

Military equipment used by any employee of this Department shall be approved for use and in accordance with this Department policy. Military equipment used by other jurisdictions that are providing mutual aid to this Department shall comply with the policies of the LBPD.

We recommend BPD adopt the Long Beach language for its policy.

Hayward PD, Alameda PD, Emeryville PD, El Cerrito PD, Santa Cruz PD, Santa Clara PD, and Fresno County Sheriff's Office, among others, have proposed a similar Lexipol-approved policy: "Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy."

4. Use of assault rifles (patrol and sniper rifles)

References:

Colt M4 (patrol rifle): Impact statement, pp. 3-8; Policy 709, pp. 3-4

Remington 700 (sniper rifle): Impact statement, pp. 32-35; Policy 709, pp. 4-6

We recognize that Department officers view rifles as a means to protect life. At the same time, the display of assault rifles has a chilling and fear-inducing effect on community members. That is why authorized uses – deployments or displays – of rifles should clearly and carefully defined.

Existing and proposed BPD policies for *deploying* assault rifles are general and as a whole, have much more specificity and clarity on the authorization to *fire* the weapon than for authorization to *deploy* or *display* the weapon. Guidelines for *firing* the weapon are extensively detailed in Policy 300. However, AB 481 and – to a lesser extent – Berkeley’s controlled equipment ordinance require policies for *use* of equipment more broadly than for *use of force*.

Current policy for deployment of assault rifles is contained in Policies 349 (patrol rifles) and 354 (sniper rifles), as well as in Policy 300 on Use of Force.

Policy 349 focuses most attention on selection of rifle operators and the rifles themselves. Policy is that assault rifles are to “exercise expeditious control over critical incidents or potentially violent situations.” (Section 349.2, Policy Manual p. 235) The guidance on authorized use is: “In light of known or potential risks, a TRO should deploy the firearm which best meets the needs of the police response, and in which he/she has the greatest accuracy and operational confidence.” (Section 349.6, Policy Manual p. 236).

We propose that this policy describe prohibited uses that are not appropriate, as well as considerations to take into account for pre-planned operations (typically by the SRT). For this, we reference the Oakland PD patrol rifle policy and armored vehicles policy.

Proposed language on uses of patrol rifles:

- In Policy 709, p. 3, add the following to the “Authorized Uses” section:
- In Impact statement, p. 5 (M4 patrol rifle) and p. 34 (Remington 700 sniper rifle), add the following to the “Uses” sections:

“Commanders shall only authorize the deployment of patrol rifles or sniper rifles when the specific capabilities of the rifles are necessary to bring an incident to a safe conclusion. Any authorized departure of a rifle from its place of storage, excluding movement of the rifles at the start or end of a shift, shall be considered a deployment.

All uses that are not authorized by this policy are prohibited. For purposes of clarity, the following are specifically noted as prohibited uses:

- Recruitment, public relations, or promotional activities
- Crowd control
- Display during routine patrol operations

Pre-planned deployments of patrol rifles and sniper rifles

Commanders shall determine whether to deploy patrol rifles based on credible intelligence, and consider the following variables when determining whether to deploy patrol rifle and sniper rifles:

- Whether the use of an alternative operation location would diminish the need to use a patrol rifle or sniper rifle.
- Whether the subject is beyond the effective range of Departmental pistols or shotguns.
- Whether the subject is known to wear or is suspected of wearing body armor.
- Potential presence of minors, elderly, medically compromised, people with physical, mental or intellectual disabilities, people with limited English proficiency, or other vulnerable people. (Note: This variable should be given special consideration due to the potential for trauma.)
- Potential presence of uninvolved persons. (Note: This variable should be given special consideration due to the potential for trauma.)
- Potential traumatic effect of the presence of assault rifles on neighbors and other bystanders.
- Lack of knowledge on relevant characteristics of the operation location and persons present.
- Reliability of intelligence source for information on the operation location and persons present.
- For night-time operations, potential effects on sleeping or just-awakened persons.
- Whether the subject is known to possess or is suspected of possessing a deadly weapon or firearm (including caliber and type)
- Potential skills of persons present to use firearms or other weapons, including experience in law enforcement, military, or other armed groups.
- Whether the targeted person(s) have a history (within a time period relevant to the suspected crime) involving the criminal use of firearms or other weapons.”

5. .50 Caliber Barrett rifle

(pp. 54-57 of Impact Statement; pp. 6-7 of Policy 709): BPD should get rid of this weapon from its inventory, as it is not appropriate for civilian law enforcement. Barrett .50 caliber rifles are very large sniper rifles that typically require a tripod or other mounting device. BPD recognizes that it is “infrequently” used. BPD says it is for “disabling an engine block.” BPD acquired this weapon from Dept of Justice 15 years ago, and many other departments of BPD’s size and larger do not have this weapon. Last week Supervisor Nate Miley spoke out against the Alameda County Sheriff’s Office possession of this type of weapon. The Berkeley use report says this weapon was not deployed at all in the last year. The staff time required to train on this weapon is not a good use of City resources.

Proposal on .50 caliber Barrett rifle

Policy 709, Barrett rifle, p. 6: Replace the section on “Authorized Uses” with the statement:

“The Barrett rifle is not authorized for use by the Berkeley Police Department or by any outside department or agency called to respond to mutual aid in Berkeley. Berkeley Police Department will dispose of its Barrett rifle within three months.”

Impact statement, Barrett rifle, p. 55: Replace the section on “Use” ((1)E), with the statement:
“The Barrett rifle is not authorized for use by the Berkeley Police Department or by any outside department or agency called to respond to mutual aid in Berkeley. Berkeley Police Department will dispose of its Barrett rifle within three months.”



**DEPARTMENTAL
GENERAL
ORDER**

**Effective Date:
6 Oct 08**

K-6

**Evaluation Coordinator:
Patrol Rifle Program Coordinator**

Index as:

**Evaluation Due Date:
6 Apr 09**

Patrol Rifle Program

**Automatic Revision Cycle:
3 Years**

PATROL RIFLE PROGRAM

The purpose of this order is to set forth Department policy and procedures regarding the Patrol Rifle Program (PRP), to regulate the use of the Department's patrol rifle, establish selection and certification procedures, and establish training protocols.

Recognizing that officers are not normally equipped to safely address threats from persons wearing body armor and/or who are at distances beyond the effective range of standard issue police pistols and shotguns, the PRP has been implemented to address such threats and enhance police officer and public safety.

I. DEFINITIONS

A. Patrol Rifle

1. The Departmental patrol rifle shall be an AR-15 Semi-Automatic Carbine, utilizing .223 caliber/5.56 mm ammunition.¹
2. Modifications to the patrol rifle are not authorized unless approved by the Patrol Rifle Program Coordinator and shall only be completed by a Department certified AR-15 armorer.

B. Patrol Rifle Officer (PRO)

A police officer shall be designated as a certified PRO when he/she has:

1. Successfully completed the selection and training process described in this order;

¹ Entry and Sniper Team members utilizing Department issued or privately owned AR-15 carbines are not subject to this order.

2. **Been issued a patrol rifle; and**
3. **Is current on all training and qualification standards set by the Patrol Rifle Program Coordinator.**

C. Patrol Rifle Program Coordinator (PRPC)

A member selected by the Bureau of Field Operations (BFO) Deputy Chief to coordinate and oversee the Patrol Rifle Program.

II. POLICY

- A. **Only members certified as PROs shall be authorized to deploy Departmental patrol rifles.**
- B. **Discharge of the patrol rifle shall be in accordance with the provisions of Departmental General Order K-3, USE OF FORCE.**
- C. **Discharge of the patrol rifle shall be reported in accordance with the provisions of Departmental General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE.**
- D. **To ensure that members of the PRP maintain skill levels required by the Department, PRP members shall successfully complete an initial Departmental training course and additional training as determined by the PRPC.**

III. ORGANIZATION

The PRP is designed to regulate the use of the patrol rifle, train PROs, and provide the Department with an additional tool to enhance officer and public safety. The PRP is not an organizational unit. PRP members are primarily assigned to the Patrol Division to ensure appropriate coverage of the City and shall report to their assigned supervisors within their normal chain-of-command.

IV. RESPONSIBILITIES OF THE PRPC AND RANGE MASTER

- A. **The PRPC shall report directly to the BFO Deputy Chief regarding all matters concerning the Patrol Rifle Program. The PRPC shall have the following responsibilities:**
 1. **Coordinate the selection process of all PROs;**

2. Coordinate all PRO training; and
3. Distribute and maintain Patrol Rifle Logs.

B. The Range Master shall ensure the following provisions are met:

1. Issue and recover patrol rifles as necessary, and document the required information on a Departmental Equipment Control Card (TF 536-804).
2. Ensure maintenance of the patrol rifle, beyond operator level maintenance and cleaning, is performed by a certified Department AR-15 armorer.
3. Maintain replacement parts for the patrol rifle.

V. PATROL RIFLE PROGRAM COORDINATOR SELECTION

The PRPC shall be a member selected by the BFO Deputy Chief who meets the following criteria:

- A. Has successfully completed a POST certified Firearm Instructor School.
- B. Has successfully completed a manufacturer's or equivalent AR-15 armorer course.
- C. Meets the criteria established in Part VI, D of this order.

VI. PATROL RIFLE OFFICER SELECTION

- A. Officers requesting assignment as a PRO shall submit a memorandum through channels to the PRPC.
- B. The PRPC shall maintain submitted requests for use in the selection process.
- C. Responsibilities of requesting officer's supervisor:
 1. Supervisors reviewing PRO assignment request memoranda shall endorse the request based on the criteria set forth in Part VI, D of this order.

2. Supervisors shall submit the memorandum for review and endorsement through the chain-of-command to the PRPC.

D. All prospective PRO candidates shall meet the following minimum qualification criteria:

1. Full-time member (non-probationary), in a field-based uniformed assignment (excluding Canine Officers and Police Evidence Technicians), with a minimum of one (1) year of patrol duty experience, unless specifically exempted from this requirement by the BFO Deputy Chief;
2. Exhibit the ability to work independently and with minimal supervision;
3. Exhibit the ability to maintain a calm, professional demeanor while making sound decisions during stressful situations;
4. Exhibit the ability to communicate professionally with the public;
5. Exhibit an ability to render effective testimony in court; and
6. Exhibit proficiency in report writing.

E. All candidates meeting the criteria in Part VI, D, shall participate in the remaining selection process.

F. The selection process for all PROs shall include:

1. Selection Panel

The PRPC shall convene an oral board selection panel to personally interview each candidate. The interview shall address Departmental policies, tactics, and the candidate's motivation and judgment in hypothetical situations.

2. Physical Agility Test

The physical agility test consists of a series of events designed to test strength, agility, and endurance and must be successfully completed within a specified time. Criteria for successfully passing the test shall be determined by the PRPC.

3. Rifle Marksmanship Test

Candidates must demonstrate accuracy in shooting the patrol rifle. Criteria for successfully passing the test shall be determined by the PRPC.

4. Departmental Work History Evaluation (Matrix) prepared by the PRPC. The candidate shall be evaluated on the following criteria:

- a. Performance Appraisals;
- b. IAD complaints and sustained findings;
- c. Preventable vehicle collisions;
- d. Sick and injury record;
- e. Documented use of force;
- f. Disciplinary history;
- g. Patrol duty experience; and
- h. LRMS review.

5. Other

Additional relevant information may also be considered (e.g., letters of appreciation, training, self-improvement, military experience, and firearm-related experience).

G. The PRPC shall prepare a list of candidates based on the following:

1. Overall evaluation of "Pass."
2. Ranking based on selection process scores.
3. The Department's operational needs for PROs, based on patrol rifle availability, and geographic and temporal coverage throughout the City. Priority shall be given to PRO assignments in the Patrol Division.

- H. The PRPC shall forward the list of candidates through channels to the Chief of Police who shall select which candidates attend the Departmental Patrol Rifle School.
- I. Officers who successfully complete the Patrol Rifle School and are issued a patrol rifle shall be certified as PROs.

VII. PATROL RIFLE OFFICER ASSIGNMENT

- A. The BFO Deputy Chief shall select which officers who have successfully completed the Departmental Patrol Rifle School are issued a patrol rifle based on Departmental needs.
- B. PROs assigned to the Patrol Division shall not select their Patrol Division assignments based on their PRO status.

VIII. DEPLOYMENT

The purpose of deploying the patrol rifle is to enhance officer and public safety.

- A. The following factors shall be considered prior to deploying the patrol rifle:
 - 1. A patrol rifle deployment provides a distinct tactical advantage for officers;
 - 2. The subject is known to possess or is suspected of possessing a deadly weapon or firearm;
 - 3. The subject is beyond the effective range of Departmental pistols or shotguns; or
 - 4. The subject is known to wear or is suspected of wearing body armor.
- B. When a PRO deploys the patrol rifle, the officer shall, as soon as practical, advise the Communications Division. Upon deployment, if applicable and practical, the PRO shall advise the Communications Division of tactical considerations to include:
 - 1. Safest route of approach;

2. Location of the PRO;
 3. Location and description of the suspect; and
 4. Containment, and crossfire concerns.
- C. PROs shall not be deployed as a substitute for the Department Tactical Operations Team.²
- F. When a PRO is directed to deploy his/her rifle in an inappropriate circumstance, he/she shall advise the directing supervisor/commander prior to deploying the rifle.
- G. Patrol rifles shall be used to dispatch a wounded or dangerous animal only when a Departmental pistol is inappropriate.
- H. Patrol rifles shall only be discharged during actual duty deployment or at an authorized firearms range.

IX. PATROL RIFLE LOG

- A. A PRO who deploys a patrol rifle shall document the incident in the Patrol Rifle Log (TF-3118) assigned to that rifle.
- B. Each PRO shall submit his/her Patrol Rifle Log to the PRPC on a quarterly basis.
- C. The PRPC shall review Patrol Rifle Logs on a quarterly basis, and prepare and forward a quarterly report summarizing patrol rifle deployments documented in the logs to the BFO Deputy Chief.

X. STORAGE/SECURITY

- A. When on-duty, PROs shall store their patrol rifles in one (1) of two (2) conditions:
 1. Rendered safe inside an approved hard gun case in the locked trunk of their assigned police vehicles; or

² Refer to Departmental General Order K-5, TACTICAL OPERATIONS TEAM for Departmental policy and procedures.

2. Locked in a designated rifle rack of a police vehicle in the following condition:
 - a. Weapon safety placed on "SAFE."
 - b. Bolt group closed/forward on an empty chamber.
 - c. Loaded magazine fully inserted in the magazine well.
- B. At the end of the PRO's shift, the patrol rifle shall be stored in a secure location with restricted access (e.g., locker, secured cabinet).
- C. PROs may take their patrol rifles home at the end of their shift, but only if they are secured at their residence.
- D. Patrol rifles shall not be stored in a privately-owned vehicle except when traveling between work and home, or to and from training.

XI. TRAINING AND QUALIFICATIONS

- A. PROs shall attend quarterly training and undergo physical fitness and shooting proficiency evaluations (qualifications).
- B. The PRPC shall document and maintain training and qualification records for all PROs.

XII. DECERTIFICATION OF PATROL RIFLE OFFICERS

- A. Removal from the program shall occur automatically when a member is promoted to a rank other than Police Officer or is permanently transferred to a non-field based assignment.
- B. A PRO may voluntarily resign from the program by submitting a memorandum through channels to the PRPC. The PRPC shall notify the BFO Deputy Chief of a PRO resignation.
- C. The PRPC may decertify a PRO for any of the following reasons:
 1. Substandard performance;
 2. Failure to successfully complete required training;
 3. Failure to progress in training;

4. Any documented willful and deliberate mistreatment, neglect or improper use of the patrol rifle;
 5. Failure to satisfactorily complete a physical fitness or shooting proficiency evaluation and subsequent remediation;
 6. Exhibiting a pattern of unsafe tactics during actual patrol rifle deployments; or
 7. Failure to comply with the provisions of this order.
- D. Within 72 hours of a PRO's decertification, the PRPC shall submit a memorandum documenting the circumstances which led to the decertification to the BFO Deputy Chief, the decertified PRO's immediate supervisor, Shift Commander, and Area Commander.
- E. The PRPC shall consult with the BFO Deputy Chief to determine if remedial training would rectify the problem(s) or if the PRO is to be immediately removed from the program.
- F. Any PRO removed from the program shall immediately surrender his/her patrol rifle to the Range Master.
- G. Remedial Training
1. In the event remedial training is prescribed, the PRPC shall schedule the appropriate training with the subject PRO.
 2. The PRPC shall notify the BFO Deputy Chief of the satisfactory completion of the remedial training with a recommendation for recertification.
 3. Upon positive endorsement from the BFO Deputy Chief, the PRPC shall notify the subject PRO and his/her immediate supervisor of the recertification.
 4. If remedial training has not been satisfactorily completed, the PRPC shall forward a memorandum through channels to the BFO Deputy Chief detailing the remedial training provided and the PRO's failure to satisfactorily complete the training, and shall recommend the removal of the PRO from the program.

**DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT**

**K-6 Effective Date:
6 Oct 08**

5. Upon the negative endorsement from the BFO Deputy Chief, the PRPC shall notify the subject PRO and his/her immediate supervisor of the removal from the program.

H. A PRO who is decertified for unacceptable performance or conduct shall have the right to appeal that action in the same manner and within the same time frames as a member may appeal a Performance Appraisal Report within the Department, with the final determination made by the Chief of Police.

By Order of

Wayne G. Tucker
Chief of Police

Date Signed: _____

Lee, Katherine

From: Wendy Alfsen <wendyalfsen@gmail.com>
Sent: Monday, May 23, 2022 10:32 AM
To: Office of the Director of Public Accountability; Lee, Katherine; Barbara Atwell
Subject: Re: CORRECTED ATTACHMENT 5/23/22 11AM Controlled Equipment Accountability Committee - Support Strong Accountability and Use Restrictions/Prohibitions
Attachments: AB481 & Police Equipment & Community Safety Policy 05232022.pdf

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

Police Accountability Board, Controlled Equipment Accountability Committee and Director Lee:

Berkeley Friends Racial Justice Action Team Comments Supporting Elements of Mutual Aid Conformity, strong oversight, CS tear gas ban w/pepper spray and smoke crowd control prohibition, AB 48 chemical agent & kinetic energy projectile use compliance incorporation in AB 481 policy

<https://docs.google.com/document/d/1jaE3oVnwmYRMAS05f3z2ZUPazdJSkVz-F9-1Z-3GpFQ/edit?usp=sharing>

Berkeley Friends Meeting Social & Environmental Action Committee Racial Justice Action Team

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Wendy

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May 22, 2022

TO: Committee, Police Accountability Board

FROM: Berkeley Friends Meeting Social and Environmental Action Committee, Racial Justice Action Team (Berkeley Friends RJAT)

RE: Strengthening Berkeley's draft AB 481 Military Equipment policy and correcting deficiencies in Berkeley Police Equipment & Community Safety Policy draft 2021 Annual Report and Impact Statements -

Dear PAB Chair Chang, Members and Director Lee:

Berkeley Friends Racial Justice Action Team urges the PAB to take the requisite time needed and supports the PAB's efforts to correct deficiencies in the Police Equipment & Community Safety Annual Report and Impact Statements, and to develop a legally sufficient, comprehensive Berkeley Use of Military Equipment AB 481 Policy which incorporates the City's existing ban on CS tear gas crowd control by all law enforcement whether BPD or mutual aid.

This letter is not a comprehensive list of all the changes needed in the initial drafts AB481 policy, inventory and Police Equipment Impact Statements, but begins with the important element of mutual aid, a required element of the AB 481 policy.

Mutual aid conformity with Berkeley use policies already exists for ban of CS tear gas and for prohibition of pepper spray & smoke for crowd control (2020 CS Tear Gas ban and Pepper Spray & Smoke for Crowd Control Prohibition policies).¹ This mutual aid requirement of conformity with Berkeley policy should be extended to apply to all 481 military equipment.

Berkeley Friends Racial Justice Action Team recommends the following mutual aid policy:

"Coordination with Other Jurisdictions: Military equipment shall not be used by any other law enforcement agency or member in the territorial jurisdiction of Berkeley unless the military equipment is approved for use only in accordance with Berkeley's policy regarding use of that type of equipment."

AB 481 expressly authorizes local community needs criterion to govern mutual aid conduct:

¹ CS Tear Gas Ban and Pepper Spray & Smoke for crowd control Prohibitions policies were unanimously adopted by the city council. 06-09-2020 Council Action Text : "Action: M/S/Carried (Davila/Harrison) to establish an official City of Berkeley policy 1) prohibiting the use of tear gas by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, and 2) prohibiting the use of pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. Vote: All Ayes."

See Govt Code 7071(f): "Notwithstanding subdivisions (a) to (e), inclusive, if a city contracts with another entity for law enforcement services, the city shall have the authority to adopt a military equipment use policy based on local community needs."

Berkeley's interest is in preventing excessive or prohibited use of military or police equipment within its jurisdictional boundaries, whether by BPD or any other: "[AB481] also applies to gear used by outside law enforcement agencies in joint operations within a jurisdiction, such as 'mutual aid' deployments or joint task forces."²

Incorporate Berkeley's Existing Ban on CS Tear Gas and Prohibition on Crowd Control Use of Pepper Spray and Smoke in the new Military Equipment AB 481 policy governing the respective uses of CS ter gas, pepper spray and smoke.

AB 48 crowd control use restrictions of kinetic energy projectiles and CS tear gas requirements govern the City's military equipment 481 policy. Rewriting the BPD draft is necessary before Berkeley can adopt a legally sufficient policy, as required by state law.

Oversight with the PAB, and private right of action for violations, is appropriate. Oversight is a requisite element of a 481 military equipment policy.

We look forward to continue to work with PAB and BPD in developing use policies for community safety,

Berkeley Friends Meeting Social & Environmental Action Committee Racial Justice Action Team
Barb Atwell, co-clerk, batwell@thesoundwell.com
Wendy Alfsen, co-clerk, wendyalfsen@gmail.com

² "Equipped for War," AFSC, https://www.afsc.org/sites/default/files/2022_Equipped_for_wa_CA_web.pdf