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The City of Berkeley is governed by two police military equipment laws:

- 2021 City Police Equipment & Community Safety Ordinance No. 7,760-N.S, BMC Section [2.100.050](#) et seq
- [AB 481](#), the statewide policy military equipment transparency and accountability law, Gov't Code Section 7070 et seq, embodied now in BPD Policy 709

Berkeley Police Department (BPD) has submitted to the Police Accountability Board (PAB) a [Police Equipment and Community Safety Ordinance 2021 Annual Report \(2021 Report\)](#) to meet its annual report requirements with both the local ordinance and state law.

This analysis finds the submitted 2021 Report does not meet the requirements for an annual report as required by either the local ordinance or the state law.

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Compliance with local ordinance requirements

The 2021 Annual Report does not comply with local ordinance requirements. The following is a checklist covering the AB 481 requirements for an annual report, checked against BPD's proposed annual report.

- Submitted within one year of approval, and annually thereafter
- provided no later than March 15th of each year, unless the Police Accountability Board advises the Department that an alternate date is preferred

On June 21, 2022, Council set 60 days after July 26 for PAB review of the 2021 Annual Equipment Use Report (e.g. by September 24). The first Council meeting scheduled just before September 24 is September 20. PAB first considers the 2021 Report on September 14, 2022, the first meeting after July 26 at which the PAB could legally notice and agendize review of this 2021 Report for recommendations for Council action on September 20, 2022.

- Available on its internet website
Linked here: <https://berkeleyca.gov/safety-health/police/policy-training-materials>
- for each type of military equipment
 - Info covers the immediately preceding calendar year

- Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession
- 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.
Pg 5: Text breakdown of how equipment was used: warrants, call for service, and 2 exceptions. Table on pg 5 shows which incidents resulted in firing a "less lethal" weapon.
- 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.
- A summary of any complaints or concerns received concerning Controlled Equipment.
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- The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.
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Details of noncompliant local ordinance requirements

- Info covers the immediately preceding calendar year
 - Pg 4: "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."
 - Note: it seems possible that a partial construction of Jan-Sep 2021 data could be compiled from use of force reports, incident reports, investigations, and use of force complaints
- Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession
 - production descriptions missing entirely
 - inventory numbers missing entirely
- 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.
 - Breakdown by police area not provided (individual incidents are provided, but no sum/breakdown by area)
 - Number of days/instances by police area not included
 - Percentage of warrants/non-warrant use by police area not included

Recommendation: The PAB recommend that the Department amend the 2021 Report to fully meet all local ordinance requirements before presenting the Report to Council.

Alternate Recommendation: The PAB note the deficiencies in the 2021 Report and recommend each deficiency be cured in the 2022 Report, to be submitted by March 15 2023.

Compliance with AB 481 requirements

The 2021 Annual Report does not comply with AB 481 requirements. The following is a checklist covering the AB 481 requirements for an annual report, checked against BPD's proposed annual report.

- Submitted within one year of approval, and annually thereafter
- Available on its internet website
Linked here: <https://berkeleyca.gov/safety-health/police/policy-training-materials>
- for each type of military equipment
 - Info covers the immediately preceding calendar year
 - summary of how the military equipment was used
 - purpose of its use
 - summary of any complaints or concerns received concerning the military equipment
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 - results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response
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 - total annual cost for each type of military equipment, including
 - Acquisition
 - Personnel
 - Training
 - Transportation
 - Maintenance
 - Storage
 - Upgrade
 - other ongoing costs
 - from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report
 - quantity possessed for each type of military equipment.
 - If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

Details of noncompliant local ordinance requirements

- Info covers the immediately preceding calendar year
 - Pg 4: “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.”
 - Note: it seems possible that a partial construction of Jan-Sep 2021 data could be compiled from use of force reports, incident reports, investigations, and use of force complaints
- purpose of its use
 - Table on pp 5-11 does not include purpose for use
 - Note: purpose of use is for *each* type of military equipment
- total annual cost for each type of military equipment
 - All elements of total annual are missing for every type of military equipment
- quantity possessed for each type of military equipment.
 - All quantities are missing for every type of military equipment
- If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.
 - Military equipment includes munitions; does BPD intend to acquire no munitions or other military equipment for the next year? If so, they should state that explicitly.

Recommendation: The PAB recommend that before presenting the 2021 Report to Council, the Department amend the 2021 Report to state that the 2021 Report does not meet state law requirements for an annual report.

Recommendation: The PAB note the state law deficiencies in the 2021 Report and recommend each deficiency be cured prior to submitting the first annual AB 481 report, and for the first annual AB 481 report to be submitted by January 1 2023. (This date would allow for EO to have been in use for one full calendar year, meeting the state requirement for reporting on the previous calendar year.)

Alternate Recommendation: The PAB note the state law deficiencies in the 2021 Report and recommend each deficiency be cured prior to submitting the first annual AB 481 report, and for the first annual AB 481 report to be submitted by March 15 2023, as part of the same annual report for the local ordinance. (This date would allow for EO to have been in use for one full calendar year, meeting the state requirement for reporting on the previous calendar year, and for the Department to submit only one annual report in 2023.)