



POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
Tuesday, April 11, 2023
6:30 P.M.

Board Members:

JOHN MOORE III. (CHAIR)
KITTY CALAVITA

REGINA HARRIS (VICE-CHAIR)
JULIE LEFTWICH

CHERYL OWENS
DEBORAH LEVINE

MEETING LOCATION

Judge Henry Ramsey Jr. South Berkeley Senior Center
2939 Ellis Street,
Berkeley, CA 94703

PUBLIC ADVISORY

The PAB has resumed in-person meetings and encourages community members to attend in person. Community members attending in person should observe the “Health and Safety Protocols for In-person Meetings of Berkeley Boards and Commissions” as outlined by the City of Berkeley.

***The PAB acknowledges that physical attendance may not be feasible for all community members. To this end, the Office of the Director of Police Accountability (ODPA) has been exploring the option of allowing for remote participation at the PAB meetings. Please note that the ODPA and PAB are in the early stages of implementing this hybrid meeting format so there is a possibility for technical glitches and errors. Your patience and understanding are greatly appreciated. ***

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82653396072>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on “rename” to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **826 5359 6072**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

LAND ACKNOWLEDGEMENT

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Chochen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.

AGENDA

1. **CALL TO ORDER & ROLL CALL** (2 minutes)
2. **APPROVAL OF AGENDA** (5 MINUTES)
3. **PUBLIC COMMENT** (TBD)
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.)
4. **APPROVAL OF MINUTES** (5 MINUTES)
Special Meeting Minutes for March 25th, 2023
Regular Meeting Minutes for March 29th, 2023
5. **ODPA STAFF REPORT** (10 MINUTES)
Announcements, updates, and other items.
6. **CHAIR AND BOARD MEMBERS' REPORTS** (5 MINUTES)
Announcements, updates and other items.
7. **CHIEF OF POLICE'S REPORT** (20 minutes)
Crime/cases of interest, community engagement/departments events, staffing, training, and other items of interest.
8. **TRAINING ON EARLY WARNING SYSTEMS BY CAPTAIN CHRIS BOLTON (RETIRED).** (1 hour)

9. **SUBCOMMITTEE REPORTS (discussion and action)** (10 min)*

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
- b. Regulations Subcommittee (Chair: Calavita)
- c. Conflict of Interest (Chair: Leftwich?)

* When used under the subcommittee reports section, "Chair" refers to the Chairperson of the respective subcommittee, not the PAB Chair. *

10. **OLD BUSINESS (discussion and action)** (15 min)

- a. PAB's response to the Public Safety Policy Committee's questions regarding...
 - i. Unmanned Aerial Systems (Moore, Levine)
 - ii. Fixed Camera Surveillance Systems (Calavita)

11. **NEW BUSINESS (discussion and action)** (30 min)

- a. Review of the PAB's proposed permanent regulations. (Calavita)
- b. Review of the BPD's 2022 Annual Report on Police Equipment and Community Safety Ordinance (Moore).

12. **PUBLIC COMMENT (TBD)**

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

CLOSED SESSION

Pursuant to the Court's order in Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and act on the following matter(s):

- 13. **Presentation of recommendation to administratively close Case No. 27**
– (5 min)
- 14. **Presentation of recommendation to administratively close Case No. 28**
– (5 min)
- 15. **Presentation of recommendation to administratively close Case No. 30**
– (10 min)

END OF CLOSED SESSION

16. **ANNOUNCEMENT OF CLOSED SESSION ACTION** (1 minute)

17. **ADJOURNMENT** (1 minute)

Communications Disclaimer

Communications to the Police Accountability Board, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the Board Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the Board Secretary for further information.

Communication Access Information (A.R. 1.12)

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5th Floor, Berkeley, CA.

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

1947 Center Street, 5th Floor, Berkeley, CA 94704
TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

**POLICE ACCOUNTABILITY BOARD (PAB)
REGULAR MEETING ATTACHMENTS
April 11, 2023**

<u>INFORMATIONAL MATERIAL</u>	
Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions	Page 5
<u>AGENDA-RELATED</u>	
Item 4 – Minutes for 3/25/2023 Special Meeting	Page 7
Item 4 – Minutes for 3/29/2023 Regular Meeting	Page 10
Item 8. – Powerpoint Presentation by Captain Chris Bolton	Page 18
Item 9. – PAB Active Subcommittee List.	Page 48
Item 10.a – ODPa Letter to the Public Safety Policy Committee	Page 50
Item 10.a.i. – DRAFT Memorandum to Public Safety Policy Committee re: UAS	Page 64
Item 10.a.ii. - DRAFT Memorandum to Public Safety Policy Committee re: Fixed Camera Surveillance Systems	Page 69
Item 11.a. – PAB Guide for Reviewing Proposed Permanent Regulations	Page 73
Item 11.a. – Proposed Permanent Regulations (Revised 4/3/2023)	Page 86
Item 11.b. – Police Equipment and Community Safety Ordinance 2022 Annual Report and BMC 2.100.050	Page 115
Item 11.b. – ODPa Recommendation to the PAB Regarding Police Equipment and Community Safety Ordinance 2022 Annual Report.	Page 136
Item 11.b. – DRAFT Memorandum to Council Regarding BPD’s Police Equipment and Community Safety Ordinance 2022 Annual Report.	Page 142
<u>COMMUNICATIONS</u>	
None	

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

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

Issued By: City Manager's Office

Date: February 14, 2023

I. Vaccination Status

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

II. Health Status Precautions

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

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

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

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

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

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

III. Face Coverings/Mask

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

IV. Physical Distancing

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

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

Distancing will be implemented for the dais as space allows.

V. Protocols for Teleconference Participation by Commissioners

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

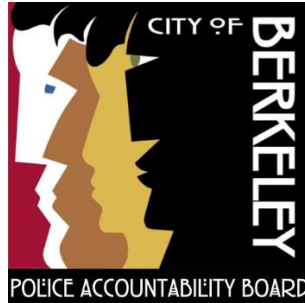
- A Commissioner at a remote location will follow the same health and safety protocols as in-person meetings.
- A Commissioner at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

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

VII. Air Flow/Circulation/Sanitizing

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



POLICE ACCOUNTABILITY BOARD
SPECIAL MEETING
2023 ANNUAL RETREAT
MINUTES

Saturday, March 25, 2023, 9:00 AM

MEETING LOCATION

Judge Henry Ramsey Jr. South Senior Center
2939 Ellis Street
Berkeley, CA 94709

1. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 9:10 A.M.

Present: Board Member John Moore (Chair)
Board Member Regina Harris (Vice-Chair)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Cheryl Owens

Absent: None.

ODPA Staff: Hansel Aguilar, Director of Police Accountability
Beneba Thomas, ODPA Investigator
Jose Murillo, ODPA Policy Analyst

2. APPROVAL OF AGENDA

Motion to approve the agenda.

Moved/Second (Owens/Harris) Motion Carried by unanimous consent.

3. PUBLIC COMMENT (0 SPEAKERS)

4. FULL-DAY RETREAT PROGRAMMING FACILITATED BY BRIAN CORR (FORMER PRESIDENT OF NACOLE)

- Brian Corr delivered a presentation to the PAB covering the following topics:
 - o Context Setting: A brief History of Civilian Oversight
 - o Digging Deeper: Structure and Practice of Oversight in the U.S.

- The PAB and the ODPa: Background, Structure, & Functions
- Principles of Effective Civilian Oversight: Lessons from the Field
- Digging Deeper: Legitimacy, Procedural Justice, & Healing
- Listening & Learning: Effective Community Outreach and Ongoing Training
- Challenges and Opportunities: Thinking Strategically

(Presenter’s agenda is attached hereto)

5. PUBLIC COMMENT (0 SPEAKERS)

6. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Owens/Leftwich) By general consent, the meeting was adjourned at 4:32 p.m.

Minutes Approved on: _____

Hansel Aguilar, Commission Secretary: _____

Berkeley Police Accountability Board Training Retreat • March 2023

Saturday, March 25, 9:00 AM to 4:30 PM

Judge Henry Ramsey Jr. South Berkeley Senior Center • 2939 Ellis St., Berkeley

Facilitator: Brian Corr: Principal, Cambridge Consulting Services Group and Past President, NACOLE

AGENDA

- 9:00 AM Welcome and Orientation
- 9:10 AM Agenda Review
- Agreements for our time together
- 9:20 AM Warming Up/Opening Activities
- Group Kickoff
 - Outcomes for the Day
- 9:45 AM Context Setting: A Brief History of Civilian Oversight
- 10:10 PM *Break*
- 10:20 AM Digging Deeper: Structure and Practice of Oversight in the U.S.
- 11:15 AM *Break*
- 11:25 PM The PAB and the ODP: Background, Structure, & Functions
- Roles and Responsibilities
 - One-to-One Exercise #1: Holding On and Letting Go
- 12:15 PM *Lunch*
- 1:00 PM Principles of Effective Civilian Oversight: Lessons from the Field
- One-to-One Exercise #2: One Thing...
- 1:40 PM Digging Deeper: Legitimacy, Procedural Justice, & Healing
- Working with the broader community
 - Working with the police department and municipal government
 - Trauma, Systemic Injustice, and Healing: The Context for Our Work
 - One-to-One Exercise #3: One More Thing...
- 2:25 PM *Break*
- 2:35 PM Listening & Learning: Effective Community Outreach and Ongoing Training
- 3:30 PM *Break*
- 3:40 PM Challenges and Opportunities: Thinking Strategically
- One-to-One Exercise #4: The Path Ahead
- 4:20 PM Closing
- 4:30 PM Adjournment

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POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA
MINUTES
(draft)

Wednesday, March 29, 2023, 6:30 P.M.

MEETING LOCATION

Live Oak Community Center
1301 Shattuck Ave,
Berkeley, CA 94709

1. INTRODUCTION TO IN-PERSON MEETINGS

Director Aguilar reminds members of the public that the PAB and ODPA are piloting new technology in order to provide hybrid meetings. He asks members of the public who are physically present to be mindful of noise levels and reminds PAB members to speak up in order to be captured by the microphones.

2. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 6:30 P.M.

Present: Board Member John Moore (Chair)
Board Member Regina Harris (Vice-Chair)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Cheryl Owens

Absent: None.

ODPA Staff: Hansel Aguilar, Director of Police Accountability
Beneba Thomas, ODPA Investigator
Jose Murillo, Associate Management Analyst

BPD Staff: Captain Durbin (*Via Zoom*)
Lieutenant Reece

CAO Office: Deputy City Attorney Mattes

3. APPROVAL OF AGENDA

Motion to approve the agenda with edits (Item 11.a.ii “Next steps; Letter to Council” is removed)

Moved/Second (Harris/Calavita) **Motion Carried**

Ayes: Calavita, Harris, Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: None

4. PUBLIC COMMENT (3 SPEAKERS)

- Speaker 1 thanks staff for their work in putting together a thorough analysis and recommendation as it relates to Item 11.b.
- Speaker 2 lets staff know that the audio quality for virtual participants is not very good.
- Speaker 3 states that he is the parent of a UC Berkeley student and part of a group of concerned parents. Ask the Board to support the BPD in obtaining necessary resources to help control crime in Berkeley.

5. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of March 15, 2023, as amended.

Moved/Second (Leftwich/Calavita) **Motion Carried**

Ayes: Calavita, Harris, Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: None

6. ODPa STAFF REPORT

- Director Aguilar provided the following administrative updates:
 - o Staff has updated the Board’s training log and will be forwarding it to Board members soon.
 - o Board members were invited to a NACOLE webinar forum for investigators. This webinar was the first webinar and there will be more in the future.
 - o The CACOLE conference will take place on May 29-31 and will have a virtual option available. Board members who are interested in the webinar should inform the office.
 - o Staff continues to work on the PAB’s annual report. We appreciate the community’s patience and look forward to presenting it.
 - o Staff is preparing some notes for the Board to consider for their review of the Police Equipment and Community Safety Ordinance 2022 annual Report which will be on the Board’s agenda in early April.

- Director Aguilar reported on his recent activities:
 - o On Monday, March 20, 2023, Director Aguilar and Policy Analyst Murillo presented to a group of students at UC Berkeley. Their presentation provided an overview of civilian oversight and the structure in Berkeley.
 - o Director Aguilar reports that the ODPa received one new personnel complaint since the last meeting.
 - o Director Aguilar provided updates on the pending items with the City Attorney's Office.

7. CHAIR AND BOARD MEMBERS' REPORTS

- Chair Moore reported that he met with Interim Chief Louis to discuss the concerns of their stakeholders. He states that the two were able to have a worthwhile discussion and that both of them were able to express their concerns. He hopes to continue working together with the Interim Chief to find solutions to these issues and meet the needs of the various community stakeholders.

8. CHIEF OF POLICE'S REPORT

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

- Captain Durbin, on behalf of the Interim Chief, reported that there were no significant staffing updates, but that the BPD recently hosted a dispatcher open house. States that there were familiar faces among the attendees which is a good sign that there is interest in filling those positions. Furthermore, he notes that there will be police officer testing on the weekend of April 1st. Lastly, he provides a report on cases of interest and notes that the past month was saturated with weather related calls.
- Captain Durbin informs the Board that the Early Warning System quarterly review is on its way. He notes that the Sergeant leading that review has informed officers that this quarter's audit will include review of officer BWC footage for the five randomly selected officers.
- Captain Durbin reports to the Board that Policy 1107, also known as "Special Order 2023-0001," was implemented. This policy pertains to the directive issued by the Berkeley City Council on February 23, 2021. The included directives mandate various policy and procedural changes for the Berkeley Police Department, and Policy 1107 serves as a framework to ensure compliance with those recommendations.
- Questions & Answers:
 - o Q: Board member Leftwich inquiries about the current status of the Board's previous request to the Interim Chief for a liaison who could serve as a point of contact between the Board and the department.

- A: Captain Durbin informs the Board that he and the Interim Chief have not had the chance to discuss the matter, but he intends to follow up with her in the near future.
 - Q: Board member Levine raises a question regarding the recovered firearm in one of the reported cases. Specifically, she asks whether there is any available data on how officers typically recover weapons and what kind of information typically leads to the discovery of such weapons.
 - A: Captain Durbin notes that there is no data regarding how the item was discovered. Available data sets only record the kind of stop and whether or not a firearm was recovered. For more specifics as to how the firearm was discovered, the report would have to be reviewed.
 - Q: Board member Calavita asks about the timeline for presenting the Berkeley Police Department's proposed policies on surveillance technology, specifically for Unmanned Aircraft Systems (UAS) and Fixed Camera Surveillance Systems, to the Council. Furthermore, they inquire if the department is still open to receiving additional feedback on the topic, considering it will be discussed again during the current meeting.
 - A: Captain Durbin informs the Board that they have reviewed the material presented by the ODPa in the agenda packet material. That the presentation to Council is anticipated to take place in May and that there were still a few weeks before the BPD submitted their report to Council.
 - Director Aguilar clarifies that the material included in the agenda packet was produced out of a request by the Public Safety Policy Committee who will be meeting again in April.
- a. Discussion on drone usage (Chair Moore)
- Questions and Answers:
 - Q: Chair Moore asks for clarification on how “exigent circumstances” is defined by the BPD.
 - A: Captain Durbin explains that defining exigent circumstances can be a complex matter. He points out that determining what qualifies as exigent circumstances requires a careful consideration of all the relevant facts, as well as an understanding of what is deemed "objectively reasonable" under the surveillance policy (BMC 2.99). He also notes that, with regard to Unmanned Aircraft Systems (UAS), the criteria for exigent circumstances are closely aligned with those required for a warrant, considering the totality of the facts and what would be considered reasonable in the circumstances.
 - Q: Chair Moore inquires whether field officers use a balancing test or checklist to determine whether a given situation meets the requirements for requesting the use of drones under exigent circumstances.

- A: Captain Durbin states that there is no “checklist.” The determination is based on the totality of the circumstances and the objectively reasonable belief that there is exigency.
- b. Discussion and action- Appointment of board members to the BWC policy subcommittee (Vice Chair Harris)
- Questions and Answers:
 - Q: Vice-Chair Harris inquired about the auditing process for BWC as a component of EWS and whether all officers will be subject to this audit.
 - A: Captain Durbin clarifies that the five randomly chosen officers for the EWS review will have their BWC footage audited as part of that process. However, the audited footage will not include use-of-force incidents since those are already reviewed by supervisors, making it unnecessary to review them again. He further notes that based on the randomizing system used, all officers should eventually be selected as part of the EWS review as the BPD tries to avoid reviewing officers who have already been selected within the two years.
 - Q: Vice-Chair Harris ask about the BPD’s policy as it relates to turning off/muting BWC.
 - A: BWC’s are rarely turned off completely but they are occasionally muted. Officers may mute their BWC when planning (i.e. discussing tactics) or confidential information (i.e. medical information).
- Vice Chair Harris, Board member Leftwich, and Board member Levine all volunteer for the BWC policy subcommittee.

9. SUBCOMMITTEE REPORTS (DISCUSSION AND ACTION) *

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
- Chair Owens reported that the subcommittee continues to gather information and that there are no updates at this time.
 - b. Regulations Subcommittee (Chair: Calavita)
- Chair Calavita reported that the subcommittee was able to meet on Friday, March 24th for a final review of the regulations. The proposed regulations will be presented to the full board at the next regular meeting on April 11th.
 - c. Fair and Impartial Subcommittee (Chair: Calavita)- Appointment of an additional board member to the Fair and Impartial Policing subcommittee

- Chair Calavita reported that the F&I subcommittee has not been able to meet recently. However, she would like for one more member to join the subcommittee before they meet again. Vice Chair Harris volunteered to join the subcommittee.

* When used under the subcommittee reports section, "Chair" refers to the Chairperson of the respective subcommittee, not the PAB Chair. *

10. OLD BUSINESS (DISCUSSION)

- Report of status on items (records, information, and advice) requested from the PAB to:
 - ODPA
 - CAO
 - BPD

The DPA reported that staff has reviewed request from January 2022 to December 2022. He informs the Board that there were over twenty request and that a majority have been answered. However, there are a few requests where the status is unknown or unclear if a satisfactory response was received. Staff will provide a more comprehensive report to the Board for their review and will try to note how much time passed before a response was received.

11. NEW BUSINESS (DISCUSSION AND ACTION)

- PAB Retreat
- Chair Moore reported on the PAB's annual retreat. He thanks the Board for their attendance and staff for putting it together.
- Discussion and action regarding the supplemental information report to the City Council's public safety policy committee regarding surveillance technology:
 - Unmanned Aerial Systems (UAS) (Board member Levine)
 - Fixed Video Surveillance Cameras (Board member Calavita)
- Policy Analyst Murillo presents an information report from the ODPA to the PAB regarding surveillance technology policies being discussed by the Public Safety Policy Committee. He mentions that the Council's Committee has requested additional information from the PAB about their past recommendations and the presented documents are ODPA's suggestions to the PAB in formulating their response. He also proposes that the reports could be rephrased for the Council's Committee on behalf of the Board, subject to the Board's approval.
 - Board member Calavita provides a summary of the report specifically related to Fixed Video Surveillance Cameras.
 - The Board members deliberate on whether to vote on the recommendations during the current meeting. The majority of the Board expresses that they are not prepared to vote and would require more time. The Board instructs staff to contact the Council's Committee to determine when the Committee plans to meet

next and request additional time for the Board to review and provide its feedback, if possible.

Motion to ask staff to inquire about the next Public Safety Policy Committee Meeting and request additional time for the PAB to respond with the requested information.

Moved/Second (Levine/Harris) **Motion Carried.**

Ayes: Calavita, Harris, Leftwich, Levine, and Moore.

Noes: Owens

Abstain: None

Absent: None

- c. Creation and appointment of board members to a subcommittee to explore issues and solutions regarding conflicts of interest with legal counsel (Board member Leftwich)

Motion to create and appoint board members to a subcommittee to explore issues and solutions regarding conflicts of interest with legal counsel.

Moved/Second (Leftwich/Levine) **Motion Carried.**

Ayes: Calavita, Harris, Leftwich, Levine, Moore, and Owens.

Noes: None

Abstain: None

Absent: None

12. PUBLIC COMMENT

1 speaker.

CLOSED SESSION

Pursuant to the Court's order in Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and act on the following matter(s):

13. CASE UPDATES

- Director Aguilar updated the Board on the status of pending complaints filed with the ODP. No actions were taken on behalf of the Board.

END OF CLOSED SESSION

14. ANNOUNCEMENT OF CLOSED SESSION ACTION

- Chair Moore announces closed session actions. He notifies the public that Director Aguilar updated the Board on the status of pending complaints and that there were no actions taken at this time on behalf of the Board.

15. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Owens/Harris) **By general consent, the meeting was adjourned at 9:31 p.m.**

Minutes Approved on: _____

Hansel Aguilar, Commission Secretary: _____

Early Intervention and Police Performance Management Systems

A Training Overview for the Berkeley Police Accountability Board





Chris Bolton

Subject Matter Expert, Public Safety

Relevant Experience

- Deputy Chief of Police (Ret) (1999 – 2022)
- Patrol, Special Operations, Internal Affairs, Inspector General – OPD Office of Inspector General, Community Policing and Intelligence-Led Policing SME
- Bachelor of Science, Criminal Justice Administration, National University
- Veteran, Military Police Corps, U.S. Army and Army National Guard (1989 – 1999)

Skills

- Public Safety Operations
- Risk Management
- Law Enforcement Policy and Practice
- Strategic Planning
- ICS and NIMS Incident Command
- Intelligence-led and Data-informed Leadership and Policing



COLLABORATIVE PUBLIC SAFETY SOLUTIONS



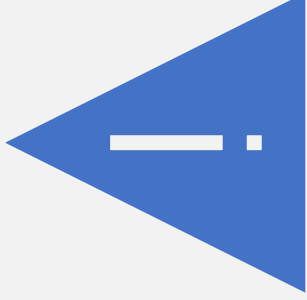
Learning Objective

Gain introductory and fundamental understanding of Early Warning/Early Intervention Systems (EWS/EIS/EWIS) and police performance management systems.

- Uses and benefits
- Best and common practices
- How such systems may incorporate and benefit civilian police oversight and accountability boards



Early Intervention Systems (EIS)



- Central location for relevant, timely, and accurate data
- Risk based or adverse performance outcomes
- Designed with objectively determined flagging mechanisms
- Routinely used in fair and impartial manners

A law enforcement early [warning and] intervention system is a personnel management tool designed to identify potential concerns at the earliest possible stage so that intervention and support can be offered to re-direct performance and behaviors toward organizational goals.¹



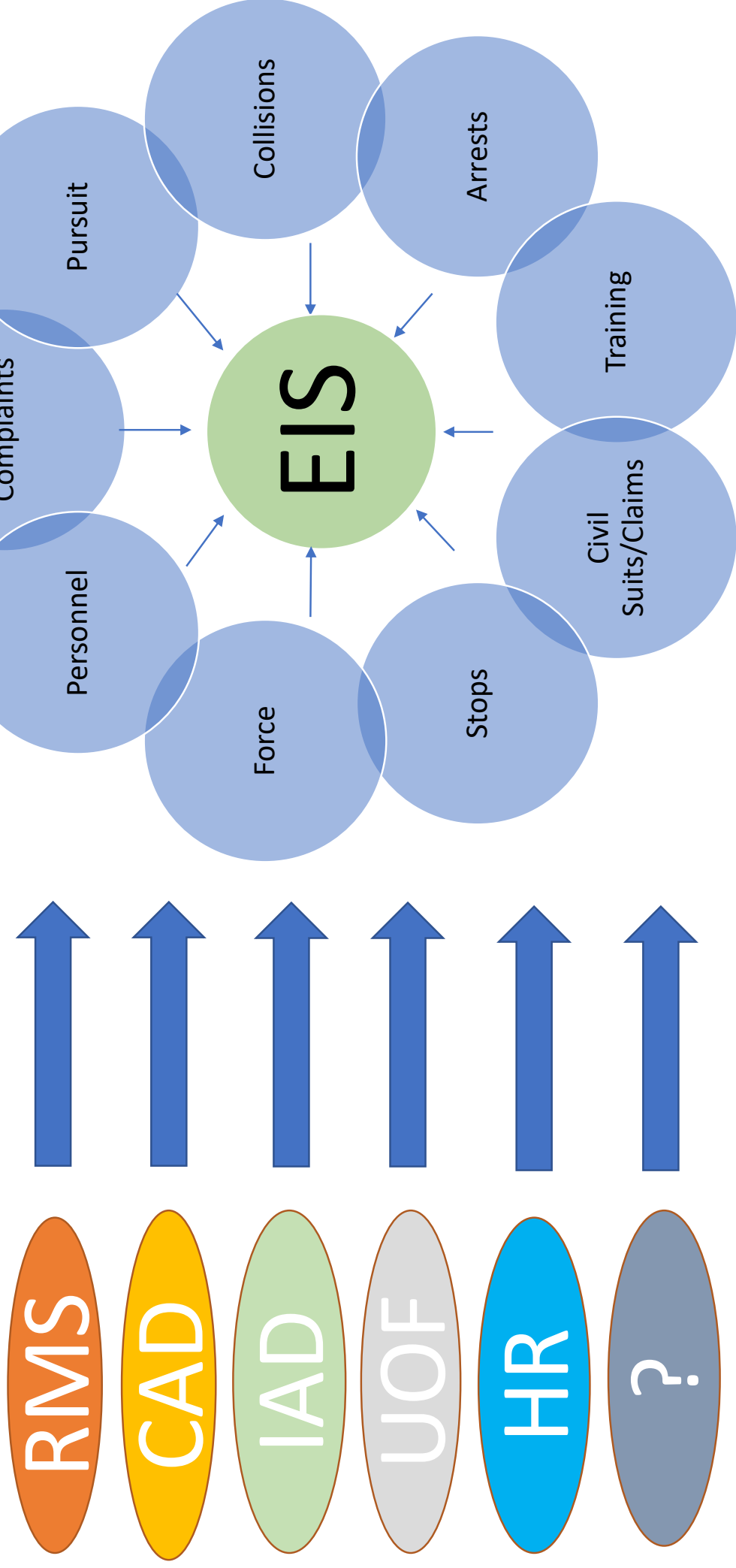
Early Intervention Systems (EIS)

- Proactively Beneficial
- Not Disciplinary
- Not Replacement for Supervision

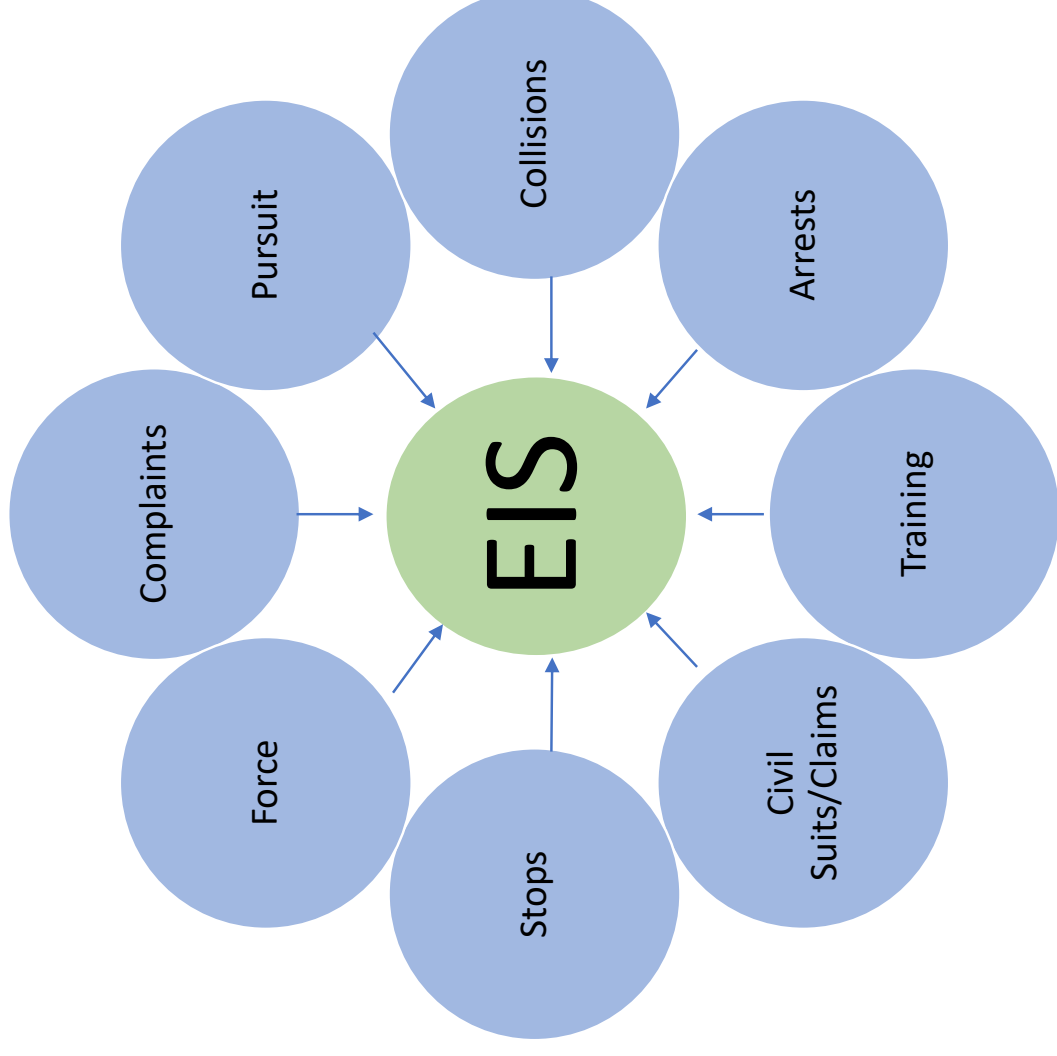
An EIS enables awareness, review, coaching, mentoring, and training - providing awareness and appropriate support - to prevent a future incident that would harm employees, their careers, or the community.

“The ideal purpose of an EIS is to provide officers with resources and tools in order to prevent disciplinary action, and to promote officer safety, satisfaction and wellness.”¹

Early Intervention Source Systems and Outputs (Example)



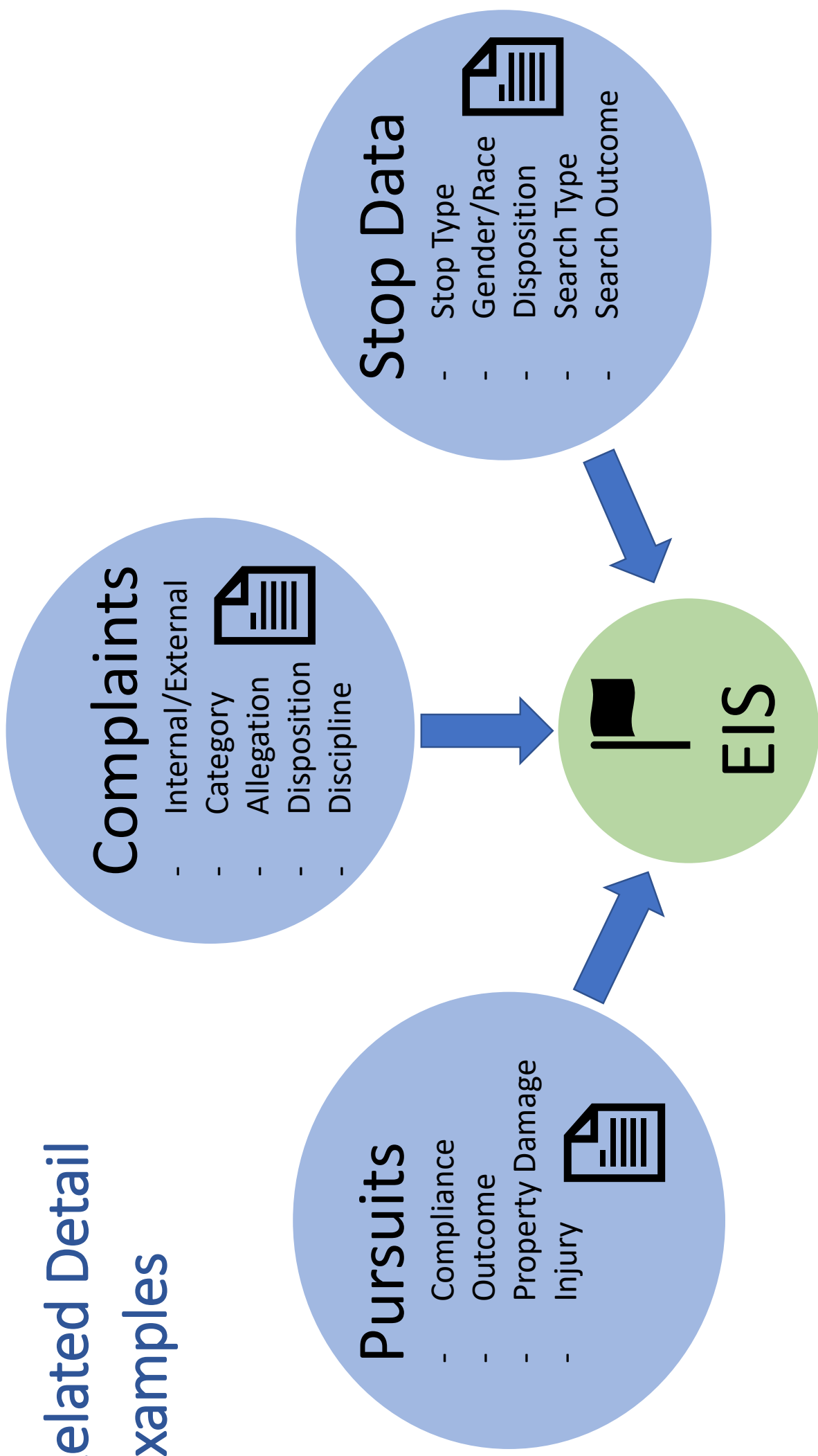
- The choice of the number of indicators to use involves a trade-off. The greater the number of indicators used, the greater the capacity of the system to evaluate the full range of officer performance.²
- Tailored range of performance data and related detail.
- Wide range in type of system, manner of collection, category of data.



Possible Performance Outcomes and Data^{3,4}

- Resisting arrest reports,
 - Use of force reports,
 - Leave usage,
 - Criminal arrests made,
 - Traffic stops conducted,
 - Investigative stops initiated,
 - Injury on duty,
 - Loss or damage of agency equipment, to include motor vehicles,
 - Firearm discharge,
 - Commendations and awards,
 - Response to critical and/or traumatic incidents,
 - Agency rule violations,
 - Training activity,
 - Evidence and/or property seizures,
 - Worker's compensation claims,
 - Misuse of electronic control weapons,
 - Other examples of conduct as defined by agency policy
- Complaints – both from the public and other employees,
 - Body-worn camera or dash camera footage,
 - Disciplinary actions,
 - Documented performance counseling/redirection sessions,
 - Intimate partner assault,
 - Domestic incidents,
 - Motor vehicle collisions,
 - Pursuits – both vehicular and foot,
 - Lawsuits and claims,
 - Assaults on the officer,
 - Criminal investigations of employees,
 - Secondary employment,

Related Detail Examples



.....
.....

EIS Identification: Flagging Mechanisms and Considerations

Managers are alerted when performance data for individuals or groups signify a need for review (i.e., exceeded (or in some cases fallen below) an acceptable threshold.⁴

- **Thresholds:** flags data when a defined count of certain events in a defined period is reached (e.g., 3 complaints in 180 days), or a ratio of two indicators (complaints vs stops, force vs arrests).³
- **Outlier:** flags officer activity if data demonstrates an unusual number of certain events compared to other officers.
- **Machine Learned⁶ or Predictive Modeled Based:¹⁰** flag from computer learned statistical patterns and predictions.
- **Supervisor Discretion:** flag based on supervisory assessment with or without EIS system data.

EIS Identification: Flagging Mechanisms and Considerations



Early intervention system threshold possibilities:

- **Fixed or Point Thresholds**
- **Peer-Officer averages**
 - What is a peer group?
 - Standard deviations, average spread of deviations
- **Performance ratios** (e.g., ratio or percentage of force used for arrests)
 - What data is available and relevant given trends and experience?
- **Time Parameters**
- **Weighting**
 - Are all uses of force equal within a set? Is each class or type independent?



Best Practices and Dispositions²



- Maintained and used by supervisors and managers.
- Policies and protocols for data collection, maintenance, retrieval, analysis, data security, and access.
- Proper training provided.
- Threshold criteria for appropriately flagging risk patterns must be developed.
- Flexibility and Adjustment



Best Practices and Dispositions²



- Supervisor research, review and recommendation using EIS data analysis must be specified.
 - No Action
 - Monitoring
 - Intervention
 - Commendation
- Interventions by supervisors must be implemented in a timely manner.
- Dispositions must be documented with monitoring and intervention tracked.
- Monitoring and Intervention progress must be reviewed by a supervisor

- Success Dependent
on...
- 1) Accurate, timely data
 - 2) Predictive accuracy of the system
 - 3) Use of system
 - 4) Effectiveness of response

“The effectiveness of EISs depends on two factors. The first is the predictive accuracy of the system — whether the EIS can accurately identify officers who are at high risk for a future adverse event. The second is whether and how the agency acts on the results of that prediction — for example, whether a supervisor or other unit intervenes with the officer (and the degree to which that intervention is effective).”⁹

Key Benefits

- Highly Accountable Learning Organization (HALO) support and strengthening.⁷
- Education, training, mentoring, health and wellness programs, and other forms of support can help employees maintain and improve their performance and health.
- Internally just transparency in supervision and data
- Proactiveness and data-informed accountability builds community trust
- Patterns or trends may indicate where leader support is needed: policy, procedure, training, leadership, assistance
- Tend to beneficially reduce adverse incidents, complaints, liability, injuries, or claims

Key Benefits (However)

- Academic assessment studies of EIS are generally positive but, overall, relatively inconsistent regarding evidence-based system effectiveness.⁸
- May be effective in reducing (use of force) and other (sustained misconduct). However, there is scant research finding direct, causal effects of such systems on officer performance outcomes.⁹
- False Negatives and False Positives
- Misuse and unacceptance
- Consequences of system bias

IACP Early Intervention Strategies and Recommendations¹⁵

- All agencies, regardless of size, should strive to incorporate the core concepts of early intervention into their personnel management practices
- Agencies seeking to develop early intervention should look to their peers for ideas, but must recognize that they will have to tailor their own system to their department's needs
- Agencies should strive to include as many stakeholders as possible in the planning of early intervention systems.
- Agencies should ensure that supervisors have the appropriate experiences, skills, and training to perform their early intervention responsibilities
- Agencies must ensure that the early intervention system remains distinct from the disciplinary system
- Agencies should develop a discrete policy directive addressing the purpose and functional elements of the department's early intervention system



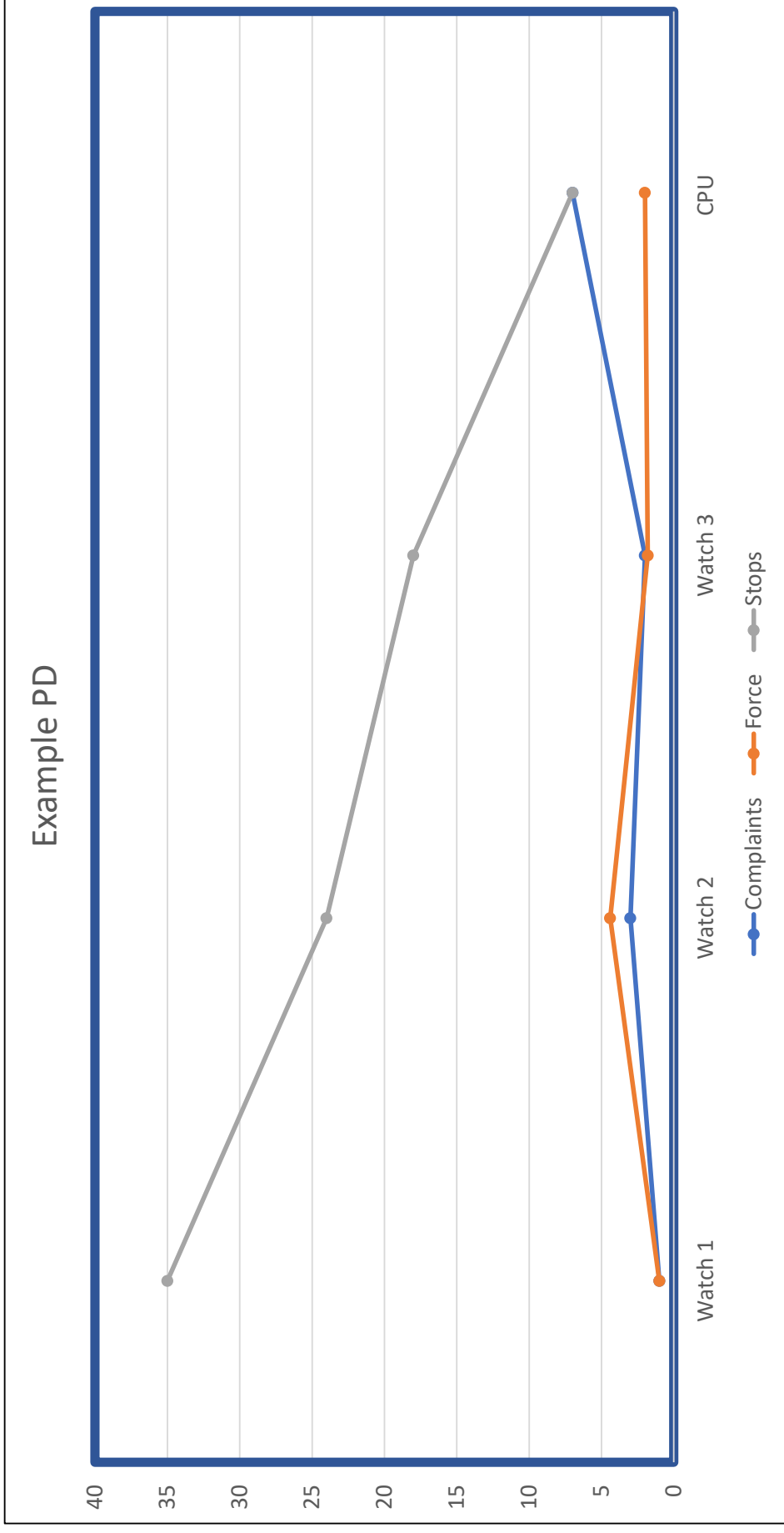
Council on Criminal Justice Task Force Summary⁹

- Systems that employ statistical prediction models more accurately identify officers at high risk of an adverse event.
- Interventions must be tailored to the individual’s specific risk factors and needs.
- Interventions that rely on supervisory coaching could benefit from the review and discussion of body-worn camera footage from relevant incidents.
- Systems may perpetuate structural biases that lead to disparate identification unless they are properly vetted for equity and fairness considerations.

Performance Management

- Performance Management is a comprehensive and multifaceted measurement system of police performance outputs and outcomes to sustain, adjust, or improve high levels of organizational, unit, and personal performance.¹¹
- Risk Management involves recognizing, assessing, and mitigating risks that serve as barriers to performance that meets or exceeds performance expectations.
- EIS Systems may overlap, or an EIS system may be a component of a risk and performance management system, process, and goals.
- Each system requires a clear vision, resources, training, and direction from leadership with data collection and analysis, supervisory review, and predictable accountability measures.

Possible Performance Outputs and Review



Community Oversight and Accountability¹²

Civilian Oversight Agency Directory

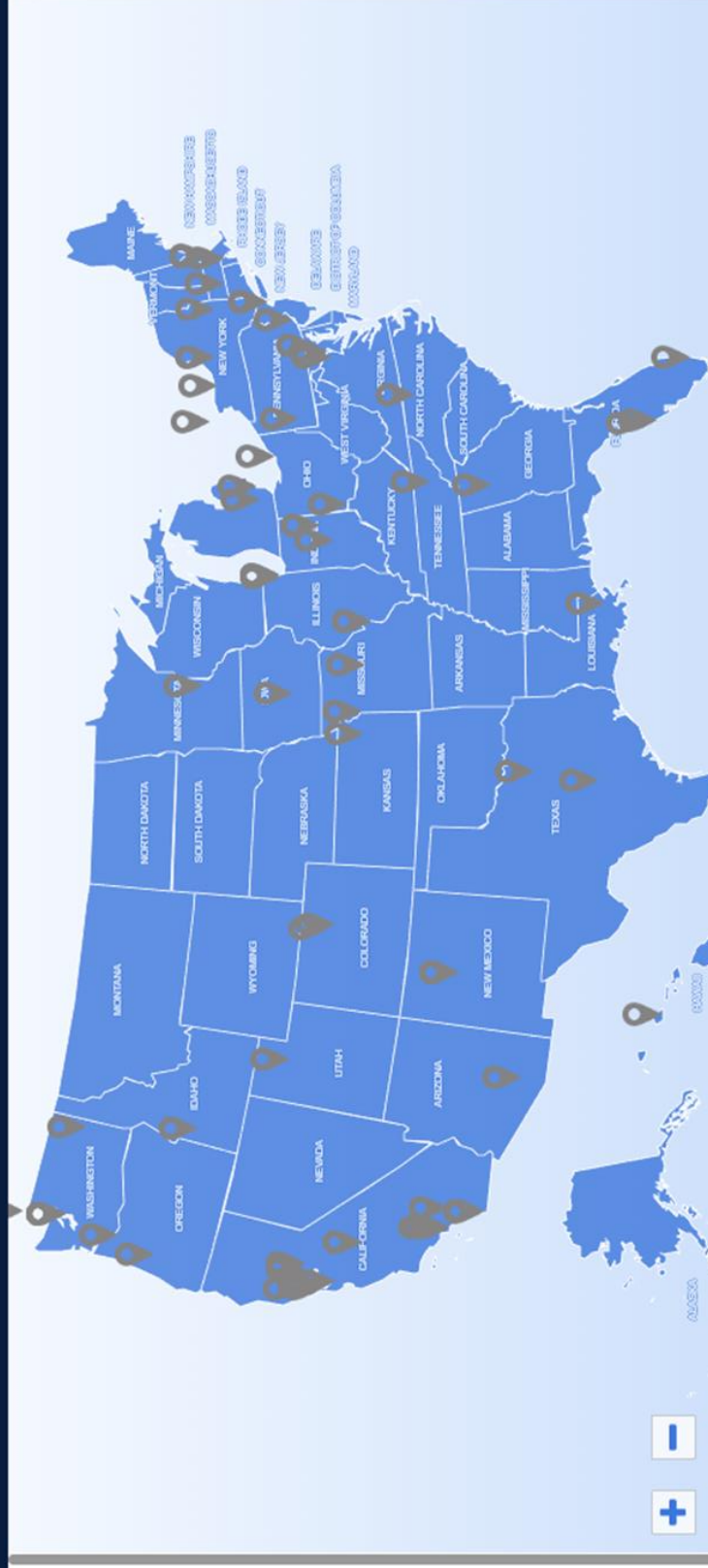


Civilian Oversight Agency Directory

The COAD is a regularly updated and publicly available database of civilian oversight agencies and their various characteristics. Use the options below to filter through the database and learn more about an individual oversight

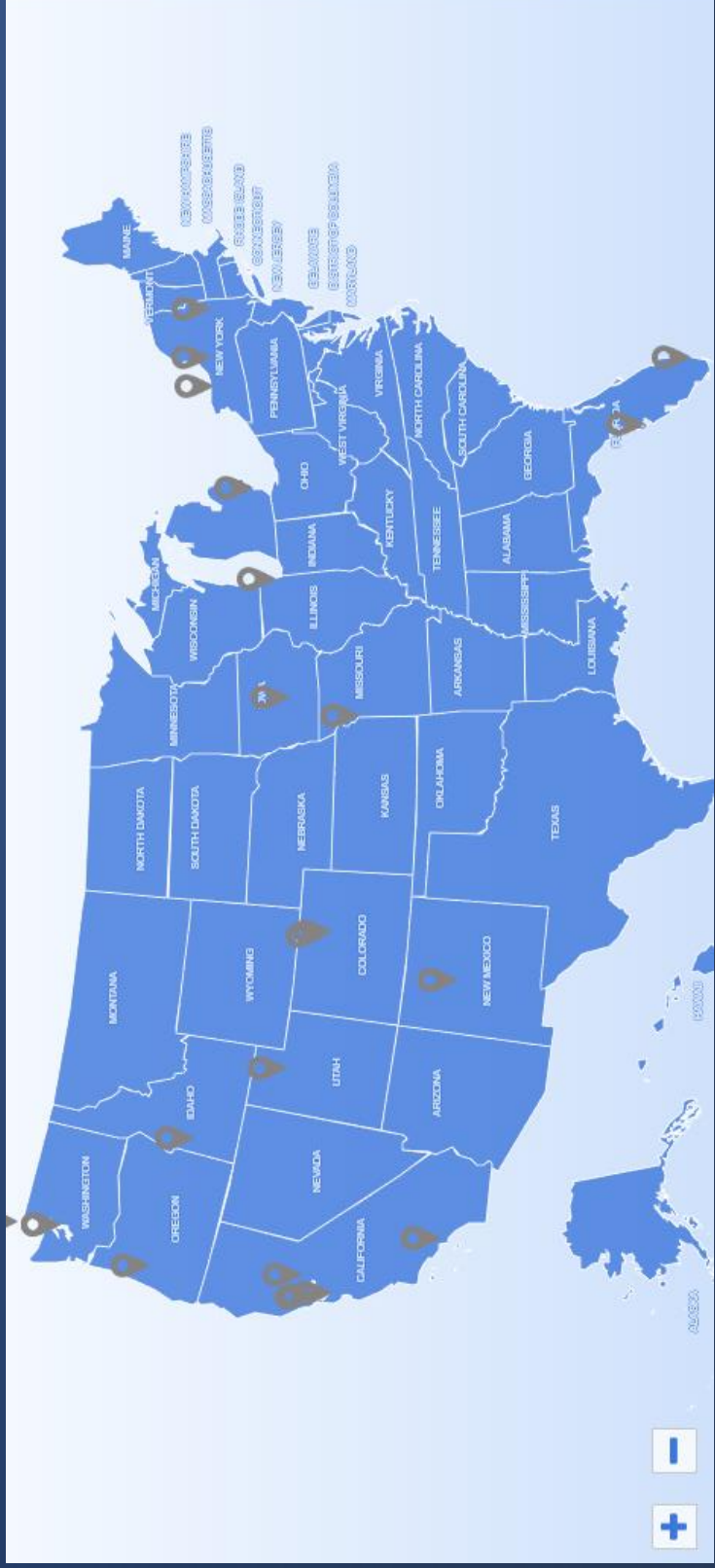
[Home](#)

[About](#)



Civilian Oversight Directory¹²

28 agencies listed with access to EIS Records



Salt Lake City Police/Civilian Review Board	Salt Lake City, UT	Investigation-focused
BART Office of the Independent Police Auditor	Oakland, CA	Investigation-focused
Seattle Office of Police Accountability	Seattle, WA	Investigation-focused
Los Angeles County Office of Inspector General	Los Angeles, CA	Auditor/monitor-focused
City of Detroit Board of Police Commissioners	Detroit, MI	Auditor/monitor-focused
Citizen Review Board City of Syracuse	Syracuse, NY	Investigation-focused
Office of Community Complaints	Kansas City, MO	Auditor/monitor-focused
City of St Peterburg Civilian Police Review Committee	St Petersburg, FL	Review-focused
Albuquerque Civilian Police Oversight Agency	Albuquerque, NM	Investigation-focused
Center for Dispute Settlement- Rochester NY	Rochester, NY	Auditor/monitor-focused
Office of Professional Accountability	Richmond, CA	Investigation-focused
Civilian Investigative Panel	Miami, FL	Investigation-focused
Independent Police Auditor	Akron, OH	Auditor/monitor-focused
Office of Law Enforcement Support	Sacramento, CA	Auditor/monitor-focused
Albanys Community Police Review Board	Albany, NY	Review-focused



City of Eugene Office of the Independent Police Auditor and Eugene Civilian Review Board	Eugene, OR	Auditor/monitor-focused
Iowa Office of Ombudsman	Des Moines, IA	Investigation-focused
Albuquerque Civilian Police Oversight Agency	Albuquerque, NM	Investigation-focused
King County Auditor's Office	Seattle, WA	Investigation-focused
Civilian Office of Police Accountability	Chicago, IL	Investigation-focused
Independent Investigations Office of British Columbia	Surrey, BC	Investigation-focused
City of Boise, Office of Police Oversight	Boise, ID	Investigation-focused
Office of Professional Accountability	Richmond, CA	Investigation-focused
Office of the Independent Monitor	Denver, CO	Auditor/monitor-focused
King County Office of the Ombuds	Seattle, WA	Auditor/monitor-focused
Office of the Inspector General - Los Angeles Board of Police Commissioners	Los Angeles, CA	Auditor/monitor-focused
Office of the Independent Police Monitor	Boulder, CO	Auditor/monitor-focused
Oakland Police Commission	Oakland, CA	Investigation-focused

Oversight involvement in EIS Systems

*CITIZEN REVIEW OF POLICE : APPROACHES
AND IMPLEMENTATION*, U.S. Department of
Justice Office of Justice Programs National
Institute of Justice¹⁵

Citizen oversight programs can become involved with an EWS in at least four ways:

- Recommend that the police or sheriff's department adopt an EWS.
- Collaborate with the department in implementing an EWS.
- Operate EWS for the department.
- Audit the department's EWS system.

Policy

CALEA: If an agency has an EIS, a written directive establishes a Personnel Early Intervention System to identify agency employees who may require agency^{1, 13} intervention efforts

The (EIS) directive shall include:

- a. definitions of employee behaviors or actions to be included for review;
- b. threshold or trigger levels to initiate a review of employee actions or behavior;
- c. a review of identified employees, based on current patterns of collected material, that is approved by the agency CEO or designee;
- d. agency reporting requirements of conduct and behavior;
- e. documented annual evaluation of the system;
- f. the responsibility of supervisors;
- g. remedial action; and
- h. some type of employee assistance such as a formal employee assistance program, peer counseling, etc

Conclusion

Questions?

Chris Bolton

chris@fieldbasedconsulting.com



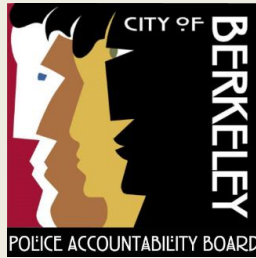
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**SUBCOMMITTEES LIST
3-31-2023**

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21 Renewed 6-22-22	Calavita Leftwich Owens <u>Public members:</u> Kitt Saginor		Lt. Dan Montgomery
Fair & Impartial Policing Implementation Formed 8-4-21 Renewed 9-14-22	Calavita Moore Harris <u>Public members:</u> George Lippman Elliot Halpern	Calavita	Sgt. Peter Lee
Mental Health Response Formed 11-10-21 Scope expanded 3-9-22	Harris Levine <u>Public members:</u> Elena Auerbach		Sgt. Joe LeDoux
Fixed Surveillance Cameras (Policy 351) Formed 2-9-22	Calavita		
Controlled Equipment Use & Reporting Formed 5-11-22	Moore	Moore	Sgt. Peter Lee Sgt. Joe LeDoux
Chief of Police Process Formed 9-30-22	Leftwich Levine Moore		

Drone Use Policy Formed 11-9-22	Moore Levine		
Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations Formed 11-15-22	Calavita Moore Owens	Owens	
Body-Worn Camera Policy Formed 03-15-23	Harris Leftwich Levine		
Conflict of Interest Formed 03-29-23	Moore Leftwich Levine		



Hansel Alejandro Aguilar
Director of Police Accountability
haguilar@cityofberkeley.info

April 4, 2023

VIA ELECTRONIC MAIL [policycommittee@cityofberkeley.info]

PUBLIC SAFETY POLICY COMMITTEE
2180 MILVIA STREET,
BERKELEY, CA 94704

Re: Update on Request for Information Regarding Unmanned Aerial Systems and Fixed Camera Surveillance Systems to the Police Accountability Board

Honorable Chair Taplin and Members of the Public Safety Policy Committee:

First, I would like to express my sincere apologies for not being present at your March 20, 2023, regular Committee meeting where you discussed the recommendations made by the Police Accountability Board (PAB) on the Unmanned Aerial Systems and Fixed Camera Surveillance Systems. As you may recall, the Office of the Director of Police Accountability (ODPA) Policy Analyst Jose de Jesus Murillo was present at the meeting. He debriefed me on the discussions that took place at the meeting and through a memorandum, we presented the questions posed by the Committee to the PAB Members at their March 29, 2023, regular meeting. In our memo, we also provided preliminary research and recommendations for the PAB to consider as they respond to the Committee. The recommendations provided by the ODPA have been attached to this correspondence for your convenience.

Through this letter, I can confirm that the PAB has received your request and is actively working to gather the necessary information to provide a comprehensive response. The PAB will reconvene on April 11, 2023, to finalize their discussion and would like to know when the Committee intends to meet to continue their discussion. If the Committee plans to meet before the PAB, they kindly request that you consider postponing this meeting to allow them to finalize their research on the specific questions related to surveillance technology. This will enable them to provide the most

detailed and accurate response possible to assist the Committee in their work. Alternatively, if you are unable to postpone the Committee meeting until after the regular PAB meeting on April 11, 2023, please do provide us the meeting date at your earliest convenience so that we may have a representative from the ODPa and the PAB to provide any guidance in realtime.

Thank you for your attention to this matter. Please let us know if you have any additional questions for the Board or our office.

Sincerely,



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

--

Attachments:

1. ODPa recommendations to the PAB regarding Unmanned Aerial Systems
2. ODPa recommendations to the PAB regarding Fixed Camera Surveillance Systems

Via Email Only

cc: Rose Thomsen, Deputy City Clerk
John "Chip" Moore III, Police Accountability Board Chair



SUPPLEMENTAL INFORMATION REPORT

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

Background:

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

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

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

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

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

Response:

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

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

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

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

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

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

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

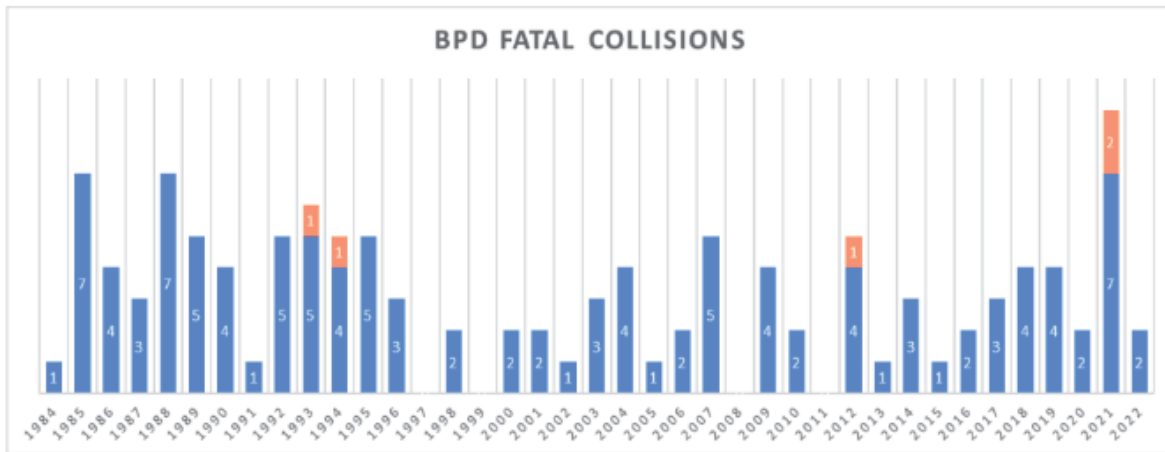


Figure 1 FATAL COLLISIONS IN THE CITY OF BERKELEY
 Source: BPD (2023)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Works Cited

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SUPPLEMENTAL INFORMATION REPORT

Date: Monday, March 27, 2023
To: Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability (DPA) *H.A.*
Jose Murillo, Policy Analyst (ODPA) *JM*
Subject: Berkeley Police Department Surveillance Ordinance Policies Related to Unmanned Aerial System (“Drones”) (Policy 611, Policy 1303 and Related Surveillance Acquisition Report)

Background:

The Police Accountability Board (PAB) made recommendations on BPD policies 611, 1303, and the related surveillance acquisition report for Drone usage to Interim Chief Louis and the Honorable members of the City Council on Thursday, February 23, 2023. In this report, the PAB recommended that the Council and BPD not implement the proposed policies. Instead, the PAB suggested that these policies be further revised to limit the use of drones in the most critical situations and reduce the risk of constitutional violations.

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

1. Could the PAB further elaborate on potential threats to civil rights and liberties that may arise from the proposed policies?
2. Does the PAB have any recommended resources or model policies available that the Council can use as a reference for best practices regarding drone usage?

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

Response:

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

1. *Potential Threats to Civil Rights and Liberties Arising from Proposed Drone Policies*

*"The use of drones is limited only by one's creativity."
— Deputy Chief Tony Zucaro, Virginia Beach Police Department*

In its policy review report dated February 23, 2023, the PAB expressed apprehensions regarding the possible consequences for civil liberties and constitutional rights. The PAB stated that the use of drones could potentially endanger the First Amendment rights to assemble freely and peacefully (U.S. Const. amend. I) and Fourth Amendment protection that safeguards "the privacy and security of individuals against arbitrary invasions by governmental officials" (*Camara v. Municipal Court of City and County of San Francisco*, 1967). These concerns arise from the proposed authorized use of drones for "other unforeseen exigent circumstances," as well as the absence of a prohibition on using drones to collect or retain data on private citizens peacefully exercising their constitutional rights of free speech and assembly. The PAB is concerned that the definition of "exigent circumstances" is too broad in this case and that it could result in unintended uses of this technology.

As it relates to the definition of "exigent circumstances," BMC 2.99 defines an exigent circumstance as the "City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires the use of the surveillance technology or the information it provides" (BMC 2.99.020(5)). The Supreme Court of the United States has weighed in on this definition throughout the decades. In *United States v. McConney* (1982), the Court defined exigent circumstances as "circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or other consequence improperly frustrating legitimate law enforcement efforts." Later on in *Michigan v. Fisher* (2009) and in *Missouri v. McNeely* (2013) the Court expanded on the previous definition to include a variety of other circumstances (i.e. provide emergency medical assistance) that would allow for a lawful search without warrants. As a general point, it is important to maintain certain aspects of the policy broad to be able to address unforeseen circumstances; however, to remain consistent with previous positions the PAB has expressed, the definition should be narrowed down.

One specific incident that has guided this stance arose from a policy complaint the Board received in October of 2022. This complaint involved the alleged acquisition of

Alameda County Sheriff's Office (ASCO) drones by the BPD to provide additional security in the Solano Stroll event. The PAB's inquiry into the incident later revealed that the BPD had not requested these drones (the request was made by Albany PD) and that the submitted surveillance technology report was a result of a misunderstanding. Nevertheless, the PAB took issue with the surveillance use reporting because the exigent circumstances articulated were based on "unfortunate recent attacks on similar events¹". Under the PAB's assessment, such justification would not have met the threshold to deploy surveillance technology at a public gathering.

As a result of this incident, the PAB has expressed that it is vital to define an exigent circumstance in the context of this policy as well as specifically prohibit the use of drones to monitor and collect data of private citizens exercising their first amendment rights. It should be noted, however, that case law as it relates to the fourth amendment and law enforcement use of drones is far more extensive than it is for the implications of the first amendment and law enforcement surveillance of lawful assemblies. Although the BPD has removed the monitoring of social events and public gatherings from its proposed policies, which are primarily based on Oakland PD's current policy², it does not prohibit it. In *United States v. Jones* (2011), the Supreme Court rejected the argument that there is no reasonable expectation of privacy in a person's movement on public thoroughfares as it relates to the fourth amendment. In her concurring opinion, Justice Sotomayor made the following observation:

Awareness that the Government may be watching chills associational and expressive freedoms. And the Government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse...

Additionally, she draws from *United States v. Cuevas-Perez*, 640 F. 3d 272, 285 (CA7 2011) to express concerns about what unfettered discretion to track data can do to community relations. Specifically, she quotes that it may, "alter the relationship between citizen and government in a way that is inimical to a democratic society". Taking this context into account as well as Berkeley's rich history of first amendment advocacy, the PAB should consider emphasizing that drones in public gatherings should be prohibited (barring exigent circumstances).

It is under these considerations that the PAB should consider presenting its concerns back to the Committee to further guide the discussion on civil rights and liberties. The PAB has not rejected the notion that drones can be an important tool but it has been consistent in its stance that there is a need to add safeguards that ensure the maximum protection of the first and fourth amendments.

¹ See Attachment 1, which contains a letter from Interim Chief Louis to the City Council. The letter, dated September 30, 2022, pertains to the use of Unmanned Aerial Vehicle (Drone) and bears the subject line "Notification regarding use of Unmanned Aerial Vehicle (Drone)."

² See Attachment 2, Oakland PD General Order I-25 "Unmanned Aerial Systems"

2. Recommended Resources, Model Policies, or Best Practices Related to Drone Usage by Police Departments

The sudden appearance of police drones and the increased attention they are receiving has raised questions about their origin and purpose. While consumer drones became readily available in the early 2010s, strict regulations regarding civilian drone use initially restricted police use of drones. However, in 2016, the Federal Aviation Administration (FAA) implemented the “Part 107” rule, which allowed non-hobby drone use in American airspace. This rule change led to a surge in police drone usage, with a record number of agencies acquiring drones in 2017 (Greenwood, 2020). Naturally, concerns about their use and data collection have been raised which has led the 1,500+ jurisdictions in possession of drones to implement various policies to address the needs and concerns of their community.

Although the use of drone technology in law enforcement has gained popularity, it is still a relatively new implementation, making it premature to label any policy as a “model policy.” As an alternative, the ODPa suggests referring to the guidelines outlined in the Community Policing & Unmanned Aircraft Systems (UAS) report from the Community Oriented Policing Services (COPS), which offer a framework for the acquisition and usage of drones and enable the creation of a tailored policy that caters to the specific needs of the community. Specifically, guidelines on how to address community concerns & liabilities, identifying the community’s role in a UAS program, deciding on needs, and developing UAS policy and procedures (Valdovinos, et al., 2016). Additionally, the report also highlights the following prohibitions that should be considered based on the responses of focus groups and advisory board members across the country:

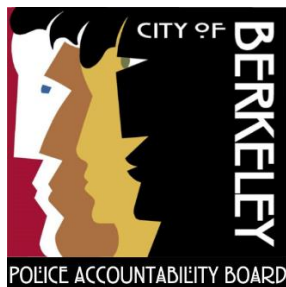
- A prohibition on any use of force involving a UAS, including weaponization.
- A prohibition on *generalized* patrol and intelligence-gathering missions.
- A prohibition on data-driven information gathering, such as crowd monitoring or estimating during peaceful demonstrations; or revenue-generating such as monitoring traffic or parking areas.

These prohibitions directly address some of the concerns that have been presented by the community (Valdovinos, et al., 2016).

An additional resource the PAB may wish to recommend to the Committee is the 2020 Police Executive Research Forum (PERF) publication titled Drones A Report on the Use of Drones by Public Safety Agencies—and a Wake-Up Call about the Threat of Malicious Drone Attacks. That report was published after a February 2019, two-day conference in Washington, D.C that was convened to discuss the policy and operational issues regarding the implementation and use of drones. The agencies that brought the conference together included the COPS Office, the PERF, and the U.S. Department of Homeland Security (DHS). The publication synthesizes information presented and discussed by the conference participants; lessons learned; and promising practices gathered from interviews, policy reviews, and survey data to provide law enforcement agencies with guidance on implementing a drone program. The ODPa urges the City’s

decision-makers to pay close attention to the important pre-implementation recommendations from the report concerning community outreach:

- Engage with the community before implementing a drone program to ensure support for the program.
 - Proactively reach out to community organizations that are likely to have reservations about drone use, such as civil liberties or privacy interest groups, prior to program implementation. This can help the agency to get ahead of concerns, address them properly, and avoid misunderstandings.
 - Solicit feedback from community stakeholders to ensure that community concerns are addressed properly.
 - Host outreach events during a variety of days and times to ensure that a large majority of community members will be able to attend such events.
- Communicate with the public and community stakeholders about the authorized and official purposes of your drone program to ease privacy concerns about the uses of drones and alleviate concerns about unauthorized uses or purposes.
 - Stress that the use of drones is to promote public safety and not for loosely defined surveillance purposes.
 - Use print, broadcast, and social media to inform and engage the public.
 - Involve your agency's public information officer to share information widely.
- Be transparent about your agency's drone policies and practices both prior to and after implementation. (pg. xiv-xv)



SUPPLEMENTAL INFORMATION REPORT

Date: Wednesday, April 05, 2023
To: Public Safety Policy Committee
From: Police Accountability Board
Cc:
Subject: Berkeley Police Department Surveillance Ordinance Policies Related to Unmanned Aerial System ("Drones") (Policy 611, Policy 1303 and Related Surveillance Acquisition Report)

Background:

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1. Could the PAB further elaborate on potential threats to civil rights and liberties that may arise from the proposed policies?
2. Does the PAB have any recommended resources or model policies available that the Council can use as a reference for best practices regarding drone usage?

The purpose of this memorandum is to present to the Committee additional information in response to those inquiries.

Response:

1. Potential Threats to Civil Rights and Liberties Arising from Proposed Drone Policies

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In its policy review report dated February 23, 2023, the PAB expressed apprehensions regarding the possible consequences for civil liberties and constitutional rights. The PAB stated that the use of drones could potentially endanger the First Amendment rights to assemble freely and peacefully (U.S. Const. amend. I) and Fourth Amendment protection that safeguards "the privacy and security of individuals against arbitrary invasions by governmental officials" (*Camara v. Municipal Court of City and County of San Francisco*, 1967). These concerns arise from the proposed authorized use of drones for "other unforeseen exigent circumstances," as well as the absence of a prohibition on using drones to collect or retain data on private citizens peacefully exercising their constitutional rights of free speech and assembly. The PAB is concerned that the definition of "exigent circumstances" is too broad in this case and that it could result in unintended uses of this technology.

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As a result of this incident, the PAB has expressed that it is vital to define an exigent circumstance in the context of this policy as well as specifically prohibit the use of drones to monitor and collect data of private citizens exercising their first amendment rights. It should be noted, however, that case law as it relates to the fourth amendment and law enforcement use of drones is far more extensive than it is for the implications of the first amendment and law enforcement surveillance of lawful assemblies. Although the BPD has removed the monitoring of social events and public gatherings from its proposed policies, which are primarily based on Oakland PD’s current policy², it does not prohibit it. In *United States v. Jones* (2011), the Supreme Court rejected the argument that there is no reasonable expectation of privacy in a person’s movement on public thoroughfares as it relates to the fourth amendment. In her concurring opinion, Justice Sotomayor made the following observation:

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The PAB has not rejected the notion that drones can be an important tool but it has been consistent in its stance that there is a need to add safeguards that ensure the maximum protection of the First and Fourth Amendments.

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The sudden appearance of police drones and the increased attention they are receiving has raised questions about their origin and purpose. While consumer drones became readily available in the early 2010s, strict regulations regarding civilian drone use initially restricted police use of drones. However, in 2016, the Federal Aviation Administration (FAA) implemented the “Part 107” rule, which allowed non-hobby drone use in American airspace. This rule change led to a surge in police drone usage, with a

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- Engage with the community before implementing a drone program to ensure support for the program.
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- Host outreach events during a variety of days and times to ensure that a large majority of community members will be able to attend such events.
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 - Use print, broadcast, and social media to inform and engage the public.
 - Involve your agency's public information officer to share information widely.
- Be transparent about your agency's drone policies and practices both prior to and after implementation. (pg. xiv-xv)

Table of Authorities

- ❖ Berkeley Municipal Code §2.99
- ❖ California Constitution. (n.d.). Article I, section 2, subdivision (a).
- ❖ U.S. Const. amend. I.
- ❖ *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1967).
- ❖ *United States v. McConney*. (1982). 728 F.2d 1195. *United States v. McConney*. (1982). 728 F.2d 1195.
- ❖ *Michigan v. Fisher* (2009). 558 U.S. 45.
- ❖ *Missouri v. McNeely*, 569 U.S. 141 (2013)
- ❖ *United States v. Jones*, 565 U.S. 400 (2012).

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Valdovinos, Maria, Specht, James, and Zeunik, Jennifer 2016. *Community Policing & Unmanned Aircraft Systems (UAS): Guidelines to Enhance Community Trust*. Washington, DC: Office of Community Oriented Policing Services.

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NOTE: This document was authored and proposed by Board member Calavita.

SUPPLEMENTAL INFORMATION REPORT

Date: Wednesday, April 05, 2023
To: Public Safety Policy Committee
From: Police Accountability Board
Cc:
Subject: Responses to the City Council Committee on Public Safety Requests for Additional Information from the PAB Regarding Fixed Surveillance Cameras and the BPD Use Policies

In reviewing Policies 351 and 1304, the PAB originally flagged the fact that the uses described in these policies were not consistent with—and were more expansive than—the sole use (“solving criminal investigations”) authorized by City Council. Subsequently, the City Council’s Public Safety Committee had three main follow-up questions for the PAB. We present them here with our responses and recommendations.

1. What is the PAB’s stance on the use of these CCTV cameras for police oversight?

We have uncovered little systematic research on the impact of these cameras on the oversight of the police. It is of note, however, that the ability of the surveillance camera in Memphis to capture the Tyre Nichols killing was due to a real-time manipulation of the camera by an operator. Memphis has 2100 surveillance cameras, and one was close enough to the Tyre Nichols incident that an off-site operator was able to adjust the angle to capture it. Memphis has spent over 10 million dollars to install these cameras and significantly more in personnel costs to do real-time monitoring. This is beyond Berkeley’s capacity and intentions. The PAB, therefore, does not envision that CCTV cameras would be a significant tool in police oversight, beyond what officers’ body-worn cameras already achieve. The PAB has found the latter extremely useful in its police oversight function.

2. **What is the PAB stance on the use of these cameras for investigations of serious traffic collisions?**

The PAB has not at this time discovered any research or evidence on this topic. Therefore, the PAB does not have enough information to determine how effective these cameras would be in investigating traffic collisions. It should be pointed out, however, that to capture useful footage of a collision the camera would have to be directly angled on the incident at a particular intersection.

3. **How effective is fixed camera surveillance in deterring and reducing crime?**

The PAB examined six major studies on this question. The studies used a variety of methods and had differing goals with mixed results. These six studies are summarized here:

La Vigne et al. (2011). Urban Institute. “Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention”. This study of Baltimore, Chicago and Washington DC found that any impact on reducing crime rates was largely dependent on wide camera coverage and real-time, 24/7 monitoring.

Piza (2018). “The Crime Prevention Effect of CCTV in Public Places”. This study of Newark, New Jersey, found a modest preventive effect on auto theft, but not on other types of crime. The effect was most notable where camera coverage was high.

National Academy of Sciences, Engineering and Medicine (2018). “Proactive Policing: Effects on Crime and Communities”. This study is a review of the literature and found that CCTV can be used “passively” (without real-time monitoring) or “proactively” (close monitoring in real time). The results regarding the crime-prevention impacts of these methods have been mixed although the studies tend to show only modest outcomes in reducing property crimes in high-crime areas even in cases of proactive usage.

Robin et al. (2020). Urban Institute. “Public Surveillance Cameras and Crime”. This study compared two different types of cameras and their effects on crime in Milwaukee in 2018 and 2019. Crime overall in Milwaukee decreased during this period, but the crime at the intersections where these

cameras were placed had 15% more crimes than at matched (similar) intersections, with one type of camera associated with 40% more violent crime. There was no statistically significant effect on crime reduction for either type of camera. The authors note that the increase in crime in areas with cameras may have been the result of the cameras recording crimes that otherwise would not have been reported.

Piza et al. (2019). “CCTV Surveillance for Crime Prevention: A 40-Year Systemic Review...”. This article reviewed 40 years of studies and found a “modest” decrease in vehicle and property crime associated with camera surveillance with the “largest and most consistent decreases” in parking lots. It found no significant effects on violent crime. Cameras with live monitoring showed the most promise.

Alexandrie (2017). “Surveillance Cameras and Crime”. This article reviewed 7 studies and found that overall cameras were associated with a 24-28% reduction in crime, and were most effective in reducing property crimes such as pickpocketing or theft. No significant effects were found in aggregate violent crime rates, homicide, assault, or sexual offenses. Overall, the effects and statistical significance varied across the 7 studies reviewed.

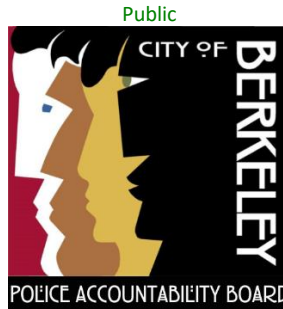
Collectively, these studies show mixed results. Some showed modest effects on non-violent crimes, while the Milwaukee study revealed increases in crime. The most significant impacts on crime reduction were generally dependent on wide coverage and close monitoring, both of which are expensive propositions and presumably beyond the fiscal capacity and intentions of Berkeley.

Summary

The PAB is concerned about crime in Berkeley and is committed to public safety for all. We are eager to collaborate in finding evidence-based law-enforcement tools and other crime-control strategies that are consistent with Berkeley’s fiscal capabilities and values. There is scant evidence that fixed camera surveillance will enhance police oversight, nor is there currently available information on how they might play a role in traffic investigations. There is, however, substantial research on the ability of CCTV surveillance to reduce crime, with significant positive results largely dependent on the wide coverage and 24/7 monitoring that are beyond the capability of a relatively small department. Therefore, the PAB—given its commitment to evidence-based strategies--cannot endorse it at this time as a meaningful tool in deterring crime in Berkeley.

The PAB recognizes that the City Council has authorized cameras to be placed at 10 intersections in addition to those locations where cameras already exist. If these new cameras happen to record traffic collisions or police misconduct incidents and are useful in their resolution, that of course would be beneficial. The PAB is primarily focused on the fact 1) that use policies #351 and #1304, with their references to “a variety of uses”, are inconsistent with the authorization of the City Council for fixed camera surveillance solely for the purpose of solving criminal investigations; and 2) that any future proposals to extend camera locations in Berkeley for the purpose of reducing crime be scrutinized within the context of this scant evidence for their effectiveness.

DRAFT



PAB GUIDE FOR REVIEWING PROPOSED PERMANENT REGULATIONS

The purpose of this guide is to assist the Police Accountability Board (PAB) in their review of proposed permanent regulations. The guide enables a side-by-side comparison of the revisions made to the document submitted by the PAB to the City Attorney in November 2022. This allows the PAB to efficiently review the changes made by the regulations subcommittee before voting to accept these regulations and forwarding them to the next appropriate authority for further review. By using this guide, the PAB can ensure that they have a clear understanding of the modifications made to the document and make informed decisions.

Preamble	
Relevant Section	Revisions
Preamble	No revisions were made.
Section I	
Relevant Section	Revisions
Section I.A. “Definitions”	No revisions were made.
Section I.B.1	No revisions were made.
Section I.B.2	No revisions were made.
Section I.B.3	No revisions were made.
Section I.B.4	No revisions were made.
Section I.B.5	Revised Section I.B.5.
<p><u>Effect of violation.</u> A Board member who violates confidentiality before or during a confidential complaint hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a closed session of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member’s nominating Councilmember or to the City Council, or a prohibition from participating in future confidential complaint hearings for the remainder of the Board member’s term</p>	<p><u>Effect of violation.</u> A Board member who violates confidentiality before or during a confidential complaint hearing shall recuse themselves from further participation in the hearing, and the Director shall then designate a replacement Board member. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a closed session of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include notice of the violation to the Board member’s nominating Councilmember or to the City Council.</p>

Section II

Relevant Section	Revisions
Section II.A.1	No revisions were made.
Section II.A.2	No revisions were made.
<p>Section II.A.3</p> <p>3) <u>Filing Period.</u> A complaint must be filed within 180 days of the alleged misconduct, except that the 180 days shall be tolled if:</p> <p>(a) The complainant is incapacitated or otherwise prevented from filing a complaint; or</p> <p>(b) The complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.</p>	<p>Revised Section II.A.3</p> <p>3) <u>Filing Period.</u></p> <p>(a) A complaint must be filed within 180 days of the alleged misconduct, except that the 180 days shall be tolled if:</p> <p>(i) The complainant is incapacitated or otherwise prevented from filing a complaint; or</p> <p>(ii) The complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.</p> <p>(b) If a complainant first files with the Police Department of Internal Affairs pursuant to Charter section 125(18), the Director of Police Accountability shall assess whether the complaint can be investigated in a thorough manner within the remaining time of the 240-day time limit. If the Director determines that insufficient time remains for a thorough investigation, the Director shall recommend administrative closure of the complaint by the Board.</p>
Section II.A.4	No revisions were made.
Section II.A.5	No revisions were made.
<p>Section II.B.1</p> <p>B) Mediation</p> <p>1) <u>Election</u></p> <p>(a) ODPa staff shall provide every complainant with information about the option to select mediation and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II.E.1. below.</p>	<p>Revised Section II.B.1</p> <p>B) Mediation</p> <p>1) <u>Election</u></p> <p>(a) ODPa staff shall provide every complainant with information about the option to select mediation and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II.E.1. below.</p>

<p>(b) If the complainant elects mediation, ODPa staff shall issue a Notice of Complaint and Request for Mediation to the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.</p> <p>(c) A subject officer who agrees to mediation must agree to toll the City’s 240-day disciplinary deadline if the officer later withdraws from mediation before the mediation session concludes.</p> <p>(d) Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and heard at a confidential complaint hearing, unless the subject officer withdraws from mediation.</p>	<p>(b) If the complainant elects mediation, ODPa staff shall issue a Notice of Complaint and Request for Mediation to the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.</p> <p>(c) A subject officer who agrees to the mediation must agree to waive the 240-day time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and Article XVIII, Section 125(18)(d) in a written tolling agreement pursuant to Government Code section 3304(d)(2)(B) if the officer later withdraws from mediation before the mediation session concludes.</p> <p>(d) Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and heard at a confidential complaint hearing, unless the subject officer withdraws from mediation.</p>
<p>Section II.B.2</p>	<p>No revisions were made.</p>

<p>Section II.C.1</p> <p>C) Complaint investigation</p> <p>1) <u>Time for completion.</u> Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City’s discovery by a person authorized to initiate an investigation of the alleged misconduct, unless Government Code Sec. 3304(d) applies, except:</p> <p>a) If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPa shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPa shall</p>	<p>Revised Section II.C.1</p> <p>C) Complaint investigation</p> <p>1) <u>Time for completion.</u> Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City’s discovery by a person authorized to initiate an investigation of the alleged misconduct, unless Government Code Sec. 3304(d) applies, except:</p> <p>a) If the act, omission, or other allegation in a complaint is also the subject of a criminal investigation or criminal prosecution. All time limits for processing the complaint shall be tolled during the pendency of the criminal investigation or criminal prosecution. As soon as practicable after the filing of the complaint, the ODPa shall contact the District Attorney’s Office</p>
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<p>contact the District Attorney’s Office to determine the status and anticipated resolution of the criminal proceeding.</p> <p>b) A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.M.</p>	<p>to determine the status and anticipated resolution of the criminal proceeding.</p> <p>b) The ODPa shall not commence an investigation if the complaint involves a matter in criminal litigation where the complainant is a criminal defendant. All time limits for processing the complaint shall be tolled during the period of that defendant’s criminal investigation and prosecution. As soon as practicable after the filing of a complaint, the ODPa shall contact the District Attorney’s Office to determine the status and anticipated resolution of the criminal prosecution.</p> <p>c) A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.M.</p>
Section II.C.2	No revisions were made.
Section II.C.3	No revisions were made.
Section II.C.4	No revisions were made.
Section II.C.5	<p>Revised Section II.C.5</p> <p>5) <u>Production, subpoena, and preservation of records</u>. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board, without redaction or limitation, in order to carry out its investigatory and other functions and duties, unless state or federal law forbids the production of those records and information.</p> <p>5) <u>Production, subpoena, and preservation of records</u>. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board, without redaction or limitation, in order to carry out its investigatory and other functions and duties, unless state or federal law forbids the production of those records and information. shall be produced no later than ten (10) business days from the date of any such request unless additional time is needed to locate and review records. If additional time is needed to comply, the responding departments, officers, or employees shall specify how much time up to thirty (30) additional business days is needed and explain the reasons for the delay in producing the necessary records and information.</p>
Section II.C.6	No revisions were made.
Section II.C.7	Revised Section II.C.7

<p><u>7) Conduct of interviews exercise of Constitutional rights.</u> Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers’ Procedural Bill of Rights Act (“POBRA”). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment and are subject to discipline for failure to respond.</p> <p>Both the subject officer and the complainant retain all their constitutional rights throughout the process, and any such exercise shall not be considered by the Board in its disposition of a complaint.</p>	<p><u>7) Conduct of interviews exercise of Constitutional rights.</u> Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers’ Procedural Bill of Rights Act (“POBRA”). When possible, ODPa staff shall avoid contacting BPD employees at home and avoid contacting others at their place of employment. Officers have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment and are subject to discipline for failure to respond. When an officer is questioned on matters related to a potential criminal offense, the officer must be advised that “silence could be deemed insubordination, leading to administrative discipline, and any statement made under the compulsion of the threat of such discipline cannot be used against them in any subsequent criminal proceeding.”</p> <p>Both the subject officer and the complainant retain all their constitutional rights throughout the process, and any such exercise shall not be considered by the Board in its disposition of a complaint.</p>
Section II.D.1	No revisions were made.
Section II.E.1	No revisions were made.
Section II.E.2	No revisions were made.
Section II.E.3	No revisions were made.
Section II.E.4	No revisions were made.
<p>Section II.E.5</p> <p><u>5) Board decision.</u> Upon reviewing the investigative evidence and the Director’s findings and disciplinary recommendations, and viewing any relevant body-worn camera footage, the Board shall proceed as follows:</p>	<p>Revised Section II.E.5</p> <p><u>5) Board decision.</u> Upon reviewing the investigative evidence and the Director’s findings and disciplinary recommendations, and viewing any relevant body-worn camera footage, the Board shall proceed as follows:</p>

<p>a) If the Board affirms or proposes a sustained finding or a recommendation of discipline on any allegation, or decides that further fact-finding is warranted, a confidential complaint hearing may be convened on all allegations in the complaint upon the election of the subject officer. The Board may request that ODPa staff conduct further investigation as needed.</p> <p>b) If the Director and the Board agree on all proposed findings, none of the findings are “sustained,” and the Board decides there is no need for a hearing, the Board shall send its findings to the Chief of Police and the subject officer(s).</p> <p>c) If the Board modifies the Director’s findings, none of the findings are “sustained,” and the Board decides there is no need for a hearing, the Board shall send its findings to the Chief of Police and the subject officer(s).</p> <p>d) All findings and recommendations must be sent to the Chief of Police within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II.M.2.</p>	<p>a) If the Board affirms or proposes a sustained finding or a recommendation of discipline on any allegation, upon the election of the subject officer, a confidential complaint hearing may be convened.</p> <p>b) If the Board decides that further fact-finding is warranted, a confidential complaint hearing may be convened on all allegations in the complaint. The Board may request that ODPa staff conduct further investigation as needed provided that further investigation will not cause the investigation to exceed the 120-day time limit set forth in Article XVIII, Section 125(18)(e).</p> <p>c) If the Board decides that further fact-finding is warranted, a confidential complaint hearing may be convened. The Board may request that ODPa staff conduct further investigation as needed if such further investigation will not cause the investigation to exceed the 120-day time limit set forth in Article XVIII, Section 125(18)(e).</p> <p>d) If the Director and the Board agree on all proposed findings and none of the findings are “Sustained,” or the Board decides there is no need for a hearing, the Board shall send its findings to the Chief of Police and the subject officer(s).</p> <p>e) If the Board modifies the Director’s findings and none of the findings are “Sustained,” or the Board decides there is no need for a hearing, the Board shall send its findings to the Chief of Police and the subject officer(s).</p> <p>f) All findings and recommendations must be sent to the Chief of Police within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II.M.2.</p>
<p>Section II.F</p>	<p>No revisions were made.</p>
<p>Section II.G.1</p> <p>1) <u>Impartiality</u></p> <p>a) Board members shall maintain basic standards of fair play and impartiality and</p>	<p>Revised Section II.G.1</p> <p>1) <u>Impartiality</u></p> <p>a) Board members shall maintain basic standards of fair play and impartiality and</p>

<p>avoid bias and the appearance of bias. In confidential complaint hearings, they shall consider all viewpoints and evidence.</p> <p>b) No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.</p> <p>c) No Board member with a personal interest or the appearance thereof in the outcome of a hearing shall sit on the Hearing Panel. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs or affiliations.</p> <p>Examples of personal interest include, but are not limited to:</p> <ul style="list-style-type: none"> i. A familial relationship or close friendship with the complainant or subject officer; ii. Witnessing events material to the inquiry; iii. A financial interest in the outcome of the inquiry; iv. A bias for or against the complainant or subject officer. <p>d) A Board member who violates Section G.1.b above, before or during a confidential complaint hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential complaint hearings for the remainder of the Board member's term.</p>	<p>avoid bias and the appearance of bias. In confidential complaint hearings, they shall consider all viewpoints and evidence.</p> <p>b) No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.</p> <p>c) No Board member with a personal interest or the appearance thereof in the outcome of a hearing shall sit on the Hearing Panel. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs or affiliations.</p> <p>Examples of personal interest include, but are not limited to:</p> <ul style="list-style-type: none"> i. A familial relationship or close friendship with the complainant or subject officer; ii. Witnessing events material to the inquiry; iii. A financial interest in the outcome of the inquiry; iv. A bias for or against the complainant or subject officer. <p>d) A Board member who violates Section G.1.b above, before or during a confidential complaint hearing, shall recuse themselves from further participation in the hearing and the Director shall then designate a replacement Board member. Additionally, a Board member or the Director may agendize an alleged conflict of interest for discussion and action at a closed session of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include notice of the violation to the Board member's nominating Councilmember or to the City Council.</p>
Section II.G.2	No revisions were made.
Section II.G.3	No revisions were made.
Section II.G.4	No revisions were made.
Section II.G.5	Deleted.

<p><u>5) Replacement of Board Members</u></p> <p>a. If a challenge to a Board member is upheld, DPA staff shall ask another Board member to serve.</p> <p>b. In cases where the full Board sits as the Hearing Panel, a Board member who agrees to a challenge or is successfully challenged will be replaced by the alternate Board member, subject to the same Board quorum requirements.</p>	
<p>Section II.G.6</p> <p>6) <u>Tolling of time</u> A challenge to a Board member that is granted at the request of the subject officer shall toll any BPD disciplinary time period.</p>	<p>Revised Section II.G.6 (now Section II.G.5)</p> <p>5) <u>Tolling of time</u> A challenge to a Board member that is granted at the request of the subject officer shall toll the 240-day time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and Article XVIII, Section 125(18)(d), and the 60-day time limitation under Article XVIII, Section 125(18)(i) for the period of time required to re-schedule the hearing if the subject officer agrees to waive those periods in a written tolling agreement pursuant to Government Code section 3304(d)(2)(B).</p>
<p>Section II.H.1</p> <p><u>Pre-hearing continuance request.</u> Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for the request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time</p>	<p>Revised Section II.H.1</p> <p><u>Pre-hearing continuance request.</u> Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: the reason for the request, timeliness, prejudice to the other party, the filing date of the complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. The Director shall not grant a request for a continuance if granting the continuance would impact the ability to meet the time requirements set forth in Article XVIII, Section 125(18) unless the subject officer waives the 240-day time period under</p>

limitation under Article XVIII, Section 125(18)(i).	the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and Article XVIII, Section 125(18)(d), and the 60-day time limitation under Article XVIII, Section 125(18)(i) in a written tolling agreement pursuant to Government Code Section 3304(d)(2)(B).
Section II.H.2	No revisions were made.
Section II.H.3	No revisions were made.
Section II.H.4	No revisions were made.
Section II.I.1	No revisions were made.
Section II.I.2	No revisions were made.
Section II.I.3	No revisions were made.
Section II.I.4	No revisions made to Section II.I.4.(a)-(e)
Section II.I.4.f A re-hearing granted at the request of the subject officer shall toll any BPD disciplinary time period and the one-year investigatory time period under Government Code section 3304(d).	Revised Section II.I.4.f The Hearing Panel shall not grant a request to reschedule a hearing at the request of the subject officer or complainant if it would impact the ability to meet the time requirements set forth in Article XVIII, Section 125(18) unless the subject officer waives the 240-day time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and Article XVIII, Section 125(18)(d) in a written tolling agreement pursuant to Government Code Section 3304(d)(2)(B).
Section II.I.5	No revisions were made.
Section II.I.6	No revisions were made.
Section II.I.7 <u>Viewing body-worn camera footage.</u> Hearing Panel members, complainants and their representatives, and subject officers and their representatives (in accordance with BPD policy), may view relevant body worn camera footage in advance of the hearing. Relevant body-worn camera footage may also be shown during the hearing.	Revised Section II.I.7 <u>Viewing body-worn camera footage.</u> Hearing Panel members, complainants and their representatives, and subject officers and their representatives (in accordance with BPD policy and state law), may view relevant body-worn camera footage in advance of the hearing. Relevant body-worn camera footage may also be shown during the hearing at the discretion of the hearing panel.
Section II.I.8	No revisions were made.

Section II.J.1	No revisions were made.
Section II.J.2	No revisions were made.
Section II.J.3 Section II.J.3.g If either party requests that the hearing be continued at a later date to consider motions or points of law, any applicable BPD disciplinary time limit may be tolled for the period of such continuance. The Hearing Panel, in consultation with the parties, shall decide on the continuance and any possible tolling.	No revisions made to Section II.J.3.(a) – (f) or Section II.J.3(h) Revised Section II.J.3.g If either party requests that the hearing be continued at a later date to consider motions or points of law, the 240-day time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and Article XVIII, Section 126(18)(d), and the 60-day time limitation under Article XVIII, Section 125(18)(i) shall be tolled if the subject officer agrees in a written tolling agreement pursuant to Government Code Section 3304(d)(2)(B).
Section II.J.4.	No revisions were made.
Section II.K.1	No revisions were made.
Section II.K.2 <u>Vote.</u> The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability, as set forth in Section II.E.3. All actions of the Hearing Panel shall be by majority vote of those Board members present.	Revised Section II.K.2 <u>Vote.</u> The Hearing Panel, acting for the Board pursuant to Article XVIII, Section 125(18)(i), shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability, as outlined in Section II.E.3. All actions of the Hearing Panel shall be by a majority vote of those Board members present.
Section II.K.3	No revisions were made.
Section II.K.4	No revisions were made.
Section II.L.1 1) <u>Chief's decision.</u> Within 10 days of receiving the Board's findings and recommendations, the Chief of Police shall take one of the following actions: a. Issue a final decision if the Chief agrees with the Director or the Hearing Panel. b. Submit a tentative decision including any disagreement with the Director or the Police Accountability Board.	Revised Section II.L.1 1) <u>Chief's decision.</u> Within 10 days of receiving the Board's findings and recommendations, the Chief of Police shall take one of the following actions: a. Issue a final decision if the Chief agrees with the Director or the Hearing Panel. b. Submit a tentative decision including any disagreement with the Director or the Police Accountability Board and an explanation for the disagreement.
Section II.L.2	No revisions were made.

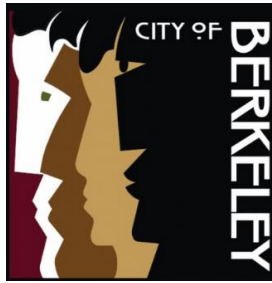
Section II.L.3	No revisions were made.
Section II.L.4	No revisions were made.
Section II.M.1	No revisions were made.
Section II.M.2	No revisions were made.
Section II.M.3	Revised Section II.M.3
<p><u>Tolling.</u> If a subject officer is unavailable for an interview with ODPa staff or to attend a confidential personnel hearing due to any leave of absence, the 240-day time limit for complaint investigation and notification of discipline under Section 18(d) of Article XVIII of the City Charter shall be tolled pending availability of the officer. This provision shall apply only when the subject officer's leave of absence exceeds 14 consecutive days.</p>	<p><u>Tolling.</u> If a subject officer is unavailable for an interview with ODPa staff or to attend confidential personnel hearing due to any leave of absence, the 240-day time limit for complaint investigation and notification of discipline under Section 18(d) of Article XVIII of the City Charter shall be tolled pending availability of the officer on a one-to-one basis for each day of the officer's unavailability, until the officer becomes available, pursuant to Government Code Section 3304(d)(2)(E).</p>

Section III	
Relevant Section	Revisions
Section III.A	No revisions.
Section III.B.1	Revised III.B.1
<p>B. Procedure</p> <p>1) When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code.</p>	<p>B. Procedure</p> <p>1) When the Internal Affairs division of the Police Department has completed its investigation of a complaint, within 120 days as mandated by Section 125(19)(c) of the Charter, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code.</p>
Section III.B.2	No revisions were made.
Section III.B.3	No revisions were made.
Section III.B.4	No revisions were made.
Section III.B.5	No revisions were made.
Section III.B.6	No revisions were made.

Section IV	
Relevant Section	Revisions
Section IV.A.	Revised Section IV.A
<p>An informal complaint is a communication not on the official ODPa complaint form from any member of the public that identifies an officer by name, badge number, other identifying features, or specific circumstances, and alleges an act of police misconduct. The individual who initiates an informal complaint may request anonymity (i.e., remain anonymous to all, including ODPa staff) or confidentially (i.e., remain known only to ODPa staff and Board members).</p>	<p>An informal complaint is a communication not on the official ODPa complaint form from any member of the public that identifies an officer by name, badge number, other identifying features, or specific circumstances, and alleges an act of police misconduct. The individual who initiates an informal complaint may request anonymity (i.e., remain anonymous to all, including ODPa staff) and shall be advised that if the individual discloses their identity to ODPa staff, such information could be subject to legally mandated disclosure to other parties as required by Government Code section 3303(g).</p>
Section IV.B	No revisions were made.
Section IV.C	No revisions were made.
Section IV.D	No revisions were made.

Section V	
Relevant Section	Revisions
Section V	No revisions were made.
Section VI	
Relevant Section	Revisions
Section VI	No revisions were made.

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POLICE ACCOUNTABILITY
BOARD

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

REGULATIONS FOR HANDLING INVESTIGATIONS AND COMPLAINTS

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.

1947 Center Street, 5th Floor, Berkeley, CA 94704 | TEL: 510-981-4950 | TDD: 510-981-6903 | FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ | Email: dpa@cityofberkeley.info

Last Date of Revision: April 3, 2023

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PREAMBLE

These regulations for handling complaints against sworn members of the Berkeley Police Department (BPD) and investigations are issued in accordance with the City of Berkeley Charter Article XVIII, Section 125.

I) GENERAL PROVISIONS

A) Definitions

1) The following definitions shall apply:

- (a) *Administrative closure*: Closure of a complaint before findings and recommendations are sent to the Chief of Police.
- (b) *Aggrieved party*: Any person who is the subject of alleged police misconduct.
- (c) *Allegation*: An assertion of specific police misconduct.
- (d) *Board member*: A member of the Police Accountability Board (PAB) appointed by the City Council.
- (e) *Chief; Police Chief*: Chief of the Berkeley Police Department.
- (f) *City's discovery of alleged misconduct*: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
- (g) *Complaint*: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
- (h) *Complainant*: A member of the public who files a complaint with the Office of the Director of Police Accountability (ODPA).
- (i) *Complaint hearing*: A confidential personnel hearing regarding alleged police misconduct as referenced in City Charter Article XVIII, Section 125.
- (j) *Days*: Calendar days unless otherwise specified.
- (k) *Director of Police Accountability; Director*: The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA).

- (l) *Duty Command Officer (DCO)*: A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying the departmental policy.
- (m) *Formal complaint*: A complaint filed on the ODPa complaint form by a member of the public.
- (n) *Hearing Panel*: Three Board members impaneled to conduct a confidential hearing of alleged police misconduct.
- (o) *Informal complaint*: A communication not on the official ODPa complaint form from any member of the public to ODPa staff that identifies an officer by name, badge number, other identifying features, or specific circumstances, and alleges an act of police misconduct.
- (p) *Investigator*: Employee of the ODPa whose primary role is to investigate complaints filed with the ODPa and to pursue fact-finding inquiries.
- (q) *Investigation*: The fact-finding process engaged in by the ODPa staff in response to a complaint of alleged misconduct by a member of the public, or at the request of the PAB as a policy review or review of a particular incident or incidents.
- (r) *Mediation*: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
- (s) *Police Accountability Board ("PAB" or "Board")*: The body established by City Charter Article XVIII, Section 125.
- (t) *Preponderance of the evidence*: Standard of proof in which the evidence on one side outweighs, or is more convincing than, the evidence on the other side, but not necessarily because of the number of witnesses or quantity of evidence.
- (u) *Subject officer*: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
- (v) *Toll*: To suspend a time period.
- (w) *Witness officer*: A sworn employee of the Berkeley Police Department, other than the subject officer, who witnessed the events described in the complaint or has relevant personal knowledge of those events.

B) Confidentiality

- 1) Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley Police Department personnel. ODPa staff will likewise have access to such confidential information. It is vitally important to the integrity of the complaint process that all parties understand and adheres to the confidentiality of the process and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. The testimony of any sworn employee of the Police Department is subject to the due process and confidentiality provisions of applicable state and federal law.
- 2) Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. In particular, such persons shall not violate the rights of sworn officers to the confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated.
- 3) Closed hearings, effect on public records. All confidential complaint hearings, confidential investigative records, and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. Complainants shall receive redacted versions of investigative records relating to their case in accordance with the Public Safety Officers' Procedural Bill of Rights Act ("POBRA"), Government Code Section 3300 et seq., and sworn employees' right to maintain the confidentiality of their personnel file information (including but not limited to Penal Code §§832.7,832.8.), except as required under Section 20 of Article XVIII of the City Charter.

- 4) Handling confidential information. Each Board member shall shred or return to ODPa staff all hard copies of confidential material and delete all confidential material sent electronically, at the close of any proceeding or as soon as the information is no longer needed. Board members shall inform ODPa staff after the confidential materials have been shredded or electronically deleted.
- 5) Effect of violation. A Board member who violates confidentiality before or during a confidential complaint hearing shall recuse themselves from further participation in the hearing, and the Director shall then designate a replacement Board member. Additionally, a Board member or the Director may agendaize an alleged violation of confidentiality for discussion and action at a closed session of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include notice of the violation to the Board member’s nominating Councilmember or to the City Council.

**II) FORMAL COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF
POLICE ACCOUNTABILITY**

A) Initiating a formal complaint

- 1) Complainant form. A formal complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Department of Police Accountability (DPA). If assistance is needed to complete the written form, DPA staff are available to assist. Complaint forms must include language advising a complainant of their right to consult an attorney before filing a complaint, especially in cases where the complainant has or may have a criminal case arising from the same events alleged in the complaint. The complaint form shall include the following attestation language: “Your signature below indicates that the statement that you are making is true and accurate to the best of your knowledge.”
- 2) Who may file. Any member of the public may file a complaint.

3) Filing Period.

(a) A complaint must be filed within 180 days of the alleged misconduct, except that the 180 days shall be tolled if:

(i) The complainant is incapacitated or otherwise prevented from filing a complaint; or

(ii) The complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.

(b) If a complainant first files with the Police Department of Internal Affairs pursuant to Charter section 125(18), the Director of Police Accountability shall assess whether the complaint can be investigated in a thorough manner within the remaining time of the 240-day time limit. If the Director determines that insufficient time remains for a thorough investigation, the Director shall recommend administrative closure of the complaint by the Board.

4) Sufficiency of a complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be submitted by the Director to the Board for administrative closure at the next meeting that allows the complainant to be provided at least a 5-day notice. If a majority of the Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation.

5) Right to representation. Complainants and subject officers have the right to consult with and be represented by, an attorney or other representative, but a representative is not required. If the ODPa is notified that a complainant or subject officer is represented, then the ODPa shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives, as well.

B) Mediation

1) Election

- (a) ODPa staff shall provide every complainant with information about the option to select mediation and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II.E.1. below.
- (b) If the complainant elects mediation, ODPa staff shall issue a Notice of Complaint and Request for Mediation to the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- (c) A subject officer who agrees to the mediation must agree to waive the 240-day time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and Article XVIII, Section 125(18)(d) in a written tolling agreement pursuant to Government Code section 3304(d)(2)(B) if the officer later withdraws from mediation before the mediation session concludes.
- (d) Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and heard at a confidential complaint hearing, unless the subject officer withdraws from mediation.

2) Completion

- (a) After receiving notice from the mediator that mediation has concluded, ODPa staff shall close the case and inform the Board of the results of the mediation.

C) Complaint investigation

1) Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City’s discovery by a person authorized to initiate an investigation of the alleged misconduct, unless Government Code Sec. 3304(d) applies, except:

(a) If the act, omission, or other allegation in a complaint is also the subject of a criminal investigation or criminal prosecution. All time limits for processing the complaint shall be tolled during the pendency of the criminal investigation or criminal prosecution. As soon as practicable after the filing of the complaint, the ODPa shall contact the District Attorney’s Office to determine the status and anticipated resolution of the criminal proceeding.

(b) The ODPa shall not commence an investigation if the complaint involves a matter in criminal litigation where the complainant is a criminal defendant. All time limits for processing the complaint shall be tolled during the period of that defendant’s criminal investigation and prosecution. As soon as practicable after the filing of a complaint, the ODPa shall contact the District Attorney’s Office to determine the status and anticipated resolution of the criminal prosecution.

(c) A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.M.

2) Notice of Complaint and Allegations. Complaints accepted by the Director of Police Accountability shall be promptly sent in hard copy or electronically to the Chief of Police and the Police Department of Internal Affairs, members of the Police Accountability Board, and each sworn employee of the BPD against whom the complaint is filed.

After the initial Notice of Complaint and Allegations is sent, ODPa staff may add, modify, or remove allegations as they deem appropriate in consultation with the complainant, with a brief explanation for any such changes, in a revised Notice of Allegations that is sent to the complainant, the Chief and Internal Affairs, PAB Members, and each subject officer. Notices under this section may be sent by hard copy or electronically.

- 3) Sworn officer's schedules. The Chief of Police or their designee shall provide ODP staff with the schedules of all sworn employees of the Police Department.
- 4) Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence.
- 5) Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board, without redaction or limitation, in order to carry out its investigatory and other functions and duties, unless state or federal law forbids the production of those records and information. Documents shall be produced no later than ten (10) business days from the date of any such request unless additional time is needed to locate and review records. If additional time is needed to comply, the responding departments, officers, or employees shall specify how much time up to thirty (30) additional business days is needed and explain the reasons for the delay in producing the necessary records and information.
 - (a) The Director and/or the PAB may issue subpoenas to compel the attendance of persons and the production of books, papers, and documents, including but not limited to photographic, audio, and video evidence, as needed to carry out their duties and functions.
 - (b) While an investigation is in process or tolled, the Chief of Police shall take appropriate steps to assure the preservation of the following items of evidence:
 - (i) The original Communications Center tapes are relevant to the complaint.
 - (ii) All police reports, records, and documentation, including body-worn camera video.
 - (iii) Names, addresses, telephone numbers, and statements of all witnesses.

- 6) Interview Notices. Subject officers and witness officers must appear for interviews related to complaints. ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability.
- 7) Conduct of interviews exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act¹ ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home and avoid contacting others at their place of employment. Officers have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment and are subject to discipline for failure to respond. When an officer is questioned on matters related to a potential criminal offense, the officer must be advised that "silence could be deemed insubordination, leading to administrative discipline, and any statement made under the compulsion of the threat of such discipline cannot be used against them in any subsequent criminal proceeding."

Both the subject officer and the complainant retain all their constitutional rights throughout the process, and any such exercise shall not be considered by the Board in its disposition of a complaint.

D) Pre-hearing complaint disposition.

- 1) Administrative Closure
 - (a) Grounds.

The grounds upon which a formal complaint may be administratively closed include but are not limited to the following:

¹ Government Code Sec. 3300 et seq.

- (i) The complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- (ii) The complainant requests closure.
- (iii) Staff has been unable to contact the complainant despite at least 3 telephone calls, electronic mail, and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- (iv) The complaint is moot, including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- (v) Failure of the complainant to cooperate, including but not limited to refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.

(b) Procedure

A complaint may be administratively closed by a majority vote of Board members during a closed session at a meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 5 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified.

(c) No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.E.1. If the subject officer enters a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them.

E) Initial submission and consideration of investigative findings and disciplinary recommendations.

- 1) Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and disciplinary recommendations to the Board in a closed session, and convene a confidential complaint hearing if the conditions of item 5.a. below are met. This deadline may be extended as provided under Section II.M.
- 2) Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is “preponderance of the evidence.”
- 3) Categories of Findings. The Director’s recommended finding shall include one of the following categories:
 - (a) Unfounded: The alleged actions of the police officer did not occur.
 - (b) Not Sustained: The available evidence can neither prove nor disprove whether the alleged actions of the police officer occurred.
 - (c) Exonerated: The actions of the police officer occurred, but were found to be lawful, justified, and/or within policy.
 - (d) Sustained: The actions of the police officer were found to violate law or department policy.
- 4) Recommendation of discipline and level of discipline. If the Director recommends a “sustained” finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421 on January 1, 2019, the Director must include a recommendation regarding the level of discipline.
- 5) Board decision. Upon reviewing the investigative evidence and the Director’s findings and disciplinary recommendations, and viewing any relevant body-worn camera footage, the Board shall proceed as follows:
 - (a) If the Board affirms or proposes a sustained finding or a recommendation of discipline on any allegation, upon the election of the subject officer, a confidential complaint hearing may be convened.

- (b) If the Board decides that further fact-finding is warranted, a confidential complaint hearing may be convened on all allegations in the complaint. The Board may request that ODPa staff conduct further investigation as needed provided that further investigation will not cause the investigation to exceed the 120-day time limit set forth in Article XVIII, Section 125(18)(e).
- (c) If the Board decides that further fact-finding is warranted, a confidential complaint hearing may be convened. The Board may request that ODPa staff conduct further investigation as needed if such further investigation will not cause the investigation to exceed the 120-day time limit set forth in Article XVIII, Section 125(18)(e).
- (d) If the Director and the Board agree on all proposed findings and none of the findings are “Sustained,” or the Board decides there is no need for a hearing, the Board shall send its findings to the Chief of Police and the subject officer(s).
- (e) If the Board modifies the Director’s findings and none of the findings are “Sustained,” or the Board decides there is no need for a hearing, the Board shall send its findings to the Chief of Police and the subject officer(s).
- (f) All findings and recommendations must be sent to the Chief of Police within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II.M.2.

F) Scheduling a hearing, assigning Hearing Panel members, and distributing hearing packets.

- 1) Time. If the Board decides to move forward with a confidential complaint hearing, it must be held within 60 days of the date the ODPa has completed its investigation.
- 2) Scheduling hearing. ODPa staff shall determine the availability of subject officers and complainants before setting a hearing date and time. Hearings are not to be scheduled on an officer’s day off or during vacation or other leave unless two or more subject officers identified in the same complaint do not share a common day on duty.

- 3) Hearing Panel. ODPa staff shall secure a Hearing Panel to conduct the confidential complaint hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which a majority of Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel.
- 4) Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer and complainant retain the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing. The hearing will be continued until the challenge can be resolved.
- 5) Effect of continuance. If a hearing is rescheduled due to the unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened.
- 6) Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel.
- 7) Hearing Packet. At least 14 days before the hearing date The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation, and provide access to any relevant body-worn camera footage. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command Officer, and the Police Chief. The complainant shall receive the same Hearing Packet without information protected from disclosure by state law. Witness officers and civilian witnesses shall receive a copy of only their interview transcripts.

G) Board member impartiality; recusals; challenges.

1) Impartiality

- (a) Board members shall maintain basic standards of fair play and impartiality and avoid bias and the appearance of bias. In confidential complaint hearings, they shall consider all viewpoints and evidence.
- (b) No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.
- (c) No Board member with a personal interest or the appearance thereof in the outcome of a hearing shall sit on the Hearing Panel. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs or affiliations.

Examples of personal interest include, but are not limited to:

- (i) A familial relationship or close friendship with the complainant or subject officer;
 - (ii) Witnessing events material to the inquiry;
 - (iii) A financial interest in the outcome of the inquiry;
 - (iv) A bias for or against the complainant or subject officer.
- (d) A Board member who violates Section G.1.b above, before or during a confidential complaint hearing, shall recuse themselves from further participation in the hearing and the Director shall then designate a replacement Board member. Additionally, a Board member or the Director may agendaize an alleged conflict of interest for discussion and action at a closed session of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include notice of the violation to the Board member's nominating Councilmember or to the City Council.

- 2) Recusal. Board members who recuse themselves for personal interest must do so as soon as they become aware of it.

- 3) Disclosure of *ex parte* contacts. Board members shall verbally disclose all *ex parte* contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. *Ex parte* contacts include any contact between a Board member and any party involved in the complaint before the public hearing.
- 4) Challenges to Hearing Panel Members:
 - (a) Basis for Challenge

A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing as defined in Sec. II.G.1.c. shall not sit on the Hearing Panel.
 - (b) Procedure
 - (i) Within 7 calendar days from the date of mailing of the notice of a confidential complaint hearing, which includes the names of the Board members constituting the Hearing Panel, or 10 calendar days before the hearing date, whichever occurs first, the complainant or the subject officer(s) may file with the ODPa a written challenge for cause to any Hearing Panel member. Such a challenge must specify the nature of the personal interest or perceived bias, accompanied by all evidence and argument supporting the challenge.
 - (ii) The Director of Police Accountability or their designee shall notify the challenged Board member and send them a copy of the challenge and supporting materials within 1 business day after receipt of the challenge.
 - (iii) A Board member challenge and a Board member's response to being challenged may be filed via email to dpa@cityofberkeley.info. ODPa staff may serve a notice of challenge and supporting materials, and respond to a challenge and supporting materials, via email.
 - (iv) If the Board member agrees to recuse themselves, the Director or their designee shall ask another Board member to serve.

5) Tolling of time

A challenge to a Board member that is granted at the request of the subject officer shall toll the 240-day time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and Article XVIII, Section 125(18)(d), and the 60-day time limitation under Article XVIII, Section 125(18)(i) for the period of time required to re-schedule the hearing if the subject officer agrees to waive those periods in a written tolling agreement pursuant to Government Code section 3304(d)(2)(B).

H) Continuance request; other pre-hearing motions

- 1) Pre-hearing continuance request. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: the reason for the request, timeliness, prejudice to the other party, the filing date of the complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. The Director shall not grant a request for a continuance if granting the continuance would impact the ability to meet the time requirements set forth in Article XVIII, Section 125(18) unless the subject officer waives the 240-day time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and Article XVIII, Section 125(18)(d), and the 60-day time limitation under Article XVIII, Section 125(18)(i) in a written tolling agreement pursuant to Government Code Section 3304(d)(2)(B).
- 2) Newly Discovered Evidence or Witnesses. Any newly discovered evidence or witnesses' names shall be provided to the ODPA staff no later than 10 days before the scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. ODPA staff shall inform the parties and the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

The Hearing Panel shall decide whether to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision.

- 3) Procedural issues or objections. The complainant and subject officer should raise any procedural issues or objections by submitting them in writing to the Director at least 7 days before the hearing date.
- 4) Pre-hearing submission of questions. The complainant, subject officers, or their respective representatives may submit proposed questions related to the incident in writing at least three business days before the hearing to ODPa staff. Hearing Panel members may ask these questions if they deem them appropriate and useful.

I) Hearing procedures

- 1) Who may or must be present at the hearing. The hearing is closed to the public. The Director, Investigator, and Hearing Panel members may be present during the entirety of the hearing. The complainant and the subject officer must be present to answer questions from Board members, subject to state law. An attorney or other representative (up to two for each complainant and subject officer) may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for ensuring their representative's presence at the hearing.
- 2) Continuances. If good cause is shown, the Hearing Panel may continue the hearing to another date due to the unanticipated unavailability of the witness or a representative.
- 3) Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed, and the allegations may be sustained.

4) Good cause for failure to appear at complaint hearing.

- (a) A complainant or subject officer who fails to appear at a complaint hearing due to significant, unforeseen circumstances that could not have been anticipated has 7 calendar days from notice of the dismissal or notice of findings to request that the complaint be re-opened, and a hearing or re-hearing be held. The request must be made to the ODPa in writing and state the reason for not attending the hearing.
- (b) ODPa staff shall notify the Hearing Panel members and the opposing party of the request. On the same date, staff shall notify the requesting party that they must submit, within 5 business days, documentary, or other evidence (such as witness statements, a doctor's note, or an obituary) to support their claim of inability to attend the hearing.
- (c) Staff shall schedule a special meeting date to hear the request, and then send written notice thereof. At least 72 hours' written advance notice of the meeting must be sent. The notice to the opposing party and Hearing Panel members shall include the requesting party's evidence. The opposing party may submit a written response before or at the special meeting.
- (d) At the special meeting, the requesting party will have the opportunity to present their case to the Hearing Panel members, who may ask questions of the requesting party. The opposing party may not ask questions of the requesting party but may present their argument in opposition. Hearing Panel members may ask questions of the opposing party. Each side shall have an opportunity for rebuttal.
- (e) Following the parties' arguments, everyone except ODPa staff is excused while the Hearing Panel members deliberate. In determining whether good cause has been shown, the Hearing Panel members shall consider the reason for not appearing, the prejudice to the opposing party, and other relevant information. The finding of good cause must pass by a majority of the Hearing Panel. The decision of the Hearing Panel will be announced orally and issued in writing. If a good cause is found, staff will schedule a hearing.

- (f) The Hearing Panel shall not grant a request to reschedule a hearing at the request of the subject officer or complainant if it would impact the ability to meet the time requirements set forth in Article XVIII, Section 125(18) unless the subject officer waives the 240-day time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and Article XVIII, Section 125(18)(d) in a written tolling agreement pursuant to Government Code Section 3304(d)(2)(B).
- 5) Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued (i.e. delayed) until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members. In this case, all findings must be unanimous.
- 6) Chair of the panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing.
- 7) Viewing body-worn camera footage. Hearing Panel members, complainants and their representatives, and subject officers and their representatives (in accordance with BPD policy and state law), may view relevant body-worn camera footage in advance of the hearing. Relevant body-worn camera footage may also be shown during the hearing at the discretion of the hearing panel.
- 8) Taking testimony at the hearing. Testimony at the hearing will include the following elements:
- (a) The complainant, witnesses, and officers will be called into the hearing room to testify separately. Hearing Panel Members may ask questions submitted previously in accordance with Section II.H.4 if deemed appropriate and useful.
- (b) The complainant will generally testify first and may be accompanied by their representatives. The complainant and/or their representatives may make a statement or rely on their interview statement. The representatives may ask the complainant questions. Hearing panel members may then ask questions. After questioning is completed, the complainant or their

representatives will have up to 15 minutes to provide a summary of their case and a closing statement.

- (c) The complainant and their representative will be excused from the hearing room after their testimony or representation is completed.
- (d) Any civilian witnesses will be called into the hearing room to testify separately. They may make a statement or rely on their interview statement. Hearing Panel Members may ask questions. After their questioning is completed, witnesses will be excused.
- (e) The subject officer(s) and any witness officers will be called into the hearing room to testify separately, and will not be present during the complainant's and civilian witness's testimony. Subject officer representatives may be present for all of their subject officer's testimony. Subject officers may make a statement or rely on their interview statements. The subject officer may be questioned by their representative, after which the officer may be questioned by up to 2 Hearing Panel Members unless the officer waives this limitation. After questioning is completed, subject officers or their representatives will have up to 15 minutes to provide a summary of their case and a closing statement.
- (f) Witness officers will then be called into the hearing room. They may make a statement or rely on their interview statement. Hearing Panel Members may then ask questions. After questioning is completed, the officer witness(es) will be excused.

The Duty Command Officer (DCO) may be present during the subject officer and witness officer's testimony. The DCO appears on behalf of the Berkeley Police Department to answer questions from the Board about Department policies and procedures. The DCO is not to testify as to the events pertaining to the complaint, offer any opinion about whether misconduct occurred, or act as a representative of a subject officer.

J) Evidence

- 1) General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be considered if it is the sort of evidence on which reasonable persons are accustomed to relying in the conduct of serious affairs.
- 2) Subpoenas. The Director and/or Board may issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out their duties and functions.
- 3) Procedure. Evidence shall be considered in accordance with the following provisions:
 - (a) The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their behalf, they may be called and questioned.
 - (b) All oral evidence shall be taken under oath.
 - (c) The Chairperson shall exclude irrelevant evidence.
 - (d) The Chairperson shall conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPa staff will answer Board members' questions on the evidence, points of law, and procedure.
 - (e) The City Attorney's opinion shall be sought whenever the interpretation of a City Ordinance or the City Charter is contested and pivotal to the case, or when a case raises substantial legal issues of first impression. If a conflict of interest exists for the City Attorney, outside counsel may be obtained.
 - (f) If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
 - (g) If either party requests that the hearing be continued at a later date to consider motions or points of law, the 240-day time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and Article XVIII, Section 126(18)(d), and the 60-day time limitation under Article XVIII, Section 125(18)(i) shall be tolled

if the subject officer agrees in a written tolling agreement pursuant to Government Code Section 3304(d)(2)(B).

(h) Any applicable BPD disciplinary time limit may be tolled for the period of such continuance. The Hearing Panel, in consultation with the parties, shall decide on the continuance and any possible tolling.

- 4) Judicial Disposition. Either party may present to the Hearing Panel evidence of the disposition of a matter relating to the incident in question by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

K) Deliberation and Findings

- 1) Deliberation. After the hearing has concluded, the Hearing Panel shall deliberate outside the presence of everyone except ODPa staff. The Hearing Panel shall only consider information provided in the hearing packet, through body-worn camera footage, or during the hearing.
- 2) Vote. The Hearing Panel, acting for the Board pursuant to Article XVIII, Section 125(18)(i), shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability, as outlined in Section II.E.3. All actions of the Hearing Panel shall be by a majority vote of those Board members present.
- 3) Content of Findings.
 - (a) If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.
 - (b) If the Hearing Panel modifies or rejects the Director's findings and recommendations, the Hearing Panel shall finalize the findings and recommendations at the hearing.
 - (c) A dissenting Hearing Panel member may submit a separate written explanation of their reasoning.
- 4) Transmittal of findings. The Hearing Panel's decision, and any dissenting opinion, must be submitted in writing to the Chief of Police and the full Board within 15 days of the hearing, unless extended as provided under Section II.M.2. The decision, and any dissenting opinion, shall also be transmitted to the complaint and the subject officer(s).

L) Findings of Chief of Police; tentative decisions; final determination by Chief or City Manager

- 1) Chief's decision. Within 10 days of receiving the Board's findings and recommendations, the Chief of Police shall take one of the following actions:
 - (a) Issue a final decision if the Chief agrees with the Director or the Hearing Panel.
 - (b) Submit a tentative decision including any disagreement with the Director or the Police Accountability Board and an explanation for the disagreement.
- 2) Director's request to review the tentative decision. If the Chief submits a tentative decision disagreeing with any findings or recommendations of the Director or Board, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.
- 3) City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.
- 4) Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.M.2.

M) Time limits; extensions; tolling.

- 1) Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct unless a Government Code section 3304(d) exception applies.
- 2) Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within

240 days. The timeline for completing an investigation shall not be extended beyond 195 days.

- 3) Tolling. If a subject officer is unavailable for an interview with ODPa staff or to attend confidential personnel hearing due to any leave of absence, the 240-day time limit for complaint investigation and notification of discipline under Section 18(d) of Article XVIII of the City Charter shall be tolled pending availability of the officer on a one-to-one basis for each day of the officer’s unavailability, until the officer becomes available, pursuant to Government Code Section 3304(d)(2)(E).

III) CONTESTING FINDINGS OF DECISION WHEN A COMPLAINT IS FILED WITH THE POLICE DEPARTMENT

A) Application

Section III applies to complaints that a member of the public files directly with the Police Department.

B) Procedure

- 1) When the Internal Affairs division of the Police Department has completed its investigation of a complaint, within 120 days as mandated by Section 125(19)(c) of the Charter, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code.

If a finding is “not sustained,” “unfounded,” or “exonerated,” the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief’s determination to the Director. The Director, if appropriate, may request to review all files, transcripts, and records related to the complaint.

Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:

- (a) The objection is accepted, and the Board will convene to conduct a review based on the investigative record provided by the Department; or
 - (b) The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.
- 2) If the Director decides that the Board will conduct a review, ODPa staff shall ask the Board to conduct a review of the investigative record at a closed session meeting.
- (a) At the meeting, only Board members and ODPa staff will be present. A Duty Command Officer may be present.
 - (b) The Board shall evaluate the investigative record to determine whether the complainant's objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief's decision is not supported by the evidence in the record.
 - (c) All actions of the Board must be by majority vote.
- 3) The Board must, within 45 days of the date the Director accepts an objection:
- (a) Dismiss the complainant's objection;
 - (b) Issue a report agreeing with the Chief's determination; or
 - (c) Issue a report disagreeing with the Chief's determination if the Board finds that: 1) the Department failed to proceed in a manner required by state and federal law, or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.
- 4) Within 15 days of receiving a Board's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections.
- 5) Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief, and send a final determination with a written explanation to the Director, the Board, and the Chief.

6) The deadlines in this Section III are advisory and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct unless a Government Code section 3304(d) exception applies.

IV) INFORMAL COMPLAINTS

- A)** An informal complaint is a communication not on the official ODPa complaint form from any member of the public that identifies an officer by name, badge number, other identifying features, or specific circumstances, and alleges an act of police misconduct. The individual who initiates an informal complaint may request anonymity (i.e., remain anonymous to all, including ODPa staff) and shall be advised that if the individual discloses their identity to ODPa staff, such information could be subject to legally mandated disclosure to other parties as required by Government Code section 3303(g).
- B)** The Board shall determine whether to process the complaint based, in part, on the following considerations:
 - 1) Whether the informal complaint alleges prima facie misconduct.
 - 2) The seriousness of the alleged incident.
 - 3) The timeliness of the complaint.
 - 4) Whether a formal complaint has already been filed about the alleged incident.
- C)** If the Board decides to process the complaint, ODPa staff shall initiate a complaint investigation, including interviews, body-worn camera footage, etc., as provided in Section II.C. above. If necessary (following Section II.E.5.a. above), a complaint hearing shall be scheduled. At said hearing, a complainant who requests anonymity shall attend the hearing remotely via electronic audio but no video, in order to preserve their anonymity. To the extent possible, the identity of an individual who submits an anonymous complaint shall remain anonymous, if requested, subject to the requirements of Government Code Section 3303(g).

- D)** A complaint filed anonymously on the official ODPA complaint form shall be treated as an informal complaint.

V) COMPLAINT FOLLOW-UP

After the Chief of Police or City Manager has issued a final decision on a complaint, ODPA staff shall invite the subject officer(s), complainant, and witnesses who testified, to participate in an exit interview or survey, and ODPA shall conduct the exit interview or survey with those who are willing.

VI) AVAILABILITY AND AMENDMENT OF REGULATIONS

- A)** These Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPA staff shall furnish them to any person requesting a copy.
- B)** Amendments to these Regulations require a majority vote of the Board and ratification by the City Council.

2.100.050 Reports on the Use of Controlled Equipment.

(A) Annual Report on Controlled Equipment

(1) The Police Department shall submit a report on Controlled Equipment to the Police Accountability Board within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use. The report shall be provided no later than March 15th of each year, unless the Police Accountability Board advises the Department that an alternate date is preferred. The Department shall also make each annual report publicly available on its website for as long as the Controlled Equipment is available for use. The annual report shall, at a minimum, include the following information for the immediately preceding calendar year:

- (a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.
- (b) A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is Deployed, not to transfers of location or placement of equipment inside Department vehicles.
- (c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.
- (d) A summary of any complaints or concerns received concerning Controlled Equipment.
- (e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

(B) Compliance or Revocation of Approval

(1) Within 60 days of the Police Department submitting an annual report, the Police Accountability Board shall place the report as an agenda item for an open session of a regular meeting. The Police Accountability Board shall determine, based on the report, whether each piece of Controlled Equipment reported on has complied with the standards for approval set forth in Section [2.100.040](#).

(2) If the Police Accountability Board determines that any Controlled Equipment has not complied with the standards for approval set forth in Section [2.100.040](#), it shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations shall be forwarded to City Council in accordance with the approval process in Section [2.100.040](#).

(3) After review by the Police Accountability Board, the Police Department shall submit the annual report to City Council, indicating its approval or lack of compliance for each piece of Controlled Equipment. (Ord. 7760-NS § 1, 2021)

The Berkeley Municipal Code is current through Ordinance 7849-NS, passed December 13, 2022.

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

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

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Police Equipment and Community Safety Ordinance 2022 Annual Report



INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.050 of the ordinance mandates an annual report for the deployment of specific equipment the Berkeley Police Department possesses. Below is a list and inventory of the reportable equipment under the city ordinance:

- Patrol Rifle (96)
Associated .223 duty and training rounds (129,720)
- Less Lethal single 40MM launcher (20)
- Less Lethal Milkor LTL 40 MM multi-launcher (2)
Associated 40mm rounds (724)
- Less Lethal FN 303 Launcher (8)
Associated FN rounds (5,445)
Associated FN Pava rounds (150)
- Oleoresin capsicum (OC spray) (190)
- Chlorobenzylidene Malonitrile and Oleoresin capsicum (204)
- Remington 700 Precision Rifle (6)
Associated .308 rounds (4460)
- Light/sound distraction device (50)
- Long Range Acoustic Device (LRAD) (2)
- 36" batons (195)
- Barret Model 99 Precision Rifle (1)
Associated .50 rounds (20)

The annual report on the controlled equipment shall contain the following information per Ordinance NO. 7,760N.S.:

- (a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.
- (b) A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is Deployed, not to transfers of location or placement of equipment inside Department vehicles.

- 1
- (c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.
 - (d) A summary of any complaints or concerns received concerning Controlled Equipment.
 - (e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

There have been no internal audits (other than those conducted to gather and confirm data for this report), identified violations of equipment use, or any complaints concerning the above listed equipment.

Section 2.100.020 (D) defines deployment as “to utilize or employ Controlled Equipment for a deliberate purpose in the presence of members of the public during management or control of crowds, during any Special Response Team deployment or to affect some response from members of the public during any other operation or critical response. “Deployed” shall not mean an officer merely wearing a piece of Controlled Equipment on their belt or elsewhere on their person.” Deployment means the display of the equipment to affect some response from members of the public. The equipment does not have to be used (I.E. less lethal projectile actually launched and struck a suspect); simply having it and in view of a person to specifically affect a response would be considered a deployment. Deployments are to be reported per the ordinance and the table on page 5 of this report reflects both deployments and utilization of equipment.

The Blue Team system and Equipment Ordinance system are the two systems that captures all utilizations and deployments of equipment enabling the Police Department to fulfill the obligations set forth by the ordinance. The Blue Team system documents all uses of force which includes patrol rifle deployments and utilization of less-lethal systems (I.E. less lethal projectile actually launched and struck a suspect). This system is maintained by the Internal Affairs Bureau. The

Equipment Ordinance system captures deployments of all equipment outlined in the ordinance.

The Police Department responded to over 62,245 calls from the community in 2022. Of the 62,245 calls received, 88 of them resulted in the deployment of either a patrol rifle or a less-lethal system capable of launching a rubber projectile or a projectile similar to that of a paintball. For details on these systems refer to the Impact Statements located on the Berkeley Police Department website.

The table on page 5 details each of the 88-equipment deployment incidents extracted from the Blue Team and EO systems. Each row within the table represents an incident where a specified equipment was deployed or utilized. The number of specified equipment deployed per incident is not represented. The table includes the service of 5 search warrants; 3 of which were served by the Special Response Team in cases involving a violent suspect. Equipment that is not outlined in the table was not deployed or used in 2022.

It should be noted that all equipment deployments in 2022, except for five, were incidents where the Berkeley Police Department responded to a call for service made by community members or in the service of search warrants. Incident #27, #43, #44, #59, and #75 are the exceptions. #27, #43, #59, and #75 were incidents where officers located a stolen vehicle with the suspect still inside the car. Incident #44 is an incident where an officer attempted to stop a vehicle driving on the wrong side of the roadway. The vehicle fled from officers, collided with a tree, and then one of the occupants discarded a firearm.

The three incidents where less-lethal systems were actually utilized (less lethal projectile actually launched and struck a suspect) are highlighted in yellow. The incidents are listed in chronological order.

It is important to note that information provided to police dispatchers by victims, witnesses, and community members dictate police responses. Officers and supervisors make decisions on deployment of equipment based on community members observations and reports.

#	Equipment	Summary	Beat
1.	40MM Launcher, FN303	Mother/Victim called the police to report that her son had physically assaulted her and threatened to kill her. She reported that he had brandished her with a handgun recently. Screaming was heard by Dispatch. When officers arrived on scene they heard screaming and sounds of a physical fight inside the residence. 40mm launcher and FN303 deployed. Subject was contacted inside agitated and said, "We can all die in here today." Subject was taken into custody.	9
2.	40MM Launcher	Subject called the police and reported his suicide attempt. Subject had stabbed himself and reported that he was unable to distance himself from the knife. 40MM launcher deployed as was contacted and medical aid was immediately provided. He was placed on a psychiatric evaluation hold.	4
3.	Patrol Rifle, 40MM Launcher	The owner of a restaurant called the police while he was witnessing a burglary in progress through the security cameras' live feed. He witnessed the suspect break through the drive-through window and climb inside. The suspect broke the alarm keypad and entered the restaurant's safe. Officers arrived and surrounded the business. 40mm launcher and rifle were deployed. The subject was ordered out of the business and arrested for burglary without incident.	12
4.	LRAD	A volcanic eruption in the southwest Pacific Ocean produced a tsunami that affected the entire Pacific Ocean. A tsunami warning was issued. Police officers responded code-3 (emergency response) to evacuate the marina. The LRAD was utilized to help with the evacuation.	14
5.	Patrol Rifle	Officers responded to multiple reports of a shooting. Officers arrived on scene and located a victim who is connected with a local gang. Surveillance cameras captured the shooting and showed a shootout between several suspects. Officers deployed patrol rifles during a search for the suspects.	11
6.	40MM Launcher	Caller reported that his housemate was high on methamphetamine and was destroying the house. The subject was screaming and throwing things. Officers responded and utilized de-escalation tactics. They attempted to negotiate with the subject and calm him, but he displayed the inability to calm down and yelled at the officers to shoot him. 40mm deployed. The subject yelled "there's a pedo inside the house and I'm going to kill him. I am ready to die." He launched several items at the officers including a wrench and screwdriver. Had the objects hit the officers it would have caused a significant injury. An officer launched the 40mm round at the subject. He immediately complied and was placed on a psychiatric evaluation hold after medical attention was provided.	8
7.	Patrol Rifle	Caller reported a subject with a gun in hand entering into the driver seat of a vehicle. Suspect and vehicle descriptions were provided as well as the specific location of the car. Officers located the vehicle and driver. Patrol rifle deployed during the detention of the reportedly armed subject with a handgun. No firearm was located.	12
8.	Patrol Rifle	Caller/store employee reported a man with a gun. Officers located the suspect and gave him orders, but the suspect ignored the officer's instructions and then ran away. Officers chased after the suspect and were able to cut him off. Patrol rifle deployed for the detainment. A methamphetamine pipe was located. The suspect was placed on a psychiatric evaluation hold.	12

9.	FN303	Berkeley Fire Fighters requested code 3 (emergency) response to assist with a suspect who had burglarized the Fire Department's warehouse. The suspect was located and was extremely confrontational, threatening and non-compliant with Officers' orders. FN 303 was deployed. The suspect was ultimately detained after officers successfully deescalated the situation.	11
10	Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher,	The Special Response Team served a search warrant in connection to multiple armed robbery cases from Berkeley and from another jurisdiction. The LRAD was used to communicate with occupants in the residence. Evidence was located during the search warrant service.	Outside City Limits
11	FN303, 40MM Launcher	Multiple callers reported a subject on a busy street with a knife gesturing like he was stabbing himself. Officers arrived at the location and located the subject who was holding a large knife and swinging it around himself. The subject refused to drop the knife and walked away from officers. Officers negotiated with the subject for 25 minutes before the subject finally dropped the knife. The subject was placed on a psychiatric evaluation hold.	6
12	FN303	Caller/gas station employee reported that someone had entered the gas station refusing to wear a mask. When the employee asked the subject to leave the subject threw a glass bottle onto the ground shattering it and threatened to stab the employee. The subject left the store, but brought out a large knife and stabbed at the gas station window. Officers arrived and deployed a 40mm launcher and gave orders to the suspect. She complied with the commands and was arrested.	12
13	40MM Launcher	A 12-year-old child and her sisters locked themselves in a room for safety and called the police to report their older brother experiencing a mental health crisis. She reported that the brother was delusional and armed with a large knife and had a gun. 40mm launcher deployed as Officers contacted the subject near the front door. Methamphetamine was located on the subject. The subject was placed on a psychiatric evaluation hold.	16
14	40MM Launcher, Patrol Rifle	Victim/Employee reported being stabbed in an attempted murder incident. The VICTIM/Employee and witnesses provided a suspect and vehicle description. Officers located a vehicle and driver that matched the description provided. A felony car stop was initiated on the possible attempted homicide suspect. 40MM launcher and the patrol rifle were deployed during the felony stop. After further investigation it was determined that the detained subject was not the attempted murder suspect.	6
15	Patrol Rifle	Multiple callers reported hearing gunshots, glass break, and people screaming in the Doe Library on the UC Berkeley campus. Patrol rifles were deployed as BPD officers responded to assist UCPD with an active shooter. At the conclusion of the investigation it was determined that balloons were being popped and people in the library mistaken it as gunshots. They broke windows to escape and were injured in the process.	Outside City Limits
16	40MM Launcher	Victim reported his friend was on drugs and threatened to stab him. Victim stated his friend was still armed with the knife and was just outside of a bar. Officers responded and deployed a 40mm launcher as they detained the subject. The subject was arrested for being drunk in public.	12

17	FN303, 40MM Launcher	Officers responded to reports of a disturbance and domestic violence. The mother of the suspect reported that the suspect was breaking things in the house. Officers arrived and heard yelling inside and things breaking. The suspect had destroyed his brother's residence; holes were punched into the walls, closet doors broken, and mirrors shattered. 40mm launcher deployed as contact was made at the residence. The suspect was located and arrested.	9
18	FN303	Mother/caller reported her son was intoxicated and possibly experiencing a mental health crisis. She reported the son "flipping out" and destroying things. Dispatch heard yelling in the background and then the phone disconnected. During the call back, there was an open line and dispatch heard the mother say, "stop it, get away. Stop." The mother told dispatch that her son was throwing things out the window. The line disconnected again. Officers arrived and deployed an FN 303 as they detained the subject. The mother asked that her son not be arrested. The son stated that he would do counseling and to begin detox. Information containing resources were provided to the family.	5
19	40MM Launcher	Mother/caller reported her son was experiencing a mental health crisis. Subject naked in the house, destroying things, and had a history of mental health crisis. Subject threatened to harm himself. 40mm launcher deployed as the subject was detained. The subject was placed on a psychiatric hold.	2
20	40MM Launcher	Witness/caller reported a dispute between two individuals, one armed with a metal pole and the other armed with a knife. They were threatening to kill each other. 40mm launcher deployed when officers arrived on scene and detained both subjects. After talking to witnesses, both suspects were arrested.	16
21	FN303	Security guard/victim called the police and reported a robbery and the suspect was armed with a knife. The suspect placed the knife against the victim's throat during the robbery. The victim provided a suspect description to the officers. FN 303 launcher deployed when officers searched the area for the suspect. He was located and safely taken into custody for armed robbery.	4
22	Patrol Rifle, 40MM Launcher	A victim of an armed (firearm) carjacking that occurred in Fremont called the Berkeley police and reported he had located his stolen vehicle. The car was unoccupied. He then saw four individuals enter his car and drive it away. He was able to track his vehicle with a car App. Officers responded to the location and located the stolen car and the four suspects that attempted to evade the police. Patrol rifle and a 40 mm launcher were deployed during the detention. A loaded handgun was located in the backseat of the stolen car. All four suspects were arrested.	14
23	FN303	Victim/caller reported that her son had forced his way into her residence by prying a window open and damaging it. The son does not live there and he was not allowed on the property. The victim was afraid and barricaded herself in the bathroom. When the police arrived, the victim fled the house. She told the officers that her son had warrants for his arrest and had fled from the police recently. A records check showed several arrest warrants for violent crimes from another county. Officers ordered the subject out of the residence. FN 303 launcher deployed during the detention of the subject. He was detained and arrested for burglary and the arrest warrants.	10
24	40MM Launcher	Victim reported that a trespasser had entered his residence and refused to leave. Officers arrived on scene and was let into the residence by the victim.	12

		The subject yelled at the officers and threatened to kill them. The subject was inside of a bedroom and squirted hand sanitizing fluid onto the officers. Attempts to deescalate the situation were unsuccessful. The subject was near a screwdriver and other items that could be used as a weapon. The subject also picked up a laser and shined it into officers' eyes. A 40mm launcher was deployed during the detention of the subject. He was ultimately arrested after a brief struggle with officers.	
25	Patrol Rifle	Officers responded to Contra Costa Sheriff's Deputies' request for emergency help after the deputies pursued an armed carjacking suspect into Berkeley. The suspects crashed the car and fled on foot. Patrol rifles were deployed by officers while searching for the armed carjacking suspect. Officers located and detained the three suspects. All three were arrested.	15
26	40MM Launcher	A staff member at a rehabilitation center called the police and reported a subject experiencing a mental health crisis. The subject was threatening self-harm with a knife. Officers arrived and deployed a 40mm launcher as they verbally deescalated the subject and detained him. He was placed on a psychiatric evaluation hold.	2
27	Patrol Rifle	Officers located a stolen vehicle. Patrol rifle deployed as a high-risk felony car stop was initiated. The driver was detained and discovered to be the registered owner of the vehicle. According to the driver, he was carjacked a few days prior and his vehicle was entered into the Stolen Vehicle System. Another police agency located his vehicle and released it back to him. That agency told the registered owner that the car was removed from the Stolen Vehicle System, but it was not. Berkeley police ensured the vehicle was removed from the system and the driver was immediately released at the scene.	Outside City Limits
28	40MM Launcher	An employee of a business told a subject that she could not use the bathroom. In response to this the subject threw a large rock through the window of the business. The subject fled the area, but was located by an officer. She refused to stop for the officer and fled into the backyard of a residence. This subject was armed with a sledge hammer. 40mm launcher deployed as the subject was detained in the backyard. The subject was placed on a psychiatric evaluation hold.	16
29	Patrol Rifle	Caller reported returning home and finding her front door open. She stated that her roommates did not answer their phones and she was concerned it was a burglary. Patrol rifle was deployed for the building search. Roommates were sleeping inside, but did not pick up the caller's phone calls. No suspect located inside.	5
30	40MM Launcher	Hospital staff called the police after a patient brought out a large kitchen knife from her purse and threatened security and the nurse. 40mm launcher was deployed as contact was made with the subject. The suspect was safely detained and arrested.	8
31	Patrol Rifle, 40MM Launcher	Victim called and reported her ex brandished a knife at her after an argument. There was also a court order protecting the victim from the ex. Officers responded to this domestic violence call. 40mm launcher and patrol rifle deployed as officers formed a perimeter at the victim's residence; however, the suspect fled from the house as the officers were setting up the perimeter. He was located half a block away and arrested.	10

32	40MM Launcher	Caller reported a disturbance where a subject brandished a knife. The caller provided a detailed suspect description and location. An officer located the subject walking who was still armed with the knife. 40mm launcher deployed for the detainment of the subject. He was safely detained, but officers were unable to locate the caller and the caller did not answer phone calls. The knife was confiscated, but no arrest made since no victim was located.	3
33	40MM Launcher	Friends called the police and reported concerns for their friend who had attempted suicide several times in the past. The subject was at home and had locked the deadbolt. They believed the subject had taken multiple pills. Subject had access to knives and a katana sword inside of the residence. 40mm launcher deployed as contact was made. Subject was located and evaluated; proved ok.	4
34	Patrol Rifle	Officers located a stolen vehicle where the suspect fled on foot. Patrol rifle deployed during a building search for the suspect. He was located and arrested. A handgun and bullets were also located. He was arrested for being in possession of a firearm, stealing a car, and burglary.	15
35	40MM Launcher	An employee called the police and reported that a person in the store was bothering customers, breaking glass, and armed with a knife. Officers arrived and saw the subject in the back of the store screaming unintelligible things. Officers gave commands to the subject, but were ignored. 40mm launcher was deployed as officers detained the subject who resisted. The subject was placed on a psychiatric evaluation hold.	16
36	Patrol Rifle	Hospital staff reported a disturbance after an upset patient pointed a handgun at several hospital staff members. The victims feared for their lives. Police responded to this "man with a gun" call. Patrol rifle deployed as officers went to detain the suspect. The handgun turned out to be a replica handgun. He was arrested.	8
37	40MM Launcher	Investigators served an arrest warrant on a subject wanted for manufacturing explosives and firearms and threatened to bomb a school. 40mm launcher deployed while serving the arrest warrant. The suspect was not at the house, but was arrested at a later date by investigators.	8
38	FN303	The jail requested additional officers due to a prisoner's resistance while being removed from the cell for transportation to Santa Rita Jail. The prisoner was extremely agitated and it appeared that he was going to be combative. FN303 launcher deployed. The prisoner eventually complied. He was transported with no further incident.	4
39	Patrol Rifle	A security guard at a business reported a suspect threatened him with a gun. He provided a suspect description and location. Patrol rifle deployed as an officer located the suspect inside the business and gave commands to the suspect. The suspect complied and was detained. A gun was not located. The security guard did not press charges. All parties were released at the scene.	4
40	Patrol Rifle	Victim called the police and reported that her vehicle was stolen in Oakland and she tracked it into Berkeley. Officers responded and located the stolen car and it was occupied. Patrol rifle deployed as a high-risk stop was conducted. The driver was safely detained and was arrested for vehicle theft.	15
41	40MM, FN303	Officers responded to a call of an assault with a deadly weapon after victim was attacked with a knife. The Berkeley Fire Department rendered aid to the victim	15

		as the officers located the suspect. 40mm and FN303 launcher were deployed as officers detained the suspect. He was arrested for felony assault with a deadly weapon.	
42	40MM Launcher	Caller reported a suspect threw a rock through her neighbor's window and entered the house. Officers responded to this burglary in progress call and surrounded the residence. 40mm launcher deployed as officers attempted to contact the suspect. The suspect ultimately surrendered and was arrested for burglary.	16
43	Patrol Rifle	An officer located an occupied stolen vehicle parked on the street. A high-risk car stop was initiated. Patrol rifle deployed as the driver was detained. Further investigation revealed that the car belongs to the subject's girlfriend and was stolen several months back, but was recovered by another police department. The vehicle was never taken out of the stolen vehicle system by that agency and was still registered as stolen. Subject released at the scene.	Outside City Limits
44	Patrol Rifle, 40MM Launcher	Officers attempted to conduct a car stop on a vehicle that had its headlights off at night and traveling on the wrong side of the roadway. The vehicle failed to stop and fled from officers at a high rate of speed. The vehicle then collided with several cars and trees. Three occupants fled from the car and one dropped a handgun. Patrol rifle and 40mm launcher were deployed during a search for suspects. Two were located and arrested.	8
45	Patrol Rifle	Several callers reported multiple individuals in a fight and 8 were armed with handguns. One caller reported it was gang related. Patrol rifle deployed as officers searched for the suspect. No armed suspects located, but one person was arrested for public intoxication.	14
46	Patrol Rifle	Officer located a suspect vehicle that was used in several armed robberies in Berkeley. The officer recognized the vehicle make and model, license plate, and suspects, so he initiated a vehicle stop when backup arrived. One passenger fled on foot as the driver threw a handgun out of the window. The driver then fled in his car colliding with two police cars. A block search was conducted and patrol rifle deployed. The suspects got away, but were located and arrested for armed robbery at a later date.	Outside City Limits
47	Patrol Rifle	Officers responded to a call of a man with a rifle in public. A suspect description and exact location were provided. Officers arrived on scene and located the suspect and saw that he was armed with a rifle. Patrol rifle deployed as officers ordered the subject to drop the gun. He complied and was detained. Officers located a large amount of methamphetamine on his person. The rifle he was holding was a realistic replica of a rifle. The subject was arrested.	6
48	40MM Launcher	Caller/father reported his son was threatening to hit his family with a hammer. The caller reported that his son was recently placed on a psychiatric evaluation hold a week prior and has physically resisted police officers in the past. Officers responded. 40mm launcher deployed as contact was made with the subject and he was safely detained. He was placed on a psychiatric evaluation hold.	12
49	Patrol Rifle	Contra Costa County Deputies located and attempted to stop a vehicle involved in an armed robbery. Three occupants fled the vehicle and into a residential neighborhood. A rifle was located in the backseat of the car. The suspects were considered armed and dangerous. The deputies requested for emergency	7

		response from Berkeley Police. Patrol rifle deployed as officers searched for the suspects. One of the suspects was located and arrested.	
50	Patrol Rifle, 40MM Launcher	A hotel employee called the police when he witnessed an altercation between a male and female. When he tried to intervene, the suspect said he would shoot him and went to his car looking for his gun. The employee fled. When officers arrived, the employee pointed out the suspect vehicle. Officers conducted a high risk stop on the possibly armed driver. 40mm launcher and patrol rifle were deployed. The driver was detained, but no firearm was located. The female was unharmed. No prosecution was requested by the employee. No arrest made.	14
51	Patrol Rifle,40MM Launcher	Four armed suspects robbed a victim and during the robbery shots were fired. An officer located the suspect's car fleeing the area. The suspect crashed the car and four suspects fled on foot; at least one was running with a handgun still in hand. Three more handguns (one ghost gun with a high capacity magazine, one handgun with a high capacity magazine, and one fully automatic handgun with an extended magazine) and a short-barreled assault rifle (high capacity magazine) were located in the car. 40mm launcher and patrol rifle were deployed during an extensive block search. All four suspects were located and arrested for armed robbery and various gun charges.	12
52	40MM Launcher	A hotel employee called the police to report a vehicle with extensive damage parked in the hotel lot. Officers arrived and discovered that the car was stolen. Investigations led officers to a hotel room where one of the two suspects slammed the door shut on officers. Further investigation showed one suspect has prior arrest history for firearms and the other has several felony arrest warrants for her arrest. A perimeter was established. 40MM launcher and patrol rifle were deployed. The suspect was contacted via telephone and agreed to exit the hotel room. She was arrested on the arrest warrants and possession of a stolen vehicle. The second suspect was not located in the room.	3
53	Patrol Rifle	A caller, who was monitoring the security cameras for a business, reported seeing a suspicious person outside of the business. The caller reported the subject wearing army fatigues, crouching down near an electrical box, putting items into a brown bag, and also holding onto a rifle. The caller also reported seeing the subject pull out a handgun. The subject was also hiding between buildings. Patrol rifle deployed as officers located the subject and gave orders to him. He was detained and officers located a knife tucked in his waistband. No firearms located. The knife was confiscated. The subject was not arrested.	10
54	Patrol Rifle, 40MM Launcher	At 4:20AM, a caller reported seeing a suspect with bolt cutters cutting a hole in the chain-link fence to a business. The caller was watching this unfold through the security cameras from a remote location. 40MM launcher and patrol rifle were deployed when officers arrived on scene. Officers established a perimeter for this burglary in-progress incident. They saw the suspect and gave commands that were ignored. The suspect ran from officers. Officers lost sight of the suspect, but located him hiding in the heavily foliated area of the property. Officers gave more commands and provided ample time for the suspect to complied, but he refused. The suspect's hands were hidden and it was unknown at the time if he was armed. Officers warned the suspect that 40mm launcher would be utilized, but the suspect continued to ignore the officers. Both officers	13

		launched a single 40mm round each at the suspect. One projectile missed and the other hit the suspect's thigh. The suspect immediately surrendered and complied. Medical aid was provided. Officers located two screw drivers and a window smashing tool on the suspect. They also located a single bullet where the suspect was hiding. A records check showed the suspect was on bail for multiple felonies. He was arrested for burglary and possession of fentanyl.	
55	Patrol Rifle	Caller reported a home invasion in-progress. He reported 5 suspects had entered his house. Dispatch heard the caller screaming, "Get the f**k out of here! Stop it. Stop trying to enter the door." Patrol rifle deployed when officers arrived on scene. Further investigation showed the caller was experiencing a mental health crisis and was under the influence of methamphetamine. There was no home invasion that had occurred. He was placed on a psychiatric evaluation hold.	1
56	40MM Launcher	Caller reported a shirtless man swinging a 5' long stick. The subject was screaming in the middle of a busy street and attempting to remove utility hole covers. 40MM launcher deployed when officers arrived on scene. The man was unintelligible and ran from officers. Officers struggled placing handcuffs on the subject as the subject resisted and kicked. He was finally detained and placed on a psychiatric evaluation hold.	4
57	Patrol Rifle	A caller reported someone walking down the street in possession of a shotgun. The subject is known to police as someone with an extensive arrest history including violent crimes. This subject is on probation for robbery and also had an active warrant for his arrest. Patrol rifle deployed when officers arrived on scene. Officers located the subject and detained him. Officers located a loaded sawed-off shotgun with a pistol grip and crack cocaine. The subject was arrested for firearm charges, the crack cocaine, and the active arrest warrants.	12
58	FN303, LRAD, Patrol Rifle, 40MM Launcher,	Officers were looking for a suspect in connection with a murder in another jurisdiction. They located the suspect but he ran from the police into a residential neighborhood. 40mm, FN303, patrol rifle, and LRAD were deployed as officers established a perimeter to conduct a high-risk block search. The homicide suspect was located and arrested.	12
59	40MM Launcher	Officers located a stolen vehicle that was occupied with a suspect who fell asleep in possession of alcohol and methamphetamine. This suspect is known to police officers as someone who uses narcotics and has resisted officers' numerous times before. 40mm launcher deployed and the suspect was ordered out of the vehicle. The subject complied and he was taken into custody without incident.	10
60	40MM Launcher	Caller reported a suspect swung a bat at him several times trying to hit him. Officers responded to this felony assault and located the suspect. The suspect was uncooperative and said that officers would have to shoot him before he would go to jail. 40mm launcher was deployed as de-escalation attempts were made. Subject was successfully deescalated and was safely taken into custody.	10
61	40MM Launcher	A detainee refused to exit his cell at the Berkeley Jail to be transported to court. He was yelling at officers and told them that force would have to be used to get him out of the cell. The detainee demanded to speak to an investigator. Two investigators were called from their office to respond and speak to this detainee in attempts to calm him. It did not work. He continued to yell and directed his	4

		anger at the investigators. 40mm launcher deployed in this incident. The detainee ultimately exited his cell on his own accord.	
62	40MM Launcher	Employees at a restaurant called and reported a man loitering in the restaurant. When the manager asked him to leave the subject became aggressive and got into the manager's face. The subject picked up a knife and wrapped it with a napkin. The manager reported it to be a "shank." 40mm launcher deployed when officers arrived on scene. The officers told the subject that all the business wanted was for him to leave. The subject was hesitated at first, but ultimately left.	14
63	40MM Launcher	Hospital staff called and reported a subject in the ER waiting room throwing things and being violent. The caller reported that this was the same subject in the past where it took 9 employees to restrain. Officers were familiar with the subject and knew he had a history of violence as well as fighting police. 40mm launcher deployed. Subject was deescalated by officers and placed on a psychiatric evaluation hold.	8
64	Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher	The Special Response Team served a search warrant in connection to an armed-robbery series. This case is also connected to an incident where the suspect rammed two patrol vehicles and threw a handgun out the window after a patrol officer attempted to stop him. The suspect was located and arrested and evidence was seized.	Outside City Limits
65	FN303	Caller reported a subject threatened him with a large knife. FN303 launcher deployed as officers contacted the subject and detained him. The subject was cooperative. The large knife was located, but it turned out to be a fake plastic knife. Both individuals separated from each other and no arrest was made.	13
66	Patrol Rifle	Callers reported a subject with a gun and was waving it in the air. The caller followed the subject while providing updates to officers. Patrol rifle deployed as officers located the subject and detained him. A replica pistol was located as well as methamphetamine and hypodermic needles. The subject was placed on a psychiatric evaluation hold.	15
67	40MM Launcher	A victim was sleeping when someone broke into his apartment armed with a hammer and tire iron. The victim fled the apartment and called the police. 40mm launcher deployed. Officers entered the apartment and located the suspect inside. The suspect was in possession of stolen property as well as a hammer and tire iron nearby. The suspect was arrested for burglary.	16
68	Patrol Rifle	A victim called and reported that he was shot at by a suspect that he knew. The victim reported that the suspect had pointed the gun at his head, but thankfully he ducked when the suspect opened fire so the bullet missed his head. He provided the suspect's name and location. Officers responded and located the suspect. Patrol rifle deployed as they detained the shooting suspect. He was arrested. During a search warrant service, the suspect's firearm was located.	17
69	40MM Launcher	Caller reported he locked himself and his brother in the basement away from their older brother who was coming off of methamphetamine and threatening to kill both of them. The caller reported that the older brother is enraged and had a gun in the house. The caller did not know if the older brother was armed with the gun but reported that he may be armed with a knife. 40mm launcher deployed as officers ordered the subject/older brother to exit the house. The	1

		subject complied and was detained. It was determined that the accusations the caller made was not true. The mother of the three brothers was contacted. No arrest was made.	
70	Patrol Rifle	Officers responded to an armed robbery where the suspect was armed with an AR-15 style rifle. An area check for the suspect and get-away vehicle was conducted, but officers were unsuccessful in locating the suspect. Approximately 6 hours later, officers located the suspect vehicle occupied by a driver. Officers attempted to stop this vehicle, but it fled and almost collided with several vehicles when it failed to stop for traffic lights. The suspect ultimately jumped out of his car and ran. Patrol rifle deployed as officers secured a perimeter so they could conduct a search for the suspect. He was located by officers hiding on the roof of a residence. He was arrested for armed-robbery.	11
71	Patrol Rifle	Caller reported a fight involving twelve individuals where one person pulled out a gun and shot someone. A suspect and get-away vehicle descriptions were provided. Officers located a car and possible suspects that matched the descriptions provided by the caller. Patrol rifle deployed as officers initiated a high-risk stop. The person stopped proved not to be the suspect and was released. The suspect was not located; however, a victim was later located at the hospital suffering from a non-life-threatening gunshot wound.	4
72	FN303	Caller reported someone walking down the street with a large amount of blood on him. Another caller reported that the victim was possibly stabbed by a suspect. A suspect description was provided. Officers located this suspect and deployed FN303 launcher as they detained him. Victim was located and advised that he was involved in a scooter accident and was not stabbed.	4
73	Patrol Rifle, 40MM Launcher	Investigators served an arrest warrant on 64-year-old suspect in the forced oral copulation of a 14-year-old child. Patrol rifle and 40mm launcher deployed as Investigators served the warrant. The suspect was located and arrested.	City Limits Outside
74	Patrol Rifle, FN303	A victim called the police after someone pointed a gun and threatened to kill her. The suspect was located, but he entered his house and refused to come out. Officers employed de-escalation and negotiation techniques and convinced the suspect to exit his house. Patrol rifle and FN303 launcher deployed as the suspect was detained. He was arrested for pointing a gun and threatening to kill the victim.	5
75	Patrol Rifle	Officer located and followed a stolen vehicle. Patrol rifle deployed as officers conducted a high-risk felony car stop. The driver was arrested. He was on probation and had methamphetamine in his possession.	City Limits Outside
76	Patrol Rifle	Caller/employee of a business reported someone attempting to steal a company vehicle. Officers located the company vehicle with the ignition on and suspect still in the driver seat. Patrol rifle deployed. Officers contacted the suspect and arrested him for attempting to steal the vehicle. He was already on probation for stealing cars.	13
77	40MM Launcher, Patrol Rifle	Smithfield Police Department in Rhode Island reported a victim was scammed out of \$50,000 and the suspect was in a hotel in Berkeley. Officers contacted the hotel staff and they provided a room number to the suspect. A search	14

		warrant was signed by a local judge to search/detain the occupants in that room. 40mm launcher and patrol rifle were deployed during the service of the search warrant. No suspects were located	
78	FN303,40MM Launcher	Caller/hotel manager reported a hotel guest being belligerent and throwing trash from the third story. Officers arrived and contacted the subject in the room where the subject challenged the officers to a fight. Officers left to speak with the manager who advised she was going to refund the subject his money and wanted him removed from the property. Officers recontacted the subject with the manager. The manager and the officers asked the subject to leave, but he refused and grabbed a bottle of pepper spray and threatened to spray the officers. The officers retreated and waited for backup. 40mm launcher deployed. Officers contacted the subject again and took him into custody.	15
79	40MM Launcher	Caller reported a domestic dispute involving an ex refusing to leave her apartment. She provided the suspect's name and said that he will fight the police. Officers knew this person as a subject with a long history of violence and assault on police officers. 40MM launcher deployed as officers contacted the subject and negotiated his surrender. He was arrested for violating a restraining order protecting the victim and for violating his probation.	9
80	Patrol Rifle	Investigators were conducting surveillance on a suspect related to a case where the suspect shot at a witness during a catalytic converter theft. The investigators attempted to detain the suspect, but he fled on foot. Investigators chased the suspect as the suspect threw a backpack. Investigators caught the suspect and detained him. They recovered the backpack containing methamphetamine and a ghost gun with 15 rounds inside. Investigators then served a warrant at the suspects hotel room. Patrol rifle deployed as entry was made into the hotel room. Ammunition, a reciprocating saw, extra saw blades, and vehicle jacks were located. Evidence was seized and the suspect arrested.	Outside City Limits
81	40MM Launcher	Caller/sister reported her brother was suicidal. She reported that her brother takes drugs. The mother took the phone from the daughter and reported that her son was on methamphetamine and was holding a large knife to his own neck. Then dispatch heard the caller/sister screaming. 40mm launcher deployed as officers arrived on scene. Subject ran out of the house and threw the knife. Officers detained the subject and placed him on a psychiatric evaluation hold.	16
82	Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher	An armed robbery occurred where one suspect pointed a gun at the victim's face while a second suspect beat up the victim and stole his property. Investigations lead to several search warrants including a high-risk warrant served by the Special Response Team. The LRAD was used to communicate with occupants in the residence. Two AR-15 pistols and a handgun were located during the warrant service. This case is an on-going investigation.	9
83	Patrol Rifle	Victim called the police and reported a violent domestic violence situation. Dispatch reported hearing a violent confrontation between the victim and suspect/boyfriend. The victim reported that the suspect had a gun and pointed it at his head and threatened suicide. Officers responded and formed a perimeter around the residence. Patrol rifle deployed. The victim was located and so was the suspect. He was arrested. The gun was located and seized.	9
84	40MM Launcher	Detainee in the jail refused to be transported to the Santa Rita Jail. He was screaming at officers and made threats to fight them. Attempts to deescalate	4

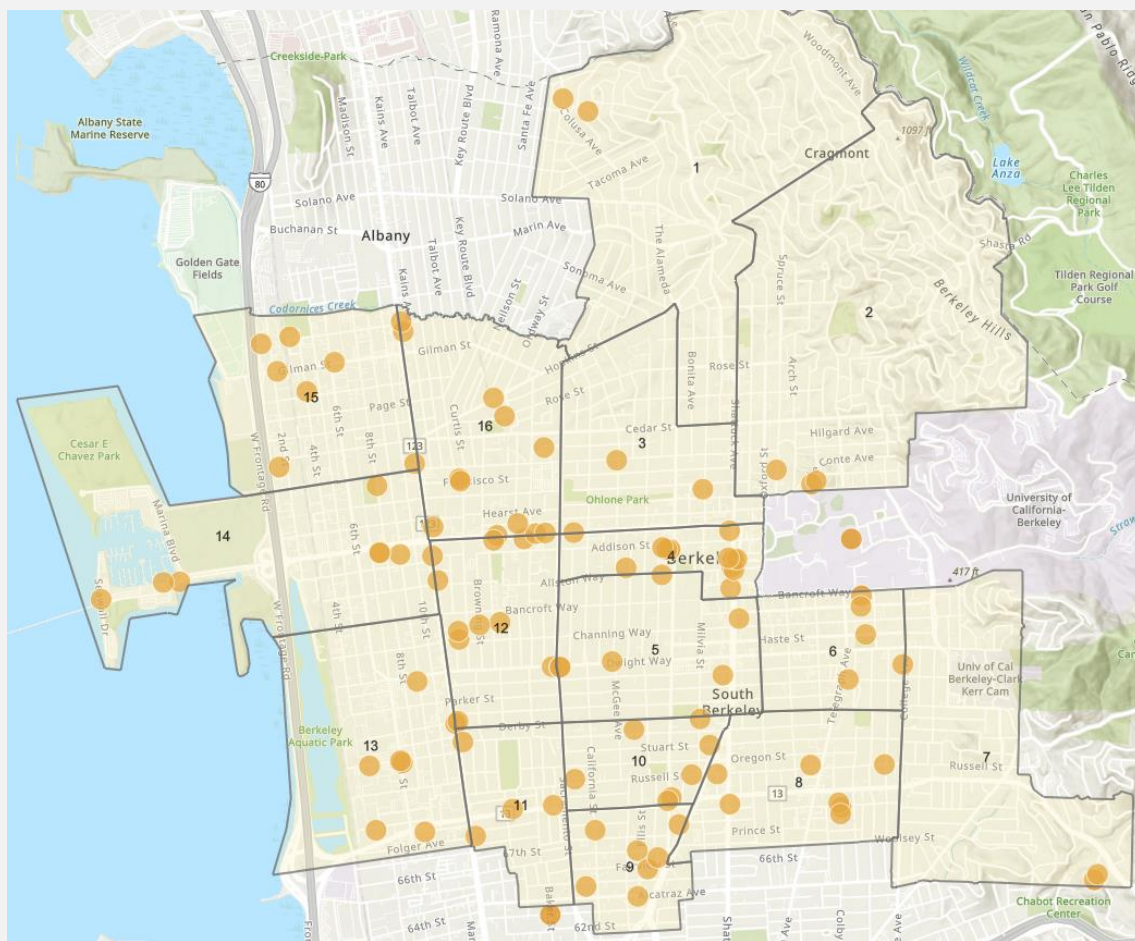
		the subject were unsuccessful. 40mm launcher deployed as officers opened the cell door and handcuffed him. He did not fight the officers and was transported to the Santa Rita Jail.	
85	40MM Launcher, FN303	Caller reported a man waving a knife inside of a BART train in Berkeley. The caller reported that this man was "acting weird." BART PD requested emergency assistance. FN303 and 40mm deployed. Subject was located and detained.	4
86	Patrol Rifle, 40MM Launcher	Investigators were serving an arrest/search warrant for child abuse. Patrol rifle and 40mm launcher were deployed as investigators entered the residence. The suspect, mother of the reported child abuse case, charged at a detective with a large kitchen knife over her head. She plunged the knife downwards into the detective's chest. The knife did not puncture his Kevlar vest, but broke his body worn camera. 40mm launcher was utilized, but she held onto the knife. The detective and the suspect fell onto the floor where they struggled for the knife. She cut a supervisor's finger before the knife was wrestled out of her hand. She was placed on a psychiatric evaluation hold and subsequently charged with attempted murder.	8
87	40MM Launcher	A caller reported two males acting suspiciously in a vehicle and provided dispatch with the vehicle's license plate. A records check showed that the car was a vehicle that was carjacked via handgun from Oakland. Officers responded and located the car. 40mm launcher was deployed as officers detained the driver. He was arrested.	12
88	FN303	A caller reported being assaulted with a sword as the suspect chased her. The caller provided a suspect and suspect vehicle description. A supervisor located the vehicle and conducted a vehicle stop. 40mm launcher deployed as officers detained the suspect. The caller refused to participate in the investigation and walked away from the officer. The suspect provided his version of what occurred and was released at the scene.	5

Below is a table that shows the total number of times a specified equipment was deployed in 2022. It should be noted that different types of equipment may be deployed in one incident and the same equipment may be deployed by multiple officers within a single incident.

EQUIPMENT	Number of Deployments
Patrol Rifle	43
40MM Single Launcher	50
40MM LTL Multi-Launcher	0
FN 303 Launcher	20
FN Pava Impact Projectile	0

Oleoresin Capsicum Spray	0
Chlorobenzylidene Malononitrile and Oleoresin capsicum	0
Remington 700 Rifle	3
Light/Sound Diversionary Device	3
Long Range Acoustic Device	5
36" Batons	0
Barret Model 99	0

Below is a map showing where each of the above 88 equipment deployments occurred in Berkeley. 9 occurred in other Bay Area cities.



Appendix:

Applicable Lexipol Policies Respective to Each Equipment

Patrol Rifle

- Policy 300 (Use of Force)
- Policy 349 (Tactical Rifle Operator Program)

40MM single launcher

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

40MM LTL multi-launcher

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

FN 303 Launcher & FN Pava rounds

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

Remington 700 Rifle

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

Light/Sound Diversionary Device

- Policy 353 (Diversionary Device)

Long Range Acoustic Device

- Policy 707 (Long Range Acoustical Device)

36" batons

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

Barret Model 99

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



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RECOMMENDATION

Date: Thursday, April 06, 2023
To: Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability (DPA) *Ha*
Jose Murillo, Policy Analyst (ODPA) *Jm*
Subject: Berkeley Police Department's Police Equipment and Community Safety Ordinance 2022 Annual Report

Background:

In May 2021, the Berkeley City Council approved the Police Equipment and Community Safety Ordinance (Ordinance No. 7,760-N.S.), which requires the Berkeley Police Department to provide an annual report on the deployment of specific equipment. The report is to be reviewed by the Police Accountability Board (PAB), which will assess compliance with the relevant approval standards set forth by BMC Section 2.100.040. If any equipment is found to be non-compliant with the standards set forth by BMC 2.100.040, the PAB “shall recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations shall be forwarded to City Council in accordance with the approval process in Section 2.100.040.” The PAB shall make these determinations based on the content of the report.

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

- a. Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.

- b. A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is Deployed, not to transfers of location or placement of equipment inside Department vehicles.
- c. If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.
- d. A summary of any complaints or concerns received concerning Controlled Equipment.
- e. The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

The PAB shall make recommendations based on compliance with the standards outlined in these sections.

The Office of the Director of Police Accountability (ODPA) received the Police Equipment and Community Safety Ordinance 2022 Annual Report from Interim Chief Jennifer Louis on February 17, 2023. ODPA staff has reviewed the report to ensure compliance with the relevant sections of the Berkeley Municipal Code that the PAB is obligated to follow during their review. The report has been scheduled to be reviewed at a regular meeting of the PAB within 60 days of receipt, specifically on April 11, 2023. This memorandum provides recommendations to assist the PAB in developing their final recommendations for any Controlled Equipment that may not comply with the standards for approval outlined in Section 2.100.040.

Recommendation:

The PAB should consider accepting the ODPA's recommendation to conditionally accept the BPD's report under the condition that they implement the necessary edits to maintain compliance with BMC 2.100.050(A)(1). The ODPA proposes that the PAB adopts the memorandum included in Attachment 1.

Analysis:

As mentioned earlier, compliance with BMC 2.100.050(A)(1) necessitates meeting five specific requirements for the report. This memorandum proposes a recommendation that was formulated by scrutinizing the available information and evaluating whether each section satisfies the criteria. If necessary, recommendations were suggested to improve the clarity of the information presented or enhance its transparency. Please refer to Table 1 titled “Compliance Status Overview: Requirements of BMC 2.100.050” for a summary of the compliance status.

Table 1. Compliance Status Overview: Requirements of BMC 2.100.050		
Ordinance No.	Description	In compliance with the ordinance?
2.100.050(A)(1)(a)	Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department’s possession.	Yes.
2.100.050(A)(1)(b)	A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is Deployed, not to transfers of location or placement of equipment inside Department vehicles.	Yes.
2.100.050(A)(1)(c)	If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.	No.
2.100.050(A)(1)(d)	A summary of any complaints or concerns received concerning Controlled Equipment.	Yes.
2.100.050(A)(1)(e)	The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.	Yes.

Requirement 1 – Product descriptions for Controlled Equipment and inventory numbers of each product in the Police Department’s possession.

To comply with BMC 2.100.050(A)(1)(a), the BPD must furnish product descriptions and inventory levels for every piece of controlled equipment in its possession. In accordance with this requirement, the BPD has listed eleven different pieces of equipment and six types of ammunition and/or projectiles, along with their respective inventory levels. Even though the BPD included an appendix containing the pertinent policies that define and detail every controlled equipment, the report proper didn't incorporate these descriptions. The ODPa suggests that the PAB advise the BPD to improve compliance by including concise descriptions of all their controlled equipment and referring to the comprehensive descriptions provided in the Impact Statement of the Police Equipment and Community Safety Ordinance in the body of the report.

Requirement 2 – A summary of how Controlled Equipment was used.

To comply with BMC 2.100.050(A)(1)(b), the BPD must provide a summary of how Controlled Equipment was used. For this reporting requirement, “use” of equipment refers to deployment and not transfers between locations or placement inside department vehicles. On page five of the report, the BPD provides a summary of various incidents in which one or more pieces of controlled equipment were used. The presented chart includes the name of the equipment, a summary of the event, and the beat where it was used. Based on the provided criteria, the ODPa believes that this requirement has been met.

Requirement 3 – Geographical breakdown of Controlled Equipment Usage by Police Area; Reporting days/instances of use; Authorized Usage Percentage

To comply with BMC 2.100.050(A)(1)(c), three criteria must be met. The first requirement is a geographical breakdown of where Controlled Equipment was used by individual police area. The second requires that for each police area, the BPD must report the number of days or instances in which Controlled Equipment was used. Lastly, the BPD must record the percentage of the reported uses which were authorized by warrant and by non-warrant forms of court authorization. The ODPa believes that only two of the

three requirements outlined in this section have been sufficiently met with the third requirement needing minor changes to meet compliance.

To ensure compliance, the ODPA recommends that the PAB ask the BPD to record percentages of the daily reported uses which were authorized by warrant and by non-warrant forms of court authorization. Currently, the BPD provides a count of the uses of each specific piece of controlled equipment and the beat in which the equipment was used, and it provides limited insight as to the method of authorization. The provided data states that five out of eighty-eight deployments were a result of a warrant, five were officer initiated, and the rest were a result of calls for service. In order to meet the requirement for the reporting of the authorized usage percentage, the aforementioned values should be calculated as percentages. Additionally, although not required, the ODPA recommends that a chart or infographic be included for reader accessibility purposes.

Requirement 4 – Summary of any complaints or concerns received concerning Controlled Equipment

BMC 2.100.050(A)(1)(d) requires that a summary of any complaints or concerns received concerning Controlled Equipment be provided. The BPD reports that it did not receive any complaints concerning the use of the controlled equipment in its possession. Based on the information provided in this report and the requirements of the BMC, the ODPA believes this requirement has been sufficiently met.

Requirement 5 – Results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

BMC 2.100.050(A)(1)(e) requires that the BPD disclose the results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response. In their report, the BPD states that “there have been no internal audits (other than those conducted to gather and confirm data for this report), identified violations of equipment use, or any complaints concerning the above-listed equipment.” Based on the information provided in this report and the requirements of the BMC, the ODPA believes this requirement has been sufficiently met. However, the ODPA notes

that while BMC 2.100.050(A)(1)(e) seeks the results of any internal audits, it does require the BPD to conduct and report the internal audits. It is important to determine if the legislative intent of Council was for BPD to conduct annual audits. Having that clarification will ensure that BPD is complying with the BMC as intended.



RECOMMENDATION

Date: Thursday, April 06, 2023
To: Honorable members of the Berkeley City Council
From: John Moore, Chair of the Police Accountability Board
Cc:
Subject: Berkeley Police Department's Police Equipment and Community Safety Ordinance 2022 Annual Report

Background:

In May 2021, the Berkeley City Council approved the Police Equipment and Community Safety Ordinance (Ordinance No. 7,760-N.S.), which requires the Berkeley Police Department to provide an annual report on the deployment of specific equipment. The report is to be reviewed by the Police Accountability Board (PAB), which will assess compliance with the relevant approval standards set forth by BMC Section 2.100.040. If any equipment is found to be non-compliant with the standards set forth by BMC 2.100.040, the PAB “shall recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations shall be forwarded to City Council in accordance with the approval process in Section 2.100.040.” The PAB shall make these determinations based on the content of the report.

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

- a. Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.
- b. A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is Deployed, not to transfers of location or placement of equipment inside Department vehicles.
- c. If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.
- d. A summary of any complaints or concerns received concerning Controlled Equipment.
- e. The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

The PAB shall make recommendations based on compliance with the standards outlined in these sections.

The Office of the Director of Police Accountability (ODPA) received the Police Equipment and Community Safety Ordinance 2022 Annual Report from Interim Chief Jennifer Louis on February 17, 2023. The report was scheduled for review at a regular meeting of the PAB within 60 days of receipt, specifically on April 11, 2023. This memorandum provides the PAB's recommendation on the presented Police Equipment and Community Safety Ordinance 2022 Annual Report following the standards for approval outlined in Section 2.100.040.

Recommendation:

The PAB recommends to the Council that they consider accepting the BPD's report, subject to the condition that the required edits are made to ensure compliance with BMC 2.100.050(A)(1) as detailed in this memorandum.

Analysis:

As previously stated, BMC 2.100.050(A)(1) requires meeting five specific requirements for the report. This memorandum presents a recommendation that was developed by examining the available information and assessing each section's compliance with the criteria. Where appropriate, suggestions were made to improve the information's transparency or clarity. . Please refer to Table 1 titled "Compliance Status Overview: Requirements of BMC 2.100.050" for a summary of the compliance status.

Table 1. Compliance Status Overview: Requirements of BMC 2.100.050		
Ordinance No.	Description	In compliance with the ordinance?
2.100.050(A)(1)(a)	Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.	Yes.
2.100.050(A)(1)(b)	A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is Deployed, not to transfers of location or placement of equipment inside Department vehicles.	Yes.
2.100.050(A)(1)(c)	If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.	No.
2.100.050(A)(1)(d)	A summary of any complaints or concerns received concerning Controlled Equipment.	Yes.
2.100.050(A)(1)(e)	The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.	Yes.

Requirement 1 – Product descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.

To comply with BMC 2.100.050(A)(1)(a), the BPD must furnish product descriptions and inventory levels for every piece of controlled equipment in its

possession. In accordance with this requirement, the BPD has listed eleven different pieces of equipment and six types of ammunition and/or projectiles, along with their respective inventory levels. Even though the BPD included an appendix containing the pertinent policies that define and detail every controlled equipment, the report proper didn't incorporate these descriptions. The PAB advises the BPD to improve compliance by including concise descriptions of all their controlled equipment and referring to the comprehensive descriptions provided in the Impact Statement of the Police Equipment and Community Safety Ordinance in the body of the report.

Requirement 2 – A summary of how Controlled Equipment was used.

To comply with BMC 2.100.050(A)(1)(b), the BPD must provide a summary of how Controlled Equipment was used. For this reporting requirement, “use” of equipment refers to deployment and not transfers between locations or placement inside department vehicles. On page five of the report, the BPD provides a summary of various incidents in which one or more pieces of controlled equipment were used. The presented chart includes the name of the equipment, a summary of the event, and the beat where it was used. Based on the provided criteria, the PAB believes that this requirement has been met.

Requirement 3 – Geographical breakdown of Controlled Equipment Usage by Police Area; Reporting days/instances of use; Authorized Usage Percentage

To comply with BMC 2.100.050(A)(1)(c), three criteria must be met. The first requirement is a geographical breakdown of where Controlled Equipment was used by individual police area. The second requires that for each police area, the BPD must report the number of days or instances in which Controlled Equipment was used. Lastly, the BPD must record the percentage of the reported uses which were authorized by warrant and by non-warrant forms of court authorization. The PAB believes that only two of the three requirements outlined in this section have been sufficiently met with the third requirement needing minor changes to meet compliance.

To ensure compliance, the PAB asks that the BPD records the percentages of the daily reported uses which were authorized by warrant and by non-warrant forms of court authorization. Currently, the BPD provides a count of the uses of each specific piece of controlled equipment and the beat in which the equipment was used, and it provides limited insight as to the method of authorization. The provided data states that five out of eighty-eight deployments were a result of a warrant, five were officer initiated, and the rest were a result of calls for service. In order to meet the requirement for the reporting of the authorized usage percentage, the aforementioned values should be calculated as percentages. Additionally, although not required, the PAB recommends that a chart or infographic be included for reader accessibility purposes.

Requirement 4 – Summary of any complaints or concerns received concerning Controlled Equipment

BMC 2.100.050(A)(1)(d) requires that a summary of any complaints or concerns received concerning Controlled Equipment be provided. The BPD reports that it did not receive any complaints concerning the use of the controlled equipment in its possession. Based on the information provided in this report and the requirements of the BMC, the PAB believes this requirement has been sufficiently met.

Requirement 5 – Results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

BMC 2.100.050(A)(1)(e) requires that the BPD disclose the results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response. In their report, the BPD states that “there have been no internal audits (other than those conducted to gather and confirm data for this report), identified violations of equipment use, or any complaints concerning the above-listed equipment.” Based on the information provided in this report and the requirements of the BMC, the PAB believes this requirement has been sufficiently met. However, the PAB notes that while BMC 2.100.050(A)(1)(e) seeks the results of any internal audits, it does require the BPD to conduct and report the internal audits. It is important to determine if the legislative

intent of Council was for BPD to conduct annual audits. Having that clarification will ensure that BPD is complying with the BMC as intended.

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