

OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

## **POLICE ACCOUNTABILITY BOARD CONTROLLED EQUIPMENT REPORTING SUBCOMMITTEE**

Board Members: Moore, Mizell

**Tuesday, May 17, 2022  
3:30 P.M.**

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

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

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/83842714327>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **838 4271 4327**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized.

### **AGENDA**

- 1. CALL TO ORDER**
- 2. ELECTION OF SUBCOMMITTEE CHAIRPERSON**
- 3. APPROVAL OF AGENDA**
- 4. PUBLIC COMMENT**

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

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

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Website: [www.cityofberkeley.info/dpa/](http://www.cityofberkeley.info/dpa/) Email: [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)

**5. NEW BUSINESS (discussion and action)**

- a. Develop plan for addressing Community Safety Ordinance Impact Statements, Associated Equipment Policies, Annual Equipment Use Report, and Military Equipment Policy 709.
- b. Review and develop recommendations for the aforementioned reports and policies.

**6. SCHEDULE NEXT MEETING DATE**

**7. PUBLIC COMMENT**

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

**8. ADJOURNMENT**

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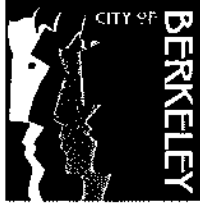
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**SB 343 Disclaimer**

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

Contact the Director of Police Accountability (Board Secretary) at [dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info) or (510) 981-4950.



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OF POLICE ACCOUNTABILITY

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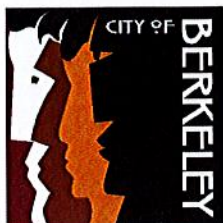
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Office of the City Manager

ACTION CALENDAR

May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

RECOMMENDATION

Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and equipment.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impacts are minimal as the Berkeley Police Department has possessed the equipment outlined in the impact statements for many years. The majority of the fiscal impacts are limited to staff time for reporting and continuous training.

CURRENT SITUATION AND ITS EFFECTS

The Police Equipment and Community Safety Ordinance and Assembly Bill No.481 require the Police Department to submit documents outlining details of specific equipment defined as "military equipment." The definition of "military equipment" differs between the city ordinance and state law. The Berkeley Police Department impact statements and their associated policies are comprehensive and address equipment from both the ordinance and state law. All equipment outlined within the impact statements was previously acquired to the passage of this legislation and has been in the possession of the Berkeley Police Department and utilized for many years.

BACKGROUND

On May 11<sup>th</sup>, 2021 the city of Berkeley adopted the Police Equipment and Community Safety Ordinance, Ordinance NO. 7,760-N.S. This ordinance addresses military equipment funding, acquisition, and use. This ordinance requires the Berkeley Police Department to submit impact statements and associated equipment policies on certain equipment that the Berkeley Police Department already possesses to the Police Accountability Board and City Council for approval. An annual report is also mandated by the city ordinance for the usage of specified equipment.

On January 1<sup>st</sup>, 2022 Assembly Bill No.481 took effect. Similar to the city ordinance, this assembly bill also addresses military equipment funding, acquisition, and use. The

Annual Reporting and Impact Statements:  
Police Equipment and Community  
Safety Ordinance

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assembly bill and the Police Equipment and Community Safety Ordinance address similar equipment and have similar requirements. However, Assembly Bill No.481 addresses additional equipment that the city ordinance does not and requires additional impact statements and additional equipment policies.

The city ordinance provides the Police Accountability Board 90-days to review Impact Statements and their associated use policies before making recommendations and before City Council's consideration of approval. After reconciling the city ordinance and new state law mandates, the required documents were provided to the Police Accountability Board on February 24<sup>th</sup>, 2022. On April 6<sup>th</sup>, 2022 the Police Accountability Board provided the Berkeley Police Department with their recommendations on the Impact Statements and their associated use policies. The Police Accountability Board's recommendations are submitted as an attachment to this council item pursuant to section 2.100.040 (H)(1), which requires the Berkeley Police department provide City Council with the Police Accountability Board's recommendations 15 days prior to a public meeting.

It should be noted that Section 2.100.040 (H)(2) states "If the City Council does not approve such item within four (4) regular City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment until such review and approval occurs."

The Impact Statements and their associated use policies and Annual Report have been submitted as attachments to this council item. The attached Impact Statements and their associated use policies were also posted onto the Berkeley Police Department's website thirty days prior to the May 10, 2022 Council Meeting, in line with the requirements of Assembly Bill No.481.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

The Police Equipment and Community Safety Ordinance and Assembly Bill No.481 require the approval of "military equipment" by a "governing body."

#### ALTERNATIVE ACTIONS CONSIDERED

If the equipment outlined in the Impact Statements and their associated policies are not approved, the Berkeley Police Department is required to cease its use, per the city ordinance. Public safety and the safety of Berkeley Police Officers will be detrimentally impacted if the continued use of this equipment by the Berkeley Police Department is not approved. This equipment has been relied on for many years, assisting in keeping the Berkeley community safe.

Annual Reporting and Impact Statements:  
Police Equipment and Community  
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CONTACT PERSON

Jennifer Louis, Interim Chief of Police, (510) 981-5700

Attachments:

1. Resolution
2. Impact Statements and their associated use policies
3. 2021 Annual Equipment Use Report
4. Police Accountability Board Recommendation
5. Military Equipment Policy

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RESOLUTION NO. ##,###-N.S.

ANNUAL REPORTING AND IMPACT STATEMENTS: POLICE EQUIPMENT AND  
COMMUNITY SAFETY ORDINANCE

WHEREAS, the Berkeley City Council adopted Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance on May 11, 2021; and

WHEREAS, Section 2.100.020 of the city ordinance mandates Impact Statements and their associated equipment policies for certain equipment that the Berkeley Police Department possesses; and

WHEREAS, Section 2.100.050 of the ordinance mandates an annual report for the deployment of certain equipment that the Berkeley Police Department possesses; and

WHEREAS, per city ordinance, the Impact Statements, associated equipment policies, and the first annual report shall be submitted within one year of approval; and

WHEREAS, Assembly Bill No.481 was passed September 30, 2021; and mandates similar requirements to the city ordinance including "use policies" and "annual use report;" and

WHEREAS, the equipment outlined between Assembly Bill No.481 and the Police Equipment and Community Safety Ordinance are similar.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it accepts the Berkeley Police Department Impact Statements, associated equipment policies, and Annual Report, and approve the equipment outlined in the Impact Statements.





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

## **ACKNOWLEDGEMENTS**

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

Officer Corey Bold –

*Patrol Officer and chemical agent instructor*

Officer Semir Muratovic –

*Patrol Officer and Bomb Squad Technician*

Officer Derek Radey –

*Patrol Officer and less lethal coordinator/instructor*

Lieutenant Kevin Reece –

*Special Response Team Commander*

Officer Scott Salas –

*Patrol officer and Special Response Team high ground team leader*

Lieutenant Jennifer Tate –

*Traffic Lieutenant and defensive tactics instructor*

Officer Jason Tillberg –

*Department trainer and Department Armorer*

Officer Sean Tinney –

*Department trainer and Special Response Team member*

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## INTRODUCTION

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

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

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

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

The impact statements required by the City ordinance also fulfill the obligations set forth in Assembly Bill 481. Impact statements were compiled in this report in a

prioritized ranking for the Police Accountability Board to consider in determining the order in which to perform its review per the Police Equipment and Community Safety Ordinance.

### M4 Rifle and Associated Ammunition

(1) Description:

A. Background:

The "M4" was developed and produced for the United States government by Colt Firearms and was based off of the original Armalite Rifle (AR) patent purchased by Colt in 1959. Although Colt owned the trademarked name of "M4", a number of other manufacturers offer M4-like firearms under various model names. The M4 and its variants fire 5.56x45mm NATO (and .223 Remington) ammunition, and are a gas-operated, magazine-fed firearm with a barrel length ranging from 11.5" to 16".

The current Berkeley Police Department (BPD) rifle ammunition used is the .223 Remington, a rimless, bottlenecked rifle cartridge. The round was developed in 1957 by Remington Arms and Fairchild Industries. The .223 Remington is considered one of the most popular cartridges and is currently used by a wide range of semi-automatic and manual-action rifles as well as handguns. While the military uses the similar 5.56x45 NATO cartridge, BPD uses the more common and often regarded civilian cartridge of .223 Remington for all training and duty uses.

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

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

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

**B. Quantity:**

The Berkeley Department currently owns and maintains 96 rifles.

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

**C. Capability:**

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

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

**D. Lifespan:**

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

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

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

**E. Use:**

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

**F. How it Works:**

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

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

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

**(2) Purpose:**

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

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

(3) **Fiscal Cost:**

A. **Initial Cost:**

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

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

B. **Cost of Use:**

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

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

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

D. **Annual and Ongoing Costs:**

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

E. **Training Costs:**

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



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

**F. Maintenance and Storage Costs:**

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

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

**G. Upgrade Costs:**

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

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

**(4) Impact:**

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

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

(5) **Mitigations:**

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

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

(6) **Alternatives:**

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

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

(7) **Third Party Dependence:**

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

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

**Penn Arms 40mm Single Launcher**

(1) **Description:**

A. **Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge

bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Penn Arms L-140 single shot launcher.

**B. Quantity:**

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

**C. Capability:**

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

**D. Lifespan:**

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

**E. Use:**

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

**F. How it works:**

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

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

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

**(2) Purpose:**

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

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

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

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

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

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

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

**(3) Fiscal Cost:**

**A. Initial Cost:**

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

**B. Cost of Use:**

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

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

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

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

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

**F. Maintenance and Storage Costs:**

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

**G. Upgrade Costs:**

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

**(4) Impact:**

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

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

**(5) Mitigation:**

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

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

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

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

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

**(6) Alternative:**

This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling all issues related to the repair or maintenance of the Penn Arms single launcher. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

**Milkor LTL Multi-launcher**

**(1) Description:**

**A. Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge

bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Milkor LTL multi-shot launcher.

**B. Quantity:**

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

**C. Capability:**

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

**D. Lifespan:**

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

**E. Use:**

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

**F. How it works:**

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



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

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

**(2) Purpose:**

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

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

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

time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

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

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

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

**(3) Fiscal Cost:**

**A. Initial Cost:**

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

**B. Cost of Use:**

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

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

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

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification

class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use.

**G. Upgrade Costs:**

There are no foreseeable upgrade costs.

**(4) Impact:**

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

The Milkor LTL launcher, with its high level of accuracy and 6 projectile capacity, can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

**(5) Mitigation:**

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

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons

and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

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

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

**(6) Alternative:**

This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(7) Third Party Dependence:**

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

## FN 303 and FN Pava Impact Projectile

(1) **Description:**

A. **Background:**

The FN 303 was developed in 2003 by Fabrique Nationale de Herstal as a less lethal option. The FN 303 is based on a concept developed by Monterey Bay Corporation. The development team consisted of designers and researchers from two paintball related companies. The FN 303 uses compressed air to propel a .68 caliber projectile similar to that of most manufactured paintball guns.

B. **Quantity:**

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

C. **Capability:**

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

D. **Lifespan:**

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

E. **Use:**

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

F. **How it works:**

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

The projectiles are 8.5 grams in weight and utilize a polystyrene fin stabilized body with a non-toxic forward payload to aid in stability and accuracy. The

projectile will deliver approximately 24-foot pounds of kinetic energy at the muzzle which is about double the kinetic energy of most paintball guns. Most paintballs have a mass of 3 grams while the FN 303 projectile has a mass of 8.5 grams which increases the kinetic energy produced.

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

The impact + PAVA projectile is intended to be direct fired at an individual. In addition to delivering pain through kinetic energy upon impact, the PAVA projectile will deliver a secondary chemical irritant, which is the Oleoresin Capsicum (O.C.) payload. Oleoresin Capsicum generally causes irritation/burning at the application site, irritation to the eyes, and coughing. According to the National Institute of Health, the effects of O.C. power exposure tend to resolve on their own within 30 minutes.

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

**(2) Purpose:**

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

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

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

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

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

**(3) Fiscal Cost:**

**A. Initial Cost:**

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

**B. Cost of Use:**

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

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

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

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

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

venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

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

**G. Upgrade Costs:**

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

**(4) Impact:**

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

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

**(5) Mitigation:**

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

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of



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

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

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

**(6) Alternative:**

This is the only piece of equipment that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the Berkeley Police Department.

Unlike the Penn Arms 40mm single shot and the Milkor LTL multi-shot launcher, the FN 303 is capable of propelling 15 projectiles before a reload is required. The 15 round magazine allows for a quick follow-up application should the situation warrant with an effective range of over 160 feet; compared to the Penn Arms 40mm single shot and the Milkor LTL multi-shot launcher’s 100 feet. The FN303’s smaller and faster projectiles also generally allow for a higher level of accuracy compared to the 40mm foam baton rounds. The FN 303 rounds is also capable of carrying payloads such as paint or PAVA (Oleoresin capsicum).

(7) **Third Party Dependence:**

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

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

**OC (oleoresin capsicum) Spray**

(1) **Description:**

A. **Background:**

For the purposes of this portion of the Impact Statement, OC (Oleoresin capsicum) will be referred to in the spray form as opposed to the aerosol canister form. First Defense manufactures different sizes of OC sprays. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. Besides being effective on humans, OC based chemical agents usually work on animals as well. In a liquid form, OC can appear as a clear, amber, or heavy dark red solution depending on the manufacturer. It is mixed with several types of solutions which act as carriers.

B. **Quantity:**

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

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

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

C. **Capability:**

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

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

**D. Lifespan:**

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

**E. Use:**

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

**F. How it Works:**

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

**(2) Purpose:**

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

**(3) Fiscal Cost:**

**A. Initial Cost:**

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

**B. Cost of Use:**

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

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

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

**D. Annual and Ongoing Costs:**

See below cost of training.

**E. Training Cost:**

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

**F. Maintenance and Storage Costs:**

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

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

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

**(5) Mitigations:**

Law Enforcement Officers attend a Police Officer Standard Training (POST) approved academy before they enter into a Field Training Program and continue their training. During this academy they are taught about OC, how to deploy it, its effects, and the decontamination process. They are also subjected to OC to physically feel the effects themselves. After the academy, each officer is issued a MK-3 OC spray which they

are to keep on their person while on duty. If deployed and when practical, medical personnel should be summoned for the affected person(s) per policy 303. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

**(6) Alternatives:**

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

**(7) Third Party Dependence:**

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

**Chlorobenzylidene Malonitrile and Oleoresin Capsicum**

**(1) Description:**

**A. Background:**

Chlorobenzylidene malonitrile (CS):

Chlorobenzylidene malonitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily

temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

Oleoresin capsicum (OC):

For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

**B. Quantity:**

Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

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

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

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

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

**C. Capability:**

CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin.

Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

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

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

**D. Lifespan:**

CS and OC canisters expire in approximately 5 years.

**E. Use:**

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

**(2) Purpose:**

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

**(3) Fiscal Cost:**

**A. Initial Cost:**

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

**B. Cost of Use:**

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

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

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

**D. Annual and Ongoing Costs:**

See below cost of training.

**E. Training Cost:**

When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor

the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

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

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

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

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

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

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



**(5) Mitigations:**

Regarding the already mentioned impacts, the decision to utilize chemical agents (unless there are exigent circumstances) flows through the chain of command and ultimately makes its way to the Chief of Police and the City Manager. If there are exigent circumstances, the Field Commander makes the decision and then advises the Chief of Police as soon as practical. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

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

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

**(6) Alternatives:**

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

(7) **Third Party Dependence:**

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

**Remington 700 Rifle**

(1) **Description:**

A. **Background:**

The Remington 700 is a series of bolt-action rifles designed in 1962 by the Remington Arms Company. The "700" designator is the generic name for multiple models of rifles with various parts, barrel lengths, stocks, etc. The Remington 700 rifle has long been used by law enforcement agencies and continues to be an industry standard for issued equipment. The Berkeley Police Department utilizes a custom Remington 700 action, chambered in the common .308-caliber round, with a 20" barrel and an Accuracy International chassis/stock. The rifle also includes a Nightforce 3-15x magnified optic and bipod.

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

B. **Quantity:**

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

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

C. **Capability:**

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

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

**D. Lifespan:**

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

**E. Use:**

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

**F. How it Works:**

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

**(2) Purpose:**

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

**(3) Fiscal Cost:**

**A. Initial Cost:**

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

**B. Cost of Use:**

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

**C. Cost of Adverse Effects:**

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

**D. Annual and Ongoing Costs:**

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

**E. Training Costs:**

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

**F. Maintenance and Storage Costs:**

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

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

**G. Upgrade Costs:**

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

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

**(4) Impact:**

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

(5) **Mitigations:**

Mitigating impacts from this tool's primary purpose is done through regular training. The training includes accuracy, decision making, scenarios, and various other training points. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

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

(7) **Third Party Dependence:**

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

**ReconRobotics Recon Scout XT**

(1) **Description:**

A. **Background:**

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

B. **Quantity:**

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

**C. Capability:**

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

**D. Lifespan:**

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

**E. Use:**

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

**F. How it Works:**

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

**(2) Purpose:**

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

**(3) Fiscal Cost:**

**A. Initial cost:**

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

**B. Cost of Use:**

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

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

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

**D. Annual and Ongoing Cost:**

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

**E. Training Cost:**

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

**F. Maintenance and Storage Costs:**

There are no annual or storage costs.

**G. Upgrade Costs:**

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

**(4) Impact:**

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

**(5) Mitigations:**

The use of the Recon Scout XT robot is limited to sworn police officers, and guided by field supervisors (Lieutenants and Sergeants). Procedurally, the Recon Scout XT robot is used when exigent circumstances exist (hostage situation, barricaded subject, natural disaster

necessitating rescue, etc.) and real-time information is necessary to safely and effectively resolve the situation. The robot does not record or store data.

(6) **Alternatives:**

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

(7) **Third Party Dependence:**

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

**Andros Remotec HD-1 Hazardous Duty Robot**

(1) **Description:**

A. **Background:**

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

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

B. **Quantity:**

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

C. **Capability:**

Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a



scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

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

**D. Lifespan:**

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

**E. Use:**

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

**F. How it Works:**

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

**(2) Purpose:**

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

**(3) Fiscal Cost:**

**A. Initial Cost:**

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

**B. Cost of Use:**

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

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

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

**D. Annual and Ongoing Costs:**

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

**E. Training Costs:**

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

**F. Maintenance and Storage Costs:**

Remotec offers occasional maintenance and upkeep workshops free of charge.

**G. Upgrade Costs:**

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

**(4) Impact:**

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

**(5) Mitigations:**

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

**(6) Alternatives:**

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

**(7) Third Party Dependence:**

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

**Light/Sound Diversionary Device**

**(1) Description:**

**A. Background:**

Light/Sound Diversionary devices also known as distraction device, flashbang, light/sound and noise/flash devices have been available for approximately 40 years and are a safe and effective tool for Law Enforcement (LE) to use during challenging tactical incidents. The device will be referred to a diversionary device throughout this document.

**B. Quantity:**

Qty 50 - CTS 7290 Diversionary Device

**C. Capability:**

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

**D. Lifespan:**

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

**E. Use:**

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

**F. How it Works:**

The main charge of a modern diversionary device typically contains flash powder which is sometimes called photoflash powder. Upon initiation, this chemical compound causes the device to deflagrate (not detonate). The powder mixture is

rapidly changed into gases that expand outward reaching upwards to 3,800 times the original volume of the charge itself. This process releases the desired effects of loud noise, bright light and the feeling of atmospheric pressure. Flash powder is typically made up of an oxidizer and some type of fuel. The oxidizer is needed to initiate and sustain the flash powder's rapid combustion. This is required since sufficient oxygen cannot be obtained from just the surrounding air.

**(2) Purpose:**

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

**(3) Fiscal Cost:**

**A. Initial Cost:**

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

**B. Cost of Use:**

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

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

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

**D. Annual and Ongoing Costs:**

See below training cost.

**E. Training Cost:**

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

**F. Maintenance and Storage Costs:**

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

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

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

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

**(5) Mitigations:**

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

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

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

- The number of people at a location and the individual location of suspects within the structure.

- Evaluation if there are children or elderly people present
- An evaluation of the suspect's mental and physical conditioning
- Evaluation of the building/room layout
- Possible combustible/flammable substances present
- Lighting conditions

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

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

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

**(6) Alternatives:**

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

- There is no feeling of atmospheric pressure, limiting the desired momentary physiological effect.
- A suspect could pick up and throw the device at potential victims and at police officers. The currently used diversionary devices are too hot to attempt this.
- In certain circumstances, a suspect could potentially steal the device during an escape.
- The individual cost per unit is approx. \$200 which is much more than a diversionary device
- This device is significantly less effective in disorienting subjects compared to a diversionary device.

**(7) Third Party Dependence:**

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

**Long Range Acoustic Device (LRAD)**

**(1) Description:**

**A. Background:**

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

**B. Quantity:**

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

**C. Capability:**

Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It

has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

**D. Lifespan:**

The lifespan for both LRADs is 25 years.

**E. Use:**

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

**F. How it Works:**

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

**(2) Purpose:**

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

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



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

(3) **Fiscal Cost:**

A. **Initial Cost:**

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

B. **Cost of Use:**

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

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

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

D. **Annual and Ongoing Costs:**

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

E. **Training Costs:**

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

F. **Maintenance and Storage Costs:**

There are no maintenance or storage costs for this equipment.

G. **Upgrade Costs:**

No upgrades exist for this equipment as of this report.

(4) **Impact:**

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

(5) **Mitigations:**

The only potential negative impact of the LRAD's is that they are capable of producing a high pitched "deterrent tone" that is designed to disperse a potential threat. This "deterrent tone" does have the ability to cause hearing damage. BPD Policy 707 strictly prohibits any member of BPD from using the LRAD as a weapon. Additionally, the LRAD can only be deployed at the direction of a Watch Commander or Incident Commander and may only be used by personnel specifically trained in the use of the LRAD.

(6) **Alternatives:**

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

(7) **Third Party Dependence:**

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

**36" Baton**

(1) **Description:**

A. **Background:**

The Berkeley Police Department issues a knurled grip, polycarbonate, fixed-length straight baton for crowd control purposes. The baton is 36" long and 1.25" in diameter and weighs about 1.64 pounds. Polycarbonate is a thermoplastic, which means it is durable, resistant to splintering and heat.

B. **Quantity:**

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

**C. Capabilities:**

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

**D. Lifespan:**

The manufacturer provides a lifetime repair or replacement guarantee.

**E. Use:**

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

**F. How it Works:**

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

**(2) Purpose:**

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

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

When the baton is used to strike a subject, kinetic energy transfer occurs. Kinetic energy is the energy of motion. The amount of translational kinetic energy which an object has depends upon two variables: the mass of the object and the speed of the

object. The desired effect is for the officer to apply a baton strike with the necessary energy to stop the threat as quickly and safely as possible. By targeting the large muscle areas of the arms or legs with sufficient kinetic energy, motor and sensory nerves can be affected. When the nerves are affected this will create momentary muscle dysfunction or pain, which will allow the officer the ability to gain control of the subject, while minimizing the possibility of long-term injury to the subject.

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

**(3) Fiscal Cost:**

**A. Initial Cost:**

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

**B. Cost of Use:**

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

**C. Costs of Potential Adverse Impacts:**

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

**D. Annual and Ongoing Costs:**

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

**E. Training costs:**

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

**F. Maintenance and Storage Costs:**

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

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

Per Policy 300, "The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. The Department is committed to accomplishing this mission with respect and minimal reliance of the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force."

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

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

**(5) Mitigations:**

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

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

Every officer who carries a 36" baton has been trained how to properly carry the equipment, it's intended use, target areas and non-target areas. Large muscle groups such as the upper legs or lower abdomen are approved target areas and areas to be avoided at the groin and head. When a baton strike is directed at an intended target area and the subject moves simultaneously, it is possible for the officer to unintentionally strike a non-target area. Officers are trained to consider the placement of baton strikes, and to immediately render medical aid to the subject as soon as it is safe to do so.

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

**(6) Alternatives:**

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

**(7) Third Party Dependence:**

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

**Mobile Command Vehicle**

**(1) Description:**

**A. Background**

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

**B. Quantity:**

The Berkeley Police Department owns 1 MCV.

**C. Capability:**

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

**D. Lifespan:**

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

**E. Use:**

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

**F. How it Works:**

This vehicle operates and drives like other vehicles.

**(2) Purpose:**

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

**(3) Fiscal Cost:**

**A. Initial cost:**

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

**B. Cost of Use:**

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

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

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

**D. Annual and Ongoing Costs:**

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

**E. Training Costs:**

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

**F. Maintenance and Storage Costs:**

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

**G. Upgrade Cost:**

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

**(4) Impact:**

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

**(5) Mitigations:**

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

**(6) Alternatives:**

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

**(7) Third Party Dependence:**

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

**Barrett Model 99 Rifle**

**(1) Description:**

**A. Background:**

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



introduced in 1999. It is intended to be used in emergency situations where there is a high potential for violence.

**B. Quantity:**

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

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

**C. Capability:**

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

**D. Lifespan:**

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

**E. Use:**

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

**F. How it Works:**

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

**(2) Purpose:**

The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore,

these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

(3) **Fiscal Cost:**

A. **Initial Cost:**

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

B. **Cost of Use:**

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

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

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

D. **Annual and Ongoing Costs:**

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

E. **Training Costs:**

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

F. **Maintenance and Storage Costs:**

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

G. **Upgrade Costs:**

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

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

(4) **Impact:**

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

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

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

(5) **Mitigations:**

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

(6) **Alternatives:**

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

(7) **Third Party Dependence:**

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

## Appendix:

### Applicable Lexipol Policies Respective to Each Equipment

Policies are hyperlinked to its respective webpage.

#### M4 rifle/Patrol Rifle

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

#### Penn Arms 40MM launcher

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

#### Milkor LTL multi-launcher

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

#### FN 303 Launcher & FN Pava rounds

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

#### Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

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

#### Remington 700 Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)

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

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

#### Light/Sound Diversionary Device

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

#### Long Range Acoustic Device

- [Policy 707 \(Long Range Acoustical Device\)](#)

36" batons

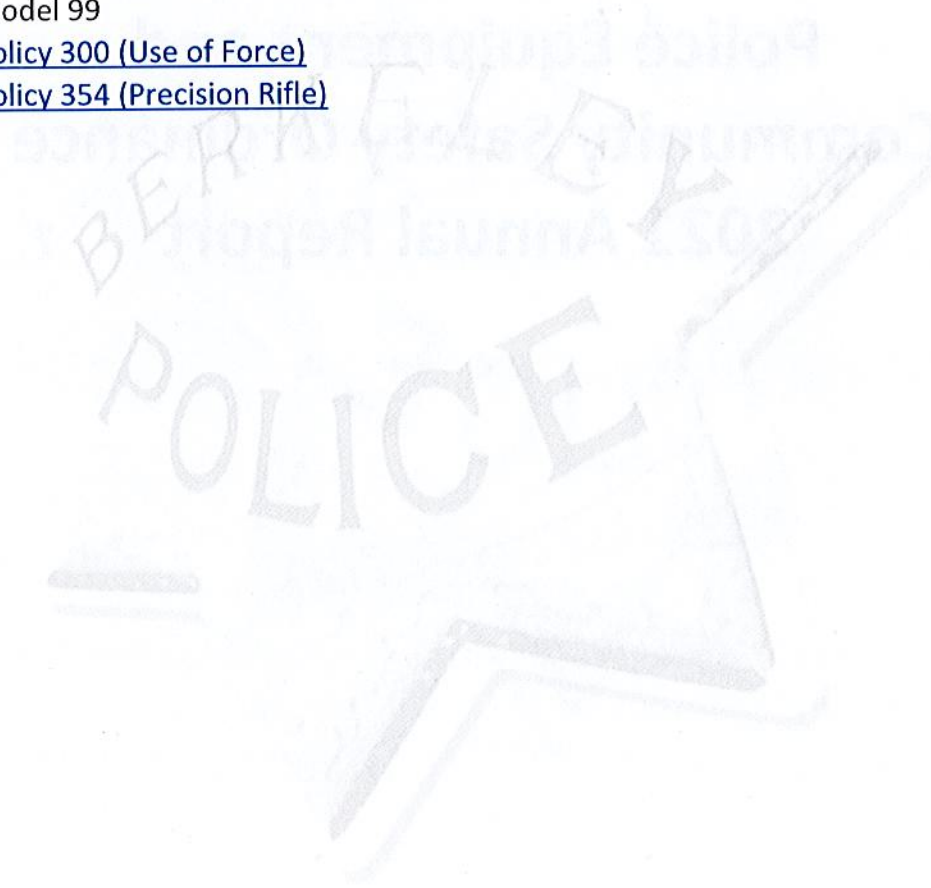
- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

Mobile Command Vehicle

- [Policy 811 \(Mobile Command Vehicle \(MCV\)\)](#)

Barret Model 99

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)



# **Police Equipment and Community Safety Ordinance 2021 Annual Report**



## INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.050 of the ordinance mandates an annual report for the deployment of specific equipment the Berkeley Police Department possesses. This annual report also fulfills the obligations set forth in Assembly Bill No.481. Below is a list of the reportable equipment under the city ordinance and Assembly Bill No.481:

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

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

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

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

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

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

On the date of passage of the Police Equipment and Community Safety Ordinance on May 11, 2021 the Police Department’s Blue Team system was already being utilized to capture the deployment of patrol rifles as well as all uses of force, including the use of less-lethal systems. However, although the use of the above listed equipment was thoroughly documented in police incident or crime reports, no system existed where the deployment of each defined equipment could be



extracted. In response to this, the Professional Standards Bureau and the Police Technology Unit collaborated to develop a new system that was capable of fulfilling the obligations set forth by the ordinance.

The development of the new system began immediately after the ordinance was adopted and the new Equipment Ordinance System was created. Every sworn member of the Berkeley Police Department was trained on this new Equipment Ordinance System, hereinafter referred to as EO System. The EO System was fully implemented in October 2021.

It should be noted that the data on equipment deployments in 2021 does not capture deployments for the entire year. The ordinance was passed in May of 2021. The development and implementation of the EO System and the training of all sworn personnel was completed in October 2021.

The Police Department responded to over 42,500 calls from the community in 2021 and 11,262 were calls which occurred following the development of the new EO System that captured equipment deployments mandated by the ordinance. Of the 11,262 calls received, 29 of them resulted in the deployment of either a patrol rifle or a less-lethal system capable of launching a rubber projectile or a projectile similar to that of a paintball. For details on these systems refer to the Impact Statements located on the Berkeley Police Department website.

The Blue Team system was fully implemented in March of 2021. The system documents all uses of force which includes patrol rifle deployments and uses of less-lethal systems. This system is maintained by the Internal Affairs Bureau. In 2021 there were five incidents where less-lethal systems were used and 14 incidents where a patrol rifle was deployed. These incidents were recorded prior to the EO System going live. Three of the five less-lethal system uses were also entries into the EO System because they occurred after the launch of the EO System.

The table on page 5 details each of the 47-equipment deployment/use incidents extracted from the Blue Team and EO systems as well as 2 deployments of the Hazardous Duty Robot by the Berkeley Police Bomb Squad. Each row within the table represents an incident where a specified equipment was deployed/used. The number of specified equipment deployed per incident is not represented. The

table includes the service of 14 search warrants; 6 of which were served by the Special Response Team in cases involving a violent suspect. Equipment that is not outlined in the table was not used in 2021.

It should be noted that all other equipment deployments that are not related to the service of a search warrant were incidents where officers responded to a call for service by community members. Incident #6 & #17 are the only exceptions. #6 is an incident where an officer witnessed a stabbing and had to take immediate action to save the victim and apprehend the suspect and #17 is an incident where a stolen car and suspect were tracked down by officers. The 5 incidents where less-lethal systems were actually utilized are marked with asterisks next to the incident number. The incidents are listed in chronological order.

#	Equipment	Summary of Deployment and Use	Beat
1*	40MM Launcher	Victim called and reported being victim of a robbery. Suspect located still armed and refused many orders to drop the weapon. Attempts to deescalate not effective. Less-lethal and lethal force used.	6
2	Patrol Rifle	The victims reported that they were robbed via gun. A search warrant was conducted at the suspect's residence in another Bay Area city. Arrest made and evidence seized.	X
3	Andros Remotec HD-1 Hazardous Duty Robot	Suspicious package left in front of Bank of America with Hong Kong postage. Robot used for initial approach to ensure package is safe.	6
4	Patrol Rifle	Victim called and reported someone brandished him with a gun during an argument. Suspect located, but no gun found. Victim later advised that he never saw a gun. Suspect released on scene.	14
5	Patrol Rifle	Victim reported that his brother brandished him with a gun. The suspect was located in a vehicle nearby. Victim requested suspect be arrested.	4
6*	40MM Launcher	Officer witnessed a stabbing. Victim stabbed in neck. Suspect ran from officers still armed with the knife. 40MM used to stop suspect. She stopped, but held onto knife. Attempts to deescalate failed. Still non-compliant and with knife in hand, a sergeant snuck up behind the suspect and grabbed her hand and knife. Suspect arrested.	6

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7	Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher, Recon Scout XT	Special Response Team, search warrant on a shooting suspect. Suspect arrested and evidence seized.	9
8	Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher, Recon Scout XT	Special Response Team, search warrant assist to outside agency. Suspect known to carry and sell firearms. Suspect later located by outside agency.	12
9	Patrol Rifle	Caller reported that someone was armed with a gun inside a store. The caller provided details on the gun and the suspect. Suspect was located inside of the store and was identified as the same person by the caller. No gun was located. No arrest.	15
10	Patrol Rifle	Victim reported that her vehicle was stolen. Investigations lead to the service of a search warrant by investigators at the location the suspects were residing. Suspects located and arrested	8
11	atrol Rifle	Victim reported that the suspect forcibly entered her RV armed with a handgun and attempted to rape her. Search warrant served for suspect in another Bay Area city. Suspect arrested	X
12	Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher, Recon Scout XT	Special Response Team, search warrant conducted in another Bay Area city on a Berkeley shooting suspect. Suspect attempted to flee, but was stopped and arrested. A loaded-fully-automatic pistol was located.	X
13	Patrol Rifle	Multiple witnesses reported a drive-by shooting into a vehicle near a park. The victim later reported that the suspect fired multiple rounds at their vehicle for no apparent reason. A search warrant was conducted at the suspect's residence by investigators. Suspect located and three guns seized for evidence.	11
14	Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher, Recon Scout XT	Special Response Team, search warrant assist to an outside agency on murder suspect. Suspect not located but evidence collected.	9

15	Andros Remotec HD-1 Hazardous Duty Robot	Employees at a business reported a disturbance. The employee pointed the suspect out to the officer. Officer contacted suspect and his friend in a stolen car. One of them had an improvised explosive device in his pocket. Both arrested. Bomb squad relocated the device to a safe location and utilized robot for "render safe procedure."	15
16	Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher, Recon Scout XT	Special Response Team, search warrant on a shooting suspect. Suspect arrested and evidence located.	14
17	Patrol Rifle	Officers recognized a vehicle that was involved in a carjacking via gun and several other armed robberies in Berkeley. The car failed to stop for the police. The vehicle was eventually stopped after a lengthy pursuit. Patrol rifles deployed. Suspects arrested.	14
18	Patrol Rifle	Victim employee reported that someone brandished a firearm at him after an argument inside of a liquor store. The suspect was located down the street. Patrol rifle deployed. Suspect was detained. He was identified by the employee as the suspect. Surveillance video showed the suspect pointed the gun at the employee. Gun was later located and suspect arrested.	8
19	Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher, Recon Scout XT	Special Response Team, search warrants on suspects residences who were involved in a daytime gun battle. Suspects arrested. Assault rifles located.	14
20	40MM Launcher	Community member reported a man having a "psychotic episode" and broke into an office. The man was naked and has prior history of smashing windows to use to harm himself. 40mm deployed. Subject safely detained. Property manager of office did not want to prosecute man. Mental Health professionals requested by PD and placed subject on psychiatric hold.	13
21	40MM Launcher	Burglary in progress, community member locked the suspect inside a workshop full of tools. Subject is a known to resist and fight the police. Subject was detained without incident. He was arrested and meth was located in his pockets. He later made suicidal statements and was placed on a psychiatric hold.	3

22*	FN303 Launcher	BART PD requested emergency assistance. Mental Health crisis, subject possession of knife refusing to drop. Verbal de-escalation attempts failed. Subject ran with knife still in hand. FN303 deployed and used, but had no effect. BART PD used taser which disarmed her. BARD PD placed subject on a psychiatric hold.	9
23	40MM Launcher	Officers responded to a residence after the caller reported a suspicious person prowling outside his house. As officers were at this house, they heard a female screaming from the house next door. A female came out of that house and screamed, "Help! Someone call the police!" She reported that a man broke into her house with no pants on. Officers entered the house. 40mm deployed. The subject was located and arrested.	11
24	Patrol Rifle, 40MM Launcher	Search warrant on sexual assault suspect who victimized a child. Suspect arrested and evidence seized.	1
25	Patrol Rifle, 40MM Launcher	Caller reported that a neighbor fired a gun while yelling threats to shoot. The subject cooperated with officers and exited his house and was detained. Further investigations showed no other neighbors heard gunshots. No firearms were located. No arrest made.	9
26	40MM Launcher, FN303 launcher	A caller reported a suspect pulling off a window to make entry inside. Officers arrived and the suspect locked himself inside of a room and did not comply with call out commands. Unknown if armed with a weapon. Less-lethal deployed but not used. Subject detained and arrested without incident.	3
27	40MM Launcher	Multiple community members called the police about a person who instructed her dog to bite the victim. Victim transported to hospital via ambulance from multiple bites/puncture wounds. Victim pointed suspect out to officers. Suspect refused to stop for the police and yelled at the officers causing the dog to lunge and try to bite officers. 40MM deployed. Mental health professionals were requested. Suspect placed on psychiatric hold by MH. Out of custody charges requested.	6
28	Patrol Rifle	Officers responded to reports of an armed robbery (gun) and located a vehicle fleeing the area that matched the description of a get-away car for other armed robberies in Berkeley. A high-risk stop was conducted where one of the 3 suspects fled. Patrol rifle was deployed during the block search. Two suspects were arrested. Stolen items recovered.	8

29	40MM Launcher, Patrol Rifle	<p>Caller reported multiple subjects inside a construction site after hours. Officers arrive and heard sawing items inside.</p> <p>Burglary subjects failed to comply with commands, barricaded, and hid during the search. Less-lethal was deployed but not used. Burglary tools located, two arrested. One suspect has extensive arrest history and a warrant for his arrest.</p>	14
30	40MM Launcher	<p>Responded for a medical call of a person badly cut (needed stitches) following a dispute. Officers had reasons to believe it was possibly an assault with a deadly weapon. Requested the 40mm on scene while contact was made with the involved party inside of residence where the assault may have occurred. Further investigation showed no domestic violence. No crime, no arrest made.</p>	4
31	FN303 launcher, 40MM Launcher	<p>Officers responded to victim's call for help after being assaulted by her husband. Officers arrived on scene and deployed a 40mm and FN303 due to the suspect's continued violent behavior. He was still breaking things in the house and yelling. Contact made with husband, husband arrested for domestic violence.</p>	1
32*	40MM Launcher	<p>Caller requested help with roommate who was "high on drugs" yelling and causing a disturbance. Officers arrived and located the front door unlocked, blood in the living room, broken window, and incoherent speech coming from a bedroom. Occupants including caller was evacuated for their safety while officers attempted to negotiate with subject to exit his room. Subject was naked, covered in blood and threatened to kill officers. Negotiations failed. Subject did not comply with commands and was ultimately hit with 2 rounds from the 40 mm launcher. Officers were able to detain the subject and provide him with medical attention. He was transported to the hospital by the fire department and placed on a psychiatric hold. Illegal drugs were located in subject's room. Out of custody charges requested.</p>	6
33	FN303 launcher	<p>Caller is social worker who requested a welfare check of her health client, a subject with a history of violence and history of fighting police. FN was deployed. Subject refused to speak to officers and grabbed several bricks and smashed them while screaming; there were children nearby that had to be escorted out of harm's way. Negotiations not effective.</p> <p>Subject tackled by own father. Subject detained, but continued to fight. Mental Health professions responded and placed a psychiatric hold on subject.</p>	11

34	40MM Launcher	Caller reported ex-boyfriend had a knife and brandished it at him. While on phone with Dispatch caller yelled, "He's got a knife!" All parties located and detained. No knife located and further investigation shows no criminal threats were made. 40MM was deployed during detention. No arrest.	13
35	Patrol Rifle, FN303 launcher, 40MM Launcher	Highland Hospital reported a stabbing victim. Contact made with victim at hospital and she reported being stabbed at a specific location. Search warrant conducted at this location and less-lethal and patrol rifle deployed for service of search warrant. Suspect located and arrested for stabbing victim and puncturing victim's lung.	10
36	Patrol Rifle, FN303 launcher	Stolen vehicle was tracked by Officers. Stolen vehicle located abandoned by officer and suspect fled on foot into an apartment. Rifle and less-lethal deployment during service of search warrant. Suspect arrested	16
37	Patrol Rifle	Caller reported a suspect armed with a gun threatened to kill him. Officers located the suspect and patrol rifle was deployed. Suspect detained and identified by victim as the same person who threatened him. No gun located, but witnesses corroborated victim's account of events and how the suspect had a gun. Suspect had an alter state of mind. Psychiatric hold was placed on subject. Out of custody charges requested.	15
38	Patrol Rifle	Caller reported armed subject in a vehicle waving a firearm around. Car and subject description provided by caller. Car and driver that matched description were located by an officer. Patrol rifle deployed. Driver ordered out of car. Caller identified the driver as the same person he saw with a gun. A realistic black Beretta BB gun located in the car. Driver said he was shooting fish. Driver relinquished ownership of BB gun. No arrest made.	12
39*	Patrol Rifle, 40MM Launcher, FN303 launcher	Caller reported that a subject had hit his mother over the head with a saw-off shotgun. Victim sustained injuries to her head that required stiches. The suspect was reported as being agitated and was heard yelling on the phone by dispatch. Officers arrived on scene and could still hear the suspect yelling. Victim/mother was contacted outside of residence. Subject still had access to the shotgun. Many attempts to deescalate and negotiate for the suspects surrender failed. Subject was on the porch and refused to comply with orders. Patrol rifles and less-lethal deployed. 40mm and FN303 were utilized and caused suspect drop fall onto the ground. Subject immediately taken into custody. Medical attention provided to all parties	16
40	Patrol Rifle, 40MM Launcher	Search warrant service on rape suspect. One officer wore rifle slung on body. One officer wore 40MM slung on body. Suspect located and arrested	12

41	40MM Launcher	Victim called and reported that a neighbor and brandished a knife at him. Victim wanted to press charges. Officers arrived. Subject came out of his apartment and yelled at officers then went back in. 40mm deployed. Subject refused to come outside. Out of custody charges requested.	11
42	FN303 launcher	Caretakers called and reported a subject with a butcher knife chased caregivers who were attempting to bathe him. Caretakers ran out of the house to call the police. Officers responded with FN303. Subject's son was called to help speak to subject who suffers from dementia. The son agreed to stay to help care for subject and help caretakers. No prosecution requested by caretakers. No injuries sustained by caretakers.	10
43	Patrol Rifle, 40MM Launcher, FN303 launcher	Caller (ex-girlfriend) reported subject (ex-boyfriend) is suicidal and requested welfare check. Officers attempted a welfare check on a suicidal subject inside of his home. The subject told officers he was armed and told officers to leave. Subject hands were not visible to officers. Threat was deemed credible. Less-lethal systems and a Patrol rifle were deployed. Negotiator attempted to negotiate for the subject to exit his residence, but failed. Subject said officers are going to force a confrontation with him. Subject not a threat to others and refused officer's help. No crimes committed. Officers left the area.	11
44	Patrol Rifle, FN303 launcher	Officers responded to a call of a possible burglary. A patrol rifle and less-lethal were deployed to clear the building. Suspect located and arrested burglary.	4
45	40MM Launcher	Caller is security and reported a subject was verbally threatening staff and residents and assaulted security. Staff wanted him to leave. Subject is a known burglar and have fought officers in the past. Less-lethal deployed. Request subject to leave and he complied. No prosecution requested.	16
46	40MM Launcher	Caller (wife) reported subject (husband) had a knife and was threatening to kill himself. Caller was contacted outside of house while subject was still inside. 40MM deployed as officers contacted subject. Subject located safely and placed on a psychiatric hold.	12
47	40MM Launcher	Caller (mother) reported subject (son) having a mental health crisis. Caller reported the subject was armed with a knife and standing outside the house. 40mm deployed, subject safely located and placed on 5150 hold.	12

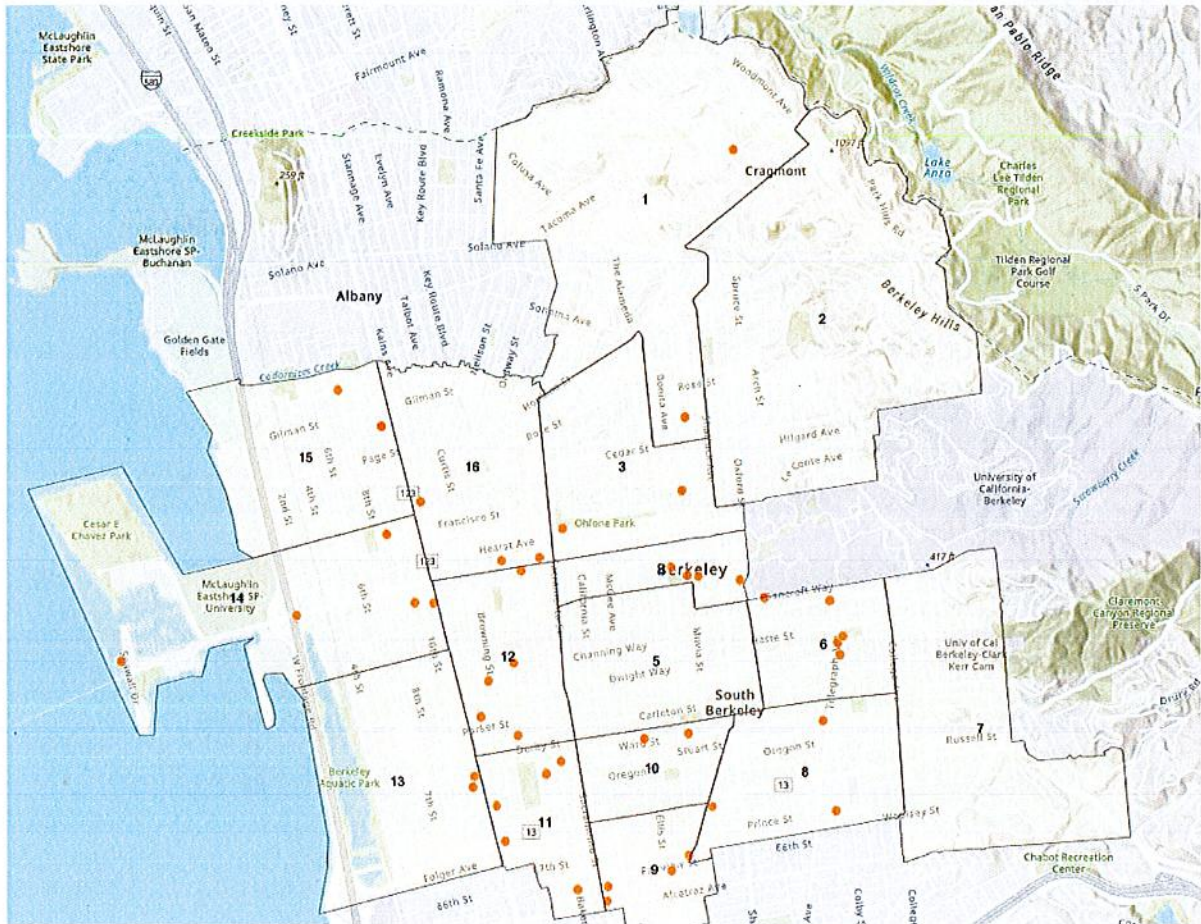


1

Below is a table that shows the total number of incidents a specified equipment was deployed in 2021. It should be noted that different types of equipment may be deployed in one incident and the same equipment may be deployed by multiple officers within a single incident.

EQUIPMENT	Number of Incidents
Patrol Rifle	27
40MM Single Launcher	27
40MM LTL Multi-Launcher	0
FN 303 Launcher	16
FN Pava Impact Projectile	0
Oleoresin Capsicum Spray	0
Chlorobenzylidene Malononitrile and Oleoresin capsicum	0
Remington 700 Rifle	6
ReconRobotics Recon Scout XT Robots	6
Andros Remotec HD-1 Hazardous Duty Robot	2
Light/Sound Diversionary Device	6
Long Range Acoustic Device	6
36" Batons	0
Mobile Command Vehicle	0
Barret Model 99	0

Below is a map showing where each of the above 44 equipment deployments occurred in Berkeley. 3 occurred in other Bay Area cities.



## Appendix:

### Applicable Lexipol Policies Respective to Each Equipment

#### Patrol Rifle

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

#### 40MM single launcher

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

#### 40MM LTL multi-launcher

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

#### FN 303 Launcher & FN Pava rounds

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

#### Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

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

#### Remington 700 Rifle

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

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

- Policy 708 (Robot Cameras)

#### Light/Sound Diversionary Device

- Policy 353 (Diversionary Device)

#### Long Range Acoustic Device

- Policy 707 (Long Range Acoustical Device)

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36" batons

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

Mobile Command Vehicle

- Policy 811 (Mobile Command Vehicle (MCV))

Barret Model 99

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



OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

April 6, 2022

To: Interim Police Chief Jennifer Louis  
From: Michael Chang, Chairperson, Police Accountability Board  
Re: Police Equipment and Community Safety Ordinance Impact Statements

The Police Accountability Board (PAB) held a special meeting on March 30, 2022, for the purpose of reviewing the Impact Statements that the Police Department prepared and submitted to the PAB in order to meet the Department's obligations under the Police Equipment and Community Safety Ordinance ("Ordinance")<sup>1</sup>; specifically under B.M.C. Section 2.100.040 (G), Review Process for Previously-Acquired Equipment.

Preliminarily, we note that the Appendix to the Impact Statements contains "Applicable Lexipol Policies Respective to Each Equipment." Thus, we presume that those Lexipol Policies are intended to serve as the Use Policies that also must be submitted under B.M.C. Section 2.100.040 (G). The introduction to the Impact Statements notes that they also fulfill the obligations set forth in Assembly Bill 481.<sup>2</sup>

However, the PAB identified several ways in which the Impact Statements fall short of meeting the requirements of the Ordinance and of AB 481. Furthermore, the PAB took notice of AB 48,<sup>3</sup> which prohibits law enforcement agencies from using kinetic energy projectiles or chemical agents to disperse an assembly, protest, or demonstration, except in limited circumstances. The limitations in AB 48 do not appear to be incorporated either in the Impact Statements or the Lexipol Policies. Accordingly, the PAB requests that the Police Department revise the Impact Statements and Lexipol Policies so that they are fully compliant with the local Ordinance, state law, and any applicable federal law. The PAB further suggests consultation with the City Attorney's Office to ensure all the City's legal obligations are met.

1. Following are some examples of how the Impact Statements or Use Policies are lacking:

<sup>1</sup> Ordinance No. 7760-N.S., codified in Berkeley Municipal Code Chapter 2.100.

<sup>2</sup> Adding Sections 7070 through 7075 to the Government Code.

<sup>3</sup> Adding Section 13652 to the Penal Code, and other provisions not relevant here.

- FN 303 and FN Pava Impact Projectile:

The Impact Statement for this launcher states in Section E., Use (p. 19), that the FN 303 is designed to reduce the potential for a violent confrontation; is less likely to result in serious bodily injury or death, and can be used to de-escalate a potentially deadly situation. Missing, however, is a reference to the prohibition on the use of kinetic energy projectiles to disperse any assembly, protest, or demonstration, except by a trained peace officer, if the use is objectively reasonable to defend against a threat to life or serious bodily injury, or to bring a dangerous and unlawful situation under control; and, in either case, by following certain guidelines. (AB 48; Penal Code Sec. 13652(b).) This Impact Statement thus fails to meet the conditions of the Ordinance because an Impact Statement must include "intended uses and effects" of each type of controlled equipment (B.M.C. Sec. 2.100.020 (C)).

Moreover, the applicable Lexipol Policies (300 – Use of Force, and 303 – Control Devices and Techniques), do not comply with AB 481, which requires that a "military equipment use policy" address "[t]he purposes and authorized uses for which the law enforcement agency . . . proposes to use each type of military equipment." (Gov. Code sec. 7070(d)(2).) In omitting the limitations placed on kinetic energy projectiles by Penal Code Section 13652(b), Policies 300 and 303 do not accurately describe the authorized uses of the FN 303 launcher.

These same issues arise for the Impact Statements and Policies 300 and 303 with respect to the Penn Arms and Milkor launchers.

- OC Spray (Pepper Spray):

The Impact Statement for OC Spray is lacking in a way similar to that for the FN 303 launcher. The description of its Use (Section E, p. 25) states that OC spray may be considered for use to bring individuals or groups about to become violent under control; but should not be used against those who merely fail to disperse or do not appear to present a risk to the safety of others. It omits any reference to the stricter limitations on using this chemical agent under AB 48 (the same limitations as for kinetic energy projectiles cited above, under Penal Code Sec. 13652(b)), and thus falls short of compliance with the Ordinance.

Additionally, Lexipol Policy 303 does not reference the current ban on OC spray for crowd control during the COVID-19 pandemic, so it is not compliant with AB 481, requiring a listing of authorized uses. While that ban is included in Policy 300 on Use of Force (in Sec. 300.3.7), the lack of an up-front reference in the Impact Statement is confusing and possibly misleading.

- CS Gas (Tear Gas):

Currently, using tear gas is prohibited under any circumstances, so it is questionable whether an Impact Statement for this chemical agent should be

Interim Police Chief Jennifer Louis  
Police Equipment and Community Safety Ordinance Impact Statements  
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included. If it is included because the Department is reporting its possession of this equipment, the ban must be noted, to comply with local and state law.<sup>4</sup>

2. Another problem with the Impact Statements is internal inconsistency of the less-lethal launcher descriptions. For the Penn Arms launcher, Section 6, Alternative (p. 13), states, "This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance." But identical language is used in describing an Alternative for the Milkor launcher (p. 18), so two pieces of less lethal equipment have been identified as an alternative to the FN 303. Finally, the FN 303 itself is described as "the **only** piece of equipment that allows officers to address a potentially deadly threat from a distance" (p. 23; emphasis added), which contradicts the descriptions of the Penn Arms and Milkor launchers as alternatives to the FN 303.

3. The PAB also discussed a suggestion for the Department to employ best practices in developing its use policies, while acknowledging it did not have time at this point to suggest best practices for all relevant policies within the approval timeframe mandated by the Ordinance.

4. With respect to mutual aid, the PAB points out a pertinent provision of AB 481: A law enforcement agency must obtain the governing body's approval, by adopting a military equipment use policy, before engaging in a number of enumerated activities. (Gov. Code Sec. 7071(a)(1).) One of them is "(D) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body." This means that, before any outside law enforcement agency uses military equipment within the City of Berkeley, an approved use policy for that equipment must be in place. As this language has no counterpart in the local Ordinance, it is important that your Department is mindful of this provision.

5. Finally, the PAB requests that when you submit your item seeking approval of the Impact Statements and Use Policies into City Council agenda process, that you also send a copy to the Interim Director of Police Accountability

The PAB approved communicating to you the points made in this memorandum by a unanimous vote at its March 30, 2022 special meeting: Moved/seconded – Owens/Ramsey; Ayes – Calavita, Chang, Harris, Levine, Mizell, Moore, Owens, Ramsey; Noes – none; Abstentions – none; Absent – Leftwich.

cc: Farimah Brown, City Attorney  
Police Accountability Board Members

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<sup>4</sup> Interim Director Lee advised me that, during your April 5 phone conversation, you reminded her that in September 2020 the Police Review Commission supported the BPD's request for an exception to the tear gas ban for use during certain Special Response Team operations. This was not presented to the City Council but may be in the future.

## Military Equipment

### 709.1 PURPOSE AND SCOPE

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

#### 709.1.1 DEFINITIONS

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

**Governing body** – The Berkeley City Council.

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

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



## *Military Equipment*

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### **709.2 POLICY**

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

### **709.3 MILITARY EQUIPMENT COORDINATOR**

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

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

### **709.4 MILITARY EQUIPMENT INVENTORY**

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

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

## Military Equipment

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### 709.4.1 BERKELEY POLICE DEPARTMENT'S INVENTORY

#### Rifles and Associated Ammunitions

##### Rifle:

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

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

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

**Quantity:** The Berkeley Department currently owns and maintains 96 rifles

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

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

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

##### **PURPOSE and AUTHORIZED USE:**

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

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

##### **FISCAL IMPACT:**

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

## *Military Equipment*

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

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

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

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

### **LEGAL AND PROCEDURAL RULES:**

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

### **TRAINING:**

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

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

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

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

**Quantity:** The Berkeley Department currently owns and maintains 6 rifles

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

## Military Equipment

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

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

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

### **PURPOSE and AUTHORIZED USE:**

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

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

### **FISCAL IMPACT:**

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

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

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

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

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

### **LEGAL AND PROCEDURAL RULES:**

## *Military Equipment*

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

### **TRAINING:**

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

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

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

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

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

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

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

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

### **PURPOSE and AUTHORIZED USE:**

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

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

### **FISCAL IMPACT:**

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

## *Military Equipment*

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

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

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

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

### **LEGAL AND PROCEDURAL RULES:**

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

### **TRAINING:**

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

### **RIFLE AMMUNITION:**

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

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

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

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

.223 Remington ammunition 62 grain soft point for duty purposes

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

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

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

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

### Product Description:

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

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

.223 Remington ammunition 62 grain soft point

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

### PURPOSE and AUTHORIZED USE:

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

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

### FISCAL IMPACT:

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

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

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

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

### LEGAL AND PROCEDURAL RULES:

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

### TRAINING:

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

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

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

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

Type: Hornady .308-caliber ammunition

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

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

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



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

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

### **PURPOSE and AUTHORIZED USE:**

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

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

### **FISCAL IMPACT:**

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

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

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

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

### **LEGAL AND PROCEDURAL RULES:**

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

### **TRAINING:**

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

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

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

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

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

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

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

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

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

### PURPOSE and AUTHORIZED USE:

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

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

### FISCAL IMPACT:

Initial Cost:

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

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

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

### LEGAL AND PROCEDURAL RULES:

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

### TRAINING:

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

### Robots:

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

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

Type: ReconRobotics Recon Scout XT

Quantity: The Berkeley Department currently owns and maintains 2.

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

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

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

### PURPOSE and AUTHORIZED USE:

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

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

### FISCAL IMPACT:

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

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

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

Maintenance costs: There are no annual or storage costs.

### LEGAL AND PROCEDURAL RULES:

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

### TRAINING:

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

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

Type: Andros Remotec HD-1 Hazardous Duty Robot

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

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

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

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

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

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

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

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

### **PURPOSE and AUTHORIZED USE:**

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

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

### **FISCAL IMPACT:**

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

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

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

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

### **LEGAL AND PROCEDURAL RULES:**

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

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### TRAINING:

#### Less Lethal Launchers:

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

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

Type: Penn Arms 40mm Single Launcher

Quantity: The Berkeley Department currently owns and maintains 20.

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

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

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

### PURPOSE and AUTHORIZED USE:

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

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

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

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

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

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

### **FISCAL IMPACT:**

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

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

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

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

### **LEGAL AND PROCEDURAL RULES:**

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

### **TRAINING:**

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

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

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

Type: Milkor LTL Multi-launcher

Quantity: The Berkeley Department currently owns and maintains 2.

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

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

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

### **PURPOSE and AUTHORIZED USE:**

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

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

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

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

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



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### FISCAL IMPACT:

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

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

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

Maintenance costs: Maintenance costs vary depending on use.

### LEGAL AND PROCEDURAL RULES:

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

### TRAINING:

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

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

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

Type: FN 303 and FN Pava Impact Projectile

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

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

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

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

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

### **PURPOSE and AUTHORIZED USE:**

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

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

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

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

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

### **FISCAL IMPACT:**

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

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

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

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

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

### LEGAL AND PROCEDURAL RULES:

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

### TRAINING:

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

### Light/sound Diversionary Devices:

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

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

Type: CTS 7290 Diversionary Device

Quantity: The Berkeley Department currently owns and maintains 50.

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

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

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

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

### PURPOSE and AUTHORIZED USE:

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

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

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

### **FISCAL IMPACT:**

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

**Annual cost:** See below training cost.

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

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

### **LEGAL AND PROCEDURAL RULES:**

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

### **TRAINING:**

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

### Long Range Acoustic Device

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

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

Type: The Long Range Acoustic Device (LRAD)

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

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

## *Military Equipment*

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

Lifespan The lifespan for both LRADs is 25 years.

### Manufacturer's Description

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

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

### PURPOSE and AUTHORIZED USE:

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

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

## Military Equipment

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- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

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

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

### **FISCAL IMPACT:**

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

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

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

**Maintenance costs:** costs for this equipment.

### **LEGAL AND PROCEDURAL RULES:**

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

### **TRAINING:**

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

### Mobile Command Vehicle

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

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

**Type:** MCV is a 2003 Freightliner MT55

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

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

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

## *Military Equipment*

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

### Manufacturer's Description

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

### PURPOSE and AUTHORIZED USE:

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

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

### FISCAL IMPACT:

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

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

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

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

### LEGAL AND PROCEDURAL RULES:

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

### TRAINING:

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

### Chlorobenzylidene Malononitrile and Oleoresin Capsicum

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

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

Type: Chlorobenzylidene malononitrile (CS)

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

## *Military Equipment*

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Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

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

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

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

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

Lifespan CS and OC canisters expire in approximately 5 years.

### Manufacturer's Description

Unable to locate. Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

### PURPOSE and AUTHORIZED USE:

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

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

### FISCAL IMPACT:

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



## *Military Equipment*

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Annual cost: See below cost of training.

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

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

### LEGAL AND PROCEDURAL RULES:

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

### TRAINING:

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

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

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

Type: Oleoresin capsicum (OC)

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

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

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

Both CS and OC canisters ca

Lifespan CS and OC canisters expire in approximately 5 years.

Manufacturer's Description

## *Military Equipment*

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Unable to locate. For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

### PURPOSE and AUTHORIZED USE:

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

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

### FISCAL IMPACT:

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

**Annual cost:** See below cost of training.

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

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

### LEGAL AND PROCEDURAL RULES:

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

### TRAINING:

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

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

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

## Military Equipment

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Type: Oleoresin capsicum (OC) spray

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

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

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

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

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

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

### Manufacturer's Description

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

### PURPOSE and AUTHORIZED USE:

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

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

### FISCAL IMPACT:

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

Annual cost: See below cost of training.

## *Military Equipment*

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

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

### **LEGAL AND PROCEDURAL RULES:**

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

### **TRAINING:**

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

### **709.5 APPROVAL**

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

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

## *Military Equipment*

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### **709.6 COORDINATION WITH OTHER JURISDICTIONS**

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

#### **709.6.1 TEMPORARY USE IN EXIGENT CIRCUMSTANCES**

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

- (a) Provide written notice of the acquisitions or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state, or federal law
- (b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and received approval, as applicable from the City Council pursuant to BMC 2.100.040
- (c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

### **709.7 ANNUAL REPORT**

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

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

### **709.8 COMMUNITY ENGAGEMENT**

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

### **709.9 MILITARY EQUIPMENT QUESTIONS**

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

## *Military Equipment*

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### 709.9.1 MILITARY EQUIPMENT CONCERNS

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

### 709.10 ASSOCIATED EQUIPMENT USE POLICIES

The below links will direct to the respective use policies:

[300-Use of Force](#)

[303-Control Devices and Techniques](#)

[349-Tactical Rifle Operator Program](#)

[353-Flash/Sound Diversionary Devices](#)

[354-Precision Rifle Operator Program](#)

[428-First Amendment Assemblies](#)

[707-Long Range Acoustical Device \(LRAD\)](#)

[708-Robot Cameras](#)

[811-Mobile Communications Vehicle \(MCV\)](#)

### 709.11 COMPLIANCE

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

Dee Williams-Ridley  
Berkeley City Manager  
2180 Milvia Street  
Berkeley, CA 94704

April 29, 2022

Dear City Manager Williams-Ridley,

It has come to my attention that the Berkeley City Manager's Office, Berkeley Police Department, and therein the City of Berkeley ("the city") have very likely violated the Police Equipment and Community Safety Ordinance (BMC Chapter 2.100).

The alleged violations span a number of sections including, but are not necessarily limited to:

2.100.040(C)(1), Violation 1  
2.100.040(E)(1), Violation 2  
2.100.040(E)(3), Violation 3  
2.100.040(H)(1), Violation 4  
2.100.050(A)(1), Violation 5  
2.100.050(B), Violation 6

The appearance of Item 30- "Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies, and Annual Equipment Use Report" on the City Council's May 10th agenda is in clear violation of Chapter 2.100. While I hope these violations can be remedied quickly, let this serve as written notice of specific alleged violations that should be remedied pursuant to 2.100.060(A).

These violations appear to stem in part from an easily verifiable falsehood in the Item:

"...After reconciling the city ordinance and new state law mandates, the required documents were provided to the Police Accountability Board on February 24th, 2022. **On April 6th, 2022 the Police Accountability Board provided the Berkeley Police Department with their recommendations on the Impact Statements and their associated use policies.** The Police Accountability Board's recommendations are submitted as an attachment to this council item pursuant to section 2.100.040 (H)(1), which requires the Berkeley Police department to provide City Council with the Police Accountability Board's recommendations 15 days prior to a public meeting."

This alleged "recommendation" refers to an April 6th letter (pg.81 of item) from Chair Chang on behalf of the PAB. The preliminary comments on their submitted impact statements and equipment policies and suggestions to ensure basic requirements of state law. While this was a recommendation it is *not* the recommendation to the council the Board is required to make for the department and city to proceed.

At no point has the Board voted on a recommendation to the city council adopting, modifying, or rejecting the controlled equipment policies or impact statements. At best, this letter has been severely misread as such an approval. The meeting minutes from the PAB's March 30th (when the letter was authorized) make clear that the board took no action that would trigger the department's ability to proceed to the council. The recording of the meeting further shows that the Board was in preliminary review of the impact statements and policies.

#### Violation I

##### **2.100.040 Acquisition and Use of Controlled Equipment.**

##### **BMC 2.100.040 (C) -**

###### *(C) Criteria for Police Accountability Board Recommendations*

*(1) The Police Accountability Board shall recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter only if it determines all of the following:*

*(a) The Controlled Equipment is needed and there is no practicably available alternative equipment which is not Controlled Equipment that is sufficient for the purposes.*

*(b) The proposed Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.*

*(c) The Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.*

...

The PAB has barely begun to determine if the equipment submitted by the departments satisfies these elements and the Board has taken no action to indicate such a determination had been made. Again, the department had no legal authority to submit without the board making such a determination (unless 90 days had already elapsed).

#### Violation II

##### **2.100.040(E) Police Accountability Board Review Required Before City Council Consideration of Approval**

*(1) The Police Accountability Board shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy, and notify the Police Department of its recommendations.*

...



This has not taken place. On March 30th the PAB voted unanimously:

*Motion to submit a letter to the Berkeley Police Department that requests compliance with AB 481, AB 48, the local ordinance [BMC Chapter 2.100], and federal law; recommend consulting with the City Attorney's Office to ensure compliance; letter to include specific examples of lack of compliance; request the inclusion of best practices; point out the requirement pertaining to mutual aid; and request that the Council item be sent to the PAB simultaneous with submission to the City Clerk.*

In no way did the board submit a recommendation to the city adopting, modifying, or rejecting the controlled equipment use policies or the impact statements.

### Violation III

*(3) Failure by the Police Accountability Board to make its recommendation on a proposal within ninety (90) days or thirty (30) days in instances where the proposal is subject to a time-sensitive grant application, of submission shall enable City Staff to proceed to the City Council for approval of the proposal.*

...

The department has violated this section in its submission to the city council without the PAB adopting a recommendation to the city council. The department submitted there impact statement and equipment policies on February 24, 2022. The language of the section clearly prohibits city staff from even "proceeding to the council" without PAB approval. An item on publicity agenzized for a council meeting less than three weeks now clearly qualifies as proceeding to the council.

While it could be more clear, this section does include the impact statement along with the equipment policies. BMC 2.100.040 Section (A)(1) includes the Controlled Equipment Impact Report in the list of items the PAB "reviews and recommends". Without such a review and recommendation, the department would be subject to the prohibitions in Section (A)(1) (a-e). The impact statements are additionally a key factor in the board's ability to evaluate controlled equipment according to a criterium in Section (C)(1). As they are companion documents that cannot be separated, both are subject to the 90-day period.

### Violation IV

2.100.040(H)(1) City Council Approval Process

*(1) After the Police Accountability Board review requirements have been met, the Police Department shall schedule for City Council consideration the proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy, and include Police Accountability Board recommendations, at least fifteen(15) days prior to a public meeting*

...

Once again, the ordinance clearly states that a police department submission to the council should occur after the ordinance's requirements of the PAB are met. The only exception provides in the ordinance refers to exigency or the 90-day period elapsing. Neither are relevant in this case. Despite the claim made in the department report, these requirements have not been met.

#### Violation V

##### **2.100.050 Reports on the Use of Controlled Equipment.**

*(A) Annual Report on Controlled Equipment*

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

...

The city violates this section because the report on the use of controlled equipment appears in Item 30 before the board had even seen the item, let alone fulfilled the requirements in 2.100.050(B) Even though one year has not elapsed, the act of submitting the report to council first violets the required approval process.

#### Violation VI

*(B) Compliance or Revocation of Approval*

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

*(2) If the Police Accountability Board determines that any Controlled Equipment has not complied with the standards for approval set forth in Section 2.100.040, it shall either recommend revocation of the*

*authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations shall be forwarded to City Council in accordance with the approval process in Section 2.100.040.*

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

...

**The city violates this entire section as the report on controlled equipment was never submitted to the PAB, violating the approval process required by this section.**

**A NOTE ABOUT AB 481 & SEVERABILITY:**

AB 481 includes language that may conflict with BMC Chapter 2.100. I focus here only on the requirement that a law enforcement agency "commence a governing body approval process" by May 2022. The City Attorney will of course make the ultimate determinations, but only a few interpretations (barring unforeseen case law) seem plausible.

The Board Functions as the start of the "approval Process"

- If so, the process functions as it is described in the ordinance.

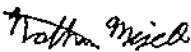
The Board does not function as the start of the "approval process"

- If this is the case BMC 2.100.090 severability clause would apply. The department could "commence" the approval process, presumably by referring the impact statement and equipment policies to the agenda and rules. The city, still bound by the rest of the ordinance (as section 7075 of AB 481 appears to indicate) would have to wait for the Board to fulfill its obligations in the approval process

In either case, the city has likely violated the ordinance.

Please update me on the status of the determining violations and any steps to cure violations that are substantiated.

Respectfully,



Nathan Mizell  
Vice-Chair, Berkeley Police Accountability Board\*

\*I write here as an individual, Title for ID only



**Date:** May 4, 2022  
**To:** Kathy Lee, Interim Director of Police Accountability  
**From:** Captain Rico Rolleri, Professional Standards Division Captain  
**Subject:** Response to 4/6/22 Police Accountability Board Letter to Interim Police Chief Louis

Kathy,

Please see my responses to PAB Chair, Michael Chang's letter on behalf of the PAB to Interim Police Chief Jen Louis below. Please forgive any formatting issues as I converted the PAB's PDF document into a Word document in an attempt to hopefully answer or explain his questions, concerns or any misunderstanding of some of the issues presented within the document immediately following the paragraphs where the questions or concerns were presented. I chose to write my responses in red so they are hopefully clearly delineated within this document.

"Preliminarily, we note that the Appendix to the Impact Statements contains "Applicable Lexipol Policies Respective to Each Equipment." Thus, we presume that those Lexipol Policies are intended to serve as the Use Policies that also must be submitted under B.M.C. Section 2.100.040 (G). The introduction to the Impact Statements notes that they also fulfill the obligations set forth in Assembly Bill 481."

True – The associated policies for each piece of defined equipment within the ordinance are referenced at the end of the Impact Statement document. The reference to AB 481 was an editing error and should not have been included in the introduction as AB 481 is a separate State law that contains similar but different requirements as well as differing dates for reporting requirements. This document was not being presented to the PAB for consideration of State law as the State law specifically defines the Governing Body under GC 7070(a) as the elected body overseeing a law enforcement agency.

"However, the PAB identified several ways in which the Impact Statements fall short of meeting the requirements of the Ordinance and of AB 481. Furthermore, the PAB took notice of AB 48, <sup>3</sup> which prohibits law enforcement agencies from using kinetic energy projectiles or chemical agents to disperse an assembly, protest, or demonstration, except in limited circumstances. The limitations in AB 48 do not appear to be incorporated either in the Impact Statements or the Lexipol Policies. Accordingly, the PAB requests that the Police Department revise the Impact Statements and Lexipol Policies so that they are fully compliant with the local Ordinance, state law, and any applicable federal law. The PAB further suggests consultation with the City Attorney's Office to ensure all the City's legal obligations are met."

We are presenting Impact Statements and Equipment Policies in order to meet the reporting requirements for the City Ordinance, not AB 481 or AB 48 (which has no reporting requirements), I would like to urge the PAB to review BPD policy 428 "First Amendment Assemblies" that was in existence prior to the City Ordinance or State laws AB 48 and AB 481. BPD modified policy 428 slightly to ensure that some of the language of the policy was consistent with language in AB 48.

"FN 303 and FN Pava Impact Projectile:

The Impact Statement for this launcher states in Section E., Use (p. 19), that the FN 303 is designed to reduce the potential for a violent confrontation; is less likely to result in serious bodily injury or death, and can be used to de-escalate a potentially deadly situation. Missing, however, is a reference to the prohibition on the use of kinetic energy projectiles to disperse any assembly, protest, or demonstration, except by a trained peace officer, if the use is objectively reasonable to defend against a threat to life or serious bodily injury, or to bring a dangerous and unlawful situation under control; and, in either case, by following certain guidelines. (AB 48; Penal Code Sec. 13652(b). This Impact Statement thus fails to meet the conditions of the Ordinance because an Impact Statement must include "intended uses and effects" of each type of controlled equipment (B.M.C. Sec. 2.100.020)."

The Impact Statements under the City ordinance mandates the "intended uses and affects" of the equipment, which are met. BPD policy 428 covers the requirements stated within AB 48. BPD is not reporting to the PAB on AB 481 or AB 48.

"Moreover, the applicable Lexipol Policies (300 — Use of Force, and 303 — Control Devices and Techniques), do not comply with AB 481, which requires that a "military equipment use policy" address "[t]he purposes and authorized uses for which the law enforcement agency proposes to use each type of military equipment." (Gov. Code sec. 7070(d)(2).) In omitting the limitations placed on kinetic energy projectiles by Penal Code Section 13652(b), Policies 300 and 303 do not accurately describe the authorized uses of the FN 303 launcher.

These same issues arise for the Impact Statements and Policies 300 and 303 with respect to the Penn Arms and Milkor launchers."

Again, the Impact Statements under the City ordinance mandates the "intended uses and affects" of the equipment, which are met. BPD policy 428 covers the requirements stated within AB 48. BPD is not reporting to the PAB on AB 481 or AB 48. BPD is reporting to the PAB on City Ordinance and focused on the scope of the ordinance here, not other legislation related to any other equipment or reporting requirements. Additionally, I would direct the PAB to review BPD policy 709 "Military Equipment" as it pertains to AB 481. It was posted on the old website and is included on the new City of Berkeley website.

"The Impact Statement for OC Spray is lacking in a way similar to that for the FN 303 launcher. The description of its Use (Section E, p. 25) states that OC spray may be considered for use to bring individuals or groups about to become violent under control; but should not be used against those who merely fail to disperse or do not appear to present a risk to the safety of others. It omits any reference to the stricter limitations on using this chemical agent under AB 48 (the same limitations as for kinetic energy projectiles cited above, under Penal Code Sec. 13652(b)), and thus falls short of compliance with the Ordinance.

Additionally, Lexipol Policy 303 does not reference the current ban on OC spray for crowd control during the COVID-19 pandemic, so it is not compliant with AB 481, requiring a listing of authorized uses. While that ban is included in Policy 300 on Use of Force (in Sec. 300.3.7), the lack of an up-front reference in the Impact Statement is confusing and possibly misleading."

The City Ordinance requires BPD reporting on "intended uses and effects" and those elements are met within the Impact Statements for the *City Ordinance*. They were included within the Impact Statements because the Police Department still possesses this equipment. The Impact Statements include hyperlinks to the associated equipment use policies, which includes Lexipol Policy 300. The details of the current ban on the usage of OC spray and OC gas for crowd control is outlined in Lexipol Policy section 300.3.7, *"As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to response to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to response to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such times as the City Council removes the prohibition."* The associated equipment use policies are part of the Impact Statements; each associated use policy is hyperlinked within the Impact Statements.

"CS Gas (Tear Gas):

Currently, using tear gas is prohibited under any circumstances, so it is questionable whether an Impact Statement for this chemical agent should be included. If it is included because the Department is reporting its possession of this equipment, the ban must be noted, to comply with local and state law."

While CS gas is prohibited and the prohibition is outlined in BPD policy 300, use of force, CS gas is equipment defined within the City Ordinance that the Berkeley Police Department possesses. For purposes of transparency BPD authored an impact statement for it.

The ban is noted in an equipment use policy (300) as required by City Ordinance. The City Ordinance does not require the ban to be additionally noted in the Impact Statements. The Impact Statement for this equipment is in compliance with the City Ordinance. City Ordinance requires use policies for each equipment which the Police Department has included. The City Ordinance requires "prohibited uses" included within policy, which is where the prohibition of the use of CS gas is located. The ordinance reads, *"Controlled Equipment requires a publicly available use policy that identifies the purpose, any prohibited uses, training requirements, and any process required prior to use."* The banning of CS gas is not required to be included within the Impact Statements.

"Another problem with the Impact Statements is internal inconsistency of the less lethal launcher descriptions. For the Penn Arms launcher, Section 6, Alternative (p. 13), states, "This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance." But identical language is used in describing an Alternative for the Milkor launcher (p. 18), so two pieces of less lethal equipment have been identified as an alternative to the FN 303. Finally, the FN 303 itself is described as "the only piece of equipment that allows officers to address a potentially deadly threat from a distance" (p. 23; emphasis added), which contradicts the descriptions of the Penn Arms and Milkor launchers.as alternatives to the FN 303."

This was an editing error and will be corrected. All three less lethal launchers may be used in situations to address a potentially deadly threat from a distance as an option to deadly force. The language can be modified to read that each one of these pieces of equipment is one of three options available to address a potential deadly threat from a distance. The Penn Arms and Milkor launchers are virtually identical but operate slightly different in that the Penn Arms launcher has the ability to launch only one projectile before being reloaded. The Milkor launcher has the ability to launch up to six projectiles, one at a time, before being reloaded. The FN303 functions completely different than

the other two, but is used in similar situations with a greater range than the Penn Arms and Milkor 40MM systems. With that said, all three may be utilized based on need or availability.

“The PAB also discussed a suggestion for the Department to employ best practices in developing its use policies, while acknowledging it did not have time at this point to suggest best practices for all relevant policies within the approval timeframe mandated by the Ordinance.”

The Berkeley Police Department policies are created based on Federal, State, local laws and best practices. BPD works in conjunction with Lexipol and guides the creation of policies based on the basic policy that begins with applicable laws related to that operation or equipment. All Lexipol policies include current best practices, where applicable, and they provide legislative updates to policies when those laws change or become effective.

“With respect to mutual aid, the PAB points out a pertinent provision of AB 481: A law enforcement agency must obtain the governing body's approval, by adopting a military equipment use policy, before engaging in a number of enumerated activities. (Gov. Code Sec. 7071 One of them is "(D) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body." This means that, before any outside law enforcement agency uses military equipment within the City of Berkeley, an approved use policy for that equipment must be in place. As this language has no counterpart in the local Ordinance, it is important that your Department is mindful of this provision.”

We are aware of this requirement within AB 481 and will focus on the requirements of that State law separate from this City Ordinance.

“Finally, the PAB requests that when you submit your item seeking approval of the Impact Statements and Use Policies into City Council agenda process, that you also send a copy to the Interim Director of Police Accountability. The PAB approved communicating to you the points made in this memorandum by a unanimous vote at its March 30, 2022 special meeting: Moved/seconded — Owens/Ramsey; Ayes — Calavita, Chang, Harris, Levine, Mizell, Moore, Owens, Ramsey; Noes — none; Abstentions — none; Absent — Leftwich.”

I do not know if a copy of the entire City Council Agenda Item was sent to the Interim Director of Police Accountability. The documents included parts of the City Ordinance as well as AB 481 that were time sensitive. There is a possibility that may have been missed, but Ms. Lee would know if she received a copy of the packet and when.



## Lee, Katherine

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**From:** Brown, Farimah F.  
**Sent:** Friday, May 13, 2022 6:54 AM  
**To:** Williams-Ridley, Dee; Harrison, Kate; Louis, Jennifer A.; Lee, Katherine; Arreguin, Jesse L.  
**Cc:** McCormick, Jacquelyn; Trachtenberg, Tano; Naso, Christopher; Michael Chang; Kitty Calavita; Bellow, LaTanya; Buddenhagen, Paul; Darrow, Brendan; Mattes, Laura Iris; Chang, James J  
**Subject:** Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

Dear Vice Mayor Harrison, Mayor Arreguin, City Manager Williams-Ridley, Chief Louis, and Director Lee,

Thank you for giving us the opportunity to review these issues. Below is our guidance regarding some of the questions that have arisen:

- 1) **Use Policies:** The City's Police Equipment and Community Safety Ordinance (the "Ordinance") instructs PAB to "recommend that the City Council adopt, modify, or reject," the proposed controlled equipment use policy and "present its recommendations to the City Council." PAB has 90 days to make its recommendation absent time-sensitive situations. Only "[a]fter the Police Accountability Board review requirements have been met," can BPD schedule the impact reports and use policies for City Council consideration. Because it appears no recommendation regarding the use policies was provided to *Council*\* nor presented on, and 90 days have not elapsed, we recommend that PAB be allowed the opportunity to comply before the Council considers the impact reports and use policies.
- 2) **Annual Reports:** The Ordinance provides that PAB has 60 days to consider annual reports at an open meeting, and then allows them the opportunity to "recommend revocation" of the controlled equipment or "modification" of the use policy. Only "[a]fter review by the Police Accountability Board, the Police Department shall submit the annual report to the City Council." It does not appear that PAB has considered the report at an open meeting nor has the 60 days elapsed since being provided the annual report. Therefore, we recommend that PAB be provided this opportunity before Council considers the annual report.
- 3) **AB 481 conflict:** We are unsure of the precise basis for Mr. Mizell's conflict concerns, however he seems to argue that the Ordinance conflicts with AB 481 because it requires a law enforcement agency to "commence a governing body approval process" by May 1, 2022. However, that provision of AB 481 and the Ordinance are not in conflict. There is an open question as to what the "governing body approval process" refers to – it may be the process delineated by the Ordinance or the more narrow Council approval process. Regardless of the interpretation, however, there is no direct conflict between that requirement and the Ordinance.

Relatedly, we note that AB 481 provides that if the governing body does not approve the continued use of the military equipment within 180 days of submission of the proposed use policy, the law enforcement agency must cease use of the equipment until approval is granted. Similarly, the Ordinance provides that if City Council does not approve the impact report and use policies within four regular City Council meetings from when it is first schedule, the Police Department must cease its use.

\*While on April 6, PAB provided a memo to BPD containing examples of how the impact reports and use policies were "lacking," PAB has not provided the memo to Council and it contains no explicit recommendation for adoption, modification, or rejection.

Let us know if can provide further guidance.

Regards,  
Farimah

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**From:** Harrison, Kate <KHarrison@cityofberkeley.info>

**Sent:** Monday, May 2, 2022 10:12:43 AM

**To:** Louis, Jennifer A. <JLouis@cityofberkeley.info>; Bellow, LaTanya <LBellow@cityofberkeley.info>; Lee, Katherine <KLee@cityofberkeley.info>; Brown, Farimah F. <FBrown@cityofberkeley.info>

**Cc:** Arreguin, Jesse L. <JArreguin@cityofberkeley.info>; McCormick, Jacquelyn <JMcCormick@cityofberkeley.info>; Trachtenberg, Tano <TTrachtenberg@cityofberkeley.info>; Naso, Christopher <CNaso@cityofberkeley.info>; Michael Chang <mike@mikechangforberkeley.com>; Kitty Calavita <kccalavi@uci.edu>; Williams-Ridley, Dee <DWilliams-Ridley@cityofberkeley.info>

**Subject:** Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report

Dear Chief, Deputy City Manager, PAB Director, and City Attorney:

I am writing to address the May 10 Council item entitled: *Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report*.

As you know, I authored the underlying ordinance last year and it is very important to me, the Council, and the community.

I want to thank the Chief and City Manager for submitting these items within one year of passage amidst various competing demands. I also want to thank the PAB for their work.

However, I have a few concerns about the Council report and the process, and recommend that we delay consideration of this item for at least one Council meeting (the ordinance provides the Council with up to four meetings of consideration before any equipment is suspended, and AB 481 provides Council with up to 180 days of consideration) to address them:

1. It appears that the PAB has not yet submitted to Council its recommendation as provided for under the ordinance.

While the PAB sent you a memo on April 6 with recommendations and questions, it is unclear how the Department has responded and addressed them.

The PAB cannot provide Council with a recommendation until the Department responds to their questions. Under the ordinance, the PAB has until May 25 to provide Council with its recommendation. These recommendations do not appear to be frivolous or even discretionary--they relate to Berkeley needing to be in compliance with state law and policy.

Ideally, before submitting the item to Council, the PAB would have been provided the full 90 days, and received responses to their questions in writing.

Again, I appreciate that you have competing demands and needed to submit the item by May 10, but in retrospect there seems to be a breakdown in process.

2. In their April letter, the PAB raised questions about possible compliance issues with AB 481. I would like the City Attorney to weigh in on this issue and more broadly with respect to compliance with the ordinance and state law.

3. In speaking with PAB representatives, I understand that the PAB did not get a use report from the BPD, as is required by Section 2.100.050. The Ordinance states that this was to have been submitted to the oversight body "no later than March 15".

Thank you very much for your work here. I am looking forward to working together on this important report.

Sincerely,

Kate Harrison  
Vice Mayor



## Lee, Katherine

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**From:** John Lindsay-Poland <JLindsay-Poland@afsc.org>  
**Sent:** Wednesday, May 11, 2022 1:58 PM  
**To:** michaelchang1942@gmail.com  
**Cc:** Lee, Katherine  
**Subject:** Proposed language on military equipment  
**Attachments:** ArmoredVehicles.pdf

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

Dear Police Accountability Board chair Chang,

I'd like to suggest some specific language for the BPD military equipment policy, building on the "best practices" idea referenced in the Board's last discussion. Specifically, I recommend language for four aspects of the policy, based on what other law enforcement agencies have implemented or have proposed to implement for AB 481:

1. Armored vehicle deployment
2. Patrol rifle deployment
3. Impact Projectiles and Respective Launchers
4. Military equipment used by outside agencies

**1. Better policy for use of armored vehicles** (Oakland PD), Training Bulletin III.P.04, "Armored Vehicles". Also attached. This policy was developed in an extensive process of the Oakland Police Commission, with Department and community input. In particular, the sections of the Oakland armored vehicle policy on **Pre-Planned Operations, Prohibited Uses** and **After-Action and Documentation of Deployments** could be easily adapted for BPD's armored vehicle policy.

**2. Better policy for M4 / Patrol rifles.** Patrol rifles are often deployed by the Special Response Team together with other specialized / militarized equipment, such as armored vehicles. The Oakland PD armored vehicle policy provides useful language for patrol rifle deployment. In particular, the sections of the Oakland armored vehicle policy on **Pre-Planned Operations, Prohibited Uses** and **After-Action and Documentation of Deployments** could be easily adapted for BPD's patrol rifle use policy. For example, display of the patrol rifle should be prohibited for "Recruitment, public relations, or promotional activities; Crowd control; and Routine patrol operations."

**3. Better policy for use of chemical agents and impact projectiles (Davis PD)**, on pp. 4-5 (copied below also). This policy incorporates the extensive language of AB 48 (Penal Code § 13652).

The Board may wish to reaffirm the full ban on teargas. But because AB 48 applies to impact projectiles and launchers, the below should be applied to a) Penn Arms 40mm Launcher; b) Milkor LTL Multi-Launcher; c) FN 303 Launcher and Pava Projectile.

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From the Davis Police Dept. proposed policy on military equipment (see pp. 4-5):

### **Kinetic Energy Projectiles & Chemical Agents – Assembly, Protest, or Demonstration (Penal Code § 13652)**

Except as provided for in this section, kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to disperse any assembly, protest, or demonstration (Penal Code § 13652 (a). See PP 2.59-A, First Amendment Assemblies for further guidance).

1. Authorized Use (Penal Code § 13652 (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:

1. A violation of an imposed curfew.
2. A verbal threat.
3. Noncompliance with a law enforcement directive.

k. 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.

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#### **4. Military equipment used by outside agencies:**

Santa Cruz PD , Santa Clara PD , Hayward PD , Fresno County Sheriff's Office use the following Lexipol-approved policy for mutual aid and military equipment:

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

Long Beach PD is more explicit. Its proposed policy on mutual aid says:

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

San Diego PD also requires outside agencies to follow SDPD's military equipment policy, and is more elaborate in its description:

From time to time, the Police Department may be required to assist or be assisted by other law enforcement agencies in a formal Law Enforcement Mutual Aid Request or support with day to day operational collaboration. These partnerships with allied law enforcement agencies and the ability to provide mutual aid and operational collaboration is an integral part of maintaining the continuity of public safety within the region. In certain mutual aid or operational collaboration circumstances, it may be necessary for San Diego Police Officers to utilize military equipment to fulfill an assigned mission (i.e. civil unrest, SWAT requests, or other critical incidents). In those situations, the Police Department members are required to adhere to the Department's Military Equipment Use Procedure and all Department policies and procedures, regardless of operational jurisdiction. Conversely, should another law enforcement agency assist in a mutual aid request in the City of San Diego, this procedure has been established to ensure that their use of military equipment is consistent with the guidelines set forth within the San Diego Police Department's Military Equipment Use Procedure.

best,  
John

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







Effective Date  
11/17/21

Index Number III-P.01  
Alpha Index High Risk Incidents  
Baricaded Subject Incidents  
Critical Incidents

Evaluation Coordinator: Training Director

*Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.*

## ARMORED VEHICLES

### Overview

The purpose of this Training Bulletin is to serve as a guideline for the safe use and deployment of any armored vehicle allowed to operate in the Department's jurisdiction. This Training Bulletin applies to all armored vehicle deployments by the Department through mutual aid to other jurisdictions, and to armored vehicle deployments by other agencies operating in Oakland under the Department's control. The Department's armored vehicles include a Lenco BearCat and an armored Chevrolet Suburban (Armored Suburban).

An armored vehicle is a piece of law enforcement equipment that may allow officers to use non-force options to safely resolve incidents involving actual, threatened, or reasonably suspected violence using firearms or explosives. The protective capabilities of an armored vehicle greatly exceed those of a patrol vehicle and proper deployment of armored vehicles may increase the safety of the public, law enforcement officers, and other first responders. Armored vehicles provide improved cover for officers, are stocked with tools that might be needed during a critical incident, and increase the options for a safe resolution.

Deployment of an armored vehicle might result in the safe apprehension of an engaged person in a timely manner. The Department recognizes that the deployment or appearance of certain armored vehicles may escalate tension, provoke fear, prevent clear communication, or increase distrust. The Department therefore restricts deployment of armored vehicles to those situations where the benefits of deployment outweigh the potential detrimental effects.

### Authorized Uses of Armored Vehicles

Command officers (at the rank of Lieutenant of above) may authorize the deployment of an armored vehicle for:

- Use as mobile physical cover in incidents involving actual or threatened violence, or when reasonable suspicion, based on articulable facts, exists that violence will occur using firearms or explosives.
- Vehicle blocking for incidents involving armed and unresponsive persons in vehicles (Reference Training Bulletin III-P.01).
- Medical emergencies and disaster responses, when the armored vehicle's capabilities are necessary to prevent loss of life.



- Oversight and informational purposes, as authorized by the Police Commission

Commanders shall only authorize the deployment of armored vehicles when the specific capabilities of the BearCat or Armored Suburban are necessary to bring an incident to a safe conclusion. Any authorized departure from an armored vehicle's place of storage shall be considered a deployment.

Safe use of armored vehicles during authorized deployments:

Vehicle deployments will necessarily vary depending on the circumstances at hand. All uses of armored vehicles should be consistent with Department training and procedures and include:

- Maintaining adequate cover. The armored vehicle's capabilities greatly exceed those of any patrol vehicles and should be maximized.
- Restricting persons' movement. The armored vehicle may give an advantage over conventional patrol vehicles for such maneuvers as blocking in another vehicle.
- Allowing for peaceful negotiations. Armored vehicles may allow officers to get into position to safely negotiate while still maintaining cover.
- The armored vehicle should be placed in such a way as to maximize the position of protection for officers or others at risk of harm, to allow all reasonable means for resolving the incident peacefully.
- Protecting Life. Armored vehicles may be able to operate in situations (e.g. active shooter) where personnel driving conventional vehicles would be at risk.
- Assessing the threat posed by the armed person, and proportional force options to respond to immediate contingencies if necessary. Depending on the ability of officers to mitigate the immediate threat posed by an armed person to officers and the public, officers may not need to necessarily use force pre-emptively even if the person moves or awakens and does not immediately disarm themselves.

**Pre-planned Operation of Armored Vehicles**

All pre-planned deployments of armored vehicles must be authorized by a command officer at the rank of Captain or above. Commanders shall ensure that an operations plan (Reference Training Bulletin III-Q and TF -3116 Operations Plan and Risk Assessment Overview) is completed for all pre-planned deployments.

Commanders shall make every effort to avoid the deployment of armored vehicles in the presence of minors, the elderly, medically compromised people, people with physical, mental or intellectual disabilities, people with limited English proficiency, or other vulnerable people. (Reference DGO K-3 Use of Force for definition of "vulnerable people".)

Commanders shall determine whether to deploy an armored vehicle based on credible intelligence, and consider the following variables when determining whether to deploy an armored vehicle, and the type of armored vehicle to deploy:



- Whether the use of an alternative operation location would diminish the need to use an armored vehicle.
- Potential presence of minors, elderly, medically compromised, people with physical, mental or intellectual disabilities, people with limited English proficiency, or other vulnerable people. (Note: This variable should be given special consideration due to the potential for trauma.)
- Potential presence of uninvolved persons. (Note: This variable should be given special consideration due to the potential for trauma.)
- Potential traumatic effect of an armored vehicle's presence on neighbors and other bystanders.
- Lack of knowledge on relevant characteristics of the operation location and persons present.
- Reliability of intelligence source for information on the operation location and persons present.
- For night-time operations, potential effects on sleeping or just-awakened persons.
- Potential presence of firearms (including caliber and type), explosives, chemical agents, edged weapons.
- Potential skills of persons present to use firearms or other weapons, including experience in law enforcement, military, or other armed groups.
- Whether the targeted person(s) have a history (within a time period relevant to the suspected crime) involving the criminal use of firearms or other weapons.
- Geographic factors, such as barriers, locked gates, water, thick brush, and narrow roads, and other factors that limit the maneuverability of the armored vehicle.
- Presence and type of animals present.

#### **Prohibited Uses of Armored Vehicles**

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

- Recruitment, public relations, or promotional activities
- Crowd control
- Routine patrol operations
- Attachment of a weapon
- Attachment of a ram (outside of use during natural disasters or medical emergencies)



### **Operation of Armored Vehicles**

Armored vehicles shall only be operated by officers<sup>1</sup> certified by the Tactical Operations Team commander. This includes, but is not limited to, all members of the Entry Team and Sniper Team elements. It also includes all Patrol Rifle Officers (PRO's).

### **Vehicle and Operations Training**

All officers authorized to operate armored vehicles shall participate in training sessions for their proper operation, which shall be conducted by a member of the Department's Training Staff. Periodic training shall include a review of the essential features of the vehicle, and a driving, operational and tactical maneuvering assessment, to ensure all operators are proficient in its use, and aware of emergency procedures. The records of such training shall be maintained by the Department's Training Staff.

Armored vehicles shall also be included in scenario-based training, to provide officers who respond to critical incidents with continued familiarization to ensure the safe operation and effectiveness of these vehicles. Scenario and classroom-based training also offer the opportunity to screen for, monitor, and assess an officer's mental and physical readiness to conduct critical incident operations prior to deployment in such operations.

Use of an armored vehicle for training purposes shall be considered a "use" for purposes of reporting.

### **Use of Video Recording Devices with Armored Vehicles**

Officers operating an armored vehicle shall utilize any video recording devices assigned to that vehicle<sup>2</sup> in accordance with Departmental policy for the use of portable digital recording devices (e.g. Departmental General Order I-15.1). This means that absent exigent circumstance (e.g. active shooter) the recording devices shall be attached to the armored vehicle and activated prior to initiating the circumstances enumerated in policy (e.g. detentions and arrests, serving a search or arrest warrant). Additionally, recording devices shall not be deactivated until allowed per policy.

Once an armored vehicle is deployed to the scene, the on-scene supervisor of the officers utilizing the armored vehicle (e.g. Team Leader of the Designated Arrest Team) shall ensure the cameras are positioned towards the person or the location of interest when it is feasible to do so safely.

The officer operating the armored vehicle is responsible for ensuring video recording devices are deployed with the armored vehicle and activated appropriately, recordings are uploaded to the appropriate system, and video recording devices are returned to their charging stations. These duties may be assigned to other personnel by the incident commander as necessary.

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<sup>1</sup> "Officers" includes all sworn members of all ranks and is used for brevity.

<sup>2</sup> This includes the portable video recording devices assigned each of the Department's armored vehicles, but might include additional devices purchased for armored vehicles in the future.



### **After Action and Documentation of Deployments**

Commanders authorizing deployment of an armored vehicle shall notify their chain of command of the deployment as soon as is practical after the incident has been resolved. A commander who authorizes the deployment of an armored vehicle for purposes other than training or maintenance shall email notification to all OPD commanders (e.g. DL – OPD Command). The email shall include a brief synopsis of the incident along with at least the following details:

- Date, time, and location
- Report and incident numbers
- Incident commander and tactical commander (if applicable)
- Scene supervisor(s)
- Which armored vehicle(s) were used
- Justification for deployment of the armored vehicle(s)
- Other specialized resources used (e.g. helicopter, canine)
- Demographic information about persons engaged at the target location (e.g., gender, race, age, membership in a vulnerable population)
- Presence or absence of media
- Description of arrests, injuries, uses of force, complaints, and/or property damage

Notifications of deployment shall include dissemination of information to the Department PIO and through Department social media channels. The commander of the Special Operations Section shall maintain a record of all deployments and ensure that information about all deployments (both callout and pre-planned), including for each of the above data points, is included in the division's Annual Management Report. Dispatch shall make a log entry in incident notes when an armored vehicle is deployed in a call-out (i.e. not pre-planned), for tracking and documentation purposes.



**Lee, Katherine**

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**From:** Wendy Alfsen <wendyalfsen@gmail.com>  
**Sent:** Tuesday, May 10, 2022 7:09 PM  
**To:** Lee, Katherine  
**Subject:** Fwd: 5/10 Agenda #30 Return to PAB - both Police Equipment & AB 481 Compliance for Due Process and Public review  
**Attachments:** Council\_ Send Police Equipment Impact Statements & AB 481 Policy to PAB for review & recommendation.pdf

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

This letter was submitted to Council in support of remand of both the Police Equipment and Community Safety Ordinance and AB 481 to the PAB. We support PAB receiving information responsive to questions to BPD in 4/6/22 resolution and in 4/29/22 violations notice. Robust review and revision of the BPD documents and policy to include all of the required information, especially detailing the prohibited and specifically defined, authorized uses of militarized equipment in Berkeley.  
Berkeley Friends Meeting Social & Environmental Action Committee Racial Justice Action Team  
Barb Atwell and Wendy Alfsen, Co-Clerks

----- Forwarded message -----

**From:** Wendy Alfsen <wendyalfsen@gmail.com>  
**Date:** Tue, May 10, 2022 at 9:30 AM  
**Subject:** 5/10 Agenda #30 Return to PAB - both Police Equipment & AB 481 Compliance for Due Process and Public review  
**To:** City Clerk <CLERK@cityofberkeley.info>, Jesse Arreguin Mayor <mayor@cityofberkeley.info>, <BBartlett@cityofberkeley.info>, Harrison, Kate <KHarrison@cityofberkeley.info>, <SHahn@cityofberkeley.info>, <RRobinson@cityofberkeley.info>, <swengraf@cityofberkeley.info>, <LDroste@cityofberkeley.info>

Council can and should wait until PAB has had the full 90 days provided by BMC 2.100 to complete review and make recommendations and cannot proceed under AB 481 until 30 days after BPD posting of 481 Policy & Inventory (no earlier than 5/28/22).

See attached letter from Berkeley Friends Meeting

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Wendy Alfsen & Barb Atwell, Co-Clerks  
510-684-5705  
[wendyalfsen@gmail.com](mailto:wendyalfsen@gmail.com)

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Wendy  
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May 9, 2022

**Re: 5/10/22 Agenda Item 30 - Police Equipment & Community Safety Ordinance and AB 481 Militarized Equipment Use Policy - Refer to Police Accountability Board with instructions to BPD to cooperate and provide PAB with information needed to complete PAB review and recommendations before returning to Council for action**

Mayor and Councilmembers:

The Berkeley Friends Meeting Social and Environmental Action Committee and the Racial Justice Action Team (RJAT) urges Council to send the BPD request for review and approval of Impacts Statements, Report as well as the AB 481 Policy & Inventory to the Police Accountability Board (PAB)

PAB Review & Recommendation Incomplete - Send back to PAB. The City Ordinance states that until BPD has adequately submitted information in Impact Statements, report and policy required by ordinance, the 4 Council meeting deadline for approval does NOT begin to run. Police Equipment & Community Safety ordinance is designed for review and public comment at PAB, then PAB recommendations (has not yet occurred). After those steps, BPD submits to Council and the 4 meeting limitation begins to run. BPD is pressuring the City Council to pass the submitted Impact Statements on 5/10/22 - one year from final approval of the Police Equipment & Community Safety Ordinance on 5/11/21.

AB 481 Timing - 30 day public review BEFORE hearing incomplete. Council cannot act on the AB 481 policy [it is unclear if BPD has even initiated AB 481 compliance] until at least 30 days from BPD prominent public posting (April 28, 2022, is apparently claimed but neither policy nor report can be easily located on the Police Department website - without public posting, has the 30 days even started to run? Is a City Council agenda packet publication sufficient public notice? We submit it is not.)

At the earliest, Council cannot act on AB 481 compliance before 5/28/22 and state law gives Council six months to determine its policy. The publication of the Berkeley Military Equipment Lexipol policy (4/28/22) is the earliest date to start the 30 days for public notice to permit public review and comment). Pursuant to the 481 posting requirement, the required public hearing cannot occur prior to 5/28/22. Council can, and is, requested to return to the PAB both compliance with AB 481 and with Berkeley Police Equipment & Community Safety.

For the Berkeley Police Equipment & Community Safety ordinance, BMC 2.100, the BPD shall not seek City Council approval until “

“(1)After the Police Accountability Board review requirements have been met,” ... [and is] “to include Police Accountability Board recommendations, at least fifteen (15) days prior to a public meeting.” BMC 2.100.040(H)

(2)If the City Council does not approve such an item within four (4) regular City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment until such review and approval occurs. (Ord. 7760-NS § 1, 2021)”

Police Equipment Ordinance - still time for due process. The PAB has 90 days from March 30 to complete its review and make recommendations - that deadline is June 28,2022.

Proper action by Council would be to remand this matter to the PAB with instructions to the BPD to fully cooperate and provide needed information to enable the PAB to complete its review.

PAB has notified BPD of insufficiencies and BPD has stonewalled and denied, rather than complied with the needed information. BPD concedes it has not complied with AB 481; in light of the 4/29/22 and 4/6/22 PAB communications, Council remands with instructions to BPD to respond to PAB with the information and changes in language requested by PAB, is appropriate.

There is time for BPD to comply; if any deadline has passed during BPD's failure to communicate with the PAB, then BPD cannot use the equipment. It appears that if BPD complies, the deadlines can still be met – June 28 for the City's Police Equipment and Community Safety and October 28 for AB 481 adoption.

We look forward to working with the City to develop a policy which clearly identifies prohibited and authorized uses for police militarized equipment and to bring the City into compliance with state law AB 481. If PAB and Council can not make the required findings, the Impact Statements, the Report and 481 policy and equipment inventory can not be approved.

Sincerely,

Berkeley Friends Meeting Racial Justice Action Team

Barb Atwell and Wendy Alfsen, co-Clerks