

To: Berkeley Police Review Commissioners

From: John Lindsay-Poland, American Friends Service Committee

Re: Special Equipment Ordinance: Compared with existing policy, mutual aid, Council review
September 30, 2020

The proposed ordinance on Berkeley's acquisition and use of militarized equipment ("Special Equipment") is a baseline process for civilian oversight and transparency of weapons and other equipment used in SWAT operations and protests. It doesn't ban anything. Modeled on the surveillance equipment ordinance, it creates a mandate for use policies and public reporting on the uses and impact equipment that doesn't exist in current Use of Force or other policies.

Militarized equipment is different from other weapons or tools, not only because of its physical capacities, but primarily because of the impact it has on community-law enforcement relations. Its mere appearance, especially in situations where it is not needed for critical safety, sends a message that the community and police are in a war.

Mutual Aid

Berkeley has the authority to tell outside agencies coming into the City for mutual aid what equipment uses are permitted and what is prohibited. Oakland's mutual aid policy, for example, in force since 2014, requires that "Prior to deployment, outside law enforcement units shall respond to a designated staging area where... their less-lethal weapons and munitions will be inventoried and they will be told which weapons and munitions are prohibited according to Departmental Policy." The OPD mutual aid policy also states that visiting officers deployed for mutual aid "shall comply with all applicable Departmental policy including but not limited to: Use of force; Report writing; Crowd control and management; Taking complaints."

City Council Review of Acquisitions and Use Policies

The City Council holds ultimate authority over City acquisitions of equipment, and should routinely receive recommendations from the Department and Police Review Commission on types of equipment and use policies for that equipment. Uncontroversial items may be placed on consent agendas, but the City Council should not have to monitor PRC reviews of equipment to determine what the Council reviews or doesn't review.

Use of Force Policy

Use of Force policy reporting requirements in 300.11.1:

The Use of Force Policy requires the Department to prepare a quarterly comprehensive analysis report on use of force incidents that includes: "An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age; All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2); The identification of any trends in the use of force by members."

No reporting on the types of equipment covered by this ordinance is required by the Use of Force policy. The "types of force" (Levels, 1, 2, 3, 4) include firing of chemical agents, and body strikes with long batons, but only among bigger categories of uses of force. There is nothing in Use of Force reporting to show how many times assault rifles were used among other firearms.

Deployments of militarized gear covered by this ordinance that did not result in uses of force are not reported. That includes chemical launchers that were deployed but not fired, long batons that were deployed but not used to strike someone, or LRADs that were deployed at a protest. There is no public reporting required in current policies on deployments of armored vehicles or forced breaching of doors.

Assault Rifles Policy – [Policy 349](#)

Policy states rifles will be deployed “to exercise expeditious control over critical incidents or potentially violent situations” and that Tactical Rifle Officers “should deploy the firearm which best meets the needs of the police response, and in which he/she has the greatest accuracy and operational confidence.” No prohibited uses are listed. No impact report is required. No reporting is required on deployments of rifles that are not Uses of Force.

The Department’s [F-02 policy](#) on Firearms references AR-15 style rifles, but includes no use policy or reporting on deployment of the AR-15s.

Long Range Acoustic Devices (LRADs) – [Policy 707](#) (not yet posted)

LRADs can emit extremely loud sounds and voice commands, which is useful to effectively communicate over distances, but can also be used in a crowd to forcibly disperse people, much as firehoses have been used. [Oakland](#) and [New York PD](#) have used LRADs in this manner, and a federal court ruled against its use as “excessive force” in crowd control in 2018. **LRADs should be included in the list of Special Equipment in this ordinance.**

Policy 707 describes LRADs that BPD owns, their purpose, uses, and approval process for use. One of approved uses is to “disperse crowds,” but policy also states that the Department “shall not use either LRAD system as a weapon.”

Armored Vehicles (“Emergency Response Vehicle”) – [Policy 706](#)

Existing policy states the purpose of armored vehicles, authorized uses, training required, process for deployment, and prohibited uses. The SRT commander maintains a vehicle usage log “which may be provided to the City Council on an annual basis, or as requested.”

The proposed ordinance would require such an annual report also to include inventory information; general locations of equipment use; summary of complaints; any internal audit results; and costs.

Chemical Agents, Launchers, Projectiles, and Batons – “Control Devices and Techniques” [Policy 303](#)

Policy 303 covers chemical agents, impact projectiles, and batons. When these devices are “applied”, they are documented in incident reports and reported according to the Use of Force Policy. However, deployment without a use of force would not be reported.

The proposed Special Equipment ordinance would require the Department to report on inventory, costs, impacts on civil liberties, mitigations, or alternatives for this equipment; such reporting is not mandated by current policy.