



**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE  
REGULAR MEETING**

**Monday, September 19, 2022  
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Terry Taplin, and Susan Wengraf  
Alternate: Councilmember Sophie Hahn

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

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

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/85801916305>. If you do not wish for your name to appear on the screen, then 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 **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **858 0191 6305**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Public Safety Policy Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

# AGENDA

## Roll Call

## Public Comment on Non-Agenda Matters

## Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

### 1. Minutes - June 6, 2022

## Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

2. **Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement**  
**From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor)**  
**Referred: June 14, 2021**  
**Due: October 31, 2022**  
**Recommendation:** 1. Adopt an Ordinance Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.  
2. Refer to the City Manager to report to Council within six months with anonymized data and information regarding discriminatory reports to law enforcement.  
**Financial Implications:** Staff time  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

- 3. Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios**  
**From: Councilmember Taplin (Author)**  
**Referred: August 29, 2022**  
**Due: January 25, 2023**  
**Recommendation:** Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023. Report should include but not be limited to the following factors: -BPD intelligence-gathering capabilities on potentially violent large crowd scenarios; - BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses; -Tools and tactics available for crowd control in potentially violent scenarios; -Mutual aid and support from other local/state/federal agencies; -Applicable state and federal laws on crowd control and First Amendment rights.  
**Financial Implications:** Staff time  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

## Items for Future Agendas

- Discussion of items to be added to future agendas

## Adjournment

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*Written communications addressed to the Public Safety Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, September 15, 2022.



Mark Numainville, City Clerk

## **Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [policycommittee@cityofberkeley.info](mailto:policycommittee@cityofberkeley.info).*

**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE  
SPECIAL MEETING MINUTES**

**Monday, June 6, 2022  
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Terry Taplin, and Susan Wengraf  
Alternate: Councilmember Sophie Hahn

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

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

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To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **859 7649 2058**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Public Safety Policy Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

## AGENDA

**Roll Call:** 10:35 a.m. Councilmembers Kesarwani, Taplin, and Wengraf present.

**Public Comment on Non-Agenda Matters:** 3 speakers.

### Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes - May 16, 2022**

**Action:** M/S/C (Wengraf/Taplin) to approve the May 16, 2022 minutes.

**Vote:** All Ayes.

### Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

**2. Information Report on Current Policies Related to Tear Gas, Smoke, and Pepper Spray**

**From: City Manager**

Contact: Jennifer Louis, Police, (510) 981-5900

**Action:** 5 speakers. Presentation made and discussion held.

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

- 3. Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement**  
**From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor)**  
**Referred: June 14, 2021**  
**Due: September 30, 2022**  
**Recommendation:** 1. Adopt an Ordinance Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.  
2. Refer to the City Manager to report to Council within six months with anonymized data and information regarding discriminatory reports to law enforcement.  
**Financial Implications:** Staff time  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Councilmember Harrison requested that this item's due date be extended to October 31, 2022. It will remain on "Unscheduled Items" for the July Public Safety Committee meeting.

## Items for Future Agendas

- None

## Adjournment

**Action:** M/S/C (Kesarwani/Wengraf) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 11:44 a.m.

I hereby certify that this is a true and correct record of Public Safety Policy Committee meeting held on June 6, 2022.

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April Richardson, Assistant City Clerk

## Communications

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Kate Harrison  
Councilmember District 4

## ACTION CALENDAR

June 29, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison (Author) and Councilmember Hahn (Co-sponsor)

Subject: Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

### RECOMMENDATION

1. Adopt an Ordinance Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.
2. Refer to the City Manager to report to Council within six months with anonymized data and information regarding discriminatory reports to law enforcement.

### CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

As the City of Berkeley addresses disparate policing outcomes, it is critical to consider potential bias stemming from community-initiated calls for service. Over the past year, there have been numerous high-profile instances, including in the Bay Area, of people allegedly calling law enforcement on innocent people on purely discriminatory grounds. It is likely that numerous additional instances go unreported each year. Such incidents cause serious harm to the person falsely accused of a crime, contribute to defamation, cause anxiety and distrust among people of color and other people, and put an unnecessary strain on law enforcement officers responding to frivolous and false calls. Berkeley is not immune to such discriminatory calls and therefore it is the public interest to explicitly expand existing laws regarding false police reports such that it is explicitly unlawful to engage in such behavior and that any aggrieved person may seek restitution through civil means.

### BACKGROUND

This Ordinance is modelled upon the City and County of San Francisco's recently unanimously adopted 2020 Caution Against Racially and Exploitative Non-Emergencies (CAREN) Act. A similar bill also passed in the State of Virginia.<sup>1</sup>

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<sup>1</sup> Ebrahimji, Alisha, and Amanda Jackson, "San Francisco's 'CAREN Act,' Making Racially Biased 911 Calls Illegal, Is One Step Closer to Becoming a Law," *CNN*, October 21, 2020, [www.cnn.com/2020/10/20/us/caren-act-911-san-francisco-board-passes-first-read-trnd/index.html](http://www.cnn.com/2020/10/20/us/caren-act-911-san-francisco-board-passes-first-read-trnd/index.html).

Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

These laws were passed in the wake of the global protest movement in response to the murder of George Floyd, which highlighted discriminatory calls to law enforcement, including notable incidents in New York City's Central Park and Oakland's Lake Merritt.<sup>2</sup>

In addition to causing serious harm to the person(s) falsely accused of a crime, anxiety and distrust among people of color and other groups, such incidents put an unnecessary strain on law enforcement officers responding to frivolous and false calls. However, this ordinance is not intended to discourage individuals from contacting law enforcement when they are facing real danger or desire to report a crime.

The Berkeley Police Review Commission's 2017 "To Achieve Fairness and Impartiality: Report and Recommendations" cited a number of anecdotal reports from community members alleging discriminatory calls for law enforcement service, including:

- A racially-mixed family was having pizza at Bobby G's on University. Another diner called police saying that the mixed couple were "abusing their child by drinking beer and wine in front of their child." Two police cars arrived with lights flashing. The owner attested that the family were regulars, and were minding their own business watching a football game. Police interrogated the African American father for one hour in a hallway at the restaurant.
- An African American man, a security guard in uniform with a licensed gun, was talking with a Caucasian female on the corner of Bonar and Allston Way after a ceremony at the Berkeley Youth Association. A Caucasian man drove by, parked the car, got out and started videotaping the couple. The African American man asked the driver to stop videotaping. The man answered that it was his right to do so and started making statements such as "don't bring a gun into my neighborhood." After a heated back-and-forth, the driver called the police. Eight cars arrived. The lead officer reviewed the credentials of the African-American man, was satisfied and departed. One of the remaining officers stayed and continue to ask the same questions for another 15 minutes. The African American security guard registered that he felt he was "unduly questioned" and was being "badgered."
- The owners of "44 Restaurant and Lounge" lodged a complaint with NAACP and police. During happy hour to 8p.m.the guests that frequent the bar are a racially mixed crowd. After 8p.m.the guests are predominantly African American. After a minor complaint to police from a resident, the police parked a car with lights off across the street from the establishment for a period of four months. "44" has no history of rowdiness or spillover from bar patrons onto the sidewalk or the street. The bar down the street, Nick's Lounge, has spillover into the street almost every night. The owners of "44" and the NAACP observed there is no police presence at Nick's.<sup>3</sup>

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<sup>2</sup> Nir, Sarah Maslin, "How 2 Lives Collided in Central Park, Rattling the Nation," *The New York Times*, June 14, 2020, [www.nytimes.com/2020/06/14/nyregion/central-park-amy-cooper-christian-racism.html](http://www.nytimes.com/2020/06/14/nyregion/central-park-amy-cooper-christian-racism.html); Fearnow, Benjamin, "A Black Family's Sunday Barbecue Was Interrupted after a Woman Called out Their Charcoal Grill and Phoned the Cops," *Newsweek*, May 10, 2018, [www.newsweek.com/lake-merritt-bbq-barbecue-video-oakland-racist-charcoal-east-bay-black-family-919355](http://www.newsweek.com/lake-merritt-bbq-barbecue-video-oakland-racist-charcoal-east-bay-black-family-919355).

<sup>3</sup> Berkeley Police Review Commission, "To Achieve Fairness and Impartiality: Report and Recommendations from the Berkeley Police Review Commission," November 15, 2017, [https://www.cityofberkeley.info/uploadedFiles/Police\\_Review\\_Commission/Level\\_3\\_-\\_General/FAIR%20%20IMPARTIAL%20POLICING%20REPORT%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Level_3_-_General/FAIR%20%20IMPARTIAL%20POLICING%20REPORT%20final.pdf)

Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

The Berkeley Police Review Commission's 2017 report was not exhaustive and it is likely that there were numerous additional unreported incidents involving individuals contacting law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Berkeley Police Department staff also cited biased calls for service as a potential factor in racially disparate policing outcomes during the Mayor's Fair and Impartial Working Group meetings. The intent of this ordinance and referral is to prohibit and daylight these incidents, and to provide an avenue for restitution through the court system.

The misuse of law enforcement by members of the public to discriminate against others is intolerable. Creating a civil cause of action for damages will also discourage this type of behavior and provide a tangible compensation for victims.

Berkeley Municipal Code 13.08 already prohibits persons from knowingly reporting or causing to be reported:

"any false or fictitious request for protection or assistance, or any false or fictitious information indicating that a crime has been or is about to be committed, or to knowingly cause the Police Department to respond to any such false or fictitious report, or to request any assistance or investigation in connection with or as a result of any such false or fictitious report or false or fictitious information."

This ordinance expands the scope of this existing law to explicitly prohibit false or frivolous reports involving individuals who contact law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Discriminatory calls are defined as those that are made on the basis of a person's actual or perceived race, color, ancestry, ethnicity, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight, or height, and with the intent to do any of the following:

- (1) Infringe upon the person's rights under either the California Constitution or the United States Constitution;
- (2) Discriminate against the person;
- (3) Cause the person to feel harassed, humiliated, or embarrassed;
- (4) Cause the person to be expelled from a place in which the person is lawfully located;
- (5) Damage the person's reputation or standing within the community; or
- (6) Damage the person's financial, economic, consumer, or business prospects or interests.

In addition, any aggrieved person may enforce the provisions of this ordinance by means of a civil action, including special, general and punitive damages.

#### FINANCIAL IMPLICATIONS

Staff time will be necessary to implement and enforce this ordinance. However, this ordinance already in part tracks existing law and practices regarding false police reports.

#### ENVIRONMENTAL SUSTAINABILITY

No immediately identifiable environmental impact.

Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

CONTACT

Councilmember Kate Harrison  
kharrison@cityofberkeley.info | 510-981-7140

ATTACHMENTS:

1. Ordinance

ORDINANCE NO. -N.S.

ADDING A NEW CHAPTER 13.09 TO THE BERKELEY MUNICIPAL CODE  
PROHIBITING DISCRIMINATORY REPORTS TO LAW ENFORCEMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Berkeley Municipal Code Chapter 13.09 is added to read as follows:

**Chapter 13.09**  
**Discriminatory Reports to Law Enforcement**

**Sections:**

**13.09.010 Findings and Purpose.**

**13.09.020 Discriminatory Reports to Law Enforcement Prohibited.**

**13.09.030 Civil Cause of Action.**

**13.09.040 Undertaking for the General Welfare.**

**13.09.050 Severability.**

**13.09.010 Findings and Purpose.**

The Council finds and expressly declares as follows:

- A. There have been numerous incidents across the country involving individuals contacting law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Discriminatory law enforcement reports against people of color for racially motivated reasons are common enough that many people of color have experienced one or more incident of being contacted by law enforcement when engaging in normal day-to-day activities. These incidents cause serious harm to the person falsely accused of a crime, cause anxiety and distrust among people of color, and put an unnecessary strain on law enforcement officers responding to frivolous and false calls.
- B. The misuse of law enforcement by members of the public to discriminate against others should not be tolerated and the City should take action to stop such behavior in every way possible. Creating a means for people who suffer this kind of discrimination to seek redress from those who have targeted them through a civil cause of action for damages will discourage this type of behavior and provide a tangible way for these victims to be compensated for this wrong.
- C. This ordinance is not intended to discourage individuals from contacting law enforcement when they are facing real danger or desire to report a crime. It will allow individuals who have been reported to law enforcement for unfair and unnecessary reasons to seek justice and restitution, and will motivate people who contact law enforcement to consider the reasons they are making the report.

**13.09.020 Discriminatory Reports to Law Enforcement Prohibited.**

(a) It shall be unlawful to knowingly make a false or frivolous call to police to cause a peace officer to arrive at a location to contact a person, with the specific intent to do any of the following on the basis of the person's actual or perceived race, color, ancestry, ethnicity, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight, or height:

- (1) Infringe upon the person's rights under either the California Constitution or the United States Constitution;
- (2) Discriminate against the person;
- (3) Cause the person to feel harassed, humiliated, or embarrassed;
- (4) Cause the person to be expelled from a place in which the person is lawfully located;
- (5) Damage the person's reputation or standing within the community; or
- (6) Damage the person's financial, economic, consumer, or business prospects or interests.

**13.09.030 Civil Cause of Action.**

(a) Any aggrieved person may enforce the provisions of this Section by means of a civil action.

- (1) A person found to have violated Section 13.09.020 (a) in a cause of action under subsection (a) shall be liable to the aggrieved person for special and general damages, but in no case less than \$1,000 plus attorneys' fees and the costs of the action. In addition, punitive damages may be awarded in a proper case.
- (2) Nothing in this Section shall preclude any person from seeking any other remedies, penalties, or procedures provided by law.

**13.09.040 Undertaking for the General Welfare.**

In enacting and implementing this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

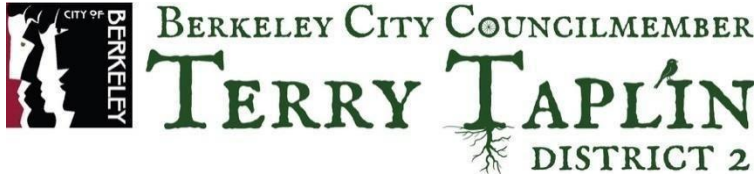
**13.09.050 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.







CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios

### RECOMMENDATION

Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023.

Report should include but not be limited to the following factors:

- BPD intelligence-gathering capabilities on potentially violent large crowd scenarios
- BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses
- Tools and tactics available for crowd control in potentially violent scenarios
- Mutual aid and support from other local/state/federal agencies
- Applicable state and federal laws on crowd control and First Amendment rights

### FINANCIAL IMPLICATIONS

Staff time.

### CURRENT SITUATION AND ITS EFFECTS

Planning for large-scale crowd scenarios is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

As of June 9, 2020, the City of Berkeley has prohibited the use of tear gas, pepper spray, smoke canisters, and other chemical agents for crowd control by the Berkeley Police Department and any other outside agencies providing mutual aid in Berkeley. This prohibition was enacted due to concerns for the health and safety of peaceful protesters, including permanent lung damage and the potential to exacerbate the COVID-19 pandemic (see Attachment 1).

In 2021, the state legislature passed Assembly Bill 48 (see Attachment 2), which imposed restrictions on the use of chemical agents and kinetic energy projectiles by law enforcement officers during protests, including requirements for de-escalation, prohibiting their use for dispersing crowds, and restricting their use to "objectively

reasonable efforts” to only target violent individuals after all other options have been exhausted, while also establishing public reporting requirements.

In June of 2022, the Berkeley Police Department presented to the City Council’s Public Safety Policy Committee on regional best practices and conformance with AB-48 (see Attachment 3).

In August of 2022, the Berkeley City Council was briefly scheduled to discuss potentially lifting the prohibition on chemical agents on a temporary basis in response to reports of violence at protests near People’s Park, due to concerns that the Alameda County Sheriff’s Office would not provide mutual aid. The meeting was canceled, and the prohibition remains in place.<sup>1</sup> UCPD, which is overseeing law enforcement at the park, is permitted to use tear gas in limited situations under its use of force policy.<sup>2</sup> On August 5, 2022, the Sheriff Gregory Ahern clarified on KTVU that the Alameda County Sheriff’s Office would provide mutual aid to the City, not “to assist with the movement of the crowd.”<sup>3</sup>

Due to ongoing concerns regarding violent crowds outlined below, it is in the public interest to study feasible alternatives for responding to potentially violent large gatherings while protecting First Amendment rights, de-escalating and preventing bodily harm for all present pursuant to existing City of Berkeley policies.

## BACKGROUND

The extreme far-right in the US has become increasingly violent since the election of President Donald Trump, with white supremacist propaganda and neo-Nazi rallies consistently condoned by the highest echelons of the Republican Party. Since former President Trump’s well-documented lies about election theft fomented an attempted insurrection and violent invasion of the US Capitol on January 6, 2021, the need to safeguard democratic institutions from violent extremism has only increased, as far-right figures have openly threatened to increase violent demonstrations while pivoting to more local, decentralized actions.<sup>4</sup>

Berkeley has been the site of several violent encounters with far-right militias and counter-protesters. On February 1, 2017, a faction of protesters opposing a UC

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<sup>1</sup> Yelimeli, S. (Aug. 4, 2022). Berkeley City Council will not lift tear gas ban amid People’s Park protests. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2022/08/04/berkeley-city-council-will-not-lift-tear-gas-ban-amid-peoples-park-protests>

<sup>2</sup> [https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2022/08/Use\\_of\\_Force-1.pdf](https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2022/08/Use_of_Force-1.pdf)

<sup>3</sup> KTVU. (Aug 5, 2022). People’s Park project on hold; debate over tear gas in Berkeley. Retrieved from <https://www.ktvu.com/news/peoples-park-project-on-hold-debate-over-tear-gas-in-berkeley>

<sup>4</sup> Holt, J. (2022). After the insurrection: How Domestic Extremists Adapted and Evolved After the January 6 US Capitol Attack. *Atlantic Council*. Retrieved from <https://www.atlanticcouncil.org/wp-content/uploads/2022/01/After-the-Insurrection.pdf>

Berkeley speaking event by far-right figurehead Milo Yiannopoulos engaged in looting of commercial retailers and injured peaceful protesters.<sup>5</sup> On March 4, 2017, Berkeley police arrested 10 individuals following violent clashes at a “March 4 Trump” rally in Civic Center Park where 7 were injured. In response, then-President Trump praised the rallies and threatened to pull federal funding from UC Berkeley.<sup>6</sup> On April 15, 2017, right-wing protesters (including neo-Nazi militia groups such as Oath Keepers) and counter-protesters fought violently with rocks, sticks, pepper spray, and smoke bombs, resulting in 21 arrests and 11 injuries, including one stabbing.<sup>7</sup>

The City of Berkeley must assess its preparedness for large crowd scenarios in order to prevent future violence.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

#### CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

#### ATTACHMENTS

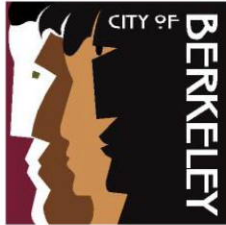
- 1: June 9, 2020: Prohibiting Use of Chemical Agents for Crowd Control During COVID-19 Pandemic
- 2: Assembly Bill 48 (2021)
- 3: June 6, 2022: Berkeley City Council Public Safety Policy Committee presentation

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<sup>5</sup> Bodley, M. (2017, Feb 2). At Berkeley Yiannopoulos protest, \$100,000 in damage, 1 arrest. *SFGate*. Retrieved from <https://www.sfgate.com/crime/article/At-Berkeley-Yiannopoulos-protest-100-000-in-10905217.php>

<sup>6</sup> Wang, A.B. (2017, March 5). Pro-Trump rally in Berkeley turns violent as protesters clash with the president’s supporters. *Los Angeles Times*. Retrieved from <https://www.washingtonpost.com/news/post-nation/wp/2017/03/05/pro-trump-rally-in-berkeley-turns-violent-as-protesters-clash-with-the-presidents-supporters/>

<sup>7</sup> St. John, P. (2017, Apr 15). 21 arrested as hundreds of Trump supporters and counter-protesters clash at Berkeley rally. Retrieved from <https://www.latimes.com/local/lanow/la-me-ln-berkeley-trump-rally-20170415-story.html>



Office of the Mayor

## LATE AGENDA MATERIAL

### Pursuant to Government Code Section 54954.2(b)

**Meeting Date:** June 9, 2020

**Item Description:** Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic

**Submitted By:** Mayor Arreguin, Councilmember Harrison, Councilmember Robinson

Pursuant to California Government Code Section 54954.2(b) (2), the Mayor submits the attached item to the City Council for placement on the June 9, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that *“Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”*

This item meets the criteria for “immediate action” as follows:

The City of Berkeley is currently in a declared state of emergency regarding the outbreak of a novel coronavirus, causing the respiratory disease COVID-19. COVID-19 is an acute respiratory illness that affects the lungs in addition to other symptoms. The severity of these symptoms increases based on underlying health conditions including asthma, heart and lung problems, diabetes, and other medical conditions.

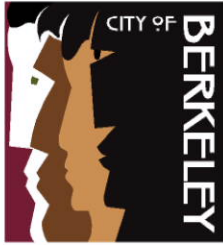
Despite being in a declared public health emergency, the Berkeley Police Department can use chemical agents (tear gas, pepper spray, and smoke canisters) to disperse a crowd, but subject to the authorization and policies outlined in General Order U-2.

Public health experts have concluded that chemical agents like tear gas may make individuals more susceptible to COVID-19 and increase its community spread. Along with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people’s lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas and smoke can also incite coughing, which can further spread the virus from an infected person.

On June 1, 2020, in response to a largely peaceful demonstration against the killing of George Floyd, Oakland Police fired tear gas into a crowd of demonstrators. The tear gas not only affected protestors by also bystanders in the immediate area. The police killing of George Floyd on May 25, 2020 and the deaths of other African Americans have sparked nationwide outrage and protests over police brutality, including demonstrations in the City of Berkeley. Additional protests may occur in the coming days and weeks.

***Consideration of late agenda items is subject to approval by a two-thirds vote of the City Council. (California Government Code Section 54954.2(b)(2))***





ACTION CALENDAR  
June 9, 2020

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Kate Harrison and Councilmember Rigel Robinson

Subject: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic

RECOMMENDATION

Adopt a motion to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition.

BACKGROUND

The use of tear gas (CS gas) and pepper spray are authorized less-than-lethal uses of force which can be deployed in crowd control situations under Berkeley Police Department policy, with specific conditions (See [General Order U-2](#)).

On June 1, 2020, Oakland police deployed tear gas to disperse protesters who failed to move before a legally established curfew. The tear gas not only affected protestors by also bystanders in the immediate area. This has raised concerns over the police use of tear gas in protests, the chilling effect it has on people engaging in First Amendment activity, and the health impacts of tear gas during a public health emergency. In response to this incident, Oakland City Council President Rebecca Kaplan and Councilmembers Nikki Fortunato Bas and Sheng Thao issued a letter to Oakland City administrators requesting that OPD use of tear gas be immediately suspended and not used during the COVID-19 pandemic. Similarly, on June 5, 2020, Berkeley Councilmembers Harrison, Davila, Bartlett and Robinson made a similar request.

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the State of Emergency"), which the City Council subsequently ratified on March 10, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

During the COVID-19 state of emergency, there is a heightened risk of individuals contracting the virus if they are exposed to tear gas, pepper spray or smoke. This will put people's safety and lives at risk. As a public health strategy, the deployment of tear gas, pepper spray and smoke must be suspended.

According to a June 2, 2020 KTVU article, infectious disease specialists are circulating an online petition calling for police to stop using tear gas to disperse crowds and calling on police to use "public health best practices" during demonstrations.<sup>1</sup>

According to an article in the June 3, 2020, *New York Times*, **"Along with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people's lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas can also incite coughing, which can further spread the virus from an infected person."**<sup>2</sup>

Researchers are concerned that the use of tear gas in crowds "might catalyze a new wave of Covid-19."<sup>3</sup>

Data show that African Americans are disproportionately impacted by COVID-19 in Berkeley and Alameda County. In addition, "many black Americans disproportionately have pre-existing conditions like asthma that could make tear gas lethal."

Tear gas has been banned for use in warfare, but is legal for police to use in the U.S. Yet, experts say it should be a weapon of last resort for crowd control and for addressing violent behavior of specific individuals because it affects everyone in the area including peaceful protestors.

The use of tear gas and other agents for crowd control adversely affects individuals in crowds of protestors as well as residents who are not involved in protesting, and it can have serious effects on medically vulnerable people and increase the spread of COVID-19.

Oakland Police Department's own police training bulletin (V-F.2. July 26, 2006) states that "Breathing CS (gas) may create a feeling of tightness in the chest, shortness of breath, coughing and/or sneezing." These are reactions that can spread COVID-19.

In response to mass protests over the killing of George Floyd, on Friday, June 5, 2020, Governor Newsom announced that he would work with the State Legislature, activists, law enforcement officers, and journalists to create new standards for policing protests in California.

**"Protesters have the right not to be harassed,"** he said. **"Protesters have the right to protest peacefully. Protesters have the right to do so without being arrested, gassed, being shot at by projectiles."**<sup>4</sup>

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<sup>1</sup> Lisa Fernandez, "Infectious disease specialists call for an end to tear gas during COVID-19 pandemic," KTVU News, June 2, 2020, <https://www.ktvu.com/news/infectious-disease-specialists-call-for-an-end-to-tear-gas-during-covid-19-pandemic>

<sup>2</sup> Mike Baker, "Corrosive Effects of Tear Gas Could Intensify Coronavirus Pandemic," The New York Times, <https://www.nytimes.com/2020/06/03/us/tear-gas-risks-protests-coronavirus.html>

<sup>3</sup> Hilary Brueck and Canela López, "Tear gas is banned from war — but police still shoot it at protesters, who cough and bleed as a result. At least one has lost an eye," Business Insider, June 3, 2020, <https://www.insider.com/tear-gas-banned-from-war-why-dangerous-how-to-neutralize-2020-6>

<sup>4</sup> Alexei Koseff, "Gavin Newsom calls for new protest policing standards in California, ban on carotid holds" San Francisco Chronicle, June 5, 2020 <https://www.sfchronicle.com/politics/article/Gavin-Newsom-calls-for-new-protest-policing-15320403.php>



The police killing of George Floyd on May 25, 2020 and the deaths of other African Americans have sparked nationwide outrage and protests over police brutality, including demonstrations in the City of Berkeley. Additional protests may occur in the coming days and weeks. Therefore, the Council should take immediate action to impose this moratorium on the use of chemical agents during the COVID-19 pandemic.

FINANCIAL IMPLICATIONS

None. Prohibiting the use of tear gas, pepper spray and smoke will require the Berkeley Police Department to use other tactics in crowd control situations.

CONTACT PERSONS

|                        |                |
|------------------------|----------------|
| Mayor Jesse Arreguín   | (510) 981-7100 |
| Councilmember Harrison | (510) 981-7140 |
| Councilmember Robinson | (510) 981-7170 |

**Assembly Bill No. 48**

CHAPTER 404

An act to amend Section 12525.2 of the Government Code, and to add Sections 13652 and 13652.1 to the Penal Code, relating to law enforcement.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 48, Lorena Gonzalez. Law enforcement: use of force.

(1) Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

This bill would prohibit the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards set by the bill, and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. The bill would include in the standards for the use of kinetic energy projectiles and chemical agents to disperse gatherings the requirement that, among other things, those weapons only be used to defend against a threat to life or serious bodily injury to any individual, including a peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control. The bill would define chemical agents to include, among other substances, chloroacetophenone tear gas or 2-chlorobenzalmalononitrile gas. The bill would make these provisions inapplicable within a county jail or state prison facility.

This bill would also require each law enforcement agency, within a specified timeframe, to post on their internet website a summary, as described, of any incident in which a kinetic energy projectile or chemical agent is deployed by that agency for the purpose of crowd control. The bill would require the Department of Justice to provide a compiled list of links to these reports on its internet website.

(2) Existing law requires each law enforcement agency to annually report specified use of force incidents to the Department of Justice and requires the Department of Justice to annually publish a summary of those incidents, as specified.

This bill would require these reports to be made monthly. By imposing new duties on law enforcement agencies, this bill would create a state-mandated local program.



The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12525.2 of the Government Code is amended to read:

12525.2. (a) Each law enforcement agency shall monthly furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

- (1) An incident involving the shooting of a civilian by a peace officer.
- (2) An incident involving the shooting of a peace officer by a civilian.
- (3) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death.
- (4) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

(b) For each incident reported under subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:

- (1) The gender, race, and age of each individual who was shot, injured, or killed.
- (2) The date, time, and location of the incident.
- (3) Whether the civilian was armed, and, if so, the type of weapon.
- (4) The type of force used against the officer, the civilian, or both, including the types of weapons used.
- (5) The number of officers involved in the incident.
- (6) The number of civilians involved in the incident.
- (7) A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders.

(c) Each year, the Department of Justice shall include a summary of information contained in the reports received pursuant to subdivision (a) through the department's OpenJustice Web portal pursuant to Section 13010 of the Penal Code. This information shall be classified according to the reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed, the report shall list the officer's employing jurisdiction and the jurisdiction where the injury or death occurred, if they are not the same. This subdivision does not authorize the release to the public of the badge number or other unique identifying information of the peace officer involved.

(d) For purposes of this section, “serious bodily injury” means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

SEC. 2. Section 13652 is added to the Penal Code, to read:

13652. (a) Except as otherwise provided in subdivision (b), kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to disperse any assembly, protest, or demonstration.

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

(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

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

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

(11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

(c) This section does not prevent a law enforcement agency from adopting more stringent policies.

(d) For the purposes of this section, the following terms have the following meanings:

(1) “Kinetic energy projectiles” means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

(2) “Chemical agents” means any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.

(e) This section does not apply within any county detention facility or any correctional facility of the Department of Corrections and Rehabilitation.

SEC. 3. Section 13652.1 is added to the Penal Code, to read:

13652.1. (a) Each law enforcement agency shall, within 60 days of each incident, publish a summary on its internet website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent, as those terms are defined in Section 13652, for crowd control. However, an agency may extend that period for another 30 days if they demonstrate just cause, but in no case longer than 90 days from the time of the incident.

(b) For each incident reported under subdivision (a), the summary shall be limited to that information known to the agency at the time of the report and shall include only the following:

(1) A description of the assembly, protest, demonstration, or incident, including the approximate crowd size and the number of officers involved.

(2) The type of kinetic energy projectile or chemical agent deployed.

(3) The number of rounds or quantity of chemical agent dispersed, as applicable.

(4) The number of documented injuries as a result of the kinetic energy projectile or chemical agent deployment.

(5) The justification for using the kinetic energy projectile or chemical agent, including any deescalation tactics or protocols and other measures that were taken at the time of the event to deescalate tensions and avoid the necessity of using the kinetic energy projectile or chemical agent.

(c) The Department of Justice shall post on its internet website a compiled list linking each law enforcement agency’s reports posted pursuant to subdivision (a).

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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# Berkeley Police Department



## Background

- **June 2020:** City Council enacts a ban on tear gas and a moratorium on the use of smoke and pepper spray for crowd-control events.
- **2021 police reform bill AB 48** signed into law, placing restrictions on the types of force law enforcement can use in response to protests. As a general rule, the bill prohibits the use of “kinetic energy projectiles” and “chemical agents” to disperse any assembly, protest, or demonstration, except in compliance with several requirements.
- **January 1, 2022:** AB 48 codified as PC 13652 Section 2



## Balanced Approach

Important considerations as to the appropriateness of using tear gas for law enforcement purposes:

**Does the use of tear gas have a chilling effect on Free Speech?**

**Is the use of tear gas reasonable?**

- Is the use of tear gas excessive?
- Is there accountability/oversight in its use?
- Is current policy in alignment with AB48?
- What are regional/State best practices?

**Health concerns related to smoke and pepper spray during COVID-19**

- Enacted when infections were up and there was no vaccine.



## Protecting Free Speech

- History of use
- Allows for safe speech:
  - Intervene at lower levels
  - Mitigates co-opting of crowd by bad actors
  - Gives department ability to target individuals committing crimes and violence
  - Smaller contingent of officers able to protect large crowd





## Is the use of tear gas reasonable?

- Allows a small number of officers to regain control over a much larger violent crowd.
- Minimal force used:
  - Consequences and level of force are much lower than all other options.
  - Effects are temporary.
  - Effects end as soon as no longer exposed.
  - Dissipates quickly.



## Accountability and Oversight

New legal requirement created by AB48 aligns with the department's past use and current policy language. Some of the legal requirements are:

- Requires **de-escalation techniques or alternatives** to force before use.
- Limits use to defend against **threats to life, serious bodily injury**, or to bring objectively dangerous and unlawful situations safely and effectively under control.
- Requires **announcement before use**.
- Requires officers to make objectively reasonable efforts to **identify** persons engaged in **violent** acts and target those individuals.



## Accountability and Oversight (continued)

AB48/Penal Code 13652 requirements (continued):

- **Minimize** the possible incidental **impact** on bystanders, medical personnel, journalist, or other unintended targets.
- Use must be **objectively reasonable and proportional** to the threat (including frequency and intensity of use).
- Specifically **prohibited** in response to verbal threats, noncompliance with law enforcement directives, or curfew violations.
- *Note: AB 48 anticipates certain instances where tear gas may be reasonably used and places that responsibility on the commanding officer of the event.*



## Accountability and Oversight (continued)

- Our current Use of Force (Policy 300) and First Amendment Assembly (Policy 428) policies align with requirements set forth in Penal Code section 13652.
- Oversight is required and provided via Police Equipment and Community Safety Ordinance.
- If tear gas ban was removed state reporting requirements would require the department to publish an after-action report documenting the equipment's use and the reasons for it within 60 days of an incident.



## What is the scope of use in Berkeley?

- To resolve a situation involving an armed barricaded person (SWAT call).
- Respond to a medical or fire emergency, or prevent catastrophic damage to critical infrastructure, where a violent crowd is present.
- To protect officers or community from large-scale violent assaults.
- To disburse a violent crowd through a minimal amount of force.



## Regional/State Best Practices

What are other agencies doing?

- Oakland PD has a policy that aligns with State law
- No other local agencies have bans in place
- All agencies in the state are compelled to abide by the requirements and protections outlined in PC 13652.



## Use of smoke and pepper spray

- Smoke has been used before deploying tear gas. Although not an alternative, it gives the department an option to try before deploying tear gas.
- Smoke is often used in conjunction with tear gas, and acts as a visual deterrent.
- Pepper Spray provides officers with an intermediate force option to use in response to an individual violent act.
  - Allows officers to respond to a specific threat up to 15 feet away.
  - Effects are temporary; there are no injuries once spray wears off.



# Questions?

*The mission of the Berkeley Police Department is to preserve the peace and allow for the peaceful expression of First Amendment Rights. These rights include, but are not limited to, assembling, marching, carrying signs, making speeches, or other lawful activity designed to express or advocate political, religious, or social opinions and beliefs.*

