



Kate Harrison  
Councilmember District 4

## SUPPLEMENTAL 3 AGENDA MATERIAL

**Meeting Date:** May 23, 2023

**Item Number:** 46

**Item Description:** Surveillance Ordinance items related to Fixed Surveillance Cameras and Unmanned Aerial Systems (UAS)

**Supplemental/Revision Submitted By:** Councilmember Harrison

**“Good of the City” Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.*

Submitting the Police Accountability Board’s March 2023 recommendation letters (without attachments) regarding Fixed Surveillance Cameras and Unmanned Aerial Systems.

This supplemental is for the “Good of the City” because under the Surveillance Ordinance and Charter the PAB is charged with providing recommendations on proposed policies.

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

Public



Friday, March 10, 2023

***Via Electronic Transmittal***

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

**Re: Fixed Video Surveillance Cameras**

Dear Interim Chief Jennifer Louis:

The Police Accountability Board (PAB) would like to provide its recommendations on the proposed policies<sup>1</sup> regarding fixed video surveillance cameras being considered by the Berkeley Police Department. As mandated by Berkeley Municipal Code Section 2.99 "Acquisition and Use of Surveillance Technology," specifically section 2.99.030.2, the PAB conducted a review of the proposed policies and voted to provide the attached report at their March 8th, 2023 special meeting.

The PAB brings to your attention several points. First, these policies state that the surveillance cameras are to be used for "a variety of purposes", which appears to be inconsistent with the Council's intent to use the cameras "solely for the purpose of solving criminal investigations", as passed in their budget referral and adoption in 2021. Second, because the two use policies provided to the PAB appear to be duplicative, the PAB recommends that to avoid confusion the Department make it clear what the intended purpose of each policy is. Thirdly, several sections of these policies are ambiguous and require further clarification. Lastly, the data retention policies should be further elaborated

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<sup>1</sup> BPD Draft Policy 351 "External Fixed Video Surveillance Cameras" & Policy 1304 "Surveillance Use Policy – External Fixed Video Surveillance Cameras"

to provide additional clarity on the proposed uses of the data. For more information, please refer to the attached report.

The PAB understands the importance of maintaining public safety and does not wish to limit the effectiveness of the BPD in ensuring the safety of the community. We strive to balance the needs of public safety with the protection of civil liberties and privacy. We hope that by addressing the aforementioned points, we can work together to maintain a safe and secure environment for all members of the Berkeley community while respecting their rights and privacy.

Sincerely,

Police Accountability Board

cc: Honorable Mayor & Members of the Berkeley City Council  
City Manager

Attachments: PAB POLICY REVIEW REPORT  
BPD Draft Policies 351 & 1304:  
External Fixed Video Surveillance Cameras & Surveillance Use Policy -  
External Fixed Video Surveillance Cameras

Public



**Police Accountability Board  
&  
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Police Accountability**

# POLICY REVIEW REPORT

BPD Draft Policies 351 & 1304:

External Fixed Video Surveillance Cameras & Surveillance Use Policy -  
External Fixed Video Surveillance Cameras



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**City Council**

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Terry Taplin, District 2

Ben Bartlett District 3

Kate Harrison, District 4

Sophie Hahn, District 5

Susan Wengraf, District 6

Rigel Robinson, District 7

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**City Manager**

Dee Williams-Ridley

**Berkeley Police Department**

Interim Chief Jennifer Louis

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Police Accountability Board  
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## **POLICY REVIEW REPORT**

BPD Draft Policies 351 & Policy 1304:

“External Fixed Video Surveillance Cameras” & “Surveillance Use Policy – External  
Fixed Video Surveillance Cameras”

**Date of Report:** March 10, 2023

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### **Summary Review:**

The Police Accountability Board (PAB) has reviewed these policies and notes several primary points. First, these policies state that the surveillance cameras are to be used for “a variety of purposes”, which appears to be inconsistent with the Council’s intent to use the cameras “solely for the purpose of solving criminal investigations”, as passed in their budget referral and adoption in 2021. Second, because the two use policies provided to the PAB appear to be duplicative, the PAB recommends that to avoid confusion the Department make it clear what the intended purpose of each policy is.

### **Background:**

On February 8th, 2023, in compliance with the BMC Section 2.99.030.2, Interim Chief Louis presented to the Police Accountability Board (PAB) a triad of documents for their review. A Surveillance Technology Acquisition Report, which was crafted by the Public

Works Department, was accompanied by two proposed policies, Policy 351 entitled "External Fixed Video Surveillance Cameras," and Policy 1304 entitled "Surveillance Use Policy - External Fixed Video Surveillance Cameras," both of which were drafted by the Berkeley Police Department (BPD). Please refer to Attachment 1, which includes a copy of the Surveillance Technology Acquisition Report, as well as the proposed policies.

The acquisition report and proposed policies state that the cameras will serve several business purposes that will include, *but not be limited to*: the prevention, deterrence, and identification of criminal activity; the addressing of areas of criminal activity; and the response to critical incidents. Additionally, the cameras will assist in identifying, apprehending, and prosecuting offenders, documenting officer and offender conduct during interactions to safeguard the rights of the public and officers, cost-effectively augmenting resources, monitoring pedestrian and vehicle traffic activity to aid traffic-related investigations, and documenting employee, employer, and/or customer conduct during interactions to protect them from any potential misconduct. See Attachment 1. However, these proposed uses of surveillance cameras—which are not inclusive of all possible uses—may be inconsistent with the implied purpose seen throughout the procedural history of these policies.

On October 12, 2021, Councilmember Taplin and Councilmember Kesarwani presented a budget referral to the City Council for "Security Cameras in the Public Right of Way at Intersections Experiencing Increased Violent Crime, and Environmental Safety Assessment of High Crime Areas." The presented recommendation aimed to deter gun violence and obtain evidence to solve criminal investigations, with an understanding that the cameras would not be used for any type of surveillance purposes. The recommendation was approved with revisions that included referring to the City Manager to develop a use policy for the security cameras, based on active investigations only and including a data retention schedule. Staff was also required to provide the council with an off-agenda memo commemorating the use policy, and the locations of the cameras would be based on calls-for-service data, with a list of locations brought to the council and referred to the AA01 budget process. See attachment 2 for a copy of the consent item 20



with Council actions from the October 12, 2021, City Council regular meeting and the relevant supplemental material.

On December 14, 2021, the City Council voted to adopt the budget recommendations that included the proposal for security cameras in certain locations. However, funding for the cameras was made conditional on the development and implementation of a Use Policy before their deployment and siting in District 1, District 2, and District 8 locations as proposed by the Police Department and at 62nd & King (District 3). The policy was set to be adopted administratively and presented to the City Council as an off-agenda memo. See attachment 3 for a copy of the action item with Council actions from the December 14, 2021, City Council regular meeting. City Manager Dee Williams-Ridley presented an off-agenda memorandum to Council on January 25, 2022, providing an early version of Policy 351. See attachment 4 for a copy of that memorandum.

The PAB has thoroughly examined all pertinent materials, and procedural history relating to the development of these policies and conducted independent research to present recommendations to the City Council and City Manager about the proposed policies of the Berkeley Police Department (BPD).

**Recommendation:**

The PAB recommends that the BPD revise the proposed policies to align with the initial scope of the budget referral, as well as the conditions placed by the City Council when the budget referral was approved. This will involve implementing changes such as clarifying language and limiting use to the intended purpose. In addition to these changes, the PAB recommends that to avoid confusion the Department make it clear what the intended purpose of each policy is and clearly define which policy is intended for internal training purposes and which is intended to ensure compliance with BMC 2.99.

**Reasoning:**

In developing its recommendation, the PAB considered the following:

*The misalignment between the proposed policies and the City Council's intended Direction*

Upon careful analysis of the proposed policies, the PAB determined that the language included within these policies is not reflective of the Council's original intent when approving the budget for these cameras. Policy 351 and Policy 1304 state that "recorded images may be used for a variety of purposes, including criminal or civil investigations." Among the potential uses, the policies note that the video images may be used "to document officer and offender conduct during interactions to safeguard the rights of the public and officers," "to augment resources in a cost-effective manner," "to monitor pedestrian and vehicle traffic related to investigations," and "to document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct." See attachment 1, proposed policy 351 section 351.3.1, and proposed policy 1304 section 1304.2. The proposal made by Councilmembers Taplin and Kesarwani made it clear that these cameras would be "used solely to solve criminal investigations." The proposed application of these cameras by the BPD is not in alignment with the Council's original objective of restricting their use as a crime deterrent and solely for solving ongoing criminal investigations. See attachment 2, the revised agenda material for supplemental packet 1 of the Council's October 12, 2021, regular meeting. Therefore, we recommend that the authorized use section should be revised to reflect Council's intent. The PAB's suggested changes to Policy 351 are included hereto as Attachment 5.

If, after a careful review of all relevant information, the City Council determines that it would be appropriate to expand the permissible uses of these systems beyond their original intent, the policy must specify what those allowable uses are. The current lack of clarity surrounding the proposed uses leaves too much room for interpretation, which could result in unintended uses that are not aligned with the Council's intent or the needs of the general public. Therefore, a well-defined policy that explicitly outlines the acceptable uses of these systems is necessary to ensure that they are used only for their intended purposes and to maintain public trust in their implementation.

*The adoption of two similar policies could cause implementation confusion.*

The BPD's Draft Policy 351, "External Fixed Video Surveillance Cameras," and Policy 1304, "Surveillance Use Policy - External Fixed Video Surveillance Cameras," are almost identical. While one policy is a "use" policy intended to provide internal training guidelines and the other is a "surveillance use" policy, it is difficult to distinguish between the two. The Police Accountability Board recommends these policies be consolidated into a comprehensive single policy or that the policies are revised to better reflect their intended purpose. If the Council and the BPD deem it appropriate to merge the policies, please refer to Attachment 5.

**Other Notes:**

*Doubts on the effectiveness of the proposed surveillance camera installation.*

In their Budget Referral memo to City Council on October 12, 2021, Council Members Taplin and Kesarwani cite a 2011 Urban Institute study entitled "Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention." That study of three large cities—Baltimore, Chicago, and Washington DC—concluded that fixed surveillance cameras could reduce crime, but only "when actively monitored" in real-time, a condition that raises personnel and other costs substantially (La Vigne et al., Page xii). Proposed policies 351 and 1304 appear to limit the cameras to the sole use of recording only video without sound and explicitly prohibit the integration of additional technologies.

The PAB's stance is not to advocate for the removal of restrictions on the integration of surveillance technology. Rather, the PAB suggests that all parties consider the possible advantages of implementing these cameras in comparison to the costs of maintenance, implementation, and training associated with the systems. According to the Urban Institute's study, "analysis results indicate that cameras, when actively monitored, have a cost-beneficial impact on crime with no statistically significant evidence of displacement to neighboring areas. However, in some contexts and locations, these crime reduction benefits are not realized" (La Vigne et al., Page xii). The study also specifies two reasons why certain locations do not observe a reduction in crime. As previously mentioned, the first explanation is that the cameras are not consistently monitored in real-time, and the

second is those areas with fewer cameras and restricted coverage limit the potential for crime prevention (La Vigne et al., Page xii).

All stakeholders must evaluate the limitations identified in the Urban Institute's study and assess whether the infrastructure necessary to make these cameras effective is already established. As the PAB acknowledges, as do other interested parties, these cameras can serve as a vital tool for deterring crime. Nonetheless, to ensure that crime is not merely being displaced to other regions, we encourage additional research to be conducted. Such research should consider the long-term effects of surveillance technology in specific areas and assess whether crime rates have decreased, remained constant, or relocated to neighboring regions. By conducting additional research, we can better comprehend the impacts of surveillance technology and make informed decisions that prioritize public safety.

*Doubts on the interpretation of Government Code 34090 as implemented in proposed policies 351.5 and 1304.7*

The PAB questions the relevance of California Government Code 34090 concerning the proposed data retention schedule in the proposed policies—specifically sections 351.5 and 1304.7. The PAB has interpreted the proposed policies to say that all video recordings, including recordings of citizen engaging in non-criminal activity, is subject to section 34090.6.a which states “the head of a department of a city or city and county, after one year, may destroy recordings of routine video monitoring, and after 100 days destroy recordings of telephone and radio communications maintained by the department.” Within this section, the following definitions are provided:

- “recordings of telephone and radio communications” means the routine daily recording of telephone communications to and from a city, city and county, or department, and all radio communications relating to the operations of the departments.
- “routine video monitoring” means video recording by a video or electronic imaging system designed to record the regular and ongoing operations of the departments described in subdivision (a), including mobile in-car video systems, jail observation, and monitoring systems, and building security recording systems.

- “department” includes a public safety communications center operated by the city or city and county.”

The PAB believes this government code, based on the definition provided, may not apply to all the data gathered by the proposed technology and that the activity of private citizens may be deleted before one year.

Based on the definitions provided by the government code, the PAB believes that the one-year retention period only applies to the monitoring of routine or departmental activities (i.e building security videos, routine video monitoring of maintenance and repair activities, police officer dash camera footage). Under this definition and the context of the proposed surveillance camera use, members of the public are not part of the “regular and ongoing operations” of city agents and their video recording would not be considered routine video monitoring and could be deleted much earlier than a year. However, if the video recording of members of the public is part of the regular and ongoing operations of any of these departments (such as a routine traffic stop), then it would fall under the definition of routine video monitoring. Otherwise, the PAB believes the retention period should be shorter than what is currently included in the proposed policies.

### Works Cited

La Vigne, Nancy G, et al. "Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention." *Www.urban.org*, Urban Institute, 19 Sept. 2011, <https://www.urban.org/research/publication/evaluating-use-public-surveillance-cameras-crime-control-and-prevention>.

### Additional Research on the topic

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.

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.

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

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.

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

Attachment List

Attachment	Description
1	Surveillance Technology Acquisition Report and Proposed Policies 351 and 1304
2	Copy of Consent Item Number 20, City Council Actions from the October 12, 2021, Regular Meeting, and Related Supplementary Materials.
3	Copy of Action Item Number 44 with City Council Actions from the December 14, 2021, Regular Meeting.
4	Copy of City Manager Dee Williams-Ridley's Off-Agenda Memorandum to Council on January 25, 2022, Presenting an Early Version of Policy 351.
5	PAB's Proposed Revisions to Policy 351 and 1304 Which Consolidates Both Policies.



**Police Accountability Board  
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## **POLICY REVIEW REPORT**

**BPD DRAFT POLICIES 611 & 1303:**

**UNMANNED AERIAL SYSTEM OPERATIONS &  
SURVEILLANCE USAGE**





**Police Accountability Board**

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Jesse Arreguin

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Terry Taplin, District 2  
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## **POLICY REVIEW REPORT**

BPD DRAFT POLICIES 611 & 1303:

UNMANNED AERIAL SYSTEM OPERATIONS & SURVEILLANCE USAGE

**Date of Report:** Thursday, February 23, 2023

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### **Introduction and Overview:**

On January 11<sup>th</sup>, 2023, the Office of the Director of Police Accountability (ODPA) presented to the Board a recommendation regarding Policy Complaint #31, which concerned the alleged use of drones by the Berkeley Police Department (BPD) during the 2022 Solano Stroll event. See Attachment 1, the ODPA Recommendation to the Police Accountability Board (PAB) regarding Policy Complaint #31. The ODPA advised the Police Accountability Board (PAB) not to proceed with the policy complaint process due to the upcoming review of new BPD Unmanned Aerial System (UAS) acquisition and use policies. The PAB accepted the recommendation. On January 24<sup>th</sup>, 2023, Interim Chief Louis provided the PAB and ODPA with two policies—Policy 611 “Unmanned Aerial System (UAS) Operations” and Policy 1303 “Surveillance Use Policy – Unmanned Aerial System (UAS)”—and respective acquisition report as required by Berkeley Municipal Code §2.99.030.2. See Attachment 2, Draft Policy 611 “Unmanned Aerial System (UAS) Operations” and Policy 1303 “Surveillance Use Policy – Unmanned Aerial System (UAS).”

Although that is the immediate procedural history of how these proposed policies have made it before the Board, the conversation on UAS technologies is not new to the City of Berkeley. The conversation began over 10 years ago with the PAB's predecessor agency, the Police Review Commission (PRC). Specifically, on December 18, 2012, the Berkeley City Council reviewed a resolution submitted to it by the Berkeley Peace and Justice Commission to "Proclaim Berkeley a No Drone Zone and Enact an Ordinance to that Effect." At that time, the Council referred the issue of drones, or unmanned aerial vehicles, back to the Peace and Justice Commission, the Berkeley Police Review Commission, and the Berkeley Disaster and Fire Commission for further review and study. The Council asked that the referenced stakeholder Commissions report back to Council for further consideration of the issues and review a proposal to permit police use of drones upon approval of the City Manager, or approval of the Chief of Police in emergencies when the City Manager isn't available, in the following circumstances:

1. In the case of a disaster;
2. To assist in locating missing persons;
3. To assist in rescue efforts;
4. To assist in a police pursuit of known suspects who have committed serious or violent crimes.

See Attachment 3, the PRC's 2013 letter and recommendation on drones to the Mayor and City Council.

Ultimately, the Council decided on February 24, 2015, to impose a ban on the use of unmanned aircraft systems, commonly known as "drones," by the BPD for one year and to formulate a protocol for their deployment by law enforcement. However, the Council granted permission for the Berkeley Fire Department to use drones for emergency response in the event of a disaster, although the Fire Department did not procure any and currently has none. See Attachment 4, the Berkeley City Council's minutes for February 24, 2015, where the topic is discussed as action item number 26. Subsequently, the Council enacted Ord. 7592-NS §2 in 2018, which introduced Chapter 2.99 to the Berkeley Municipal Code.

For this report, the term Unmanned Aerial System (UAS) is defined in the same manner as provided in the BPD Surveillance Acquisition Report (hereinafter the "Report"). A UAS is defined as an unmanned aircraft that is capable of sustained flight, whether through pre-programmed instructions or remote control, and is equipped with components designed to gather information through various means, such as imaging or recording. Typically, a UAS is composed of an unmanned aircraft that includes a chassis, propellers for flight, communication equipment, flight stabilization technology, a control chip, a camera, and a digital image/video storage system. Additionally, a UAS includes a remote-control unit that communicates with the aircraft, as well as battery charging equipment for both the aircraft and the remote control. UAS is controlled from a remote-control unit with wireless connectivity, which allows pilots to view the UAS and its surroundings from a birds-eye perspective. The UAS's cameras enable pilots to view the aerial perspective, and image and video data are recorded onto secure digital (SD) memory cards that can be removed from the UAS for evidence.

The Report addresses the need for UAS technology as being necessary to "[improving] the capacity of law enforcement (LE) to provide a variety of foundational police services." See Attachment 5, a copy of BPD's draft Surveillance Acquisition Report for Unmanned Aerial System (UAS). The claim is that the acquisition of UAS drones by the Berkeley Police Department would significantly improve their capacity to provide foundational police services and that the technology has already been proven to save lives and help capture dangerous criminal suspects in other law enforcement agencies. The need for this acquisition is justified by an annual increase in violent crimes in Berkeley, including shootings, robberies, assaults, and firearms recovery. From 2018 to 2022, the yearly average number of shootings has doubled. In 2021 Berkeley had 265 robberies, 210 aggravated assaults, 57 sexual assaults, and 118 firearms recovered. See Attachment 5. The Department notes that UAS drones can provide a greater view into the immediate surroundings of crime scenes and active pursuits, which can offer officers greater time and distance to de-escalate volatile situations (see Attachment 5). Furthermore, the Department states that UAS drones are effective in locating missing persons in remote

areas and assisting in rescue missions. Overall, the claim is that UAS systems would help mitigate risk for both officers and the public.

The increasing number of police departments across the country acquiring and using drones indicates a growing trend in law enforcement agencies relying on this technology. The Atlas of Surveillance, a project of the Electronic Frontier Foundation (EFF) and the University of Nevada, has reported that at least 1,172 police departments nationwide are currently using drones (Guariglia, 2022). With the widespread use of UAS technology, it is becoming increasingly evident that drones are being viewed as an essential tool for law enforcement agencies as UAS technologies continue to develop. The PAB does not challenge the claim that UAS technology can be beneficial to both the BPD and the community, as long as the appropriate accountability measures and safeguards are in place. Additionally, the PAB also recognizes the concern for disparate impacts when implementing these technologies as noted by Samuelson Law, Technology & Public Policy Clinic, “it can also enable targeting and discrimination against vulnerable communities” (Chivukula et al., 2021).

In conducting this policy review, the PAB assessed the necessity of acquiring a drone, weighed the benefits of such an acquisition against the cost and the concerns raised by the community, and identified the oversight measures that should be considered if the technology is deemed necessary to acquire. To that end, the Board reviewed the historical record of this conversation to include the PRC’s reports and recommendations, the current literature surrounding UAS technologies, and neighboring jurisdictions’ policies and uses of UAS technologies.

### Recommendation:

The Board notes that it is not clear whether Berkeley Municipal Code 2.99 "Acquisition and Use of Surveillance Technology," specifically section 2.99.030.2, requires review if the Berkeley Police Department does not intend to acquire drones. Because the preambles to both proposed policies (611.5 and 1303.2) clearly state, “UAS shall only occur as the result of a mutual assistance request”, the PAB needs to know if the Berkeley

Police Department intends to request or is requesting acquisition for or purchase of drones. If BPD does not intend to make this purchase it would appear more appropriate to propose a policy for requests for mutual aid such as in BPD Policy 418 "Obtaining Air Support". That policy should then include in its title that this is the mutual aid policy for use of other Department's Drones. Berkeley PD will not have the authority to supervise, train or limit other jurisdictions' use of their drones.

To ensure the City of Berkeley and the Berkeley Police Department adopt Unmanned Aerial System (UAS) policies that restrict the use of this technology to the most serious situations, minimize the potential for constitutional violations, and increase trust between BPD officers and community members, the PAB recommends that the City not approve the Department's proposed policies in their current form. Furthermore, the PAB recommends that when and if the City revisits the issue of adopting Unmanned Aerial System (UAS) policies for use or acquisition it addresses the following concerns:

#### Concerns regarding potential implications for civil liberties and constitutional rights

UAS technologies present concerns for the preservation, respect, and adherence to well-established civil liberties and constitutional rights. Specifically, the technological capabilities of drones can threaten First Amendment rights to freely and peaceably assemble (U.S. Const. amend. I) and the Fourth Amendment protection which 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). Considering the Board's purpose of promoting public trust through the review of the Police Department's policies, practices, and procedures, the PAB believes the current policies as drafted will impede that purpose.

In the PRC's 2013 Town Hall discussion, Linda Lye, staff attorney with the American Civil Liberties Union, indicated that deploying drones not only raises serious Fourth Amendment concerns, but would also likely violate the California Constitution's Article I, Section I, which grants privacy protection for personal information. Among some of the reasons to oppose the technology, she stated:

- Their low cost encourages widespread surveillance.
- Their small size and advanced abilities prevent people from knowing they are being spied on.

#### The role of civilian oversight in the acquisition and use of UAS

The role of a civilian oversight body, such as the PAB, in these instances, is to ensure that the use of technology by law enforcement is appropriate, transparent, and in line with the community values and protects civil liberties. The current reporting on UAS deployments is limited to the Annual Surveillance Technology Report compiled by the City Manager. This limited reporting is done in compliance with Ordinance 7592-NS § 2. While an annual report can provide some insight, currently the City of Berkeley falls short of meeting the transparency standards set by other California cities when reporting out on UAS deployments (See San Jose UAS Deployments<sup>1</sup>, Chula Vista Drone-Related Activity Dashboard<sup>2</sup>; Hayward Police Department Flight Logs<sup>3</sup>).

In 2022, the BPD requested UAS support from the Alameda County Sheriff's Office (ASCO) on three occasions. See Attachment 6, a copy of the UAS Deployment entries of the City Manager's 2022 surveillance technology usage report. Given the possibility of an increase in UAS deployments in Berkeley, it is crucial to establish an updated log that provides information on what, when, and why the UAS was deployed, as well as the duration of each deployment. This information is essential in ensuring transparency and accountability for law enforcement agencies, particularly in light of the concerns surrounding deployments of UAS. A publicly accessible log of UAS deployments would provide the community with much-needed transparency and accountability, and it would help build trust between law enforcement and residents. The PAB strongly recommends the implementation of such a measure if the BPD decides to implement the proposed policies.

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<sup>1</sup> <https://www.sjpd.org/records/uas-deployments>

<sup>2</sup> <https://www.chulavistaca.gov/departments/police-department/programs/uas-drone-program>

<sup>3</sup> <https://www.hayward-ca.gov/police-department/transparency/uas-drone>



## Lack of technical specifications and potential misuse

The BPD's current proposals are not transparent enough and do not clearly outline which specific UAS technologies they are seeking to use through mutual aid agreements. The wide range of capabilities and features of different UAS systems is a cause for concern among members of the Berkeley Community. The 2013 PRC Recommendation to City Council Regarding Drones identifies concerns regarding the advanced capabilities of drone technologies, including thermal imaging. See Attachment 3. In addition, the PRC letter also raised the issue of "mission creep", where certain technologies are initially requested for specific purposes but are later used for unintended or broader purposes.

The BPD cited the study, "Mission-based citizen views on UAV usage and privacy: an effective perspective," within their Acquisition Report. In the study, the authors indicate that community members are "much more concerned over their privacy when the UAV was airborne 24 hours a day than when it was used for a specific mission and returned to base" (Winter et al., 2016). The study suggests that citizens may be more accepting of UAS technology when they "see the advantages of the UAS usage outweighing their privacy concerns." For instance, UAS technology used for search and rescue during natural disasters may lead citizens to perceive the gain in benefits that offset their privacy concerns. However, when the purpose and capability of such technology are not clear, members of the community may become concerned about the uses of the UAS. This research, as cited by the Berkeley Police Department, highlights the need for clear guidelines on the appropriate usage of UAS to balance the potential benefits of UAS operations with citizens' right to privacy.

The lack of clarity and transparency regarding the technical specifications for UAV acquisition and usage has been a major source of concern for the PAB and the Berkeley community. As noted, the PAB will not endorse any policy related to UAS acquisition and usage that does not incorporate measures to promote transparency and limit the acquisition and usage of certain surveillance technologies. The current policy is vague in terms of technical specifications and does not provide any additional information other than the basic features of a majority of modern-day UAVs. This lack of clarity raises

concerns about privacy violations, civil rights abuses, and the potential for mission creep. Without clear guidelines on what technologies are being acquired and how they will be used, the community is left to speculate on the potential harms and risks associated with UAVs, which can erode public trust and acceptance. Providing clear guidelines and disclosures of the technical specifications would be a critical step toward promoting greater public acceptance of UAVs while also upholding individual rights and maintaining public trust.

Lack of definition for “Exigent Circumstances”: A key concern for appropriate use of UAS in law enforcement

Clearly defining what qualifies as an exigent circumstance helps prevent officers from claiming exigent circumstances as a blanket justification for using UAS surveillance technology. Inappropriate use of UAS systems can create a culture of constant surveillance, which can erode public trust and exacerbate tensions between BPD and the community. By using UAS only when necessary, BPD can demonstrate that they respect the privacy and civil liberties of the public and are not engaging in constant monitoring.

Additionally, restricting the use of drones to exigent circumstances can help prevent mission creep, which occurs when a technology or policy designed for a specific purpose is gradually expanded to other areas or uses. By setting clear limitations on when and how drones can be used, law enforcement can help ensure that they are not overstepping their bounds or engaging in practices that are not consistent with their intended purpose.

The PAB recognizes that UAS technology has the potential to be used for legitimate law enforcement purposes. However, to ensure the technology is used responsibly and transparently, policies must be put in place to guide their use. The PAB believes that the policy being considered by the BPD should clearly define what an exigent circumstance is, to provide better guidance to BPD staff as to when it is appropriate for drones to be used. The PAB is not comfortable endorsing a policy that does not clearly define what constitutes an exigent circumstance, as this generates too much ambiguity.

The uncertainty of UAS operations through mutual aid agreements with outside agencies

The use of unmanned aerial systems (UAS) by law enforcement is a complex issue, and the uncertainty created by the proposed policy surrounding UAS operations through mutual aid agreements with outside police agencies adds another layer of complexity. The PAB is concerned that the policies being considered by the BPD do not provide clear guidelines on how the Department will ensure that the UAS used under mutual aid agreements comply with the authorized uses, limitations, and reporting requirements of the City of Berkeley. The lack of clarity on how the Department will oversee UAS operations under mutual aid agreements raises concerns about the potential misuse of the technology, which can result in the erosion of public trust. Therefore, the PAB urges the BPD to provide more clarity on how it plans to manage UAS operations under mutual aid agreements and ensure that they comply with the authorized uses and limitations outlined in the City of Berkeley's policies.

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